

Title 41

PUBLIC EMPLOYMENT, CIVIL SERVICE, AND PENSIONS

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Payroll deductions authorized for school district employees: RCW 28A.405.400 and 28A.405.410.

41.04.003 Title application—Health benefit exchange. Except for chapters 41.05 and 41.40 RCW, this title does not apply to any position in or employee of the Washington health benefit exchange established in chapter 43.71 RCW. [2012 c 87 § 19.]

Effective date—2012 c 87 §§ 4, 16, 18, and 19-23: See note following RCW 43.71.030.

Spiritual care services—2012 c 87: See RCW 43.71.901.

41.04.005 "Veteran" defined for certain purposes.

(1) As used in RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, and *28B.15.380 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, or *28B.15.380 has received an honorable discharge, is actively serving honorably, or received a discharge for physical reasons with an honorable record and who meets at least one of the following criteria:

(a) The person has served between World War I and World War II or during any period of war, as defined in subsection (2) of this section, as either:

(i) A member in any branch of the armed forces of the United States;

(ii) A member of the women's air forces service pilots;

(iii) A U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, from December 7, 1941, through December 31, 1946; or

(iv) A civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946; or

(b) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service:

(i) In any branch of the armed forces of the United States; or

(ii) As a member of the women's air forces service pilots.

(2) A "period of war" includes:

(a) World War I;

(b) World War II;

(c) The Korean conflict;

(d) The Vietnam era, which means:

(i) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;

(ii) The period beginning August 5, 1964, and ending on May 7, 1975;

(e) The Persian Gulf War, which was the period beginning August 2, 1990, and ending on the date prescribed by presidential proclamation or law;

(f) The period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress; and

(g) The following armed conflicts, if the participant was awarded the respective campaign badge or medal: The crisis in Lebanon; the invasion of Grenada; Panama, Operation Just Cause; Somalia, Operation Restore Hope; Haiti, Operation Uphold Democracy; Bosnia, Operation Joint Endeavor;

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Operation Noble Eagle; southern or central Asia, Operation Enduring Freedom; and Persian Gulf, Operation Iraqi Freedom. [2005 c 255 § 1; 2005 c 247 § 1. Prior: 2002 c 292 § 1; 2002 c 27 § 1; 1999 c 65 § 1; 1996 c 300 § 1; 1991 c 240 § 1; 1984 c 36 § 1; 1983 c 230 § 1; 1982 1st ex.s. c 37 § 20; 1969 ex.s. c 269 § 1.]

Reviser's note: *(1) RCW 28B.15.380 was amended by 2005 c 249 § 2 and no longer applies to veterans. For later enactment, see RCW 28B.15.621.

(2) This section was amended by 2005 c 247 § 1 and by 2005 c 255 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

41.04.007 "Veteran" defined for certain purposes.

"Veteran" includes every person, who at the time he or she seeks the benefits of RCW 46.18.212, 46.18.235, 72.36.030, 41.04.010, 73.04.090, or 43.180.250 has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

(1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;

(2) As a member of the women's air forces service pilots;

(3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;

(4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946;

(5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or

(6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial waters, and who received a military commendation. [2013 c 42 § 1; 2010 c 161 § 1105; 2007 c 448 § 1; 2006 c 252 § 2. Prior: 2005 c 251 § 1; 2005 c 216 § 7; 2002 c 292 § 2.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

41.04.010 Veterans' scoring criteria status in examinations. In all competitive examinations, unless otherwise provided in this section, to determine the qualifications of applicants for public offices, positions, or employment, either the state, and all of its political subdivisions and all municipal corporations, or private companies or agencies contracted with by the state to give the competitive examinations shall give a scoring criteria status to all veterans as defined in RCW 41.04.007, by adding to the passing mark, grade or rating only, based upon a possible rating of one hundred points as perfect a percentage in accordance with the following:

(1) Ten percent to a veteran who served during a period of war or in an armed conflict as defined in RCW 41.04.005 and does not receive military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(2) Five percent to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(3) Five percent to a veteran who was called to active military service from employment with the state or any of its political subdivisions or municipal corporations. The percentage shall be added to promotional examinations until the first promotion only;

(4) All veterans' scoring criteria may be claimed upon release from active military service or upon receipt of separation orders indicating an honorable discharge, issued by the respective military department. [2013 c 83 § 1; 2009 c 248 § 1; 2007 c 449 § 1; 2003 c 45 § 1; 2002 c 292 § 4; 2000 c 140 § 1; 1974 ex.s. c 170 § 1; 1969 ex.s. c 269 § 2; 1953 ex.s. c 9 § 1; 1949 c 134 § 1; 1947 c 119 § 1; 1945 c 189 § 1; Rem. Supp. 1949 § 9963-5.]

Veterans and veterans' affairs: Title 73 RCW.

41.04.015 Public employment—Evidence of educational competence. A Washington high school equivalency certificate as awarded by the Washington state superintendent of public instruction or a high school equivalency certificate as provided in RCW 28B.50.536 shall be accepted in lieu of a high school diploma by the state and any local political subdivision when considering applicants for employment or promotion. [2013 c 39 § 19; 1971 c 43 § 1.]

41.04.017 Death benefit—Course of employment—Occupational disease or infection. A one hundred fifty thousand dollar death benefit shall be paid as a sundry claim to the estate of an employee of any state agency, the common school system of the state, or institution of higher education who dies as a result of (1) injuries sustained in the course of employment; or (2) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter, and is not otherwise provided a death benefit through coverage under their enrolled retirement system under chapter 402, Laws of 2003. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the director of the department of enterprise services by order under RCW 51.52.050. [2015 c 225 § 51; 2007 c 487 § 1; 2003 c 402 § 4.]

41.04.020 Public employees—Payroll deductions authorized. Any employee or group of employees of the state of Washington or any of its political subdivisions, or of any institution supported, in whole or in part, by the state or any of its political subdivisions, may authorize the deduction from his or her salaries or wages and payment to another, the amount or amounts of his or her subscription payments or

contributions to any person, firm, or corporation administering, furnishing, or providing (1) medical, surgical, and hospital care or either of them, or (2) life insurance or accident and health disability insurance, or (3) any individual retirement account selected by the employee or the employee's spouse established under applicable state or federal law: PROVIDED, That such authorization by said employee or group of employees, shall be first approved by the head of the department, division office or institution of the state or any political subdivision thereof, employing such person or group of persons, and filed with the department of enterprise services; or in the case of political subdivisions of the state of Washington, with the auditor of such political subdivision or the person authorized by law to draw warrants against the funds of said political subdivision. [2011 1st sp.s. c 43 § 471; 1998 c 116 § 1; 1982 c 107 § 1; 1973 c 106 § 15; 1947 c 70 § 1; Rem. Supp. 1947 § 9963-10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

*Group insurance disability: Chapter 48.21 RCW.
for employees of
cities and towns: RCW 35.23.460.
counties: RCW 36.32.400.
life: Chapter 48.24 RCW.*

41.04.030 Payroll deductions—Duty of auditing officer. Upon being authorized by any employee or group of employees so to do under the provisions of RCW 41.04.020, the auditor or other person authorized to draw warrants against the funds involved is authorized, and if such medical, surgical, and hospital care or either of them, or life insurance or accident and health disability insurance is to be provided on a group basis for groups each of not less than twenty-five individuals such auditor or other person is hereby required, to draw and issue a proper warrant or warrants directly to and in favor of the person, firm, or corporation, or organization named in the authorization for the total amount authorized to be deducted from the payroll of any such office, department, division, or institution. [1953 c 260 § 1; 1947 c 70 § 2; Rem. Supp. 1947 § 9963-11.]

41.04.033 Operation of the Washington state combined fund drive—Secretary of state—Rules. The secretary of state is authorized to adopt rules, after consultation with state agencies, institutions of higher education, and employee organizations for the operation of the Washington state combined fund drive. [2010 1st sp.s. c 7 § 9; 2010 c 101 § 1; 2003 c 205 § 1; 2002 c 61 § 4.]

Reviser's note: This section was amended by 2010 c 101 § 1 and by 2010 1st sp.s. c 7 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

41.04.0331 State combined fund drive program—Powers and duties of secretary of state. To operate the Washington state combined fund drive program, the secretary of state or the secretary's designee may, but is not limited to the following:

(1) Raise money for charity, and reducing [reduce] the disruption to government caused by multiple fund drives;

(2) Establish criteria by which a public or private non-profit organization may participate in the combined fund drive;

(3) Engage in or encouraging [encourage] fund-raising activities including the solicitation and acceptance of charitable gifts, grants, and donations from state employees, retired public employees, corporations, foundations, and other individuals for the benefit of the beneficiaries of the Washington state combined fund drive;

(4) Request the appointment of employees from state agencies and institutions of higher education to lead and manage workplace charitable giving campaigns within state government;

(5) Engage in educational activities, including classes, exhibits, seminars, workshops, and conferences, related to the basic purpose of the combined fund drive;

(6) Engage in appropriate fund-raising and advertising activities for the support of the administrative duties of the Washington state combined fund drive; and

(7) Charge an administrative fee to the beneficiaries of the Washington state combined fund drive to fund the administrative duties of the Washington state combined fund drive.

Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law. [2010 1st sp.s. c 7 § 10; 2010 c 101 § 2; 2003 c 205 § 2.]

Reviser's note: This section was amended by 2010 c 101 § 2 and by 2010 1st sp.s. c 7 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

41.04.0332 State combined fund drive—Secretary of state—Contracts and partnerships. The secretary of state may enter into contracts and partnerships with private institutions, persons, firms, or corporations for the benefit of the beneficiaries of the Washington state combined fund drive. Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law. [2010 1st sp.s. c 7 § 11; 2010 c 101 § 3; 2003 c 205 § 3.]

Reviser's note: This section was amended by 2010 c 101 § 3 and by 2010 1st sp.s. c 7 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

41.04.035 Salary and wage deductions for contributions to charitable agencies—"United Fund" defined—Includes Washington state combined fund drive. For the purpose of RCW 41.04.035 and 41.04.036 "United Fund" means the organization conducting the single, annual, consolidated effort to secure funds for distribution to agencies engaged in charitable and public health, welfare and service

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purposes, which is commonly known as the United Fund or the Washington state combined fund drive. [2002 c 61 § 1; 1957 c 208 § 1.]

41.04.036 Salary and wage deductions for contributions to charitable agencies—Deduction and payment to United Fund or Washington state combined fund drive—Rules, procedures. Any official of the state or of any of its political subdivisions authorized to disburse funds in payment of salaries or wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salary or wages of the officer or employee the amount of money designated by the officer or employee for payment to the United Fund or the Washington state combined fund drive.

The moneys so deducted shall be paid over promptly to the United Fund or the Washington state combined fund drive designated by the officer or employee. Subject to any rules adopted by the office of financial management, the official authorized to disburse the funds in payment of salaries or wages may prescribe any procedures necessary to carry out RCW 41.04.035 and 41.04.036. [2002 c 61 § 2; 1983 1st ex.s. c 28 § 2; 1979 c 151 § 53; 1973 c 106 § 16; 1957 c 208 § 2.]

Additional notes found at www.leg.wa.gov

41.04.039 Washington state combined fund drive account—Created. The Washington state combined fund drive account is created in the custody of the state treasurer. All receipts from the combined fund drive must be deposited into the account. Expenditures from the account may be used only for the beneficiaries of the Washington state combined fund drive. Only the secretary of state or the secretary's designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW, and an appropriation is not required for expenditures. [2010 c 101 § 4; 2002 c 61 § 3.]

41.04.110 Persons employed by more than one agency—Joint operation—May provide membership in single system. When there exists a joint operation of a public service, the authorities may make provision for membership of all new employees in one designated retirement system by agreement with the proper authorities. [1951 c 98 § 5.]

41.04.120 Civil service and retirement rights preserved when elective office assumed. Any civil service employee of the state of Washington or of any political subdivision thereof who is on leave of absence by reason of having been elected or appointed to an elective office shall be preserved in his or her civil service status, his or her seniority, rank and retirement rights so long as he or she regularly continues to make the usual contribution incident to the retention of such beneficial rights as if he or she were not on leave of absence: PROVIDED, That such contributions being made shall be based on the rank at the time of taking such leave of absence. [2012 c 117 § 5; 1957 c 164 § 1.]

41.04.130 Extension of provisions of retirement and pension systems by cities of the first class to nonincluded personnel. Any city of the first class may, by ordinance,

extend, upon conditions deemed proper, the provisions of retirement and pension systems for superannuated and disabled officers and employees to officers and employees with five years of continuous service and acting in capacities in which they would otherwise not be entitled to participation in such systems: PROVIDED, That the following shall be specifically exempted from the provisions of this section.

(1) Members of the police departments who are entitled to the benefits of the police relief and pension fund as established by state law.

(2) Members of the fire department who are entitled to the benefits of the firefighters' relief and pension fund as established by state law. [2013 c 23 § 68; 1945 c 52 § 1; 1941 c 192 § 1; Rem. Supp. 1945 § 9592-129. Formerly codified as RCW 41.28.250.]

41.04.140 Interchange of personnel between federal and state agencies—"State agency" defined. "State agency" means a board, department, commission or institution of the state or its political subdivisions. [1959 c 102 § 1.]

41.04.150 Interchange of personnel between federal and state agencies—Agreements—Provisions. A state agency may enter into agreements with departments or other subdivisions of the federal government for the interchange of personnel on projects which are of mutual benefit to the state and federal government.

An interchange agreement shall specify the fiscal arrangements to be made, including compensations, rights, benefits and obligations of the employees concerned, travel and transportation of employees, their immediate families and household goods, and the duties and supervision of employees while on assignment. [1959 c 102 § 2.]

41.04.160 Interchange of personnel between federal and state agencies—Employment status of state employees participating—Retirement—Civil service. State agency employees participating in an interchange may be carried on detail or in a leave of absence status.

(1) Wherever practicable, employees should be carried on detail. While on detail under an interchange agreement, employees shall remain employees of the state agency for all fiscal purposes, but shall receive no reimbursement for travel or other expenses except as provided in RCW 41.04.150.

(2) State agency employees who receive temporary appointments with federal agencies shall be carried by the state agency in a leave of absence status. Participation in an interchange shall be considered as service under any retirement system of which the employees are members. Arrangements for payment of employees' contributions to a retirement system may be by the interchange agreement or otherwise. Employees participating in an interchange shall be entitled to credit the full period toward promotion or salary increase as provided by any applicable civil service laws or regulations. [1959 c 102 § 3.]

41.04.170 Interchange of personnel between federal and state agencies—Employment status of federal employees participating—Retirement—Civil service. Federal employees participating in an interchange may

receive appointment by the state agency, or may be considered to be on detail with the state agency.

(1) Appointments of federal employees shall be made without regard to civil service laws or regulations. Compensation shall be in accordance with the usual rates paid by the state agency for similar positions.

An appropriate percentage of compensation shall be deducted and transmitted to the federal agency for retirement and insurance where the interchange agreement so provides.

(2) Federal employees on detail with a state agency remain employees of and shall continue to receive their compensation from the federal agency, subject to the terms of the interchange agreement. [1959 c 102 § 4.]

41.04.180 Hospitalization and medical aid for county, municipal and other political subdivision employees—Governmental contributions authorized. Any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body may, whenever funds shall be available for that purpose provide for all or a part of hospitalization and medical aid for its employees and their dependents through contracts with regularly constituted insurance carriers or with health care service contractors as defined in chapter 48.44 RCW or self-insurers as provided for in chapter 48.62 RCW, for group hospitalization and medical aid policies or plans: PROVIDED, That any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body shall provide the employees thereof a choice of policies or plans through contracts with not less than two regularly constituted insurance carriers or health care service contractors or other health care plans, including but not limited to, trusts of self-insurance as provided for in chapter 48.62 RCW: AND PROVIDED FURTHER, That any county may provide such hospitalization and medical aid to county elected officials and their dependents on the same basis as such hospitalization and medical aid is provided to other county employees and their dependents: PROVIDED FURTHER, That provision for school district personnel shall not be made under this section but shall be as provided for in RCW 28A.400.350. [1991 sp.s. c 30 § 18; 1974 ex.s. c 82 § 1; 1973 1st ex.s. c 147 § 6; 1970 ex.s. c 39 § 10; 1969 ex.s. c 237 § 1; 1967 c 135 § 1; 1965 c 57 § 1; 1963 c 75 § 1.]

Retirement allowance deductions for health care benefit plans: RCW 41.04.235.

State health care authority: Chapter 41.05 RCW.

Additional notes found at www.leg.wa.gov

41.04.190 Hospitalization and medical aid for county, municipal and other political subdivision employees or elected officials—Cost not additional compensation—Disbursement. The cost of a policy or plan to a public agency or body is not additional compensation to the employees or elected officials covered thereby. The elected officials to whom this section applies include but are not limited to commissioners elected under chapters 28A.315, 52.14, 53.12, 54.12, 57.12, 70.44, and 87.03 RCW, as well as any county elected officials who are provided insurance coverage under RCW 41.04.180, and city officials elected under chapters 35.17, 35.22, 35.23, 35.27, 35A.12, and 35A.13 RCW.

Any officer authorized to disburse such funds may pay in whole or in part to an insurance carrier or health care service contractor the amount of the premiums due under the contract. [2007 c 42 § 1; 1996 c 230 § 1610; 1992 c 146 § 13; 1983 1st ex.s. c 37 § 1; 1965 c 57 § 2; 1963 c 75 § 2.]

Additional notes found at www.leg.wa.gov

41.04.205 Participation of county, municipal, and other political subdivision employees in state employees' insurance or self-insurance and health care program—Transfer procedure. (1) Notwithstanding the provisions of RCW 41.04.180, the employees, with their dependents, of any county, municipality, or other political subdivision of this state shall be eligible to participate in any insurance or self-insurance program for employees administered under chapter 41.05 RCW if the legislative authority of any such county, municipality, or other political subdivisions of this state determines, subject to collective bargaining under applicable statutes, a transfer to an insurance or self-insurance program administered under chapter 41.05 RCW should be made. In the event of a special district employee transfer pursuant to this section, members of the governing authority shall be eligible to be included in such transfer if such members are authorized by law as of June 25, 1976 to participate in the insurance program being transferred from and subject to payment by such members of all costs of insurance for members.

(2) When the legislative authority of a county, municipality, or other political subdivision determines to so transfer, the state health care authority shall:

(a) Establish the conditions for participation; and

(b) Have the sole right to reject the application, except a group application from a county or other political subdivision of the state with fewer than five thousand employees must be approved.

Approval of the application by the state health care authority shall effect a transfer of the employees involved to the insurance, self-insurance, or health care program applied for.

(3) Any application of this section to members of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW is subject to chapter 41.56 RCW.

(4) School districts may voluntarily transfer, except that all eligible employees in a bargaining unit of a school district may transfer only as a unit and all nonrepresented employees in a district may transfer only as a unit. [2016 c 67 § 1; 1995 1st sp.s. c 6 § 8; 1993 c 386 § 3; 1992 c 199 § 1; 1990 c 222 § 1; 1988 c 107 § 17; 1975-'76 2nd ex.s. c 106 § 1.]

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.04.208 Local government retirees—Health care—Definitions—Participation—Exception. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Disabled employee" means a person eligible to receive a disability retirement allowance from the Washington law enforcement officers' and firefighters' retirement system plan 2 and the public employees' retirement system.

(b) "Health plan" means a contract, policy, fund, trust, or other program established jointly or individually by a county,

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municipality, or other political subdivision of the state that provides for all or a part of hospitalization or medical aid for its employees and their dependents under RCW 41.04.180.

(c) "Retired employee" means a public employee meeting the retirement eligibility, years of service requirements, and other criteria of the Washington law enforcement officers' and firefighters' retirement system plan 2 and the public employees' retirement system.

(2) A county, municipality, or other political subdivision that provides a health plan for its employees shall permit retired and disabled employees and their dependents to continue participation in a plan subject to the exceptions, limitations, and conditions set forth in this section. However, this section does not apply to a county, municipality, or other political subdivision participating in an insurance program administered under chapter 41.05 RCW if retired and disabled employees and their dependents of the participating county, municipality, or other political subdivision are covered under an insurance program administered under chapter 41.05 RCW. Nothing in this subsection or chapter 319, Laws of 2002 precludes the local government employer from offering retired or disabled employees a health plan with a benefit structure, copayment, deductible, coinsurance, lifetime benefit maximum, and other plan features which differ from those offered through a health plan provided to active employees. Further, nothing in this subsection precludes a local government employer from joining with other public agency employers, including interjurisdictional benefit pools and multi-employer associations or consortiums, to fulfill its obligations under chapter 319, Laws of 2002.

(3) A county, municipality, or other political subdivision has full authority to require a person who requests continued participation in a health plan under subsection (2) of this section to pay the full cost of such participation, including any amounts necessary for administration. However, this subsection does not require an employer who is currently paying for all or part of a health plan for its retired and disabled employees to discontinue those payments.

(4) Payments for continued participation in a former employer's health plan may be assigned to the underwriter of the health plan from public pension benefits or may be paid to the former employer, as determined by the former employer, so that an underwriter of the health plan that is an insurance company, health care service contractor, or health maintenance organization is not required to accept individual payments from persons continuing participation in the employer's health plan.

(5) After an initial open enrollment period of ninety days after January 1, 2003, an employer may not be required to permit a person to continue participation in the health plan if the person is responsible for a lapse in coverage under the plan. In addition, an employer may not be required to permit a person to continue participation in the employer's health plan if the employer offered continued participation in a health plan that meets the requirements of chapter 319, Laws of 2002.

(6) If a person continuing participation in the former employer's health plan has medical coverage available through another employer, the medical coverage of the other employer is the primary coverage for purposes of coordina-

tion of benefits as provided for in the former employer's health plan.

(7) If a person's continued participation in a health plan was permitted because of the person's relationship to a retired or disabled employee of the employer providing the health plan and the retired or disabled employee dies, then that person is permitted to continue participation in the health plan for a period of not more than six months after the death of the retired or disabled employee. However, the employer providing the health plan may permit continued participation beyond that time period.

(8) An employer may offer one or more health plans different from that provided for active employees and designed to meet the needs of persons requesting continued participation in the employer's health plan. An employer, in designing or offering continued participation in a health plan, may utilize terms or conditions necessary to administer the plan to the extent the terms and conditions do not conflict with this section.

(9) If an employer changes the underwriter of a health plan, the replaced underwriter has no further responsibility or obligation to persons who continued participation in a health plan of the replaced underwriter. However, the employer shall permit those persons to participate in any new health plan.

(10) The benefits granted under this section are not considered a matter of contractual right. Should the legislature, a county, municipality, or other political subdivision of the state revoke or change any benefits granted under this section, an affected person is not entitled to receive the benefits as a matter of contractual right.

(11) This section does not affect any health plan contained in a collective bargaining agreement in existence as of January 1, 2003. However, any plan contained in future collective bargaining agreements shall conform to this section. In addition, this section does not affect any health plan contract or policy in existence as of January 1, 2003. However, any renewal of the contract or policy shall conform to this section.

(12) Counties, municipalities, and other political subdivisions that make a documented good faith effort to comply with the provisions of subsections (2) through (11) of this section and are unable to provide access to a fully insured group health benefit plan are discharged from any obligations under subsections (2) through (11) of this section but shall assist disabled employees and retired employees in applying for health insurance. Assistance may include developing and distributing standardized information on the availability and cost of individual health benefit plans, application packages, and health benefit fairs.

(13) The office of the insurance commissioner shall make available to counties, municipalities, and other political subdivisions information regarding individual health benefit plans, including a list of carriers offering individual coverage, the rates charged, and how to apply for coverage. [2004 c 173 § 1; 2002 c 319 § 2.]

Intent—2002 c 319: "It is the intent of this act to provide retirees of local government employers access to health care benefits. It is also the intent of this act that local government employers be allowed the flexibility to design programs to meet the health care needs of their retirees and that the local government employer be able to recover all costs associated with providing retirees access to health benefits." [2002 c 319 § 1.]

Additional notes found at www.leg.wa.gov

41.04.212 Local government retirees—Health care—Administration. Employers providing access to health insurance coverage under chapter 319, Laws of 2002 may adopt criteria which specify allowable enrollment periods, require enrollees to keep current addresses and information, and outline other processes to ensure that plans can be administered efficiently and effectively. [2002 c 319 § 3.]

Intent—2002 c 319: See note following RCW 41.04.208.

41.04.220 Department of enterprise services to procure health benefit programs—Other governmental entities may use services. Any governmental entity other than state agencies, may use the services of the department of enterprise services upon the approval of the director, in procuring health benefit programs as provided by RCW 41.04.180, 28A.400.350 and 28B.10.660: PROVIDED, That the department of enterprise services may charge for the administrative cost incurred in the procuring of such services. [2015 c 225 § 52; 1983 c 3 § 88; 1969 ex.s. c 237 § 7.]

Additional notes found at www.leg.wa.gov

41.04.230 Payroll deductions authorized. Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union. An agency may, in its own discretion, establish a minimum participation requirement of fewer than twenty-five employees.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of enterprise services. Deductions shall be pretax, to the extent possible, for qualified parking and transit benefits as allowed under the federal internal revenue code.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor, employee, or retiree organization dues, and voluntary employee contributions to any funds, committees, or subsidiary organizations maintained by labor, employee, or retiree organizations, may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of chapter 41.80 RCW: PROVIDED, That each labor, employee, or retiree organization chooses only one fund for voluntary employee contributions: PROVIDED, FURTHER, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor, employee, or retiree organization: PROVIDED, FURTHER, That labor, employee, or retiree organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

(7) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority. However, enrollment or assignment by the state health care authority to participate in a health care benefit plan, as required by RCW 41.05.065(8), shall authorize a payroll deduction of premium contributions without a written consent under the terms and conditions established by the public employees' benefits board.

(8) Deductions to a bank, savings bank, or savings and loan association if (a) the bank, savings bank, or savings and loan association is authorized to do business in this state; and (b) twenty-five or more employees of a single agency, or fewer, if a lesser number is established by such agency, or a total of one hundred or more state employees of several agencies have authorized a deduction for payment to the same bank, savings bank, or savings and loan association.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

(9) Contributions to the Washington state combined fund drive.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction. [2013 c 124 § 1; 2007 c 99 § 1; 2006 c 216 § 1; 2002 c 61 § 5; 1995 1st sp.s. c 6 § 21. Prior: 1993 c 2 § 26 (Initiative Measure No. 134, approved November 3, 1992); 1992 c 192 § 1; 1988 c 107 § 19; 1985 c 271 § 1; 1983 1st ex.s. c 28 § 3; 1980 c 120 § 1; 1979 c 151 § 54; 1973 1st ex.s. c 147 § 5; 1970 ex.s. c 39 § 11; 1969 c 59 § 5.]

Effective date—2006 c 216: "This act takes effect January 1, 2007." [2006 c 216 § 2.]

Additional notes found at www.leg.wa.gov

41.04.232 Transition to two payrolls per month—Guidelines on deductions and deferrals. In order to facilitate the transition from one payroll per month to two payrolls

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per month, the following guidelines concerning payroll deductions and deferrals are established:

(1) All mandatory and voluntary deductions which are based upon a percentage of salary shall be deducted, after August 23, 1983, from the salaries payable for each pay period. This subsection shall apply regardless of when the deductions were authorized or required.

(2) The office of financial management shall adopt reasonable procedures providing for deductions, including deferrals, which are not based on a percentage of salary.

(3) Amounts which are deducted in accordance with subsections (1) and (2) of this section shall be paid to the designated recipient no later than the established paydates except when other agreements are reached with the designated recipient.

(4) Payment of deductions and deferrals to the designated recipient shall be made by warrant or check except when the designated recipient requests payment by electronic funds transfer. If recipients request electronic funds transfers, sufficient time shall be made available to establish the process. The elapsed time to establish the process shall not exceed three months from the time the recipient has requested in writing to the appropriate data processing payroll systems manager to receive payment by electronic funds transfer.

Documentation and itemization of deductions or deferrals paid shall be in printed form unless the designated recipient requests computer tapes. If recipients request computer tapes, sufficient time shall be made available to establish the process. Computer tapes shall be made available to the requesting designated recipient if at least one hundred employees paid from an automated payroll system have such deductions. The elapsed time to establish the process for providing computer tapes shall not exceed three months from the time the recipient has requested in writing to the appropriate data processing payroll systems manager to receive computer tapes. With the approval of the office of financial management, more advanced technology may be utilized to provide payment, documentation, and itemization of deductions to designated recipients. [1983 1st ex.s. c 28 § 4.]

Additional notes found at www.leg.wa.gov

41.04.233 Payroll deductions for capitation payments to health maintenance organizations.

Any employee or retired employee of the state or its departments, agencies, or subdivisions and any employee or retired employee of a county, public or municipal corporation, school district, or tax supported institution may authorize the deduction from his or her salary or wages of the amount of his or her capitation payments to any health maintenance organization receiving a certificate of authority under this chapter. Upon the filing of an authorization with the auditor or fiscal officer of the employer, such auditor or fiscal officer shall make payments in favor of the health maintenance organizations referred to in the authorization for the amounts of the deductions authorized, *RCW 41.04.230(7) notwithstanding. [2012 c 117 § 6; 1975 1st ex.s. c 290 § 20.]

*Reviser's note: RCW 41.04.230 was amended by 1993 c 2 § 26 (Initiative Measure No. 134), and subsection (7) was deleted.

41.04.235 Retirement allowance deductions for health care benefit plans. Participants in a health care benefit plan approved pursuant to RCW 41.04.180, 41.05.065, or 28A.400.350, whichever is applicable, who are retired public employees, may authorize the deduction from their retirement allowances, of the amount or amounts of their subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance upon the approval by the retirement board of an application for such deduction on the prescribed form, and the treasurer of the state shall duly and timely draw and issue proper warrants directly to and in favor of the person, firm, or corporation, or organization named in the authorization for the amount authorized to be deducted. [1993 c 386 § 4; 1983 c 3 § 89; 1975 1st ex.s. c 73 § 1.]

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.04.240 Direct deposit of salaries into financial institutions—Alternate payment methods for employees of institutions of higher education—Conservation district exemption. (1) Except with regard to institutions of higher education as defined in RCW 28B.10.016, any official of the state or of any political subdivision, municipal corporation, or quasi-municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of at least twenty-five employees to pay all or part of such salaries or wages to any financial institution for either: (a) Credit to the employees' accounts in such financial institution; or (b) immediate transfer therefrom to the employees' accounts in any other financial institutions.

(2) In disbursing funds for payment of salaries and wages of employees, institutions of higher education as defined in RCW 28B.10.016 are authorized to require the following payment methods:

(a) For employees who have an account in a financial institution, payment to any financial institution for either: (i) Credit to the employees' accounts in such financial institution; or (ii) immediate transfer therefrom to the employees' accounts in any other financial institutions; and

(b) For employees who do not have an account in a financial institution, payment by alternate methods such as payroll cards.

(3) Nothing in this section shall be construed as authorizing any employer to require the employees to have an account in any particular financial institution or type of financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the employees involved, and written directions provided to such financial institution of the amount to be credited to the account of an employee or to be transferred to an account in another financial institution for such employee. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth herein and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the employee.

(4) Conservation districts as established and authorized under chapter 89.08 RCW are exempt from the requirement to obtain a written request of twenty-five employees as required in subsection (1) of this section, and may disburse

funds in payment of salaries and wages of employees consistent with this chapter and RCW 89.08.215.

(5) For the purposes of this section "financial institution" means any bank or trust company established in this state pursuant to chapter 2, Title 12, United States Code, or *Title 30 RCW, and any credit union established in this state pursuant to chapter 14, Title 12, United States Code, or chapter 31.12 RCW, and any mutual savings bank established in this state pursuant to Title 32 RCW, and any savings and loan association established in this state pursuant to chapter 12, Title 12, United States Code, or Title 33 RCW. [2013 c 164 § 1; 2012 c 230 § 3; 1977 ex.s. c 269 § 1; 1969 c 59 § 6.]

*Reviser's note: Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

Savings report—2012 c 230: See RCW 28B.10.0291.

41.04.245 Payroll deductions to a bank, savings bank, credit union, or savings and loan association. Any official of any local political subdivision of the state, municipal corporation, or quasi-municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of any employee, to deduct all or part of such employee's salary or wages for payment to any bank, savings bank, credit union, or savings and loan association if (1) the bank, savings bank, credit union, or savings and loan association is authorized to do business in this state; and (2) twenty-five or more employees of a single local political subdivision, or fewer, if a lesser number is established by such local political subdivision, authorize such a deduction for payment to the same bank, savings bank, credit union, or savings and loan association. [1992 c 192 § 2.]

41.04.270 Public retirement systems—Members or beneficiaries estopped from becoming a member or accruing rights in any other public retirement system—Exceptions. (1) Except as provided in chapter 2.10, 2.12, 41.26, 41.28, 41.32, 41.35, 41.37, 41.40, or 43.43 RCW, on and after March 19, 1976, any member or former member who (a) receives a retirement allowance earned by the former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (c) is the beneficiary of a disability allowance from any public retirement system listed in RCW 41.50.030 shall be estopped from becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030: PROVIDED, That (a) and (b) of this subsection shall not apply to persons who have accumulated less than fifteen years service credit in any such system.

(2) Nothing in this section is intended to apply to any retirement system except those listed in RCW 41.50.030 and the city employee retirement systems for Seattle, Tacoma, and Spokane. Subsection (1)(b) of this section does not apply to a dual member as defined in RCW 41.54.010. [2006 c 309 § 3; 2005 c 327 § 1; 2001 c 180 § 4; 1988 c 195 § 5; 1987 c 192 § 9; 1980 c 29 § 1; 1975-'76 2nd ex.s. c 105 § 1.]

Effective date—2006 c 309: See note following RCW 41.37.005.

Additional notes found at www.leg.wa.gov

41.04.273 Prohibition of retirement benefits passing to slayer or abuser beneficiary—Determination by department of retirement systems—Duties upon notice—Payment upon verdicts—Admissibility of evidence—Immunity. (1) For purposes of this section, the following definitions shall apply:

(a) "Abuser" has the same meaning as provided in RCW 11.84.010.

(b) "Decedent" means any person who is entitled to benefits from the Washington state department of retirement systems by written designation or by operation of law:

(i) Whose life is taken by a slayer; or

(ii) Who is deceased and who, at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser, except as provided in RCW 11.84.170.

(c) "Slayer" means a slayer as defined in RCW 11.84.010.

(2) Property that would have passed to or for the benefit of a beneficiary under one of the retirement systems listed in RCW 41.50.030 shall not pass to that beneficiary if the beneficiary was a slayer or abuser of the decedent and the property shall be distributed as if the slayer or abuser had predeceased the decedent.

(3) A slayer or abuser is deemed to have predeceased the decedent as to property which, by designation or by operation of law, would have passed from the decedent to the slayer or abuser because of the decedent's entitlement to benefits under one of the retirement systems listed in RCW 41.50.030.

(4)(a) The department of retirement systems has no affirmative duty to determine whether a beneficiary is, or is alleged to be, a slayer or abuser. However, upon receipt of written notice that a beneficiary is a defendant in a civil lawsuit or probate proceeding that alleges the beneficiary is a slayer or abuser, or is charged with a crime that, if committed, means the beneficiary is a slayer or abuser, the department of retirement systems shall determine whether the beneficiary is a defendant in such a civil proceeding or has been formally charged in court with the crime, or both. If so, the department shall withhold payment of any benefits until:

(i) The case or charges, or both if both are pending, are dismissed;

(ii) The beneficiary is found not guilty in the criminal case or prevails in the civil proceeding, or both if both are pending; or

(iii) The beneficiary is convicted or is found to be a slayer or abuser in the civil proceeding.

(b) If the case or charges, or both if both are pending, are dismissed or if a beneficiary is found not guilty or prevails in the civil proceeding, or both if both are pending, the department shall pay the beneficiary the benefits the beneficiary is entitled to receive. If the beneficiary is convicted or found to be a slayer or abuser in a civil proceeding, the department shall distribute the benefits according to subsection (2) of this section.

(5) Any record of conviction for having participated in the willful and unlawful killing of the decedent or for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, shall be admissible in

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evidence against a claimant of property in any civil action arising under this section.

(6) In the absence of a criminal conviction, a superior court may determine:

(a) By a preponderance of the evidence whether a person participated in the willful and unlawful killing of the decedent;

(b) By clear, cogent, and convincing evidence whether a person participated in conduct constituting financial exploitation against the decedent, as provided in chapter 11.84 RCW.

(7) This section shall not subject the department of retirement systems to liability for payment made to a slayer or abuser or alleged slayer or abuser, prior to the department's receipt of written notice that the slayer or abuser has been convicted of, or the alleged slayer or abuser has been formally criminally or civilly charged in court with, the death or financial exploitation of the decedent. If the conviction or civil judgment of a slayer or abuser is reversed on appeal, the department of retirement systems shall not be liable for payment made prior to the receipt of written notice of the reversal to a beneficiary other than the person whose conviction or civil judgment is reversed. [2009 c 525 § 19; 1998 c 292 § 501.]

Additional notes found at www.leg.wa.gov

41.04.276 Select committee on pension policy—Creation—Membership—Terms of office—Staff support.

(1) The select committee on pension policy is created. The select committee consists of:

(a) Four members of the senate appointed by the president of the senate, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the senate ways and means committee;

(b) Four members of the house of representatives appointed by the speaker, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the house of representatives appropriations committee;

(c) Four active members or representatives from organizations of active members of the state retirement systems appointed by the governor for staggered three-year terms, with no more than two appointees representing any one employee retirement system;

(d) Two retired members or representatives of retired members' organizations of the state retirement systems appointed by the governor for staggered three-year terms, with no two members from the same system;

(e) Four employer representatives of members of the state retirement systems appointed by the governor for staggered three-year terms; and

(f) The directors of the department of retirement systems and office of financial management.

(2)(a) The term of office of each member of the house of representatives or senate serving on the committee runs from the close of the session in which he or she is appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term continues until the member is reappointed or a successor is appointed. The term of office for a committee member who is a member of the house of representatives or

the senate who does not continue as a member of the senate or house of representatives ceases upon the convening of the next session of the legislature during the odd-numbered year following the member's appointment, or upon the member's resignation, whichever is earlier. All vacancies of positions held by members of the legislature must be filled from the same political party and from the same house as the member whose seat was vacated.

(b) Following the terms of members and representatives appointed under subsection (1)(d) of this section, the retiree positions shall be rotated to ensure that each system has an opportunity to have a retiree representative on the committee.

(3) The committee shall elect a chairperson and a vice chairperson. The chairperson shall be a member of the senate in even-numbered years and a member of the house of representatives in odd-numbered years and the vice chairperson shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.

(4) The committee shall establish an executive committee of six members, including the chairperson, the vice chairperson, one member from subsection (1)(c) of this section, one member from subsection (1)(d) of this section, one member from subsection (1)(e) of this section, and the director of the department of retirement systems.

(5) Nonlegislative members of the select committee serve without compensation, but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(6) The office of state actuary under chapter 44.44 RCW shall provide staff and technical support to the committee. [2005 c 24 § 1; 2003 c 295 § 1.]

41.04.278 Select committee on pension policy—Subcommittees. (1) The select committee on pension policy may form three function-specific subcommittees, as set forth under subsection (2) of this section, from the members under RCW 41.04.276(1) (a) through (e), as follows:

(a) A public safety subcommittee with one member from each group under RCW 41.04.276(1) (a) through (e);

(b) An education subcommittee with one member from each group under RCW 41.04.276(1) (a) through (e); and

(c) A state and local government subcommittee, with one retiree member under RCW 41.04.276(1)(d) and two members from each group under RCW 41.04.276(1) (a) through (e).

The retiree members may serve on more than one subcommittee to ensure representation on each subcommittee.

(2)(a) The public safety subcommittee shall focus on pension issues affecting public safety employees who are members of the law enforcement officers' and firefighters', public safety employees', and Washington state patrol retirement systems.

(b) The education subcommittee shall focus on pension issues affecting educational employees who are members of the public employees', teachers', and school employees' retirement systems.

(c) The state and local government subcommittee shall focus on pension issues affecting state and local government employees who are members of the public employees' retirement system. [2006 c 309 § 4; 2003 c 295 § 2.]

Effective date—2006 c 309: See note following RCW 41.37.005.

41.04.281 Select committee on pension policy—Powers and duties. The select committee on pension policy has the following powers and duties:

(1) Study pension issues, develop pension policies for public employees in state retirement systems, and make recommendations to the legislature;

(2) Study the financial condition of the state pension systems, develop funding policies, and make recommendations to the legislature;

(3) Consult with the chair and vice chair on appointing members to the state actuary appointment committee upon the convening of the state actuary appointment committee established under RCW 44.44.013; and

(4) Receive the results of the actuarial audits of the actuarial valuations and experience studies administered by the pension funding council pursuant to RCW 41.45.110. The select committee on pension policy shall study and make recommendations on changes to assumptions or contribution rates to the pension funding council prior to adoption of changes under RCW 41.45.030, 41.45.035, or 41.45.060. [2003 c 295 § 5.]

41.04.300 Travel expenses of state officials and employees. Except as otherwise provided by law the payment of travel expenses by the state to any appointive official or employee of any commission, agency, or other body of the executive, judicial, or legislative branches of state government shall be in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 3.]

Additional notes found at www.leg.wa.gov

41.04.340 State employee attendance incentive program—Sick leave records to be kept—Remuneration or benefits for unused sick leave—Medical expense plan in lieu of remuneration. (1) An attendance incentive program is established for all eligible employees. As used in this section the term "eligible employee" means any employee of the state, other than eligible employees of the community and technical colleges and the state board for community and technical colleges identified in RCW 28B.50.553, and teaching and research faculty at the state and regional universities and The Evergreen State College, entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. No employee may receive compensation under this section for any portion of sick leave accumulated at a rate in excess of one day per month. The state and regional universities and The Evergreen State College shall maintain complete and accurate sick leave records for all teaching and research faculty.

(2) In January of the year following any year in which a minimum of sixty days of sick leave is accrued, and each January thereafter, any eligible employee may receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

From July 1, 2011, through June 29, 2013, the rate of monetary compensation for the purposes of this subsection shall not be reduced by any temporary salary reduction.

(3) At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate may elect to receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days of accrued sick leave. From July 1, 2011, through June 29, 2013, the rate of monetary compensation for the purposes of this subsection shall not be reduced by any temporary salary reduction.

(4) Remuneration or benefits received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

(5) Except as provided in subsections (7) through (9) of this section for employees not covered by chapter 41.06 RCW, this section shall be administered, and rules shall be adopted to carry out its purposes, by the director of financial management for persons subject to chapter 41.06 RCW.

(6) Should the legislature revoke any remuneration or benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

(7) In lieu of remuneration for unused sick leave at retirement as provided in subsection (3) of this section, an agency head or designee may with equivalent funds, provide eligible employees with a benefit plan that provides for reimbursement for medical expenses. This plan shall be implemented only after consultation with affected groups of employees. For eligible employees covered by chapter 41.06 RCW, procedures for the implementation of these plans shall be adopted by the director of the state health care authority. For eligible employees exempt from chapter 41.06 RCW, implementation procedures shall be adopted by an agency head having jurisdiction over the employees.

(8) Implementing procedures adopted by the director of the state health care authority or agency heads shall require that each medical expense plan authorized by subsection (7) of this section apply to all eligible employees in any one of the following groups: (a) Employees in an agency; (b) employees in a major organizational subdivision of an agency; (c) employees at a major operating location of an agency; (d) exempt employees under the jurisdiction of an elected or appointed Washington state executive; (e) employees of the Washington state senate; (f) employees of the Washington state house of representatives; (g) classified employees in a bargaining unit established by the public employment relations commission; or (h) other group of employees defined by an agency head that is not designed to provide an individual-employee choice regarding participation in a medical expense plan. However, medical expense plans for eligible employees in any of the groups under (a) through (h) of this subsection who are covered by a collective bargaining agreement shall be implemented only by written agreement with the bargaining unit's exclusive representative and a separate medical expense plan may be provided for unrepresented employees.

(9) Medical expense plans authorized by subsection (7) of this section must require as a condition of participation in the plan that employees in the group affected by the plan sign

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an agreement with the employer. The agreement must include a provision to hold the employer harmless should the United States government find that the employer or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the employer not withholding or deducting a tax, assessment, or other payment on the funds as required by federal law. The agreement must also include a provision that requires an eligible employee to forfeit remuneration under subsection (3) of this section if the employee belongs to a group that has been designated to participate in the medical expense plan permitted under this section and the employee refuses to execute the required agreement. [2015 3rd sp.s. c 1 § 311. Prior: 2011 1st sp.s. c 43 § 432; 2011 1st sp.s. c 39 § 12; 2002 c 354 § 227; prior: 1998 c 254 § 1; 1998 c 116 § 2; 1997 c 232 § 2; 1993 c 281 § 17; 1991 c 249 § 1; 1990 c 162 § 1; 1980 c 182 § 1; 1979 ex.s. c 150 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Additional notes found at www.leg.wa.gov

41.04.350 Mandatory retirement prior to seventy years of age prohibited—Exceptions—Waiver of mandatory retirement. (1) Notwithstanding any other provisions of law, no employee of the state of Washington or any of its political subdivisions or any institution supported in total or in part by the state or any of its political subdivisions, other than employees covered by chapters 41.26 and 43.43 RCW, shall be compelled to retire solely on the basis of age prior to attaining seventy years of age.

(2) All compulsory retirement provisions relating to public employees, other than employees covered by chapters 41.26 and 43.43 RCW, may be waived for individuals attaining seventy years of age by the individual's employer. [1979 ex.s. c 159 § 1.]

41.04.360 State-employed chaplains—Housing allowance. In the case of a minister or other clergyperson employed as a chaplain in a state institution or agency, there is designated in the salary or wage paid to the person an amount up to forty percent of the gross salary as either of the following:

(1) The rental value of a home furnished to the person as part of the person's compensation; or

(2) The housing/rental allowance paid to the person as part of the person's compensation, to the extent used by the person to rent or provide a home. [1982 c 190 § 1.]

Appointment and duties of institutional chaplains: RCW 72.01.210 through 72.01.260.

Volunteer law enforcement chaplains: Chapter 41.22 RCW.

41.04.362 Employee wellness program. (1) Directors of state and local entities, in consultation with applicable state agencies and employee organizations, may develop and administer a voluntary state employee wellness program.

(2) A director may:

(a) Develop and implement state employee wellness policies, procedures, and activities;

(b) Disseminate wellness educational materials to agencies and employees;

(c) Encourage the establishment of wellness activities in agencies;

(d) Provide technical assistance and training to agencies conducting wellness activities for their employees;

(e) Develop standards by which agencies sponsoring specific wellness activities may impose a fee to participating employees to help defray the cost of those activities;

(f) Monitor and evaluate the effectiveness of this program, including the collection, analysis, and publication of relevant statistical information; and

(g) Perform other duties and responsibilities as necessary to carry out the purpose of this section.

(3) No wellness program or activity that involves or requires organized or systematic physical exercise may be implemented or conducted during normal working hours. [2010 c 128 § 4; 1987 c 248 § 2.]

Legislative findings—Purpose—1987 c 248: "The legislature finds that:

(1) Improved health among employees will result in a more productive workforce, better morale, reduced stress, lower injury rates and absenteeism, and improved recruitment and retention rates;

(2) A substantial amount of illness and injury in the workforce is preventable because it results from lifestyle decisions;

(3) Illness and injury among state employees can be reduced if employees engage in healthier lifestyles.

The state, as an employer, desires to foster a working environment that promotes the health and well-being of its employees. Therefore, it is the purpose of this act to establish a state employee wellness program. "Wellness program" means those policies, procedures, and activities that promote the health and well-being of state employees and that contribute to a healthful work environment." [1987 c 248 § 1.]

41.04.370 Child care—Legislative intent. The legislature recognizes that supporting child care for employees of public and private organizations is a worthwhile pursuit. To further the goals of affordable, accessible, and quality child care for working parents, the legislature intends to provide for the development of self-supporting child care programs for employees of state government. [1993 c 194 § 1; 1984 c 162 § 1.]

41.04.375 Child care—Rental of suitable space. An agency may identify space they wish to use for child care facilities or they may request assistance from the department of enterprise services in identifying the availability of suitable space in state-owned or state-leased buildings for use as child care centers for the children of state employees.

When suitable space is identified in state-owned or state-leased buildings, the department of enterprise services shall establish a rental rate for organizations to pay for the space used by persons who are not state employees. [2015 c 225 § 53; 1993 c 194 § 2; 1984 c 162 § 2.]

41.04.380 Child care—Contracts—Provision of suitable space at reduced cost authorized. When suitable space is determined to be available, either agencies or organizations of state employees may contract with one or more providers to operate child care facilities.

Subject to the approval of the director of financial management, suitable space for child care centers may be provided to organizations of state employees without charge or at reduced charge for rent or services solely for the purpose of

reducing employee child care costs. [1993 c 194 § 3; 1984 c 162 § 3.]

41.04.382 Child care organizations—Qualifications for services. In order to qualify for services under RCW 41.04.380, state employee child care organizations shall be organized as nonprofit under chapter 24.03 RCW. [1993 c 194 § 4.]

41.04.385 Child care—Legislative findings—State policy—Responsibilities of director of enterprise services.

The legislature finds that (1) demographic, economic, and social trends underlie a critical and increasing demand for child care in the state of Washington; (2) working parents and their children benefit when the employees' child care needs have been resolved; (3) the state of Washington should serve as a model employer by creating a supportive atmosphere, to the extent feasible, in which its employees may meet their child care needs; and (4) the state of Washington should encourage the development of partnerships between state agencies, state employees, state employee labor organizations, and private employers to expand the availability of affordable quality child care. The legislature finds further that resolving employee child care concerns not only benefits the employees and their children, but may benefit the employer by reducing absenteeism, increasing employee productivity, improving morale, and enhancing the employer's position in recruiting and retaining employees. Therefore, the legislature declares that it is the policy of the state of Washington to assist state employees by creating a supportive atmosphere in which they may meet their child care needs. Policies and procedures for state agencies to address employee child care needs will be the responsibility of the director of enterprise services in consultation with the director of the department of early learning and state employee representatives. [2011 1st sp.s. c 43 § 433; 2006 c 265 § 201; 2005 c 490 § 9; 2002 c 354 § 236; 1993 c 194 § 5; 1986 c 135 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2006 c 265: See RCW 43.215.905.

Additional notes found at www.leg.wa.gov

41.04.390 Flexible-time work schedules. (1) The legislature finds that flexible-time work schedules, which provide varying times for employees to arrive at and depart from work, tend to alleviate traffic congestion during peak rush hour periods and thereby reduce hazardous traffic conditions; provide more efficient use of highways and other transit facilities; and decrease fuel consumption. In addition, the legislature finds that flexible-time work schedules provide families in which both parents work outside of the home with the flexibility necessary to provide for day care; provide employees with flexibility allowing them to spend more time with their families; improve employee morale and, in-so-doing, improve productivity. Therefore, due to the clear advantages to both agencies and employees, the legislature finds that flexible-time work schedules should be utilized by agencies to the maximum extent possible.

(2) As used in this section, "flexible-time work schedule" means a daily work schedule which contains a core time of required hours during which an employee subject to the

schedule is required to be present for work and designated hours before or after the core time during which an employee, with the approval of his or her agency, may elect a time of arrival to work and departure from work.

(3) Each agency shall prepare a flexible-time work schedule or schedules and shall offer the schedule or schedules to employees as an option to the traditional eight o'clock a.m. to five o'clock p.m. working day. However, an agency shall not be required to prepare or offer a flexible-time work schedule or schedules if the agency head determines that the implementation of such a schedule would serve as an impediment to the provision of services to the public or would in any other way impede the agency in accomplishing its mission.

(4) Any employee wishing to use a flexible-time work schedule prepared under subsection (3) of this section must first obtain the permission of the agency head or the agency head's designee. However, if there is an employee organization certified as an exclusive bargaining representative for a bargaining unit affected by the flexible-time work schedule, the agency shall first negotiate with the certified employee organization.

(5) Nothing in this section affects official hours during which state offices are required to be open for the transaction of business, as prescribed in RCW 42.04.060. [1985 c 411 § 1.]

41.04.393 Public safety officers—Retirement benefits—Death in the line of duty. Retirement benefits paid under chapter 41.26, 41.37, 41.40, or 43.43 RCW to beneficiaries of public safety officers who die in the line of duty shall be paid in accordance with Title 26 U.S.C. Sec. 101(h) as amended by the Fallen Hero Survivor Benefit Fairness Act of 2001. [2006 c 309 § 5; 2003 c 32 § 1.]

Effective date—2006 c 309: See note following RCW 41.37.005.

41.04.400 Consolidation of local governmental unit and first-class city retirement system—Intent. It is the purpose of RCW 41.04.405 through 41.04.430 to govern the retirement rights of persons whose employment status is altered when: (1) Two or more units of local government of this state, at least one of which is a first-class city with its own retirement system, enter into an agreement for the consolidated performance of a governmental service, activity, or undertaking; (2) the service, activity, or undertaking is to be performed either by one of the participating local governmental units or by a newly established separate legal entity; and (3) the employees of the participating local governmental units are not all members of the same Washington public retirement system.

RCW 41.04.405 through 41.04.430 are not intended to and do not govern retirement rights of any members of the retirement systems established by chapter 41.16, 41.18, 41.20, or 41.26 RCW, or of employees described in RCW 35.58.265, 35.58.390, or 70.08.070. To the extent there is any conflict between RCW 41.04.405 through 41.04.430 and RCW 41.04.110, the provisions of RCW 41.04.405 through 41.04.430 shall govern. [1984 c 184 § 22.]

Additional notes found at www.leg.wa.gov

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41.04.405 Consolidation of local governmental unit and first-class city retirement system—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.400 through 41.04.430.

(1) "Legal entity" means any political subdivision or municipal corporation of the state, including but not limited to public agencies created under RCW 35.63.070, 36.70.060, or 39.34.030.

(2) "Consolidated employer" means the legal entity assigned by agreement to perform a governmental service, activity, or undertaking for two or more units of local government of the state, at least one of which is a first-class city with its own retirement system.

(3) "Existing employee" means a person who both (a) becomes employed by the consolidated employer within one year after the consolidation and (b) was employed by one of the combining legal entities at the time of the consolidation.

(4) "New employee" means an employee of the consolidated employer who is not an existing employee.

(5) "Active member" means a member of a retirement system who was making contributions to that retirement system at the time of the consolidation. [1984 c 184 § 23.]

Additional notes found at www.leg.wa.gov

41.04.410 Consolidation of local governmental unit and first-class city retirement system—Membership in public employees' or public safety employees' retirement system. If a consolidated employer is a participating member in the public employees' retirement system under chapter 41.40 RCW prior to the consolidation or in the public safety employees' retirement system under chapter 41.37 RCW prior to the consolidation:

(1) All existing employees of the consolidated employer who are active members of the public employees' or public safety employees' retirement system immediately prior to the consolidation shall continue to be members of that retirement system while employed by the consolidated employer.

(2) All existing employees of the consolidated employer who are active members of a first-class city retirement system under chapter 41.28 RCW immediately prior to the consolidation shall cease to be members of that system at the time of the consolidation and, if eligible, shall immediately become members of the public employees' or public safety employees' retirement system. However, any such active member may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue to be a member of the first-class city retirement system, thereby forever waiving any rights under the public employees' or public safety employees' retirement system based upon employment with the consolidated employer.

(3) Only prospective periods of qualifying service under the public employees' or public safety employees' retirement system may be established under this section. [2007 c 492 § 2; 1984 c 184 § 24.]

Additional notes found at www.leg.wa.gov

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41.04.415 Consolidation of local governmental unit and first-class city retirement system—Membership in first-class city retirement system. If a consolidated employer is a city operating a first-class city retirement system under chapter 41.28 RCW prior to the consolidation:

(1) All existing employees of the consolidated employer who are active members of the first-class city retirement system immediately prior to the consolidation shall continue to be members of that retirement system while employed by the consolidated employer.

(2) All existing employees of the consolidated employer who are active members of the public employees' retirement system under chapter 41.40 RCW immediately prior to the consolidation shall cease to be members of that system at the time of the consolidation and, if eligible, shall immediately become members of the first-class city retirement system. However, any such active member may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue to be a member of the public employees' retirement system, thereby forever waiving any rights under the first-class city retirement system based upon such employment with the consolidated employer.

(3) Only prospective periods of qualifying service under the first-class city retirement system may be established under this section. [1984 c 184 § 25.]

Additional notes found at www.leg.wa.gov

41.04.420 Consolidation of local governmental unit and first-class city retirement system—Newly created legal entity. If a consolidated employer is a newly created legal entity and does not immediately join the public employees' retirement system pursuant to RCW 41.40.062:

(1) All existing employees of the consolidated employer who are active members of a first-class city retirement system or the public employees' retirement system immediately prior to the consolidation shall cease to be members of these systems. However, any such active members may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue as members of the retirement system to which they belonged at the time of the consolidation for all periods of employment with the consolidated employer.

(2) If the consolidated employer later joins the public employees' retirement system, all existing employees still employed on that date shall, effective from that date, have the same retirement system rights and options, subject to the same conditions as employees governed by RCW 41.04.410, notwithstanding any previous election under subsection (1) of this section.

(3) No new employees of the consolidated employer may become members of an employer-sponsored retirement system until such time as the employer joins the public employees' retirement system pursuant to RCW 41.40.062. [1984 c 184 § 26.]

Additional notes found at www.leg.wa.gov

41.04.425 Consolidation of local governmental unit and first-class city retirement system—Limitations. Notwithstanding any provision of RCW 41.04.410, 41.04.415, or 41.04.420:

(1) No person may simultaneously accrue any contractual rights whatsoever in more than one Washington public retirement system as a consequence of employment by a consolidated employer.

(2) No person who makes a written election permitted by RCW 41.04.410, 41.04.415, or 41.04.420 may receive a retirement allowance from such retirement system under any circumstances while employed or reemployed by the consolidated employer.

(3) No person may accrue any benefits or rights under any Washington public retirement system as a result of RCW 41.04.410, 41.04.415, or 41.04.420 except such rights of continuing membership that are specifically and explicitly granted by RCW 41.04.410, 41.04.415, or 41.04.420.

(4) Nothing in RCW 41.04.400 through 41.04.425 is intended to constitute an amendment or waiver of any law or rule of any Washington public retirement system, including but not limited to those governing eligibility for service credit, benefits, or membership, except to broaden the class of legal entities that are deemed to be participating employers in the retirement systems in the specific circumstances stated in RCW 41.04.410, 41.04.415, and 41.04.420. [1984 c 184 § 27.]

Additional notes found at www.leg.wa.gov

41.04.430 Consolidation of local governmental unit and first-class city retirement system—Compliance with laws and rules—Application of sections. (1) Consolidated employers that employ persons governed by RCW 41.04.410, 41.04.415, or 41.04.420 shall comply with all laws and rules governing the retirement system in which the persons participate as members, including but not limited to the obligations to make employer contributions, to deduct and transmit employee contributions, and to submit required reports.

(2) RCW 41.04.410, 41.04.415, 41.04.420, and 41.04.425 govern any consolidation occurring on or after December 31, 1981. [1984 c 184 § 28.]

Additional notes found at www.leg.wa.gov

41.04.440 Members' retirement contributions—Pick up by employer—Purpose—Benefits not contractual right. (1) The sole purpose of RCW 41.04.445 and 41.04.450 is to allow the members of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.35, 41.37, 41.40, 41.34, and 43.43 RCW to enjoy the tax deferral benefits allowed under 26 U.S.C. 414(h). Chapter 227, Laws of 1984 does not alter in any manner the provisions of RCW 41.45.060, 41.45.061, and 41.45.067 which require that the member contribution rates shall be set so as to provide fifty percent of the cost of the respective retirement plans.

(2) Should the legislature revoke any benefit allowed under 26 U.S.C. 414(h), no affected employee shall be entitled thereafter to receive such benefit as a matter of contractual right. [2007 c 492 § 3; 2000 c 247 § 1101; 1995 c 239 § 322; 1984 c 227 § 1.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.04.445 Members' retirement contributions—Pick up by employer—Implementation. (1) This section applies to all members who are:

(a) Judges under the retirement system established under chapter 2.10, 2.12, or 2.14 RCW;

(b) Employees of the state under the retirement system established by chapter 41.32, 41.37, 41.40, or 43.43 RCW;

(c) Employees of school districts under the retirement system established by chapter 41.32 or 41.40 RCW, except for substitute teachers as defined by RCW 41.32.010;

(d) Employees of educational service districts under the retirement system established by chapter 41.32 or 41.40 RCW; or

(e) Employees of community college districts under the retirement system established by chapter 41.32 or 41.40 RCW.

(2) Only for compensation earned after the effective date of the implementation of this section and as provided by section 414(h) of the federal internal revenue code, the employer of all the members specified in subsection (1) of this section shall pick up only those member contributions as required under:

(a) RCW 2.10.090(1);

(b) RCW 2.12.060;

(c) RCW 2.14.090;

(d) RCW 41.32.263;

(e) RCW 41.32.350;

(f) RCW 41.40.330 (1) and (3);

(g) RCW 41.45.061 and 41.45.067;

(h) RCW 41.34.070;

(i) *RCW 43.43.300; and

(j) RCW 41.34.040.

(3) Only for the purposes of federal income taxation, the gross income of the member shall be reduced by the amount of the contribution to the respective retirement system picked up by the employer.

(4) All member contributions to the respective retirement system picked up by the employer as provided by this section, plus the accrued interest earned thereon, shall be paid to the member upon the withdrawal of funds or lump sum payment of accumulated contributions as provided under the provisions of the retirement systems.

(5) At least forty-five days prior to implementing this section, the employer shall provide:

(a) A complete explanation of the effects of this section to all members; and

(b) Notification of such implementation to the director of the department of retirement systems. [2007 c 492 § 4; 2000 c 247 § 1102; 1995 c 239 § 323; 1992 c 212 § 15; 1990 c 274 § 6; 1988 c 109 § 24; 1985 c 13 § 2; 1984 c 227 § 2.]

*Reviser's note: RCW 43.43.300 was repealed by 2001 c 329 § 12.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—1985 c 13: "The sole purpose of this 1985 act is to clarify and more explicitly state the intent of the legislature in enacting chapter 227, Laws of 1984. This 1985 act makes no substantive changes in the meaning or impact of that chapter and the provisions of this 1985 act

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shall be deemed to have retrospective application to September 1, 1984." [1985 c 13 § 1.]

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.04.450 Members' retirement contributions—Pick up by employer—Optional implementation and withdrawal. (1) Employers of those members under chapters 41.26, 41.34, 41.35, 41.37, and 41.40 RCW who are not specified in RCW 41.04.445 may choose to implement the employer pick up of all member contributions without exception under RCW 41.26.080(1)(a), 41.26.450, 41.40.330(1), 41.45.060, 41.45.061, and 41.45.067 and chapter 41.34 RCW. If the employer does so choose, the employer and members shall be subject to the conditions and limitations of RCW 41.04.445 (3), (4), and (5) and 41.04.455.

(2) An employer exercising the option under this section may later choose to withdraw from and/or reestablish the employer pick up of member contributions only once in a calendar year following forty-five days prior notice to the director of the department of retirement systems. [2007 c 492 § 5; 2003 c 294 § 1; 2000 c 247 § 1103; 1995 c 239 § 324; 1985 c 13 § 3; 1984 c 227 § 3.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.04.455 Members' retirement contributions—Pick up by employer—Conditions. The following two conditions apply to the employer pick up of member contributions authorized under RCW 41.04.445 (section 2, chapter 227, Laws of 1984):

(1) The retirement contributions, although designated as member contributions, will be picked up by the employer, as provided in RCW 41.04.445 (section 2, chapter 227, Laws of 1984) in lieu of contributions by the member.

(2) No retirement system member will have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system. [1985 c 13 § 4.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

41.04.460 Financial planning for retirement—Department of enterprise services to provide information to retirement system members. The department of enterprise services, through the combined benefits communication project, shall prepare information encouraging individual financial planning for retirement and describing the potential consequences of early retirement, including members' assumption of health insurance costs, members' receipt of reduced retirement benefits, and the increased period of time before members will become eligible for cost-of-living adjustments. The department of retirement systems shall distribute the information to members who are eligible to retire under the provisions of chapter 234, Laws of 1992. Prior to retiring, such members who elect to retire shall sign a statement acknowledging their receipt and understanding of the information. [2011 1st sp.s. c 43 § 472; 1992 c 234 § 10.]

[Title 41 RCW—page 17]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.04.500 Disability leave supplement for law enforcement officers and firefighters. County, municipal, and political subdivision employers of full-time, commissioned law enforcement officers and full-time, paid firefighters shall provide a disability leave supplement to such employees who qualify for payments under RCW 51.32.090 due to a temporary total disability. [1985 c 462 § 1.]

Additional notes found at www.leg.wa.gov

41.04.505 Disability leave supplement for law enforcement officers and firefighters—Amount. The disability leave supplement shall be an amount which, when added to the amount payable under RCW 51.32.090 will result in the employee receiving the same pay he or she would have received for full time active service, taking into account that industrial insurance payments are not subject to federal income or social security taxes. [1985 c 462 § 2.]

Additional notes found at www.leg.wa.gov

41.04.510 Disability leave supplement for law enforcement officers and firefighters—Payment. The disability leave supplement shall be paid as follows:

(1) The disability leave supplement shall begin on the sixth calendar day from the date of the injury or illness which entitles the employee to benefits under RCW 51.32.090. For the purposes of this section, the day of injury shall constitute the first calendar day.

(2) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be charged against the accrued paid leave of the employee. In computing such charge, the employer shall convert accumulated days, or other time units as the case may be, to a money equivalent based on the base monthly salary of the employee at the time of the injury or illness. "Base monthly salary" for the purposes of this section means the amount earned by the employee before any voluntary or involuntary payroll deductions, and not including overtime pay.

(3) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be paid by the employer.

If an employee has no accrued paid leave at the time of an injury or illness which entitles him or her to benefits under RCW 51.32.090, or if accrued paid leave is exhausted during the period of disability, the employee shall receive only that portion of the disability leave supplement prescribed by subsection (3) of this section. [2012 c 117 § 7; 1989 c 21 § 1; 1985 c 462 § 3.]

Additional notes found at www.leg.wa.gov

41.04.515 Disability leave supplement for law enforcement officers and firefighters—Time limitation. The disability leave supplement provided by RCW 41.04.500 through 41.04.530 shall continue as long as the employee is receiving benefits under RCW 51.32.090, up to a maximum of six months from the date of the injury or illness. [1985 c 462 § 4.]

Additional notes found at www.leg.wa.gov

41.04.520 Disability leave supplement for law enforcement officers and firefighters—Employee to perform light duty tasks. While an employee is receiving disability leave supplement, the employee, subject to the approval of his or her treating physician, shall perform light duty tasks in the employee's previous department as the employer may require, with no reduction in the disability leave supplement. [1985 c 462 § 5.]

Additional notes found at www.leg.wa.gov

41.04.525 Disability leave supplement for law enforcement officers and firefighters—Continuation of employee insurance benefits. The disability leave supplement provided in RCW 41.04.510(3) shall not be considered salary or wages for personal services: PROVIDED, That the employee shall also continue to receive all insurance benefits provided in whole or in part by the employer, notwithstanding the fact that some portion of the cost of those benefits is paid by the employee: PROVIDED FURTHER, That the portion of the cost not paid by the employer continues to be paid by the employee. [1989 c 11 § 10; 1985 c 462 § 7.]

Additional notes found at www.leg.wa.gov

41.04.530 Disability leave supplement for law enforcement officers and firefighters—Exhaustion of accrued sick leave. If an employee's accrued sick leave is exhausted during the period of disability, the employee may, for a period of two months following return to active service, draw prospectively upon sick leave the employee is expected to accumulate up to a maximum of three days or three work shifts, whichever is greater. Any sick leave drawn prospectively as provided in this section shall be charged against earned sick leave until such time as the employee has accrued the amount needed to restore the amount used. In the event an employee terminates active service without having restored the sick leave drawn prospectively, the employer shall deduct the actual cost of any payments made under this section from compensation or other money payable to the employee, or otherwise recover such payments. [1985 c 462 § 8.]

Additional notes found at www.leg.wa.gov

41.04.535 Disability leave supplement for law enforcement officers and firefighters—Greater benefits not precluded. Nothing in RCW 41.04.500 through 41.04.530 shall preclude employers of law enforcement officers and firefighters and such employees from entering into agreements which provide benefits to employees which are greater than those prescribed by RCW 41.04.500 through 41.04.530, nor is there any intent by the legislature to alter or in any way affect any such agreements which may now exist. [1985 c 462 § 11.]

Additional notes found at www.leg.wa.gov

41.04.540 Disability leave supplement for law enforcement officers and firefighters—Supplement not required in smaller cities, towns, and counties. Cities and towns with a population of less than twenty-five hundred and counties with a population of less than ten thousand shall not be required to provide a disability leave supplement to their commissioned law enforcement officers and full-time paid firefighters who qualify for payments pursuant to RCW

51.32.090, due to temporary total disability. [1985 c 462 § 12.]

Additional notes found at www.leg.wa.gov

41.04.545 Disability leave supplement for law enforcement officers and firefighters—Vested right not created. Chapter 462, Laws of 1985 neither grants employees a vested right to receive a disability leave supplement nor creates a contractual obligation on behalf of the state or its political subdivisions to provide a disability leave supplement. [1985 c 462 § 13.]

Additional notes found at www.leg.wa.gov

41.04.550 Disability leave supplement for law enforcement officers and firefighters—Not subject to interest arbitration. Disability leave supplement payments for employees covered by chapter 462, Laws of 1985 shall not be subject to interest arbitration as defined in RCW 41.56.430 through 41.56.905. [1985 c 462 § 14.]

Additional notes found at www.leg.wa.gov

41.04.580 Dismissal of municipal employees during World War II—Redress authorized. A municipality may by ordinance or resolution provide for redress to any municipal employee or the surviving spouse of a municipal employee who, due to the promulgation of federal Executive Order 9066, was dismissed, terminated from a temporary position, or rejected during the person's probationary period, or who voluntarily resigned in lieu of dismissal from municipal employment, and who incurred salary and other employment related losses as a result thereof during the years 1942 through 1947. [1986 c 225 § 2.]

Legislative findings—1986 c 225: "The dismissal or termination of various municipal employees during World War II resulted from the promulgation of federal Executive Order 9066 which was based mainly on fear and suspicion rather than on factual justification. It is fair and just that redress be made to those employees who were terminated from municipal employment during the wartime years because of these circumstances. The legislature therefore finds that equity and fairness will be served by authorizing municipalities to accept claims for salary and other employment related losses suffered by the municipal employees directly affected and to pay the claims subject to the provisions of this chapter." [1986 c 225 § 1.]

Reparations to state employees terminated during World War II: Chapter 41.68 RCW.

Additional notes found at www.leg.wa.gov

41.04.585 Dismissal of municipal employees during World War II—Redress not mandatory. RCW 41.04.580 through 41.04.595 do not require a municipality to adopt an ordinance or resolution providing for redress of salary and other employment related losses. [1986 c 225 § 3.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.590 Dismissal of municipal employees during World War II—Redress—Limitations. Under the system of redress authorized under RCW 41.04.580 through 41.04.595:

(1) A municipality may determine in its sole discretion the monetary amount of redress for salary and other employment related losses, which may not exceed five thousand dollars for any undivided claim.

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(2) If a municipality adopts an ordinance or resolution providing for redress of salary and other employment related losses, it has no obligation to notify directly any person of possible eligibility for redress of salary and other employment related losses. [1986 c 225 § 4.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.595 Dismissal of municipal employees during World War II—Definitions. For the purposes of this chapter, "municipality" means a city, town, county, special purpose district, municipal corporation, quasi-municipal corporation, or political subdivision of the state of Washington. For the purposes of this chapter, a "municipal employee" means an employee of a municipality. [1986 c 225 § 5.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.650 Leave sharing program—Intent. The legislature finds that: (1) State employees historically have joined together to help their fellow employees who suffer from, or have relatives or household members suffering from, an extraordinary or severe illness, injury, impairment, or physical or mental condition which prevents the individual from working and causes great economic and emotional distress to the employee and his or her family; and (2) these circumstances may be exacerbated because the affected employees use all their accrued sick leave and annual leave and are forced to take leave without pay or terminate their employment. Therefore, the legislature intends to provide for the establishment of a leave sharing program. [1989 c 93 § 1.]

Additional notes found at www.leg.wa.gov

41.04.655 Leave sharing program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.650 through 41.04.670, 28A.400.380, and section 7, chapter 93, Laws of 1989.

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members as defined in RCW 26.50.010; (b) sexual assault of one family or household member by another family or household member; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or annual leave and for whom accurate leave records are maintained.

(3) "Program" means the leave sharing program established in RCW 41.04.660.

(4) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an

examination to determine the fitness of the person to perform any such duty.

(5) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(6) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(7) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

(8) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(9) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed as defined in this section. [2008 c 36 § 1; 2003 1st sp.s. c 12 § 1; 1990 c 33 § 569; 1989 c 93 § 2.]

Effective date—2008 c 36: "This act takes effect October 1, 2008." [2008 c 36 § 4.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

41.04.660 Leave sharing program—Created. The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual leave, sick leave, or personal holidays, to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; a fellow state employee who is a victim of domestic violence, sexual assault, or stalking; or a fellow state employee who has been called to service in the uniformed services, which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment. [2008 c 36 § 2; 2003 1st sp.s. c 12 § 2; 1996 c 176 § 2; 1990 c 23 § 1; 1989 c 93 § 3.]

Effective date—2008 c 36: See note following RCW 41.04.655.

Additional notes found at www.leg.wa.gov

41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies—Return of unused leave—Rules. (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 respond-

ing 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; or

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

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, temporary layoff under section 3(5), chapter 32, Laws of 2010 1st sp. sess., 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) or (iv) 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 five hundred twenty-two days of leave, except that, a supervisor may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for the shared leave program because he or she is suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. 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(1)(b) 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.

(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)(a) 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. Unused shared leave may not be returned until one of the following occurs:

(i) The agency head receives from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved; or

(ii) The employee is released to full-time employment; has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months; and the employee's doctor has declined, in writing, the employee's request for a statement indicating the employee's condition has been resolved.

(b) If a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account, the agency head must approve a new shared leave request for the employee.

(c) 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.

(11) The director of financial management may adopt rules as necessary to implement subsection (2) of this section. [2016 c 177 § 1; 2015 3rd sp.s. c 1 § 312; 2011 1st sp.s. c 43 § 435. Prior: 2010 1st sp.s. c 32 § 10; 2010 c 168 § 1; 2008 c 36 § 3; prior: 2007 c 454 § 1; 2007 c 25 § 2; 2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2010 c 168: "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 [March 23, 2010]." [2010 c 168 § 2.]

Effective date—2008 c 36: See note following RCW 41.04.655.

Severability—Effective date—2007 c 25: See notes following RCW 41.04.685.

Additional notes found at www.leg.wa.gov

41.04.670 Leave sharing program—Adoption of rules. The office of financial management and other personnel authorities shall each adopt rules applicable to employees under their respective jurisdictions: (1) Establishing appropriate parameters for the program which are consistent with the provisions of RCW 41.04.650 through 41.04.665; (2) providing for equivalent treatment of employees between their respective jurisdictions and allowing transfers of leave in accordance with RCW 41.04.665(5); (3) establishing procedures to ensure that the program does not significantly increase the cost of providing leave; and (4) providing for the administration of the program and providing for maintenance and collection of sufficient information on the program to allow a thorough legislative review. [2011 1st sp.s. c 43 § 436; 1993 c 281 § 18; 1990 c 23 § 3; 1989 c 93 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.04.680 Pooled sick leave—Plan establishment—Calculations—Participation—Higher education institutions. The office of financial management and other personnel authorities shall adopt rules or policies governing the accumulation and use of sick leave for state agency and department employees, expressly for the establishment of a plan allowing participating employees to pool sick leave and allowing any sick leave thus pooled to be used by any participating employee who has used all of the sick leave, annual leave, and compensatory leave that has been personally accrued by him or her. Each department or agency of the state may allow employees to participate in a sick leave pool established by the office of financial management and other personnel authorities.

(1) For purposes of calculating maximum sick leave that may be donated or received by any one employee, pooled sick leave:

(a) Is counted and converted in the same manner as sick leave under the Washington state leave sharing program as provided in this chapter; and

(b) Does not create a right to sick leave in addition to the amount that may be donated or received under the Washington state leave sharing program as provided in this chapter.

(2) The office of financial management and other personnel authorities, except the personnel authorities for higher education institutions, shall adopt rules which provide:

(a) That employees are eligible to participate in the sick leave pool after one year of employment with the state or agency of the state if the employee has accrued a minimum amount of unused sick leave, to be established by rule;

(b) That participation in the sick leave pool shall, at all times, be voluntary on the part of the employees;

(c) That any sick leave pooled shall be removed from the personally accumulated sick leave balance of the employee contributing the leave;

(d) That any sick leave in the pool that is used by a participating employee may be used only for the employee's personal illness, accident, or injury;

(e) That a participating employee is not eligible to use sick leave accumulated in the pool until all of his or her personally accrued sick, annual, and compensatory leave has been used;

(f) A maximum number of days of sick leave in the pool that any one employee may use;

(g) That a participating employee who uses sick leave from the pool is not required to recontribute such sick leave to the pool, except as otherwise provided in this section;

(h) That an employee who cancels his or her membership in the sick leave pool is not eligible to withdraw the days of sick leave contributed by that employee to the pool;

(i) That an employee who transfers from one position in state government to another position in state government may transfer from one pool to another if the eligibility criteria of the pools are comparable and the administrators of the pools have agreed on a formula for transfer of credits;

(j) That alleged abuse of the use of the sick leave pool shall be investigated, and, on a finding of wrongdoing, the

employee shall repay all of the sick leave credits drawn from the sick leave pool and shall be subject to such other disciplinary action as is determined by the agency head;

(k) That sick leave credits may be drawn from the sick leave pool by a part-time employee on a pro rata basis; and

(l) That each department or agency shall maintain accurate and reliable records showing the amount of sick leave which has been accumulated and is unused by employees, in accordance with guidelines established by the office of financial management.

(3) Personnel authorities for higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2015 3rd sp.s. c 1 § 313; 2011 1st sp.s. c 43 § 437; 2006 c 356 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2006 c 356: "This act takes effect July 1, 2007." [2006 c 356 § 2.]

41.04.685 Uniformed service shared leave pool—Creation—Administration—Restrictions—Definitions.

(1) The uniformed service shared leave pool is created to allow employees to donate leave to be used as shared leave for any employee who has been called to service in the uniformed services and who meets the requirements of RCW 41.04.665. Participation in the pool shall, at all times, be voluntary on the part of the employee. The military department, in consultation with the office of financial management, shall administer the uniformed service shared leave pool.

(2) Employees as defined in subsection (10) of this section who are eligible to donate leave under RCW 41.04.665 may donate leave to the uniformed service shared leave pool.

(3) An employee as defined in subsection (10) of this section who has been called to service in the uniformed services and is eligible for shared leave under RCW 41.04.665 may request shared leave from the uniformed service shared leave pool.

(4) It shall be the responsibility of the employee who has been called to service to provide an earnings statement verifying military salary, orders of service, and notification of a change in orders of service or military salary.

(5) Shared leave under this section may not be granted unless the pool has a sufficient balance to fund the requested shared leave for the expected term of service.

(6) Shared leave paid under this section, in combination with military salary, shall not exceed the level of the employee's state monthly salary.

(7) Any leave donated shall be removed from the personally accumulated leave balance of the employee donating the leave.

(8) An employee who receives shared leave from the pool is not required to recontribute such leave to the pool, except as otherwise provided in this section.

(9) Leave that may be donated or received by any one employee shall be calculated as in RCW 41.04.665.

(10) As used in this section:

(a) "Employee" has the meaning provided in RCW 41.04.655, except that "employee" as used in this section does not include employees of school districts and educational service districts.

(b) "Service in the uniformed services" has the meaning provided in RCW 41.04.655.

(c) "Military salary" includes base, specialty, and other pay, but does not include allowances such as the basic allowance for housing.

(d) "Monthly salary" includes monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. "Monthly salary" does not include:

- (i) Overtime pay;
- (ii) Call back pay;
- (iii) Standby pay; or
- (iv) Performance bonuses.

(11) The office of financial management, in consultation with the military department, shall adopt rules and policies governing the donation and use of shared leave from the uniformed service shared leave pool, including definitions of pay and allowances and guidelines for agencies to use in recordkeeping concerning shared leave.

(12) Agencies shall investigate any alleged abuse of the uniformed service shared leave pool and on a finding of wrongdoing, the employee may be required to repay all of the shared leave received from the uniformed service shared leave pool.

(13) Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2011 1st sp.s. c 43 § 438; 2007 c 25 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—2007 c 25: "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." [2007 c 25 § 4.]

Effective date—2007 c 25: "This act takes effect October 1, 2007." [2007 c 25 § 5.]

41.04.700 Employee assistance program—Intent. The legislature finds that:

(1) Assisting employees in resolving personal problems that impair their performance will result in a more productive workforce, better morale, reduced stress, reduced use of medical benefits, reduced absenteeism, lower turnover rates, and fewer accidents;

(2) A substantial number of employee problems can be identified and the employees referred to treatment by an employee assistance program;

(3) The state, as an employer, desires to foster a working environment that promotes safety and productivity as well as the health and well-being of its employees.

Therefore, it is the purpose of RCW 41.04.710 through 41.04.730 to assist state employees by establishing a state employee assistance program. [1990 c 60 § 301.]

Additional notes found at www.leg.wa.gov

41.04.710 Employee assistance program—Created.

The employee assistance program is hereby created to provide support and services to state employees who have personal problems that impair their performance in the workplace. The goal of the program is to help promote a safe, productive, and healthy state workforce by assisting state employees and their supervisors to identify and deal with such personal problems. However, nothing in this chapter

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relieves employees from the responsibility of performing their jobs in an acceptable manner. [1990 c 60 § 302.]

Additional notes found at www.leg.wa.gov

41.04.720 Employee assistance program—Director of enterprise services—Duties. The director of enterprise services shall:

(1) Administer the state employee assistance program to assist employees who have personal problems that adversely affect their job performance or have the potential of doing so;

(2) Develop policies, procedures, and activities for the program;

(3) Encourage and promote the voluntary use of the employee assistance program by increasing employee awareness and disseminating educational materials;

(4) Provide technical assistance and training to agencies on how to use the employee assistance program;

(5) Assist and encourage supervisors to identify and refer employees with problems that impair their performance by incorporating proper use of the program in management training, management performance criteria, ongoing communication with agencies, and other appropriate means;

(6) Offer substance abuse prevention and awareness activities to be provided through the employee assistance program and the state employee wellness program;

(7) Monitor and evaluate the effectiveness of the program, including the collection, analysis, and publication of relevant statistical information; and

(8) Consult with state agencies, institutions of higher education, and employee organizations in carrying out the purposes of RCW 41.04.700 through 41.04.730. [2011 1st sp.s. c 43 § 439; 1990 c 60 § 303.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.04.730 Employee assistance program—Information confidential—Exceptions. Individual employees' participation in the employee assistance program and all individually identifiable information gathered in the process of conducting the program shall be held in strict confidence; except that agency management may be provided with the following information about employees referred by that agency management due to poor job performance:

(1) Whether or not the referred employee made an appointment;

(2) The date and time the employee arrived and departed;

(3) Whether the employee agreed to follow the advice of counselors; and

(4) Whether further appointments were scheduled.

Participation or nonparticipation by any employee in the employee assistance program shall not be a factor in any decision affecting an employee's job security, promotional opportunities, corrective or disciplinary action, or other employment rights. [1990 c 60 § 304.]

Additional notes found at www.leg.wa.gov

41.04.750 Supported employment—Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout RCW 41.04.760 through 41.04.780.

(1) "Developmental disability" means a disability as defined in RCW 71A.10.020.

(2) "Significant disability" means a disability as defined in 29 U.S.C. Sec. 705.

(3) "Supported employment" means employment for individuals with developmental disabilities or other significant disabilities who require on-the-job training and long-term support in order to fulfill their job duties successfully. Supported employment offers the same wages and benefits as similar nonsupported employment positions.

(4) "State agency" means any office, department, division, bureau, board, commission, community college or institution of higher education, or agency of the state of Washington. [1999 c 178 § 2; 1997 c 287 § 2.]

Finding—1997 c 287: "The legislature finds that the rate of unemployment among individuals with developmental disabilities or other significant disabilities is high due to the limited employment opportunities available to them. Given that individuals with developmental disabilities or other significant disabilities are capable of filling employment positions in the general workforce population, supported employment is an effective way of integrating such individuals into the general workforce population. The creation of supported employment programs can increase the types and availability of employment positions for individuals with developmental disabilities or other significant disabilities." [1999 c 178 § 1; 1997 c 287 § 1.]

41.04.760 Supported employment—State agency participation. State agencies are encouraged to participate in supported employment activities. The department of social and health services, in conjunction with the department of personnel and the office of financial management, shall identify agencies that have positions and funding conducive to implementing supported employment. An agency may only participate in supported employment activities pursuant to this section if the agency is able to operate the program within its existing budget. These agencies shall:

(1) Designate a coordinator who will be responsible for information and resource referral regarding the agency's supported employment program. The coordinator shall serve as a liaison between the agency and the department of personnel regarding supported employment;

(2) Submit an annual update to the department of social and health services, the department of personnel, and the office of financial management. The annual update shall include: A description of the agency's supported employment efforts, the number of individuals placed in supported employment positions, and an overall evaluation of the effectiveness of supported employment for the agency. [1999 c 178 § 3; 1997 c 287 § 3.]

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.770 Supported employment—Implementation. The department of social and health services and the department of enterprise services shall, after consultation with supported employment provider associations and other interested parties, encourage, educate, and assist state agencies in implementing supported employment programs. The department of enterprise services shall provide human resources technical assistance to agencies implementing supported employment programs. [2011 1st sp.s. c 43 § 440; 1997 c 287 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.780 Supported employment—Impact on other employment positions. The creation of supported employment positions under RCW 41.04.760 and 41.04.770 shall not count against an agency's allotted full-time equivalent employee positions. Supported employment programs are not intended to displace employees or abrogate any reduction-in-force rights. [1997 c 287 § 5.]

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.800 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under *chapter 67.40 RCW. [1984 c 210 § 5.]

***Reviser's note:** A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Additional notes found at www.leg.wa.gov

41.04.803 Application of chapter 236, Laws of 2012. (1) Chapter 236, Laws of 2012 is curative and remedial and is applicable to any future determination of eligibility for membership in a retirement system under chapters 41.26, 41.32, 41.35, 41.37, and 41.40 RCW.

(2) Chapter 236, Laws of 2012 does not apply to or contravene any prior final decision of the state supreme court regarding the interpretation of the statutes addressed in chapter 236, Laws of 2012. [2012 c 236 § 7.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

41.04.810 Title not applicable to individual providers, family child care providers, adult family home providers, and language access providers. Individual providers, as defined in RCW 74.39A.240, and family child care providers, adult family home providers, and language access providers, all as defined in RCW 41.56.030, are not employees of the state or any of its political subdivisions and are specifically and entirely excluded from all provisions of this title, except as provided in RCW 74.39A.270, 41.56.028, and 41.56.029. [2010 c 296 § 5; 2007 c 184 § 4; 2006 c 54 § 4; 2004 c 3 § 3.]

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Conflict with federal requirements—Short title—Effective date—2006 c 54: See RCW 41.56.913 through 41.56.915.

Additional notes found at www.leg.wa.gov

41.04.820 Temporary salary reductions—Exceptions—Implementation. (1) Except as provided in this section, from July 1, 2011, through June 29, 2013, base salaries are reduced three percent for all state employees of the executive, legislative, and judicial branches, including those employees in the Washington management service and employees not subject to the provisions of chapter 41.06 RCW.

(2) The following employees of the executive, legislative, and judicial branches are not subject to subsection (1) of this section:

(a) Elected officials whose salaries are set by the commission on salaries for elected officials;

(b) Employees at state institutions of higher education;

(c) Certificated employees of the state school for the blind and the center for childhood deafness and hearing loss;

(d) Commissioned officers of the Washington state patrol represented by the state patrol troopers association and the Washington state patrol lieutenants association;

(e) Represented ferry workers of the Washington state department of transportation; and

(f) Employees whose monthly full-time equivalent salary is less than two thousand five hundred dollars per month.

(3) Except as provided in subsection (4) of this section, if an employee subject to the three percent salary reduction under subsection (1) of this section is entitled to leave, the employee will receive temporary salary reduction leave of up to five and two-tenths hours per month. The director of the department of personnel shall adopt rules governing the accrual and use of temporary salary reduction leave for non-represented employees. For represented employees, the accrual and use of temporary salary reduction leave shall be in accordance with the provisions of the collective bargaining agreements.

(4) If provisions of collective bargaining agreements prevent the implementation of subsection (1) of this section, agencies of the executive, legislative, and judicial branches shall achieve a three percent salary reduction for each employee through employee leave without pay, mandatory and voluntary temporary layoffs, reduced work hours, or other actions consistent with collective bargaining agreements. This subsection does not prohibit an agency from granting temporary salary reduction leave for employees entitled to leave in accordance with subsection (3) of this section.

(5) Subsection (2) of this section does not prohibit employers of the executive, legislative, and judicial branches from implementing a salary reduction for employees exempted under subsection (2) of this section. Employers of the executive, legislative, and judicial branches are encouraged to implement a salary reduction for employees exempted under subsection (2) of this section, except for those employees whose monthly full-time equivalent salary is less than two thousand five hundred dollars per month.

(6) Subsection (2) of this section does not prohibit elected officials whose salaries are set by the commission on salaries for elected officials to voluntarily agree to a reduction in salary and elected officials are encouraged to take such action.

(7) This section does not prohibit a state agency or institution during the 2011-2013 fiscal biennium from instituting reduced work hours, mandatory or voluntary leave without pay, reductions in salaries, or temporary layoffs as an integral part of the employer's expenditure reduction efforts, as certified by the employer. This subsection must be implemented consistent with collective bargaining agreements. [2011 1st sp.s. c 39 § 1.]

Effective date—2011 1st sp.s. c 39: "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 July 1, 2011." [2011 1st sp.s. c 39 § 15.]

(2016 Ed.)

41.04.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 85.]

Chapter 41.05 RCW

STATE HEALTH CARE AUTHORITY

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Monitoring enrollee level in basic health plan and medicaid caseload of children—Funding levels adjustment: RCW 43.41.260.

Prepaid chiropractic, pilot projects: RCW 18.25.200.

41.05.006 Purpose. (1) The legislature recognizes that (a) the state is a major purchaser of health care services, (b) the increasing costs of such health care services are posing and will continue to pose a great financial burden on the state, (c) it is the state's policy, consistent with the best interests of the state, to provide comprehensive health care as an employer, to state employees and officials and their dependents and to those who are dependent on the state for necessary medical care, and (d) it is imperative that the state begin to develop effective and efficient health care delivery systems and strategies for procuring health care services in order for the state to continue to purchase the most comprehensive health care possible.

(2) It is therefore the purpose of this chapter to establish the Washington state health care authority whose purpose shall be to (a) develop health care benefit programs that provide access to at least one comprehensive benefit plan funded to the fullest extent possible by the employer, and a health savings account/high deductible health plan option as defined in section 1201 of the medicare prescription drug improvement and modernization act of 2003, as amended, for eligible state employees, officials, and their dependents, and (b) study all state purchased health care, alternative health care delivery systems, and strategies for the procurement of health care services and make recommendations aimed at minimizing the financial burden which health care poses on the state, its employees, and its charges, while at the same time allowing the state to provide the most comprehensive health care options possible. [2006 c 299 § 1; 1988 c 107 § 2.]

41.05.008 Duties of employing agencies. (1) Every employing agency shall carry out all actions required by the authority under this chapter including, but not limited to, those necessary for the operation of benefit plans, education of employees, claims administration, and appeals process.

(2) Employing agencies shall report all data relating to employees eligible to participate in benefits or plans administered by the authority in a format designed and communicated by the authority. [2009 c 537 § 1; 2005 c 143 § 4.]

Effective date—2009 c 537: "This act takes effect January 1, 2010." [2009 c 537 § 9.]

41.05.009 Determination of employee eligibility for benefits. (1) The authority, or an employing agency at the authority's direction, shall initially determine and periodically review whether an employee is eligible for benefits pursuant to the criteria established under this chapter.

(2) An employing agency shall inform an employee in writing whether or not he or she is eligible for benefits when initially determined and upon any subsequent change, including notice of the employee's right to an appeal. [2015 c 116 § 1; 2009 c 537 § 2.]

Effective date—2009 c 537: See note following RCW 41.05.008.

41.05.0091 Eligibility exists prior to January 1, 2010.

An employee determined eligible for benefits prior to January 1, 2010, shall not have his or her eligibility terminated pursuant to the criteria established under chapter 537, Laws of 2009 unless the termination is the result of: (1) A voluntary reduction in work hours; or (2) the employee's employment with an agency other than the agency by which he or she was determined eligible prior to January 1, 2010. [2009 c 537 § 10.]

Effective date—2009 c 537: See note following RCW 41.05.008.

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

(1) "Authority" means the Washington state health care authority.

(2) "Board" means the public employees' benefits board established under RCW 41.05.055.

(3) "Dependent care assistance program" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the internal revenue code.

(4) "Director" means the director of the authority.

(5) "Emergency service personnel killed in the line of duty" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(6) "Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021(1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority,

as provided in RCW 41.05.021(1) (f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

(7) "Employer" means the state of Washington.

(8) "Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority.

(9) "Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; and a tribal government covered by this chapter.

(10) "Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

(11) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(12) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(13) "Medical flexible spending arrangement" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(14) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(15) "Plan year" means the time period established by the authority.

(16) "Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(17) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district, educational service district, or charter school on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district, educational service district, or charter school due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(18) "Salary" means a state employee's monthly salary or wages.

(19) "Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(20) "Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

(21) "Separated employees" means persons who separate from employment with an employer as defined in:

- (a) RCW 41.32.010(17) on or after July 1, 1996; or
- (b) RCW 41.35.010 on or after September 1, 2000; or
- (c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(33), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(22) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(23) "Tribal government" means an Indian tribal government as defined in section 3(32) of the employee retirement income security act of 1974, as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state. [2016 c 241 § 136; 2016 c 67 § 2. Prior: 2015 c 116 § 2; 2013 c 2 § 306 (Initiative Measure No. 1240, approved November 6, 2012); 2012 c 87 § 22; prior: 2011 1st sp.s. c 15 § 54; 2009 c 537 § 3; 2008 c 229 § 2; prior: 2007 c 488 § 2; 2007 c 114 § 2; 2005 c 143 § 1; 2001 c 165 § 2; prior: 2000 c 247 § 604; 2000 c 230 § 3; 1998 c 341 § 706; 1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2; prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

Reviser's note: This section was amended by 2016 c 67 § 2 and reenacted by 2016 c 241 § 136, each without reference to the other. Both amend-

ments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application of chapter 241, Laws of 2016—Effective date—2016 c 241: See RCW 28A.710.900 and 28A.710.901.

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

Effective date—2012 c 87 §§ 4, 16, 18, and 19-23: See note following RCW 43.71.030.

Spiritual care services—2012 c 87: See RCW 43.71.901.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 537: See note following RCW 41.05.008.

Effective date—2008 c 229: See note following RCW 41.05.295.

Short title—2007 c 488: See note following RCW 43.43.285.

Intent—2007 c 114: "Consistent with the centennial accord, the new millennium agreement, related treaties, and federal and state law, it is the intent of the legislature to authorize tribal governments to participate in public employees' benefits board programs to the same extent that counties, municipalities, and other political subdivisions of the state are authorized to do so." [2007 c 114 § 1.]

Effective date—2007 c 114: "This act takes effect January 1, 2009." [2007 c 114 § 8.]

Reviser's note: Contractual right not granted—2006 c 345: See note following RCW 41.26.510.

Intent—1994 c 153: "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.013 State purchased health care programs—Uniform policies—Report to the legislature.

(1) The authority shall coordinate state agency efforts to develop and implement uniform policies across state purchased health care programs that will ensure prudent, cost-effective health care services purchasing, maximize efficiencies in administration of state purchased health care programs, improve the quality of care provided through state purchased health care programs, and reduce administrative burdens on health care providers participating in state purchased health care programs. The policies adopted should be based, to the extent possible, upon the best available scientific and medical evidence and shall endeavor to address:

(a) Methods of formal assessment, such as a health technology assessment under RCW 70.14.080 through 70.14.130. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board;

(b) Monitoring of health outcomes, adverse events, quality, and cost-effectiveness of health services;

(c) Development of a common definition of medical necessity; and

(d) Exploration of common strategies for disease management and demand management programs, including asthma, diabetes, heart disease, and similar common chronic diseases. Strategies to be explored include individual asthma management plans. On January 1, 2007, and January 1, 2009, the authority shall issue a status report to the legislature summarizing any results it attains in exploring and coordinating

strategies for asthma, diabetes, heart disease, and other chronic diseases.

(2) The administrator may invite health care provider organizations, carriers, other health care purchasers, and consumers to participate in efforts undertaken under this section.

(3) For the purposes of this section "best available scientific and medical evidence" means the best available clinical evidence derived from systematic research. [2006 c 307 § 8; 2005 c 462 § 3; 2003 c 276 § 1.]

Captions not law—Conflict with federal requirements—2006 c 307: See notes following RCW 70.14.080.

Findings—2005 c 462: See note following RCW 28A.210.370.

Additional notes found at www.leg.wa.gov

41.05.014 Applications and enrollment forms—Signatures. (1) The administrator may require applications, enrollment forms, and eligibility certification documents for benefits that are administered by the authority under this chapter and chapters 70.47 and 70.47A RCW to be signed by the person submitting them. The administrator may accept electronic signatures.

(2) For the purpose of this section, "electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. [2009 c 201 § 2.]

41.05.015 Medical director—Appointment of personnel. The director shall designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. The director shall also appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter and chapter 74.09 RCW. The medical screeners must be supervised by one or more physicians whom the director or the director's designee shall appoint. [2011 1st sp.s. c 15 § 55; 2000 c 5 § 16.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

41.05.017 Provisions applicable to health plans offered under this chapter. Each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140, are subject to the provisions of RCW 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545, 48.43.550, 70.02.110, 70.02.900, 48.43.190, and 48.43.083. [2016 c 139 § 4; 2008 c 304 § 2; 2007 c 502 § 2; 2000 c 5 § 20.]

Savings—Severability—Effective date—2007 c 502: See notes following RCW 48.43.083.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

41.05.019 Direct patient-provider primary care practices—Plan. (1) The Washington state health care authority shall develop a plan to incorporate direct patient-provider primary care practices as provided in chapter 48.150

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RCW into one or more of the choices of health benefit programs made available to participants in the public employees' benefits board system beginning no later than the open enrollment period beginning November 1, 2012.

(2) The plan will be developed in consultation with the board and interested parties, will identify statutory barriers to implementation, and will include proposed legislation to address those barriers and implement the plan. The plan will be submitted to the board and to the house of representatives and senate health care committees by December 1, 2011. [2011 1st sp.s. c 8 § 2.]

41.05.021 State health care authority—Director—Cost control and delivery strategies—Health information technology—Managed competition—Rules. (1) The Washington state health care authority is created within the executive branch. The authority shall have a director appointed by the governor, with the consent of the senate. The director shall serve at the pleasure of the governor. The director may employ a deputy director, and such assistant directors and special assistants as may be needed to administer the authority, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The director may delegate any power or duty vested in him or her by law, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; administer the children's health program pursuant to chapter 74.09 RCW; study state purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in *RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205 and (g) of this subsection, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To review and approve or deny the application when the governing body of a tribal government applies to transfer their employees to an insurance or self-insurance program administered under this chapter. In the event of an employee transfer pursuant to this subsection (1)(f), members of the governing body are eligible to be included in such a transfer if the members are authorized by the tribal government to participate in the insurance program being transferred from

and subject to payment by the members of all costs of insurance for the members. The authority shall: (i) Establish the conditions for participation; (ii) have the sole right to reject the application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050. Approval of the application by the authority transfers the employees and dependents involved to the insurance, self-insurance, or health care program approved by the authority;

(g) To ensure the continued status of the employee insurance or self-insurance programs administered under this chapter as a governmental plan under section 3(32) of the employee retirement income security act of 1974, as amended, the authority shall limit the participation of employees of a county, municipal, school district, educational service district, or other political subdivision, the Washington health benefit exchange, or a tribal government, including providing for the participation of those employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities;

(h) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(i) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled;

(j) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(k) To issue, distribute, and administer grants that further the mission and goals of the authority;

(l) To adopt rules consistent with this chapter as described in RCW 41.05.160 including, but not limited to:

(i) Setting forth the criteria established by the board under RCW 41.05.065 for determining whether an employee is eligible for benefits;

(ii) Establishing an appeal process in accordance with chapter 34.05 RCW by which an employee may appeal an eligibility determination;

(iii) Establishing a process to assure that the eligibility determinations of an employing agency comply with the criteria under this chapter, including the imposition of penalties as may be authorized by the board;

(m)(i) To administer the medical services programs established under chapter 74.09 RCW as the designated single state agency for purposes of Title XIX of the federal social security act;

(ii) To administer the state children's health insurance program under chapter 74.09 RCW for purposes of Title XXI of the federal social security act;

(iii) To enter into agreements with the department of social and health services for administration of medical care services programs under Titles XIX and XXI of the social security act. The agreements shall establish the division of responsibilities between the authority and the department with respect to mental health, chemical dependency, and long-term care services, including services for persons with

developmental disabilities. The agreements shall be revised as necessary, to comply with the final implementation plan adopted under section 116, chapter 15, Laws of 2011 1st sp. sess.;

(iv) To adopt rules to carry out the purposes of chapter 74.09 RCW;

(v) To appoint such advisory committees or councils as may be required by any federal statute or regulation as a condition to the receipt of federal funds by the authority. The director may appoint statewide committees or councils in the following subject areas: (A) Health facilities; (B) children and youth services; (C) blind services; (D) medical and health care; (E) drug abuse and alcoholism; (F) rehabilitative services; and (G) such other subject matters as are or come within the authority's responsibilities. The statewide councils shall have representation from both major political parties and shall have substantial consumer representation. Such committees or councils shall be constituted as required by federal law or as the director in his or her discretion may determine. The members of the committees or councils shall hold office for three years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member shall serve more than two consecutive terms. Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended;

(n) To review and approve or deny the application from the governing board of the Washington health benefit exchange to provide state-sponsored insurance or self-insurance programs to employees of the exchange. The authority shall (i) establish the conditions for participation; (ii) have the sole right to reject an application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

- (a) Standardizing the benefit package;
- (b) Soliciting competitive bids for the benefit package;
- (c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;
- (d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans. [2012 c 87 § 23; 2011 1st sp.s. c 15 § 56; 2009 c 537 § 4. Prior: 2007 c 274 § 1; 2007 c 114 § 3; 2006 c 103 § 2; 2005 c 446 § 1; 2002 c 142 § 1; 1999 c 372 § 4; 1997 c 274 § 1; 1995 1st sp.s. c 6 § 7; 1994 c 309 § 1; prior: 1993 c 492 § 215; 1993 c 386 § 6; 1990 c 222 § 3; 1988 c 107 § 4.]

*Reviser's note: RCW 70.41.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5). RCW 70.41.020 was subsequently amended by 2016 c 226 § 1, changing subsection (5) to subsection (7).

Effective date—2012 c 87 §§ 4, 16, 18, and 19-23: See note following RCW 43.71.030.

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Spiritual care services—2012 c 87: See RCW 43.71.901.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—2006 c 103: "(1) The legislature recognizes that improvements in the quality of health care lead to better health care outcomes for the residents of Washington state and contain health care costs. The improvements are facilitated by the adoption of electronic medical records and other health information technologies.

(2) It is the intent of the legislature to encourage all hospitals, integrated delivery systems, and providers in the state of Washington to adopt health information technologies by the year 2012." [2006 c 103 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.022 State agent for purchasing health services—Single community-rated risk pool. (1) The health care authority is hereby designated as the single state agent for purchasing health services.

(2) On and after January 1, 1995, at least the following state-purchased health services programs shall be merged into a single, community-rated risk pool: Health benefits for groups of employees of school districts and educational service districts that voluntarily purchase health benefits as provided in RCW 41.05.011; health benefits for state employees; health benefits for eligible retired or disabled school employees not eligible for parts A and B of medicare; and health benefits for eligible state retirees not eligible for parts A and B of medicare.

(3) At a minimum, and regardless of other legislative enactments, the state health services purchasing agent shall:

(a) Require that a public agency that provides subsidies for a substantial portion of services now covered under the basic health plan use uniform eligibility processes, insofar as may be possible, and ensure that multiple eligibility determinations are not required;

(b) Require that a health care provider or a health care facility that receives funds from a public program provide care to state residents receiving a state subsidy who may wish to receive care from them, and that an insuring entity that receives funds from a public program accept enrollment from state residents receiving a state subsidy who may wish to enroll with them;

(c) Strive to integrate purchasing for all publicly sponsored health services in order to maximize the cost control potential and promote the most efficient methods of financing and coordinating services;

(d) Consult regularly with the governor, the legislature, and state agency directors whose operations are affected by the implementation of this section; and

(e) Ensure the control of benefit costs under managed competition by adopting rules to prevent employers from entering into an agreement with employees or employee organizations when the agreement would result in increased utilization in public employees' benefits board plans or reduce the expected savings of managed competition. [1995 1st sp.s. c 6 § 3; 1994 c 153 § 3; 1993 c 492 § 227.]

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.023 Chronic care management program—Uniform medical plan—Definitions. (1) The health care authority, in collaboration with the department of health, shall design and implement a chronic care management program for state employees enrolled in the state's self-insured uniform medical plan. Programs must be evidence based, facilitating the use of information technology to improve quality of care and must improve coordination of primary, acute, and long-term care for those enrollees with multiple chronic conditions. The authority shall consider expansion of existing medical home and chronic care management programs. The authority shall use best practices in identifying those employees best served under a chronic care management model using predictive modeling through claims or other health risk information.

(2) For purposes of this section:

(a) "Medical home" means a site of care that provides comprehensive preventive and coordinated care centered on the patient needs and assures high-quality, accessible, and efficient care.

(b) "Chronic care management" means the authority's program that provides care management and coordination activities for health plan enrollees determined to be at risk for high medical costs. "Chronic care management" provides education and training and/or coordination that assist program participants in improving self-management skills to improve health outcomes and reduce medical costs by educating clients to better utilize services. [2007 c 259 § 6.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.026 Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization data—Exemption from public inspection—Executive sessions. (1) When soliciting proposals for the purpose of awarding contracts for goods or services, the administrator shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) When soliciting information for the development, acquisition, or implementation of state purchased health care services, the administrator shall, upon written request by the respondent, exempt from public inspection and copying such proprietary data, trade secrets, or other information submitted by the respondent that relate to the respondent's unique methods of conducting business, data unique to the product or services of the respondent, or to determining prices or rates to be charged for services.

(3) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request of the administrator, board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter by a contracting insurer, health care service contractor, health maintenance organization, vendor, or other health services

organization may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

(4) The board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter, may hold an executive session in accordance with chapter 42.30 RCW during any regular or special meeting to discuss information submitted in accordance with subsections (1) through (3) of this section.

(5) A person who challenges a request for or designation of information as exempt under this section is entitled to seek judicial review pursuant to chapter 42.56 RCW. [2005 c 274 § 277; 2003 c 277 § 2; 1991 c 79 § 1; 1990 c 222 § 6.]

Additional notes found at www.leg.wa.gov

41.05.031 Agencies to establish health care information systems. The following state agencies are directed to cooperate with the authority to establish appropriate health care information systems in their programs: The department of social and health services, the department of health, the department of labor and industries, the basic health plan, the department of veterans affairs, the department of corrections, and the superintendent of public instruction.

The authority, in conjunction with these agencies, shall determine:

- (1) Definitions of health care services;
- (2) Health care data elements common to all agencies;
- (3) Health care data elements unique to each agency; and
- (4) A mechanism for program and budget review of health care data. [1990 c 222 § 4; 1988 c 107 § 5.]

41.05.033 Shared decision-making demonstration project—Preference-sensitive care. (1) The legislature finds that there is growing evidence that, for preference-sensitive care involving elective surgery, patient-practitioner communication is improved through the use of high-quality decision aids that detail the benefits, harms, and uncertainty of available treatment options. Improved communication leads to more fully informed patient decisions. The legislature intends to increase the extent to which patients make genuinely informed, preference-based treatment decisions, by promoting public/private collaborative efforts to broaden the development, certification, use, and evaluation of effective decision aids and by recognition of shared decision making and patient decision aids in the state's laws on informed consent.

(2) The health care authority shall implement a shared decision-making demonstration project. The demonstration project shall be conducted at one or more multispecialty group practice sites providing state purchased health care in the state of Washington, and may include other practice sites providing state purchased health care. The demonstration project shall include the following elements:

(a) Incorporation into clinical practice of one or more decision aids for one or more identified preference-sensitive care areas combined with ongoing training and support of involved practitioners and practice teams, preferably at sites with necessary supportive health information technology;

(b) An evaluation of the impact of the use of shared decision making with decision aids, including the use of prefer-

ence-sensitive health care services selected for the demonstration project and expenditures for those services, the impact on patients, including patient understanding of the treatment options presented and concordance between patient values and the care received, and patient and practitioner satisfaction with the shared decision-making process; and

(c) As a condition of participating in the demonstration project, a participating practice site must bear the cost of selecting, purchasing, and incorporating the chosen decision aids into clinical practice.

(3) The health care authority may solicit and accept funding and in-kind contributions to support the demonstration and evaluation, and may scale the evaluation to fall within resulting resource parameters. [2007 c 259 § 2.]

Severability—2007 c 259: "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." [2007 c 259 § 68.]

Subheadings not law—2007 c 259: "Subheadings used in this act are not any part of the law." [2007 c 259 § 71.]

41.05.035 Exchange of health information—Pilot—Advisory board, discretionary—Administrator's authority. (1) The administrator shall design and pilot a consumer-centric health information infrastructure and the first health record banks that will facilitate the secure exchange of health information when and where needed and shall:

(a) Complete the plan of initial implementation, including but not limited to determining the technical infrastructure for health record banks and the account locator service, setting criteria and standards for health record banks, and determining oversight of health record banks;

(b) Implement the first health record banks in pilot sites as funding allows;

(c) Involve health care consumers in meaningful ways in the design, implementation, oversight, and dissemination of information on the health record bank system; and

(d) Promote adoption of electronic medical records and health information exchange through continuation of the Washington health information collaborative, and by working with private payors and other organizations in restructuring reimbursement to provide incentives for providers to adopt electronic medical records in their practices.

(2) The administrator may establish an advisory board, a stakeholder committee, and subcommittees to assist in carrying out the duties under this section. The administrator may reappoint health information infrastructure advisory board members to assure continuity and shall appoint any additional representatives that may be required for their expertise and experience.

(a) The administrator shall appoint the chair of the advisory board, chairs, and co-chairs of the stakeholder committee, if formed;

(b) Meetings of the board, stakeholder committee, and any advisory group are subject to chapter 42.30 RCW, the open public meetings act, including RCW 42.30.110(1)(l), which authorizes an executive session during a regular or special meeting to consider proprietary or confidential non-published information; and

(c) The members of the board, stakeholder committee, and any advisory group:

(i) Shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest as a condition of appointment;

(ii) Are immune from civil liability for any official acts performed in good faith as members of the board, stakeholder committee, or any advisory group.

(3) Members of the board may be compensated for participation in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the board. Members of the stakeholder committee shall not receive compensation but shall be reimbursed under RCW 43.03.050 and 43.03.060.

(4) The administrator may work with public and private entities to develop and encourage the use of personal health records which are portable, interoperable, secure, and respectful of patients' privacy.

(5) The administrator may enter into contracts to issue, distribute, and administer grants that are necessary or proper to carry out this section. [2007 c 259 § 10.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.036 Health information—Definitions. The definitions in this section apply throughout RCW 41.05.039 through 41.05.046 unless the context clearly requires otherwise.

(1) "Director" means the director of the state health care authority under this chapter.

(2) "Exchange" means the methods or medium by which health care information may be electronically and securely exchanged among authorized providers, payors, and patients within Washington state.

(3) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005.

(4) "Health data provider" means an organization that is a primary source for health-related data for Washington residents, including but not limited to:

(a) The children's health immunizations linkages and development profile immunization registry provided by the department of health pursuant to chapter 43.70 RCW;

(b) Commercial laboratories providing medical laboratory testing results;

(c) Prescription drugs clearinghouses, such as the national patient health information network; and

(d) Diagnostic imaging centers.

(5) "Lead organization" means a private sector organization or organizations designated by the director to lead development of processes, guidelines, and standards under chapter 300, Laws of 2009.

(6) "Payor" means public purchasers, as defined in this section, carriers licensed under chapters 48.20, 48.21, 48.44, 48.46, and 48.62 RCW, and the Washington state health insurance pool established in chapter 48.41 RCW.

(7) "Public purchaser" means the department of social and health services, the department of labor and industries, and the health care authority.

(8) "Secretary" means the secretary of the department of health. [2011 1st sp.s. c 15 § 57; 2009 c 300 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Finding—2009 c 300: "The legislature finds that:

(1) The inability to securely share critical health information between practitioners inhibits the delivery of safe, efficient care, as evidenced by:

(a) Adverse drug events that result in an average of seven hundred seventy thousand injuries and deaths each year; and

(b) Duplicative services that add to costs and jeopardize patient well-being;

(2) Consumers are unable to act as fully informed participants in their care unless they have ready access to their own health information;

(3) The blue ribbon commission on health care costs and access found that the development of a system to provide electronic access to patient information anywhere in the state was a key to improving health care; and

(4) In 2005, the legislature established a health information infrastructure advisory board to develop a strategy for the adoption and use of health information technologies that are consistent with emerging national standards and promote interoperability of health information systems." [2009 c 300 § 1.]

41.05.037 Nurse hotline, when funded. To the extent that funding is provided specifically for this purpose, the director shall provide all persons enrolled in health plans under this chapter and chapters 70.47 and 74.09 RCW with access to a twenty-four hour, seven day a week nurse hotline. [2011 1st sp.s. c 15 § 58; 2007 c 259 § 15.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.039 Health information—Secure access—Lead organization—Administrator's duties. (1) By August 1, 2009, the *administrator shall designate one or more lead organizations to coordinate development of processes, guidelines, and standards to:

(a) Improve patient access to and control of their own health care information and thereby enable their active participation in their own care; and

(b) Implement methods for the secure exchange of clinical data as a means to promote:

(i) Continuity of care;

(ii) Quality of care;

(iii) Patient safety; and

(iv) Efficiency in medical practices.

(2) The lead organization designated by the *administrator under this section shall:

(a) Be representative of health care privacy advocates, providers, and payors across the state;

(b) Have expertise and knowledge in the major disciplines related to the secure exchange of health data;

(c) Be able to support the costs of its work without recourse to state funding. The *administrator and the lead organization are authorized and encouraged to seek federal funds, including funds from the federal American recovery and reinvestment act, as well as solicit, receive, contract for, collect, and hold grants, donations, and gifts to support the implementation of this section and RCW 41.05.042;

(d) In collaboration with the *administrator, identify and convene work groups, as needed, to accomplish the goals of this section and RCW 41.05.042;

(e) Conduct outreach and communication efforts to maximize the adoption of the guidelines, standards, and processes developed by the lead organization;

(f) Submit regular updates to the *administrator on the progress implementing the requirements of this section and RCW 41.05.042; and

(g) With the *administrator, report to the legislature December 1, 2009, and on December 1st of each year through December 1, 2012, on progress made, the time necessary for completing tasks, and identification of future tasks that should be prioritized for the next improvement cycle.

(3) Within available funds as specified in subsection (2)(c) of this section, the *administrator shall:

(a) Participate in and review the work and progress of the lead organization, including the establishment and operation of work groups for this section and RCW 41.05.042; and

(b) Consult with the office of the attorney general to determine whether:

(i) An antitrust safe harbor is necessary to enable licensed carriers and providers to develop common rules and standards; and, if necessary, take steps, such as implementing rules or requesting legislation, to establish a safe harbor; and

(ii) Legislation is needed to limit provider liability if their health records are missing health information despite their participation in the exchange of health information.

(4) The lead organization or organizations shall take steps to minimize the costs that implementation of the processes, guidelines, and standards may have on participating entities, including providers. [2009 c 300 § 3.]

***Reviser's note:** The definition for "administrator" was changed to "director" by 2011 1st sp.s. c 15 § 57.

Findings—2009 c 300: See note following RCW 41.05.036.

41.05.042 Health information—Processes, guidelines, and standards. By December 1, 2011, the lead organization shall, consistent with the federal health insurance portability and accountability act, develop processes, guidelines, and standards that address:

(1) Identification and prioritization of high value health data from health data providers. High value health data include:

(a) Prescriptions;

(b) Immunization records;

(c) Laboratory results;

(d) Allergies; and

(e) Diagnostic imaging;

(2) Processes to request, submit, and receive data;

(3) Data security, including:

(a) Storage, access, encryption, and password protection;

(b) Secure methods for accepting and responding to requests for data;

(c) Handling unauthorized access to or disclosure of individually identifiable patient health information, including penalties for unauthorized disclosure; and

(d) Authentication of individuals, including patients and providers, when requesting access to health information, and maintenance of a permanent audit trail of such requests, including:

(i) Identification of the party making the request;

(ii) The data elements reported; and

(iii) Transaction dates;

(4) Materials written in plain language that explain the exchange of health information and how patients can effec-

tively manage such information, including the use of online tools for that purpose;

(5) Materials for health care providers that explain the exchange of health information and the secure management of such information. [2009 c 300 § 4.]

Findings—2009 c 300: See note following RCW 41.05.036.

41.05.046 Health information—Conflict with federal requirements. If any provision in RCW 41.05.036, 41.05.039, and 41.05.042 conflicts with existing or new federal requirements, the *administrator shall recommend modifications, as needed, to assure compliance with the aims of RCW 41.05.036, 41.05.039, and 41.05.042 and federal requirements. [2009 c 300 § 5.]

***Reviser's note:** The definition for "administrator" was changed to "director" by 2011 1st sp.s. c 15 § 57.

Findings—2009 c 300: See note following RCW 41.05.036.

41.05.050 Contributions for employees and dependents—Definitions. (1) Every: (a) Department, division, or separate agency of state government; (b) county, municipal, school district, educational service district, or other political subdivisions; and (c) tribal governments as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, other political subdivision, or a tribal government for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups, except as provided in subsection (4) of this section.

(2) To account for increased cost of benefits for the state and for state employees, the authority may develop a rate surcharge applicable to participating counties, municipalities, other political subdivisions, and tribal governments.

(3) The contributions of any: (a) Department, division, or separate agency of the state government; (b) county, municipal, or other political subdivisions; and (c) any tribal government as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(4)(a) The authority shall collect from each participating school district and educational service district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans. The authority may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, 2003, the authority shall collect from each participating school district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and by family size as would be charged to state employees, only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on

behalf of districts and their employees. The authority may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) The authority may charge districts a one-time set-up fee for employee groups enrolling in authority plans for the first time.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(f) Notwithstanding this subsection and RCW 41.05.065(4), the authority may allow districts enrolled on a tiered rate structure prior to September 1, 2002, to continue participation based on the same rate structure and under the same conditions and eligibility criteria.

(5) The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature. [2016 c 67 § 3; 2009 c 537 § 5; 2007 c 114 § 4; 2005 c 518 § 919; 2003 c 158 § 1. Prior: 2002 c 319 § 4; 2002 c 142 § 2; prior: 1995 1st sp.s. c 6 § 22; 1994 c 309 § 2; 1994 c 153 § 4; prior: 1993 c 492 § 216; 1993 c 386 § 7; 1988 c 107 § 18; 1987 c 122 § 4; 1984 c 107 § 1; 1983 c 15 § 20; 1983 c 2 § 9; prior: 1982 1st ex.s. c 34 § 2; 1981 c 344 § 6; 1979 c 151 § 55; 1977 ex.s. c 136 § 4; 1975-'76 2nd ex.s. c 106 § 4; 1975 1st ex.s. c 38 § 2; 1973 1st ex.s. c 147 § 3; 1970 ex.s. c 39 § 5.]

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—2002 c 319: See note following RCW 41.04.208.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.055 Public employees' benefits board—Members. (1) The public employees' benefits board is created within the authority. The function of the board is to design and approve insurance benefit plans for employees and to establish eligibility criteria for participation in insurance benefit plans.

(2) The board shall be composed of nine members appointed by the governor as follows:

(a) Two representatives of state employees, one of whom shall represent an employee union certified as exclusive representative of at least one bargaining unit of classified employees, and one of whom is retired, is covered by a program under the jurisdiction of the board, and represents an organized group of retired public employees;

(b) Two representatives of school district employees, one of whom shall represent an association of school employ-

ees and one of whom is retired, and represents an organized group of retired school employees;

(c) Four members with experience in health benefit management and cost containment; and

(d) The administrator.

(3) The member who represents an association of school employees and one member appointed pursuant to subsection (2)(c) of this section shall be nonvoting members until such time that there are no less than twelve thousand school district employee subscribers enrolled with the authority for health care coverage.

(4) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. The administrator shall serve as chair of the board. Meetings of the board shall be at the call of the chair. [2009 c 537 § 6; 1995 1st sp.s. c 6 § 4; 1994 c 36 § 1; 1993 c 492 § 217; 1989 c 324 § 1; 1988 c 107 § 7.]

Effective date—2009 c 537: See note following RCW 41.05.008.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.065 Public employees' benefits board—Duties—Eligibility—Definitions—Penalties. (1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits; and

(f) Minimum standards for insuring entities.

(3) To maintain the comprehensive nature of employee health care benefits, benefits provided to employees shall be

substantially equivalent to the state employees' health benefits plan in effect on January 1, 1993. Nothing in this subsection shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account. The board may establish employee eligibility criteria which are not substantially equivalent to employee eligibility criteria in effect on January 1, 1993.

(4) Except if bargained for under chapter 41.80 RCW, the board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of this chapter. Employer groups obtaining benefits through contractual agreement with the authority for employees defined in RCW 41.05.011(6) (a) through (d) may contractually agree with the authority to benefits eligibility criteria which differs from that determined by the board. The eligibility criteria established by the board shall be no more restrictive than the following:

(a) Except as provided in (b) through (e) of this subsection, an employee is eligible for benefits from the date of employment if the employing agency anticipates he or she will work an average of at least eighty hours per month and for at least eight hours in each month for more than six consecutive months. An employee determined ineligible for benefits at the beginning of his or her employment shall become eligible in the following circumstances:

(i) An employee who works an average of at least eighty hours per month and for at least eight hours in each month and whose anticipated duration of employment is revised from less than or equal to six consecutive months to more than six consecutive months becomes eligible when the revision is made.

(ii) An employee who works an average of at least eighty hours per month over a period of six consecutive months and for at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period.

(b) A seasonal employee is eligible for benefits from the date of employment if the employing agency anticipates that he or she will work an average of at least eighty hours per month and for at least eight hours in each month of the season. A seasonal employee determined ineligible at the beginning of his or her employment who works an average of at least eighty hours per month over a period of six consecutive months and at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period. A benefits-eligible seasonal employee who works a season of less than nine months shall not be eligible for the employer contribution during the off season, but may continue enrollment in benefits during the off season by self-paying for the benefits. A benefits-eligible seasonal employee who works a season of nine months or more is eligible for the employer contribution through the off season following each season worked.

(c) Faculty are eligible as follows:

(i) Faculty who the employing agency anticipates will work half-time or more for the entire instructional year or equivalent nine-month period are eligible for benefits from the date of employment. Eligibility shall continue until the

beginning of the first full month of the next instructional year, unless the employment relationship is terminated, in which case eligibility shall cease the first month following the notice of termination or the effective date of the termination, whichever is later.

(ii) Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period are eligible for benefits at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Such an employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least half-time in a quarter or semester. Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period, but who actually work half-time or more throughout the entire instructional year, are eligible for summer or off-quarter or off-semester coverage. Faculty who have met the criteria of this subsection (4)(c)(ii), who work at least two quarters or two semesters of the academic year with an average academic year workload of half-time or more for three quarters or two semesters of the academic year, and who have worked an average of half-time or more in each of the two preceding academic years shall continue to receive uninterrupted employer contributions for benefits if he or she works at least half-time in a quarter or semester or works two quarters or two semesters of the academic year with an average academic workload each academic year of half-time or more for three quarters or two semesters. Eligibility under this section ceases immediately if this criteria is not met.

(iii) Faculty may establish or maintain eligibility for benefits by working for more than one institution of higher education. When faculty work for more than one institution of higher education, those institutions shall prorate the employer contribution costs, or if eligibility is reached through one institution, that institution will pay the full employer contribution. Faculty working for more than one institution must alert his or her employers to his or her potential eligibility in order to establish eligibility.

(iv) The employing agency must provide written notice to faculty who are potentially eligible for benefits under this subsection (4)(c) of their potential eligibility.

(v) To be eligible for maintenance of benefits through averaging under (c)(ii) of this subsection, faculty must provide written notification to his or her employing agency or agencies of his or her potential eligibility.

(vi) For the purposes of this subsection (4)(c):

(A) "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters;

(B) "Half-time" means one-half of the full-time academic workload as determined by each institution; except that for community and technical college faculty, half-time academic workload is calculated according to RCW 28B.50.489.

(d) A legislator is eligible for benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible for benefits on the date his or her term begins or they take the oath of office, whichever occurs first.

(e) A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for benefits on the date he or she takes the oath of office.

(f) Except as provided in (c)(i) and (ii) of this subsection, eligibility ceases for any employee the first of the month following termination of the employment relationship.

(g) In determining eligibility under this section, the employing agency may disregard training hours, standby hours, or temporary changes in work hours as determined by the authority under this section.

(h) Insurance coverage for all eligible employees begins on the first day of the month following the date when eligibility for benefits is established. If the date eligibility is established is the first working day of a month, insurance coverage begins on that date.

(i) Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in (a) through (e) of this subsection shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

(j) Except for an employee eligible for benefits under (b) or (c)(ii) of this subsection, an employee who has established eligibility for benefits under this section shall remain eligible for benefits each month in which he or she is in pay status for eight or more hours, if (i) he or she remains in a benefits-eligible position and (ii) leave from the benefits-eligible position is approved by the employing agency. A benefits-eligible seasonal employee is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. Eligibility ends if these conditions are not met, the employment relationship is terminated, or the employee voluntarily transfers to a non-eligible position.

(k) For the purposes of this subsection, the board shall define "benefits-eligible position."

(5) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems.

(6)(a) For any open enrollment period following August 24, 2011, the board shall offer a health savings account option for employees that conforms to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(b) By November 30, 2015, and each year thereafter, the authority shall submit a report to the relevant legislative policy and fiscal committees that includes the following:

(i) Public employees' benefits board health plan cost and service utilization trends for the previous three years, in total and for each health plan offered to employees;

(ii) For each health plan offered to employees, the number and percentage of employees and dependents enrolled in the plan, and the age and gender demographics of enrollees in each plan;

(iii) Any impact of enrollment in alternatives to the most comprehensive plan, including the high deductible health plan with a health savings account, upon the cost of health benefits for those employees who have chosen to remain enrolled in the most comprehensive plan.

(7) Notwithstanding any other provision of this chapter, for any open enrollment period following August 24, 2011, the board shall offer a high deductible health plan in conjunction with a health savings account developed under subsection (6) of this section.

(8) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(9) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall adopt rules setting forth criteria by which it shall evaluate the plans.

(10) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments, political subdivisions, and tribal governments not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives

of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(11) The board may establish penalties to be imposed by the authority when the eligibility determinations of an employing agency fail to comply with the criteria under this chapter. [2015 c 116 § 3; 2011 1st sp.s. c 8 § 1; 2009 c 537 § 7. Prior: 2007 c 156 § 10; 2007 c 114 § 5; 2006 c 299 § 2; prior: 2005 c 518 § 920; 2005 c 195 § 1; 2003 c 158 § 2; 2002 c 142 § 3; 1996 c 140 § 1; 1995 1st sp.s. c 6 § 5; 1994 c 153 § 5; prior: 1993 c 492 § 218; 1993 c 386 § 9; 1988 c 107 § 8.]

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.066 Domestic partner benefits. A certificate of domestic partnership qualified under the provisions of RCW 26.60.030 shall be recognized as evidence of a qualified domestic partnership fulfilling all necessary eligibility criteria for the partner of the employee to receive benefits. Nothing in this section affects the requirements of domestic partners to complete documentation related to federal tax status that may currently be required by the board for employees choosing to make premium payments on a pretax basis. [2015 c 116 § 4; 2007 c 156 § 9.]

41.05.068 Federal employer incentive program—Authority to participate. The authority may participate as an employer-sponsored program established in section 1860D-22 of the medicare prescription drug, improvement, and modernization act of 2003, P.L. 108-173 et seq., to receive federal employer subsidy funds for continuing to provide retired employee health coverage, including a pharmacy benefit. The administrator, in consultation with the office of

financial management, shall evaluate participation in the employer incentive program, including but not limited to any necessary program changes to meet the eligibility requirements that employer-sponsored retiree health coverage provide prescription drug coverage at least equal to the actuarial value of standard prescription drug coverage under medicare part D. Any employer subsidy moneys received from participation in the federal employer incentive program shall be deposited in the state general fund. [2009 c 479 § 25; 2005 c 195 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

41.05.074 Public employees—Prior authorization standards and criteria—Health plan requirements—Definitions. (Effective January 1, 2017.) (1) A health plan offered to public employees and their covered dependents under this chapter that imposes different prior authorization standards and criteria for a covered service among tiers of contracting providers of the same licensed profession in the same health plan shall inform an enrollee which tier an individual provider or group of providers is in by posting the information on its web site in a manner accessible to both enrollees and providers.

(2) The health plan may not require prior authorization for an evaluation and management visit or an initial treatment visit with a contracting provider in a new episode of chiropractic, physical therapy, occupational therapy, East Asian medicine, massage therapy, or speech and hearing therapies. Notwithstanding RCW 48.43.515(5) this section may not be interpreted to limit the ability of a health plan to require a referral or prescription for the therapies listed in this section.

(3) The health care authority shall post on its web site and provide upon the request of a covered person or contracting provider any prior authorization standards, criteria, or information the health plan uses for medical necessity decisions.

(4) A health care provider with whom the administrator of the health plan consults regarding a decision to deny, limit, or terminate a person's covered health care services must hold a license, certification, or registration, in good standing and must be in the same or related health field as the health care provider being reviewed or of a specialty whose practice entails the same or similar covered health care service.

(5) The health plan may not require a provider to provide a discount from usual and customary rates for health care services not covered under the health plan, policy, or other agreement, to which the provider is a party.

(6) For purposes of this section:

(a) "New episode of care" means treatment for a new or recurrent condition for which the enrollee has not been treated by the provider within the previous ninety days and is not currently undergoing any active treatment.

(b) "Contracting provider" does not include providers employed within an integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW. [2015 c 251 § 1.]

Effective date—2015 c 251: "This act takes effect January 1, 2017." [2015 c 251 § 3.]

(2016 Ed.)

41.05.075 Employee benefit plans—Contracts with insuring entities—Performance measures—Financial incentives—Health information technology. (1) The administrator shall provide benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.

(2) The administrator shall establish a contract bidding process that:

(a) Encourages competition among insuring entities;

(b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;

(c) Is timely to the state budgetary process; and

(d) Sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including:

(a) Subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the administrator's duties as set forth in this chapter; and

(b) Subscriber or member demographic and claims data necessary to implement performance measures or financial incentives related to performance under subsection (7) of this section.

(6) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a), (b), and (d).

(7) The administrator shall, in collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(a) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(i) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(ii) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(b) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in *RCW 70.41.020(4), integrated delivery systems, and providers that:

- (i) Facilitate diagnosis or treatment;
- (ii) Reduce unnecessary duplication of medical tests;
- (iii) Promote efficient electronic physician order entry;
- (iv) Increase access to health information for consumers and their providers; and

(v) Improve health outcomes;

(c) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005.

(8) The administrator may permit the Washington state health insurance pool to contract to utilize any network maintained by the authority or any network under contract with the authority. [2007 c 259 § 34; 2006 c 103 § 3; 2005 c 446 § 2; 2002 c 142 § 4. Prior: 1994 sp.s. c 9 § 724; 1994 c 309 § 3; 1994 c 153 § 6; 1993 c 386 § 10; 1988 c 107 § 9.]

***Reviser's note:** RCW 70.41.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5). RCW 70.41.020 was subsequently amended by 2016 c 226 § 1, changing subsection (5) to subsection (7).

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Intent—2006 c 103: See note following RCW 41.05.021.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.080 Participation in insurance plans and contracts—Retired, disabled, or separated employees—Certain surviving spouses, state registered domestic partners, and dependent children. (1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, retired or disabled employees of county, municipal, or other political subdivisions, or retired or disabled employees of tribal governments covered by this chapter may continue their participation in insurance plans and contracts after retirement or disablement;

(b) Separated employees may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment;

(c) Surviving spouses, surviving state registered domestic partners, and dependent children of emergency service personnel killed in the line of duty may participate in insurance plans and contracts.

(2) Rates charged surviving spouses and surviving state registered domestic partners of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or dependent children who are not eligible for parts A and B of medicare shall be based on the

experience of the community rated risk pool established under RCW 41.05.022.

(3) Rates charged to surviving spouses and surviving state registered domestic partners of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or children who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retirees and disabled employees shall be reduced by the amount of the subsidy provided under RCW 41.05.085.

(4) Surviving spouses, surviving state registered domestic partners, and dependent children of emergency service personnel killed in the line of duty and retired or disabled and separated employees shall be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter. These self pay rates will be established based on a separate rate for the employee, the spouse, state registered domestic partners, and the children.

(5) The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office. [2015 c 116 § 5. Prior: 2009 c 523 § 1; 2009 c 522 § 9; 2007 c 114 § 6; 2001 c 165 § 3; 1996 c 39 § 22; 1994 c 153 § 7; 1993 c 386 § 11; 1977 ex.s. c 136 § 6; 1975-'76 2nd ex.s. c 106 § 6; 1973 1st ex.s. c 147 § 7; 1970 ex.s. c 39 § 8.]

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.085 Retired or disabled school employee health insurance subsidy. (1) Beginning with the appropriations act for the 2005-2007 biennium, the legislature shall establish as part of both the state employees' and the school and educational service district employees' insurance benefit allocation the portion of the allocation to be used to provide a prescription drug subsidy to reduce the health care insurance premiums charged to retired or disabled school district and educational service district employees, or retired state employees, who are eligible for parts A and B of medicare. The legislature may also establish a separate health care subsidy to reduce insurance premiums charged to individuals who select a medicare supplemental insurance policy option established in RCW 41.05.195.

(2) The amount of any premium reduction shall be established by the board. The amount established shall not result in a premium reduction of more than fifty percent, except as provided in subsection (3) of this section. The board may also determine the amount of any subsidy to be available to spouses and dependents.

(3) The amount of the premium reduction in subsection (2) of this section may exceed fifty percent, if the administrator, in consultation with the office of financial management, determines that it is necessary in order to meet eligibility requirements to participate in the federal employer incentive

program as provided in RCW 41.05.068. [2005 c 195 § 3; 1994 c 153 § 8.]

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Additional notes found at www.leg.wa.gov

41.05.090 Continuation of coverage of employee, spouse, or covered dependent ineligible under state plan—Exceptions. (1) When an employee, spouse, or covered dependent becomes ineligible under the state plan and wishes to continue coverage on an individual basis with the same provider under the state plan, such employee, spouse, or covered dependent shall be entitled to immediately transfer and shall not be required to undergo any waiting period before obtaining individual coverage.

(2) Entitlement to a conversion contract under the terms of this section shall not apply to any employee, spouse, or covered dependent who is:

(a) Eligible for federal medicare coverage; or

(b) Covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) Entitlement to conversion under the terms of this section shall not apply to any employee terminated for misconduct, except that conversion shall be offered to the spouse and covered dependents of the terminated employee. [1990 c 222 § 5; 1979 c 125 § 3.]

41.05.095 Coverage for dependents under the age of twenty-six. (1) Any plan offered to employees under this chapter must offer each employee the option of covering any dependent of the employee under the age of twenty-six.

(2) Coverage must terminate upon attainment of age twenty-six except in the case of a child who is and continues to be both (a) incapable of self-sustaining employment by reason of a developmental disability or physical handicap and (b) chiefly dependent upon the employee for support and maintenance, provided proof of such incapacity and dependency is furnished by the employee within sixty days of the child's attainment of age twenty-six and subsequently as may be required by the authority, but not more frequently than annually after the two-year period following the child's attainment of age twenty-six. [2015 c 116 § 6; 2010 c 94 § 11; 2007 c 259 § 18.]

Purpose—2010 c 94: See note following RCW 44.04.280.

Effective date—2007 c 259 §§ 18-22: "Sections 18 through 22 of this act take effect January 1, 2009." [2007 c 259 § 72.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.100 Chapter not applicable to certain employees of Cooperative Extension Service. The provisions of this chapter shall not be applicable to any employee of the Washington State University Cooperative Extension Service who holds a federal civil service appointment and is thereby eligible for insurance coverage under the regulations of the United States Department of Agriculture and the United States Civil Service Commission, and which employee elects participation in the federal programs in lieu of the programs established pursuant to this chapter. Such election may be made only once. [1979 ex.s. c 9 § 1.]

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41.05.110 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under *chapter 67.40 RCW. [1984 c 210 § 3.]

***Reviser's note:** A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Additional notes found at www.leg.wa.gov

41.05.120 Public employees' and retirees' insurance account. (1) The public employees' and retirees' insurance account is hereby established in the custody of the state treasurer, to be used by the administrator for the deposit of contributions, the remittance paid by school districts and educational service districts under RCW 28A.400.410, reserves, dividends, and refunds, for payment of premiums for employee and retiree insurance benefit contracts and subsidy amounts provided under RCW 41.05.085, and transfers from the *medical flexible spending account as authorized in RCW 41.05.123. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the administrator. Moneys from the account may be transferred to the *medical flexible spending account to provide reserves and start-up costs for the operation of the *medical flexible spending account program.

(2) The state treasurer and the state investment board may invest moneys in the public employees' and retirees' insurance account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The administrator shall determine whether the state treasurer or the state investment board or both shall invest moneys in the public employees' [and retirees'] insurance account.

(3) During the 2005-07 fiscal biennium, the legislature may transfer from the public employees' and retirees' insurance account such amounts as reflect the excess fund balance of the fund. [2005 c 518 § 921; 2005 c 143 § 3; 1994 c 153 § 9; 1993 c 492 § 219; 1991 sp.s. c 13 § 100; 1988 c 107 § 10.]

Reviser's note: *(1) The "medical flexible spending account" was renamed the "flexible spending administrative account" by 2008 c 229 § 6.

(2) This section was amended by 2005 c 143 § 3 and by 2005 c 518 § 921, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.123 Flexible spending administrative account—Salary reduction account. (1) The flexible spending administrative account is created in the custody of the state treasurer. All receipts from the following must be deposited in the account: (a) Revenues from employing agencies for costs associated with operating the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter; (b) funds transferred from the dependent care administrative account; and (c) unclaimed moneys at the end of the plan year after all timely submitted claims for that plan year have been processed. Expenditures

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from the account may be used only for administrative and other expenses related to operating the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter. Only the administrator or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The salary reduction account is established in the state treasury. Employee salary reductions paid to reimburse participants or service providers for benefits provided by the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter shall be paid from the salary reduction account. The funds held by the state to pay for benefits provided by the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter shall be deposited in the salary reduction account. Unclaimed moneys remaining in the salary reduction account at the end of a plan year after all timely submitted claims for that plan year have been processed shall become a part of the flexible spending administrative account. Only the administrator or the administrator's designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW and an appropriation is not required for expenditures.

(3) Program claims reserves and money necessary for start-up costs transferred from the public employees' and retirees' insurance account established in RCW 41.05.120 may be deposited in the flexible spending administrative account. Moneys in excess of the amount necessary for administrative and operating expenses of the medical flexible spending arrangement program may be transferred to the public employees' and retirees' insurance account.

(4) The authority may periodically bill employing agencies for costs associated with operating the medical flexible spending arrangement program and the dependent care assistance program provided through the salary reduction plan authorized under this chapter. [2008 c 229 § 6; 2005 c 143 § 2.]

Effective date—2008 c 229: See note following RCW 41.05.295.

41.05.130 State health care authority administrative account. The state health care authority administrative account is hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operating expenses of the authority, and during the 2013-2015 fiscal biennium, for health care related analysis provided to the legislature by the office of the state actuary. [2014 c 221 § 914; 1988 c 107 § 11.]

Effective date—2014 c 221: See note following RCW 28A.710.260.

41.05.140 Payment of claims—Self-insurance—Insurance reserve fund created. (1) Except for property and casualty insurance, the authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction,

including the basic health plan as provided in chapter 70.47 RCW. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program. The authority shall endeavor to reimburse basic health plan health care providers under this section at rates similar to the average reimbursement rates offered by the statewide benchmark plan determined through the request for proposal process.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate account in the custody of the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state treasurer may invest the moneys in the reserve fund pursuant to RCW 43.79A.040.

(3) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

(4) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

(5) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

(6) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

(7) The provisions of this section do not apply to the administration of chapter 74.09 RCW. [2013 c 251 § 10; 2012 c 187 § 10; 2011 1st sp.s. c 15 § 59; 2000 c 80 § 5; 2000 c 79 § 44; 1994 c 153 § 10. Prior: 1993 c 492 § 220; 1993 c 386 § 12; 1988 c 107 § 12.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.143 Uniform medical plan benefits administration account—Uniform dental plan benefits administration account—Public employees' benefits board medical benefits administration account. (1) The uniform medical plan benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for

contracted expenditures for uniform medical plan claims administration, data analysis, utilization management, preferred provider administration, and activities related to benefits administration where the level of services provided pursuant to a contract fluctuate as a direct result of changes in uniform medical plan enrollment. Moneys in the account may also be used for administrative activities required to respond to new and unforeseen conditions that impact the uniform medical plan, but only when the authority and the office of financial management jointly agree that such activities must be initiated prior to the next legislative session.

(2) Receipts from amounts due from or on behalf of uniform medical plan enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. All proposals for allotment increases shall be provided to the house of representatives appropriations committee and to the senate ways and means committee at the same time as they are provided to the office of financial management.

(3) The uniform dental plan benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures related to benefits administration for the uniform dental plan as established under RCW 41.05.140. Receipts from amounts due from or on behalf of uniform dental plan enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(4) The public employees' benefits board medical benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures related to claims administration, data analysis, utilization management, preferred provider administration, and other activities related to benefits administration for self-insured medical plans other than the uniform medical plan. Receipts from amounts due from or on behalf of enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 507 § 1; 2000 2nd sp.s. c 1 § 901.]

Additional notes found at www.leg.wa.gov

41.05.160 Rules. The administrator may promulgate and adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1988 c 107 § 15.]

41.05.165 Rules—Insurance benefit reimbursement. The authority shall adopt rules that provide for members of (2016 Ed.)

the legislature who choose reimbursement under RCW 44.04.230 in lieu of insurance benefits under this chapter. [1998 c 62 § 2.]

Additional notes found at www.leg.wa.gov

41.05.170 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each health plan offered to public employees and their covered dependents under this chapter which is not subject to the provisions of Title 48 RCW and is established or renewed on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall preclude a self-funded plan authorized under this chapter from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the self-funded plan authorized under this chapter. Benefits shall be payable for services for the maintenance of a covered individual in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that the state, as an employer providing comprehensive health coverage including the benefits required by this section, retains the authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the self-funded plan authorized under this chapter. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available, or may limit the number of services delivered as established by the self-funded plan authorized under this chapter. [1989 c 345 § 4.]

41.05.175 Prescribed, self-administered anticancer medication. (1) Each health plan offered to public employees and their covered dependents under this chapter, including those subject to the provision of Title 48 RCW, and is issued or renewed beginning January 1, 2012, and provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in *RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred

drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy. [2011 c 159 § 2.]

***Reviser's note:** RCW 48.43.005 was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, changing subsections (15) and (16) to subsections (20) and (21). RCW 48.43.005 was subsequently amended by 2012 c 87 § 1, changing subsections (20) and (21) to subsections (22) and (23).

Findings—2011 c 159: "The Washington state legislature finds that for cancer patients, there is an inequity in how much they have to pay toward the cost of a self-administered oral medication and how much they have to pay for an intravenous product that is administered in a physician's office or clinic. The legislature further finds that when these inequities exist, patients' access to medically necessary, appropriate treatment is often unfairly restricted. The legislature also acknowledges that self-administered chemotherapy is the only treatment for some types of cancer where there is no intravenous alternative. The legislature declares that in order to reduce the out-of-pocket costs for cancer patients whose diagnosis requires treatment through self-administered anticancer medication, the cost-sharing responsibilities for these patients must be on a basis at least comparable to those of patients receiving intravenously administered anticancer medication." [2011 c 159 § 1.]

41.05.177 Prostate cancer screening—Required coverage. (1) Each plan offered to public employees and their covered dependents under this chapter that is not subject to the provisions of Title 48 RCW and is issued or renewed after December 31, 2006, shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of the health care authority to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. This section shall not apply to medicare supplemental policies or supplemental contracts covering a specified disease or other limited benefits. [2006 c 367 § 1.]

41.05.180 Mammograms—Insurance coverage. Each health plan offered to public employees and their covered dependents under this chapter that is not subject to the provisions of Title 48 RCW and is established or renewed after January 1, 1990, and that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard health plan provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of the state health care authority to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 725; 1989 c 338 § 5.]

Additional notes found at www.leg.wa.gov

41.05.183 General anesthesia services for dental procedures—Public employee benefit plans. (1) Each employee benefit plan offered to public employees that provides coverage for hospital, medical, or ambulatory surgery center services must cover general anesthesia services and related facility charges in conjunction with any dental procedure performed in a hospital or ambulatory surgical center if such anesthesia services and related facility charges are medically necessary because the covered person:

(a) Is under the age of seven, or physically or developmentally disabled, with a dental condition that cannot be safely and effectively treated in a dental office; or

(b) Has a medical condition that the person's physician determines would place the person at undue risk if the dental procedure were performed in a dental office. The procedure must be approved by the person's physician.

(2) Each employee benefit plan offered to public employees that provides coverage for dental services must cover general anesthesia services in conjunction with any covered dental procedure performed in a dental office if the general anesthesia services are medically necessary because the covered person is under the age of seven or physically or developmentally disabled.

(3) This section does not prohibit an employee benefit plan from:

(a) Applying cost-sharing requirements, maximum annual benefit limitations, and prior authorization requirements to the services required under this section; or

(b) Covering only those services performed by a health care provider, or in a health care facility, that is part of its provider network; nor does it limit the authority in negotiating rates and contracts with specific providers.

(4) This section does not apply to medicare supplement policies, or supplemental contracts covering a specified disease or other limited benefits.

(5) For the purpose of this section, "general anesthesia services" means services to induce a state of unconsciousness accompanied by a loss of protective reflexes, including the ability to maintain an airway independently and respond purposefully to physical stimulation or verbal command.

(6) This section applies to employee benefit plans issued or renewed on or after January 1, 2002. [2001 c 321 § 1.]

41.05.185 Diabetes benefits—State purchased health care. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All state purchased health care purchased or renewed after January 1, 1998, except the basic health plan described

in chapter 70.47 RCW, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For state purchased health care that includes coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all state purchased health care, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents any state agency purchasing health care according to this section from restricting patients to seeing only health care providers who have signed participating provider agreements with that state agency or an insuring entity under contract with that state agency.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements. [1997 c 276 § 1.]

Additional notes found at www.leg.wa.gov

41.05.188 Eosinophilic gastrointestinal associated disorder—Elemental formula. (1) Each health benefit plan offered to public employees and their covered dependents under this chapter that is not subject to chapter 48.43 RCW and that is issued or renewed after December 31, 2015, must offer benefits or coverage for medically necessary elemental formula, regardless of delivery method, when a licensed physician or other health care provider with prescriptive authority:

(a) Diagnoses a patient with an eosinophilic gastrointestinal associated disorder; and

(b) Orders and supervises the use of the elemental formula.

(2) Nothing in this section prohibits a health benefit plan from requiring prior authorization or imposing other appropriate utilization controls in approving coverage for medically necessary elemental formula. [2014 c 115 § 1.]

41.05.195 Medicare supplemental insurance policies. Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority, the authority shall make available to retired or disabled employees who are enrolled in parts A and B of medicare one or more medicare supplemental insurance policies that conform to the requirements of chapter 48.66 RCW. The policies shall be chosen in consultation with the public employees' benefits board. These policies shall be made available to retired or disabled state employees; retired or disabled school district employees;

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retired employees of county, municipal, or other political subdivisions or retired employees of tribal governments eligible for coverage available under the authority; or surviving spouses or surviving state registered domestic partners of emergency service personnel killed in the line of duty. [2015 c 116 § 7; 2009 c 523 § 2; 2007 c 114 § 7; 2005 c 47 § 1; 1993 c 492 § 222.]

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.197 Medicare supplemental insurance policies. The medicare supplemental insurance policies authorized under RCW 41.05.195 shall be made available to any resident of the state who:

(1) Is enrolled in parts A and B of medicare; and

(2) Is not eligible to purchase coverage as a retired or disabled employee under RCW 41.05.195. State residents purchasing a medicare supplemental insurance policy under this section shall be required to pay the full cost of any such policy. [2005 c 47 § 2; 1993 c 492 § 223.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.205 Tricare supplemental insurance policy—Authority to offer—Rules. (1) Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority under this chapter, the authority may make available a tricare supplemental insurance policy, 32 C.F.R. Sec. 199.17 (2004), to employees who are eligible. This supplemental policy may be offered as one of the board's health coverage options. Employee selection of this supplemental policy is exclusive of selecting any other medical coverage offered through the board. If offered by the board, this supplemental policy shall be made available to employees, and retired or disabled employees, eligible for coverage available under the authority, but not eligible for medicare parts A and B.

(2) The administrator may adopt rules to carry out the purposes of this section. [2005 c 46 § 1.]

41.05.220 Community and migrant health centers—Maternity health care centers—People of color—Under-served populations. (1) State general funds appropriated to the department of health for the purposes of funding community health centers to provide primary health and dental care services, migrant health services, and maternity health care services shall be transferred to the state health care authority. Any related administrative funds expended by the department of health for this purpose shall also be transferred to the health care authority. The health care authority shall exclusively expend these funds through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services. The administrator of the health care authority shall establish requirements necessary to assure community health centers provide quality health care services that are appropriate and effective and are delivered in a cost-efficient manner. The administrator shall further assure that community health centers have appropriate referral arrangements for acute care

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and medical specialty services not provided by the community health centers.

(2) The authority, in consultation with the department of health, shall work with community and migrant health clinics and other providers of care to underserved populations, to ensure that the number of people of color and underserved people receiving access to managed care is expanded in proportion to need, based upon demographic data. [1998 c 245 § 38; 1993 c 492 § 232.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.225 Blind licensees in the business enterprises program—Plan of health insurance. (1) The board shall offer a plan of health insurance to blind licensees who are actively operating facilities and participating in the business enterprises program established in RCW 74.18.200 through 74.18.230, and maintained by the department of services for the blind. The plan of health insurance benefits must be the same or substantially similar to the plan of health insurance benefits offered to state employees under this chapter. Enrollment will be at the option of each individual licensee or vendor, under rules established by the board.

(2) All costs incurred by the state or the board for providing health insurance coverage to active blind vendors, excluding family participation, under subsection (1) of this section may be paid for from net proceeds from vending machine operations in public buildings under RCW 74.18.230.

(3) Money from the business enterprises program under the federal Randolph-Sheppard Act may not be used for family participation in the health insurance benefits provided under this section. Family insurance benefits are the sole responsibility of the individual blind vendors. [2002 c 71 § 1.]

41.05.230 Multicultural health care technical assistance program. (1) Consistent with funds appropriated specifically for this purpose, the authority shall provide matching grants to support community-based multicultural health care technical assistance programs. The purpose of the programs shall be to promote technical assistance through community and migrant health clinics and other appropriate health care providers who serve underserved populations and persons of color.

The technical assistance provided shall include, but is not limited to: (a) Collaborative research and data analysis on health care outcomes that disproportionately affect persons of color; (b) design and development of model health education and promotion strategies aimed at modifying unhealthy health behaviors or enhancing the use of the health care delivery system by persons of color; (c) provision of technical information and assistance on program planning and financial management; (d) administration, public policy development, and analysis in health care issues affecting people of color; and (e) enhancement and promotion of health care career opportunities for persons of color.

(2) Consistent with appropriated funds, the programs shall be available on a statewide basis. [1993 c 492 § 272.]

Finding—1993 c 492: See note following RCW 28B.115.080.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.240 American Indian health care delivery plan. [1993 c 492 § 468.] Recodified as RCW 43.70.590 pursuant to 1995 c 43 § 5; and also repealed by 1995 1st sp.s. c 6 § 9.

Reviser's note: RCW 41.05.240 was recodified as RCW 43.70.590 pursuant to 1995 c 43 § 5 and amended by 1995 c 43 § 4, without cognizance of its repeal by 1995 1st sp.s. c 6 § 9. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

41.05.280 Department of corrections—Inmate health care. The department of corrections shall consult with the state health care authority to identify how the department of corrections shall develop a working plan to correspond to the health care reform measures that require all departments to place all state purchased health services in a community-rated, single risk pool under the direct administrative authority of the state purchasing agent by July 1, 1997. [1998 c 245 § 39; 1993 c 504 § 3.]

Findings—1993 c 504: "The legislature finds that Washington state government purchases approximately one-fourth of all the health care statewide. In addition to this huge expenditure, the state also faces health care inflation rates, far exceeding the growth rate of the economy as a whole and the general inflationary rate. Together these factors are straining state resources beyond our capability to pay.

The legislature finds that the department of corrections is responsible for providing health care to a large and growing number of offenders. It is also facing rapidly escalating medical, dental, and mental health care expenditures. As a result of this, the department must review its entire inmate health care system and take steps to reduce health care expenditures.

The legislature further finds that efforts to achieve statewide health care reform should also include the department of correction's health care facilities. In this light, the department must develop an appropriate plan that will correspond to the changing health care environment." [1993 c 504 § 1.]

Additional notes found at www.leg.wa.gov

41.05.295 Dependent care assistance program—Health care authority—Powers, duties, and functions. (1) All powers, duties, and functions of the department of retirement systems pertaining to the dependent care assistance program are transferred to the health care authority.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of retirement systems pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the health care authority. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the health care authority.

(b) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of retirement systems pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the health care authority. All existing contracts and obligations shall remain in full force and shall be performed by the health care authority.

(4) The transfer of the powers, duties, and functions of the department of retirement systems shall not affect the validity of any act performed before January 1, 2009.

(5) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the public employment relations commission as provided by law. [2008 c 229 § 1.]

Effective date—2008 c 229: "This act takes effect January 1, 2009." [2008 c 229 § 15.]

41.05.300 Salary reduction agreements—Authorized. (1) The state of Washington may enter into salary reduction agreements with employees of the state pursuant to the internal revenue code, for the purpose of making it possible for employees of the state to select on a "before-tax basis" certain taxable and nontaxable benefits. The purpose of the salary reduction plan established in this chapter is to attract and retain individuals in governmental service by permitting them to enter into agreements with the state to provide for benefits pursuant to 26 U.S.C. Sec. 125, 26 U.S.C. Sec. 129, and other applicable sections of the internal revenue code.

(2) Nothing in the salary reduction plan constitutes an employment agreement between the participant and the state, and nothing contained in the participant's salary reduction agreement, the plan, this section, or RCW 41.05.123, 41.05.310 through 41.05.360, and 41.05.295 gives a participant any right to be retained in state employment. [2008 c 229 § 3; 1995 1st sp.s. c 6 § 11.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.310 Salary reduction plan—Policies and procedures—Plan document. The authority shall have responsibility for the formulation and adoption of a plan, policies, and procedures designed to guide, direct, and administer the salary reduction plan. For the plan year beginning January 1, 1996, the administrator may establish a premium only plan. Expansion of the salary reduction plan or cafeteria plan during subsequent plan years shall be subject to approval by the director of the office of financial management.

(1) A plan document describing the benefits offered under the salary reduction plan shall be adopted and administered by the authority. The authority shall represent the state in all matters concerning the administration of the plan. The state, through the authority, may engage the services of a professional consultant or administrator on a contractual basis to serve as an agent to assist the authority or perform the administrative functions necessary in carrying out the purposes of RCW 41.05.123, 41.05.300 through 41.05.350, and 41.05.295.

(2) The authority shall formulate and establish policies and procedures for the administration of the salary reduction plan that are consistent with existing state law, the internal revenue code, and the regulations adopted by the internal revenue service as they may apply to the benefits offered to participants under the plan.

(3) Every action taken by the authority in administering RCW 41.05.123, 41.05.300 through 41.05.350, and 41.05.295 shall be presumed to be a fair and reasonable exer-

cise of the authority vested in or the duties imposed upon it. The authority shall be presumed to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all persons interested unless the contrary be proved by clear and convincing affirmative evidence. [2008 c 229 § 4; 1995 1st sp.s. c 6 § 12.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.320 Salary reduction plan—Eligibility—Participation, withdrawal. (1) Elected officials and permanent employees of the state are eligible to participate in the salary reduction plan and reduce their salary by agreement with the authority. The authority may adopt rules to: (a) Limit the participation of employing agencies and their employees in the plan; and (b) permit participation in the plan by temporary employees of the state.

(2) Persons eligible under subsection (1) of this section may enter into salary reduction agreements with the state.

(3)(a) An eligible person may become a participant of the salary reduction plan for a full plan year with annual benefit plan selection for each new plan year made before the beginning of the plan year, as determined by the authority, or upon becoming eligible.

(b) Once an eligible person elects to participate in the salary reduction plan and determines the amount his or her gross salary shall be reduced and the benefit plan for which the funds are to be used during the plan year, the agreement shall be irrevocable and may not be amended during the plan year except as provided in (c) of this subsection. Prior to making an election to participate in the salary reduction plan, the eligible person shall be informed in writing of all the benefits and reductions that will occur as a result of such election.

(c) The authority shall provide in the salary reduction plan that a participant may enroll, terminate, or change his or her election after the plan year has begun if there is a significant change in a participant's status, as provided by 26 U.S.C. Sec. 125 and the regulations adopted under that section and defined by the authority.

(4) The authority shall establish as part of the salary reduction plan the procedures for and effect of withdrawal from the plan by reason of retirement, death, leave of absence, or termination of employment. To the extent possible under federal law, the authority shall protect participants from forfeiture of rights under the plan.

(5) Any reduction of salary under the salary reduction plan shall not reduce the reportable compensation for the purpose of computing the state retirement and pension benefits earned by the employee pursuant to chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 43.43 RCW. [2008 c 229 § 5; 2007 c 492 § 6; 1995 1st sp.s. c 6 § 13.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.330 Salary reduction plan—Accounts and records. The authority shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of a salary reduction plan created under RCW 41.05.300. [2008 c 229 § 7; 1995 1st sp.s. c 6 § 14.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.340 Salary reduction plan—Termination—Amendment. (1) The state may terminate the salary reduction plan at the end of the plan year or upon notification of federal action affecting the status of the plan.

(2) The authority may amend the salary reduction plan at any time if the amendment does not affect the rights of the participants to receive eligible reimbursement from the participants' accounts. [2008 c 229 § 8; 1995 1st sp.s. c 6 § 15.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.350 Salary reduction plan—Rules. The authority shall adopt rules necessary to implement RCW 41.05.123, 41.05.300 through 41.05.340, and 41.05.295. [2008 c 229 § 9; 1995 1st sp.s. c 6 § 16.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.360 Salary reduction plan—Construction. RCW 41.05.123, 41.05.300 through 41.05.350, and 41.05.295 shall be construed to effectuate the purposes of 26 U.S.C. Sec. 125 and other applicable sections of the internal revenue code as required. [2008 c 229 § 10; 1995 1st sp.s. c 6 § 17.]

Effective date—2008 c 229: See note following RCW 41.05.295.

Additional notes found at www.leg.wa.gov

41.05.400 Plan of health care coverage—Available funds—Components—Eligibility—Administrator's duties. (1) The administrator shall design and offer a plan of health care coverage as described in subsection (2) of this section, for any person eligible under subsection (3) of this section. The health care coverage shall be designed and offered only to the extent that state funds are specifically appropriated for this purpose.

(2) The plan of health care coverage shall have the following components:

(a) Services covered more limited in scope than those contained in RCW 48.41.110(3);

(b) Enrollee cost-sharing that may include but not be limited to point-of-service cost-sharing for covered services;

(c) Deductibles of three thousand dollars on a per person per calendar year basis, and four thousand dollars on a per family per calendar year basis. The deductible shall be applied to the first three thousand dollars, or four thousand dollars, of eligible expenses incurred by the covered person or family, respectively, except that the deductible shall not be applied to clinical preventive services as recommended by the United States public health service. Enrollee out-of-pocket expenses required to be paid under the plan for cost-sharing and deductibles shall not exceed five thousand dollars per person, or six thousand dollars per family;

(d) Payment methodologies for network providers may include but are not limited to resource-based relative value fee schedules, capitation payments, diagnostic related group fee schedules, and other similar strategies including risk-sharing arrangements; and

(e) Other appropriate care management and cost-containment measures determined appropriate by the administrator, including but not limited to care coordination, provider network limitations, preadmission certification, and utilization review.

(3) Any person is eligible for coverage in the plan who resides in a county of the state where no carrier, as defined in RCW 48.43.005, or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan as defined in RCW 48.43.005 other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the administrator. Such eligibility may terminate pursuant to subsection (8) of this section.

(4) The administrator may not reject an individual for coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a nine-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. Credit against the waiting period shall be provided pursuant to subsections (5) and (6) of this section.

(5) Except for persons to whom subsection (6) of this section applies, the administrator shall credit any preexisting condition waiting period in the plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the plan in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan. The administrator must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(6) The administrator shall waive any preexisting condition waiting period in the plan for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(7) The administrator shall set the rates to be charged plan enrollees.

(8) When a carrier, as defined in RCW 48.43.005, or an insurer regulated under chapter 48.15 RCW, begins to offer an individual health benefit plan as defined in RCW 48.43.005 in a county where no carrier or insurer had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in the plan under subsection (3) of this section in that county shall no longer be eligible;

(b) The administrator shall provide written notice to any person who is no longer eligible for coverage under the plan within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options available to the person; and (iii) describe the enroll-

ment process for the available options. [2000 c 80 § 7; 2000 c 79 § 46.]

Additional notes found at www.leg.wa.gov

41.05.520 Pharmacy connection program—Notice.

(1) The administrator shall establish and advertise a pharmacy connection program through which health care providers and members of the public can obtain information about manufacturer-sponsored prescription drug assistance programs. The administrator shall ensure that the program has staff available who can assist persons in procuring free or discounted medications from manufacturer-sponsored prescription drug assistance programs by:

(a) Determining whether an assistance program is offered for the needed drug or drugs;

(b) Evaluating the likelihood of a person obtaining drugs from an assistance program under the guidelines formulated;

(c) Assisting persons with the application and enrollment in an assistance program;

(d) Coordinating and assisting physicians and others authorized to prescribe medications with communications, including applications, made on behalf of a person to a participating manufacturer to obtain approval of the person in an assistance program; and

(e) Working with participating manufacturers to simplify the system whereby eligible persons access drug assistance programs, including development of a single application form and uniform enrollment process.

(2) Notice regarding the pharmacy connection program shall initially target senior citizens, but the program shall be available to anyone, and shall include a toll-free telephone number, available during regular business hours, that may be used to obtain information.

(3) The administrator may apply for and accept grants or gifts and may enter into interagency agreements or contracts with other state agencies or private organizations to assist with the implementation of this program including, but not limited to, contracts, gifts, or grants from pharmaceutical manufacturers to assist with the direct costs of the program.

(4) The administrator shall notify pharmaceutical companies doing business in Washington of the pharmacy connection program. Any pharmaceutical company that does business in this state and that offers a pharmaceutical assistance program shall notify the administrator of the existence of the program, the drugs covered by the program, and all information necessary to apply for assistance under the program.

(5) For purposes of this section, "manufacturer-sponsored prescription drug assistance program" means a program offered by a pharmaceutical company through which the company provides a drug or drugs to eligible persons at no charge or at a reduced cost. The term does not include the provision of a drug as part of a clinical trial. [2003 1st sp.s. c 29 § 7.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

41.05.530 Prescription drug assistance, education—Rules. The authority may adopt rules to implement chapter 29, Laws of 2003 1st sp. sess. [2003 1st sp.s. c 29 § 10.]

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Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

41.05.533 Medication synchronization policy required for health benefit plans covering prescription drugs—Requirements—Definitions.

(1) A health benefit plan offered to public employees and their covered dependents under this chapter that is not subject to chapter 48.43 RCW, that is issued or renewed after December 31, 2015, and that provides coverage for prescription drugs must implement a medication synchronization policy for the dispensing of prescription drugs to the plan's enrollees.

(a) If an enrollee requests medication synchronization for a new prescription, the health [benefit] plan must permit filling the drug: (i) For less than a one-month supply of the drug if synchronization will require more than a fifteen-day supply of the drug; or (ii) for more than a one-month supply of the drug if synchronization will require a fifteen-day supply of the drug or less.

(b) The health benefit plan shall adjust the enrollee cost-sharing for a prescription drug subject to coinsurance that is dispensed for less than the standard refill amount for the purpose of synchronizing the medications.

(c) The health benefit plan shall adjust the enrollee cost-sharing for a prescription drug with a copayment that is dispensed for less than the standard refill amount for the purpose of synchronizing the medications by:

(i) Discounting the copayment rate by fifty percent;

(ii) Discounting the copayment rate based on fifteen-day increments; or

(iii) Any other method that meets the intent of this section and is approved by the office of the insurance commissioner.

(2) Upon request of an enrollee, the prescribing provider or pharmacist shall:

(a) Determine that filling or refilling the prescription is in the best interest of the enrollee, taking into account the appropriateness of synchronization for the drug being dispensed;

(b) Inform the enrollee that the prescription will be filled to less than the standard refill amount for the purpose of synchronizing his or her medications; and

(c) Deny synchronization on the grounds of threat to patient safety or suspected fraud or abuse.

(3) For purposes of this section, the following terms have the following meanings unless the context clearly requires otherwise:

(a) "Medication synchronization" means the coordination of medication refills for a patient taking two or more medications for a chronic condition such that the patient's medications are refilled on the same schedule for a given time period.

(b) "Prescription" has the same meaning as in RCW 18.64.011. [2015 c 213 § 2.]

41.05.540 State employee health program—Requirements—Report. (1) The health care authority, in coordination with the department of health, health plans participating in public employees' benefits board programs, and the University of Washington's center for health promotion, shall

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establish and maintain a state employee health program focused on reducing the health risks and improving the health status of state employees, dependents, and retirees enrolled in the public employees' benefits board. The program shall use public and private sector best practices to achieve goals of measurable health outcomes, measurable productivity improvements, positive impact on the cost of medical care, and positive return on investment. The program shall establish standards for health promotion and disease prevention activities, and develop a mechanism to update standards as evidence-based research brings new information and best practices forward.

(2) The state employee health program shall:

(a) Provide technical assistance and other services as needed to wellness staff in all state agencies and institutions of higher education;

(b) Develop effective communication tools and ongoing training for wellness staff;

(c) Contract with outside vendors for evaluation of program goals;

(d) Strongly encourage the widespread completion of online health assessment tools for all state employees, dependents, and retirees. The health assessment tool must be voluntary and confidential. Health assessment data and claims data shall be used to:

(i) Engage state agencies and institutions of higher education in providing evidence-based programs targeted at reducing identified health risks;

(ii) Guide contracting with third-party vendors to implement behavior change tools for targeted high-risk populations; and

(iii) Guide the benefit structure for state employees, dependents, and retirees to include covered services and medications known to manage and reduce health risks.

(3) The health care authority shall report to the legislature in December 2008 and December 2010 on outcome goals for the employee health program. [2007 c 259 § 40; 2005 c 360 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—Intent—2005 c 360: See note following RCW 36.70A.070.

41.05.550 Prescription drug assistance foundation—Nonprofit and tax-exempt corporation—Definitions—Liability. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Federal poverty level" means the official poverty level based on family size established and adjusted under section 673(2) of the omnibus budget reconciliation act of 1981 (P.L. 97-35; 42 U.S.C. Sec. 9902(2), as amended).

(b) "Foundation" means the prescription drug assistance foundation established in this section, a nonprofit corporation organized under the laws of this state to provide assistance in accessing prescription drugs to qualified uninsured individuals.

(c) "Health insurance coverage including prescription drugs" means prescription drug coverage under a private insurance plan, including a plan offered through the health benefit exchange under chapter 43.71 RCW, the medicaid program, the state children's health insurance program

("SCHIP"), the medicare program, the basic health plan, or any employer-sponsored health plan that includes a prescription drug benefit.

(d) "Qualified uninsured individual" means an uninsured person or an underinsured person who is a resident of this state and whose income meets financial criteria established by the foundation.

(e) "Underinsured" means an individual who has health insurance coverage including prescription drugs, but for whom the prescription drug coverage is inadequate for their needs.

(f) "Uninsured" means an individual who lacks health insurance coverage including prescription drugs.

(2)(a) The administrator shall establish the foundation as a nonprofit corporation, organized under the laws of this state. The foundation shall assist qualified uninsured individuals in obtaining prescription drugs at little or no cost.

(b) The foundation shall be administered in a manner that:

(i) Begins providing assistance to qualified uninsured individuals by January 1, 2006;

(ii) Defines the population that may receive assistance in accordance with this section; and

(iii) Complies with the eligibility requirements necessary to obtain and maintain tax-exempt status under federal law.

(c) The board of directors of the foundation consists of up to eleven with a minimum of five members appointed by the governor to staggered terms of three years. The governor shall select as members of the board individuals who (i) will represent the interests of persons who lack prescription drug coverage; and (ii) have demonstrated expertise in business management and in the administration of a not-for-profit organization.

(d) The foundation shall apply for and comply with all federal requirements necessary to obtain and maintain tax-exempt status with respect to the federal tax obligations of the foundation's donors.

(e) The foundation is authorized, subject to the direction and ratification of the board, to receive, solicit, contract for, collect, and hold in trust for the purposes of this section, donations, gifts, grants, and bequests in the form of money paid or promised, services, materials, equipment, or other things tangible or intangible that may be useful for helping the foundation to achieve its purpose. The foundation may use all sources of public and private financing to support foundation activities. No general fund-state funds shall be used for the ongoing operation of the foundation.

(f) No liability on the part of, and no cause of action of any nature, shall arise against any member of the board of directors of the foundation or against an employee or agent of the foundation for any lawful action taken by them in the performance of their administrative powers and duties under this section. [2015 c 161 § 1; 2008 c 87 § 1; 2005 c 267 § 1.]

41.05.600 Mental health services—Definition—Coverage required, when. (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on

July 24, 2005, or such subsequent date as may be provided by the administrator by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the authority's or contracted insuring entity's medical director determines the treatment to be medically necessary.

(2) All health benefit plans offered to public employees and their covered dependents under this chapter that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services

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for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

(6) The administrator will consider care management techniques for mental health services, including but not limited to: (a) Authorized treatment plans; (b) preauthorization requirements based on the type of service; (c) concurrent and retrospective utilization review; (d) utilization management practices; (e) discharge coordination and planning; and (f) contracting with and using a network of participating providers. [2005 c 6 § 2.]

Findings—Intent—2005 c 6: "The legislature finds that the costs of leaving mental disorders untreated or undertreated are significant, and often include: Decreased job productivity, loss of employment, increased disability costs, deteriorating school performance, increased use of other health services, treatment delays leading to more costly treatments, suicide, family breakdown and impoverishment, and institutionalization, whether in hospitals, juvenile detention, jails, or prisons.

Treatable mental disorders are prevalent and often have a high impact on health and productive life. The legislature finds that the potential benefits of improved access to mental health services are significant. Additionally, the legislature declares that it is not cost-effective to treat persons with mental disorders differently than persons with medical and surgical disorders.

Therefore, the legislature intends to require that insurance coverage be at parity for mental health services, which means this coverage be delivered under the same terms and conditions as medical and surgical services." [2005 c 6 § 1.]

Additional notes found at www.leg.wa.gov

41.05.601 Mental health services—Rules. The administrator may adopt rules to implement RCW 41.05.600. [2005 c 6 § 12.]

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

41.05.630 Annual report of customer service complaints and appeals. Beginning in 2011, the state health care authority must process as a complaint an enrollee's expression of dissatisfaction about customer service or the quality or availability of a health service. The agency must require that each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140 must submit a summary of customer service complaints and appeals to the agency to be included in an annual report to the legislature. Each annual report must summarize the complaints and appeals processed by the state health care authority and contracted carriers in

the preceding twelve months, and include an analysis of any trends identified. The report must be complete by September 30th of each year. [2010 c 293 § 1.]

41.05.650 Community health care collaborative grant program—Grants—Administrative support—Eligibility. (1) The community health care collaborative grant program is established to further the efforts of community-based coalitions to increase access to appropriate, affordable health care for Washington residents, particularly employed low-income persons and children in school who are uninsured and underinsured, through local programs addressing one or more of the following: (a) Access to medical treatment; (b) the efficient use of health care resources; and (c) quality of care.

(2) Consistent with funds appropriated for community health care collaborative grants specifically for this purpose, two-year grants may be awarded pursuant to RCW 41.05.660 by the administrator of the health care authority.

(3) The health care authority shall provide administrative support for the program. Administrative support activities may include health care authority facilitation of statewide discussions regarding best practices and standardized performance measures among grantees, or subcontracting for such discussions.

(4) Eligibility for community health care collaborative grants shall be limited to nonprofit organizations established to serve a defined geographic region or organizations with public agency status under the jurisdiction of a local, county, or tribal government. To be eligible, such entities must have a formal collaborative governance structure and decision-making process that includes representation by the following health care providers: Hospitals, public health, behavioral health, community health centers, rural health clinics, and private practitioners that serve low-income persons in the region, unless there are no such providers within the region, or providers decline or refuse to participate or place unreasonable conditions on their participation. The nature and format of the application, and the application procedure, shall be determined by the administrator of the health care authority. At a minimum, each application shall: (a) Identify the geographic region served by the organization; (b) show how the structure and operation of the organization reflects the interests of, and is accountable to, this region and members providing care within this region; (c) indicate the size of the grant being requested, and how the money will be spent; and (d) include sufficient information for an evaluation of the application based on the criteria established in RCW 41.05.660. [2009 c 299 § 1.]

41.05.651 Rules—2009 c 299. The health care authority may adopt rules to implement chapter 299, Laws of 2009. [2009 c 299 § 4.]

41.05.655 School district health benefits—Reports. By June 1, 2015, the health care authority must report to the governor, legislature, and joint legislative audit and review committee the following duties and analyses, based on two years of reports on school district health benefits submitted to it by the office of the insurance commissioner:

(1) The director shall establish a specific target to realize the goal of greater equity between premium costs for full family coverage and employee only coverage for the same health benefit plan. In developing this target, the director shall consider the appropriateness of the three-to-one ratio of employee premium costs between full family coverage and employee only coverage, and consider alternatives based on the data and information received from the office of the insurance commissioner.

(2) The director shall also study and report the advantages and disadvantages to the state, local school districts, and district employees:

(a) Whether better progress on the legislative goals could be achieved through consolidation of school district health insurance purchasing through a single consolidated school employee health benefits purchasing plan;

(b) Whether better progress on the legislative goals could be achieved by consolidating K-12 health insurance purchasing through the public employees' benefits board program, and whether consolidation into the public employees' benefits board program would be preferable to the creation of a consolidated school employee health benefits purchasing plan;

(c) Whether certificated or classified employees, as separate groups, would be better served by purchasing health insurance through a single consolidated school employee health benefits purchasing plan or through participation in the public employees' benefits board program; and

(d) Analyses shall include implications of taking any of the actions described in (a) through (c) of this subsection to include, at a minimum, the following: The costs for the state and school employees, impacts for existing purchasing programs, a proposed timeline for the implementation of any recommended actions. [2012 2nd sp.s. c 3 § 6.]

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

41.05.660 Community health care collaborative grant program—Award and disbursement of grants. (1) The community health care collaborative grants shall be awarded on a competitive basis based on a determination of which applicant organization will best serve the purposes of the grant program established in RCW 41.05.650. In making this determination, priority for funding shall be given to the applicants that demonstrate:

(a) The initiatives to be supported by the community health care collaborative grant are likely to address, in a measurable fashion, documented health care access and quality improvement goals aligned with state health policy priorities and needs within the region to be served;

(b) The applicant organization must document formal, active collaboration among key community partners that includes local governments, school districts, large and small businesses, nonprofit organizations, tribal governments, carriers, private health care providers, public health agencies, and community public health and safety networks, as defined in *RCW 70.190.010;

(c) The applicant organization will match the community health care collaborative grant with funds from other sources. The health care authority may award grants solely to organizations providing at least two dollars in matching funds for

each community health care collaborative grant dollar awarded;

(d) The community health care collaborative grant will enhance the long-term capacity of the applicant organization and its members to serve the region's documented health care access needs, including the sustainability of the programs to be supported by the community health care collaborative grant;

(e) The initiatives to be supported by the community health care collaborative grant reflect creative, innovative approaches which complement and enhance existing efforts to address the needs of the uninsured and underinsured and, if successful, could be replicated in other areas of the state; and

(f) The programs to be supported by the community health care collaborative grant make efficient and cost-effective use of available funds through administrative simplification and improvements in the structure and operation of the health care delivery system.

(2) The administrator of the health care authority shall endeavor to disburse community health care collaborative grant funds throughout the state, supporting collaborative initiatives of differing sizes and scales, serving at-risk populations.

(3) Grants shall be disbursed over a two-year cycle, provided the grant recipient consistently provides timely reports that demonstrate the program is satisfactorily meeting the purposes of the grant and the objectives identified in the organization's application. The requirements for the performance reports shall be determined by the health care authority administrator. The performance measures shall be aligned with the community health care collaborative grant program goals and, where possible, shall be consistent with statewide policy trends and outcome measures required by other public and private grant funders. [2009 c 299 § 2.]

*Reviser's note: RCW 70.190.010 was repealed by 2011 1st sp.s. c 32 § 13, effective June 30, 2012.

41.05.670 Chronic care management incentives—Provider reimbursement methods. (1) Effective January 1, 2013, the authority must contract with all of the public employees' benefits board managed care plans and the self-insured plan or plans to include provider reimbursement methods that incentivize chronic care management within health homes resulting in reduced emergency department and inpatient use.

(2) Health home services contracted for under this section may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(3) For the purposes of this section, "chronic care management," and "health home" have the same meaning as in RCW 74.09.010.

(4) Contracts with fully insured plans and with any third-party administrator for the self-funded plan that include the items in subsection (1) of this section must be funded within the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act.

(5) Nothing in this section shall require contracted third-party health plans administering the self-insured contract to expend resources to implement items in subsection (1) of this section beyond the resources provided by employer funding

rates provided for employee health benefits in the omnibus appropriations act or from other sources in the absence of these provisions. [2011 c 316 § 6.]

41.05.680 Report—Chronic care management. The authority shall coordinate a discussion with carriers to learn from successful chronic care management models and develop principles for effective reimbursement methods to align incentives in support of patient centered chronic care health homes. The authority shall submit a report to the appropriate committees of the legislature by December 1, 2012, describing the principles developed from the discussion and any steps taken by the public employees' benefits board or carriers in Washington state to implement the principles through their payment methodologies. [2011 c 316 § 7.]

41.05.690 Performance measures committee—Membership—Selection of performance measures—Benchmarks for purchasing decisions—Public process for evaluation of measures. (1) There is created a performance measures committee, the purpose of which is to identify and recommend standard statewide measures of health performance to inform public and private health care purchasers and to propose benchmarks to track costs and improvements in health outcomes.

(2) Members of the committee must include representation from state agencies, small and large employers, health plans, patient groups, federally recognized tribes, consumers, academic experts on health care measurement, hospitals, physicians, and other providers. The governor shall appoint the members of the committee, except that a statewide association representing hospitals may appoint a member representing hospitals, and a statewide association representing physicians may appoint a member representing physicians. The governor shall ensure that members represent diverse geographic locations and both rural and urban communities. The chief executive officer of the lead organization must also serve on the committee. The committee must be chaired by the director of the authority.

(3) The committee shall develop a transparent process for selecting performance measures, and the process must include opportunities for public comment.

(4) By January 1, 2015, the committee shall submit the performance measures to the authority. The measures must include dimensions of:

- (a) Prevention and screening;
- (b) Effective management of chronic conditions;
- (c) Key health outcomes;
- (d) Care coordination and patient safety; and
- (e) Use of the lowest cost, highest quality care for preventive care and acute and chronic conditions.

(5) The committee shall develop a measure set that:

- (a) Is of manageable size;
- (b) Is based on readily available claims and clinical data;
- (c) Gives preference to nationally reported measures and, where nationally reported measures may not be appropriate, measures used by state agencies that purchase health care or commercial health plans;

(d) Focuses on the overall performance of the system, including outcomes and total cost;

(e) Is aligned with the governor's performance management system measures and common measure requirements specific to medicaid delivery systems under RCW 70.320.020 and 43.20A.895;

(f) Considers the needs of different stakeholders and the populations served; and

(g) Is usable by multiple payers, providers, hospitals, purchasers, public health, and communities as part of health improvement, care improvement, provider payment systems, benefit design, and administrative simplification for providers and hospitals.

(6) State agencies shall use the measure set developed under this section to inform and set benchmarks for purchasing decisions.

(7) The committee shall establish a public process to periodically evaluate the measure set and make additions or changes to the measure set as needed. [2014 c 223 § 6.]

Finding—2014 c 223: See note following RCW 41.05.800.

41.05.700 Reimbursement of health care services provided through telemedicine or store and forward technology. (Effective January 1, 2017, until January 1, 2018.)

(1) A health plan offered to employees and their covered dependents under this chapter issued or renewed on or after January 1, 2017, shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

(a) The plan provides coverage of the health care service when provided in person by the provider;

(b) The health care service is medically necessary; and

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2017.

(2)(a) If the service is provided through store and forward technology there must be an associated office visit between the covered person and the referring health care provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health plan and health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

(d) Physician's or other health care provider's office;

(e) Community mental health center;

(f) Skilled nursing facility; or

(g) Renal dialysis center, except an independent renal dialysis center.

(4) Any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the health plan. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) The plan may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) The plan may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan, including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require the plan to reimburse:

(a) An originating site for professional fees;

(b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(9)[(8)] For purposes of this section:

(a) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(b) "Health care service" has the same meaning as in RCW 48.43.005;

(c) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(d) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(e) "Provider" has the same meaning as in RCW 48.43.005;

(f) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(g) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email. [2015 c 23 § 2.]

Effective date—2015 c 23 §§ 2-4: "Sections 2 through 4 of this act take effect January 1, 2017." [2015 c 23 § 7.]

Adoption of sections—2015 c 23 §§ 2-4: "The legislature encourages health plans to adopt the requirements of sections 2 through 4 of this act prior to January 1, 2017. Therefore, nothing in this act prohibits a plan from adopting the requirements of sections 2 through 4 of this act prior to January 1, 2017." [2015 c 23 § 8.]

Intent—2015 c 23: "It is the intent of the legislature to recognize the application of telemedicine as a reimbursable service by which an individual receives medical services from a health care provider without in-person contact with the provider. It is also the intent of the legislature to reduce the compliance requirements on hospitals when granting privileges or associations to telemedicine physicians." [2015 c 23 § 1.]

41.05.700 Reimbursement of health care services provided through telemedicine or store and forward technology. (Effective January 1, 2018.)

(1) A health plan offered to employees and their covered dependents under this chapter issued or renewed on or after January 1, 2017, shall reimburse a provider for a health care service provided to a

covered person through telemedicine or store and forward technology if:

(a) The plan provides coverage of the health care service when provided in person by the provider;

(b) The health care service is medically necessary;

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015; and

(d) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information.

(2)(a) If the service is provided through store and forward technology there must be an associated office visit between the covered person and the referring health care provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health plan and health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

(d) Physician's or other health care provider's office;

(e) Community mental health center;

(f) Skilled nursing facility;

(g) Home; or

(h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the health plan. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) The plan may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) The plan may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan, including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require the plan to reimburse:

(a) An originating site for professional fees;

(b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8) For purposes of this section:

(a) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(b) "Health care service" has the same meaning as in RCW 48.43.005;

(c) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(d) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(e) "Provider" has the same meaning as in RCW 48.43.005;

(f) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(g) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email. [2016 c 68 § 4; 2015 c 23 § 2.]

Effective date—Intent—2016 c 68: See notes following RCW 48.43.735.

Effective date—2015 c 23 §§ 2-4: "Sections 2 through 4 of this act take effect January 1, 2017." [2015 c 23 § 7.]

Adoption of sections—2015 c 23 §§ 2-4: "The legislature encourages health plans to adopt the requirements of sections 2 through 4 of this act prior to January 1, 2017. Therefore, nothing in this act prohibits a plan from adopting the requirements of sections 2 through 4 of this act prior to January 1, 2017." [2015 c 23 § 8.]

Intent—2015 c 23: "It is the intent of the legislature to recognize the application of telemedicine as a reimbursable service by which an individual receives medical services from a health care provider without in-person contact with the provider. It is also the intent of the legislature to reduce the compliance requirements on hospitals when granting privileges or associations to telemedicine physicians." [2015 c 23 § 1.]

41.05.730 Ground emergency medical transportation services—Medicaid reimbursement—Calculation—Federal approval—Department's duties. (1) An eligible provider, as described in subsection (2) of this section, must, in addition to the rate of payment that the provider would otherwise receive for medicaid ground emergency medical transportation services, receive supplemental medicaid reimbursement to the extent provided by law.

(2) A provider is eligible for supplemental reimbursement only if the provider has all of the following characteristics continuously during a state fiscal year:

(a) Provides ground emergency medical transportation services to medicaid beneficiaries;

(b) Is a provider that is enrolled as a medicaid provider for the period being claimed;

(c) Is owned or operated by the state, a city, county, fire protection district, community services district, health care district, federally recognized Indian tribe or any unit of government as defined in 42 C.F.R. Sec. 433.50;

(3) An eligible provider's supplemental reimbursement pursuant to this section must be calculated and paid as follows:

(a) The supplemental reimbursement to an eligible provider, as described in subsection (2) of this section, must be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to subsection (6)(b) of this section;

(b) In no instance may the amount certified pursuant to subsection (5)(a) of this section, when combined with the amount received from all other sources of reimbursement from the medicaid program, exceed one hundred percent of actual costs, as determined pursuant to the medicaid state plan, for ground emergency medical transportation services;

(c) The supplemental medicaid reimbursement provided by this section must be distributed exclusively to eligible providers under a payment methodology based on ground emergency medical transportation services provided to medicaid beneficiaries by eligible providers on a per-transport basis or other federally permissible basis. The authority shall obtain approval from the federal centers for medicare and medicaid services for the payment methodology to be utilized, and may not make any payment pursuant to this section prior to obtaining that approval.

(4)(a) It is the legislature's intent in enacting this section to provide the supplemental reimbursement described in this section without any expenditure from the general fund. An eligible provider, as a condition of receiving supplemental reimbursement pursuant to this section, shall enter into, and maintain, an agreement with the authority for the purposes of implementing this section and reimbursing the department for the costs of administering this section.

(b) The nonfederal share of the supplemental reimbursement submitted to the federal centers for medicare and medicaid services for purposes of claiming federal financial participation shall be paid only with funds from the governmental entities described in subsection (2)(c) of this section and certified to the state as provided in subsection (5) of this section.

(5) Participation in the program by an eligible provider described in this section is voluntary. If an applicable governmental entity elects to seek supplemental reimbursement pursuant to this section on behalf of an eligible provider owned or operated by the entity, as described in subsection (2)(c) of this section, the governmental entity shall do all of the following:

(a) Certify, in conformity with the requirements of 42 C.F.R. Sec. 433.51, that the claimed expenditures for the ground emergency medical transportation services are eligible for federal financial participation;

(b) Provide evidence supporting the certification as specified by the department;

(c) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation;

(d) Keep, maintain, and have readily retrievable, any records specified by the department to fully disclose reimbursement amounts to which the eligible provider is entitled, and any other records required by the federal centers for medicare and medicaid services.

(6) The department shall promptly seek any necessary federal approvals for the implementation of this section. The department may limit the program to those costs that are allowable expenditures under Title XIX of the federal social security act (42 U.S.C. Sec. 1396 et seq.). If federal approval is not obtained for implementation of this section, this section may not be implemented.

(a) The department shall submit claims for federal financial participation for the expenditures for the services described in subsection (5) of this section that are allowable expenditures under federal law.

(b) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(7) If either a final judicial determination is made by any court of appellate jurisdiction or a final determination is made by the administrator of the federal centers for medicare and medicaid services that the supplemental reimbursement provided for in this section must be made to any provider not described in this section, the director shall execute a declaration stating that the determination has been made and on that date this section becomes inoperative. [2015 c 147 § 1.]

41.05.735 Ground emergency medical transportation services—Medicaid reimbursement—Intergovernmental transfer program—Federal approval—Authority's duties.

(1) The authority shall design and implement, in consultation with eligible providers as described in subsection (2) of this section, an intergovernmental transfer program relating to medicaid managed care, ground emergency medical transport services including those services provided by emergency medical technicians at the basic, advanced, and paramedic levels in the prestabilization and preparation for transport in order to increase capitation payments for the purpose of increasing reimbursement to eligible providers.

(2) A provider is eligible for increased reimbursement pursuant to this section only if the provider meets both of the following conditions in an applicable state fiscal year:

(a) Provides ground emergency medical transport services to medicaid managed care enrollees pursuant to a contract or other arrangement with a medicaid managed care plan.

(b) Is owned or operated by the state, a city, county, fire protection district, special district, community services district, health care district, federally recognized Indian tribe or unit of government as defined in 42 C.F.R. Sec. 433.50.

(3) To the extent intergovernmental transfers are voluntarily made by, and accepted from, an eligible provider described in subsection (2) of this section, or a governmental entity affiliated with an eligible provider, the department shall make increased capitation payments to applicable medicaid managed care plans for covered ground emergency medical transportation services.

(a) The increased capitation payments made pursuant to this section must be in amounts at least actuarially equivalent to the supplemental fee-for-service payments available for eligible providers to the extent permissible under federal law.

(b) Except as provided in subsection (6) of this section, all funds associated with intergovernmental transfers made

and accepted pursuant to this section must be used to fund additional payments to eligible providers.

(c) Medicaid managed care plans shall pay one hundred percent of any amount of increased capitation payments made pursuant to this section to eligible providers for providing and making available ground emergency medical transportation and paramedical services pursuant to a contract or other arrangement with a medicaid managed care plan.

(4) The intergovernmental transfer program developed pursuant to this section must be implemented on the date federal approval was obtained, and only to the extent intergovernmental transfers from the eligible provider, or the governmental entity with which it is affiliated, are provided for this purpose. To the extent permitted by federal law, the department may implement the intergovernmental transfer program and increased capitation payments pursuant to this section on a retroactive basis as needed.

(5) Participation in the intergovernmental transfers under this section is voluntary on the part of the transferring entities for purposes of all applicable federal laws.

(6) This section must be implemented without any additional expenditure from the state general fund. As a condition of participation under this section, each eligible provider as described in subsection (2) of this section, or the governmental entity affiliated with an eligible provider, shall agree to reimburse the department for any costs associated with implementing this section. Intergovernmental transfers described in this section are subject to a twenty percent administration fee of the nonfederal share paid to the department and is allowed to count as a cost of providing the services.

(7) As a condition of participation under this section, medicaid managed care plans, eligible providers as described in subsection (2) of this section, and governmental entities affiliated with eligible providers shall agree to comply with any requests for information or similar data requirements imposed by the department for purposes of obtaining supporting documentation necessary to claim federal funds or to obtain federal approvals.

(8) This section must be implemented only if and to the extent federal financial participation is available and is not otherwise jeopardized, and any necessary federal approvals have been obtained.

(9) To the extent that the director determines that the payments made pursuant to this section do not comply with federal medicaid requirements, the director retains the discretion to return or not accept an intergovernmental transfer, and may adjust payments pursuant to this section as necessary to comply with federal medicaid requirements.

(10) To the extent federal approval is obtained, the increased capitation payments under this section may commence for dates of service on or after January 1, 2015. [2015 c 147 § 2.]

41.05.800 Community of health pilot projects—Designation—Grants—Rules. (Expires July 1, 2020.) (1) The authority shall, subject to the availability of amounts appropriated or grants received for this specific purpose, award grants to support the development of two pilot projects for a community of health. A community of health is a regionally based, voluntary collaborative. The purpose of the collabora-

tive is to align actions to achieve healthy communities and populations, improve health care quality, and lower costs. Grants may only be used for start-up costs.

(2) The authority shall develop a process for designating an entity as a community of health. An entity seeking designation is eligible if:

(a) It is a nonprofit or public-private partnership, including those led by local public health agencies;

(b) Its membership is broad and incorporates key stakeholders, such as the long-term care system, the health care delivery system, behavioral health, social supports and services, primary care and specialty providers, hospitals, consumers, small and large employers, health plans, and public health, with no single entity or organizational cohort serving in a majority capacity; and

(c) It demonstrates an ongoing capacity to:

(i) Lead health improvement activities within the region with other local systems to improve health outcomes and the overall health of the community, improve health care quality, and lower costs; and

(ii) Distribute tools and resources from the health extension program created in RCW 43.70.725.

(3) In awarding grants under this section, the authority shall consider the extent to which the applicant will:

(a) Base decisions on public input and an active collaboration among key community partners, which can include, but are not limited to, local governments, housing providers, school districts, early learning regional coalitions, large and small businesses, labor organizations, health and human service organizations, tribal governments, health carriers, providers, hospitals, public health agencies, and consumers;

(b) Match the grant funding with funds from other sources; and

(c) Demonstrate capability for sustainability without reliance on state general fund appropriations.

(4) The authority may prioritize applications that commit to providing at least one dollar in matching funds for each grant dollar awarded.

(5) Before grant funds are disbursed, the authority and the applicant must agree on performance requirements.

(6) The authority may adopt rules necessary to implement this section, but may not adopt rules, policies, or procedures beyond the scope of the authority granted in this section. [2014 c 223 § 4.]

Expiration date—2014 c 223 § 4: "Section 4 of this act expires July 1, 2020." [2014 c 223 § 21.]

Finding—2014 c 223: "(1) The legislature finds that the state of Washington has an opportunity to transform its health care delivery system.

(2) The state health care innovation plan establishes the following primary drivers of health transformation, each with individual key actions that are necessary to achieve the objective:

(a) Improve health overall by stressing prevention and early detection of disease and integration of behavioral health;

(b) Developing linkages between the health care delivery system and community; and

(c) Supporting regional collaboratives for communities and populations, improve health care quality, and lower costs." [2014 c 223 § 1.]

41.05.900 Short title. This chapter shall be known as the Washington state health care reform act of 1988. [1988 c 107 § 1.]

41.05.901 Implementation—Effective dates—1988 c 107. (1) The state health care authority shall be established and shall take such steps as are necessary to ensure that this act is fully implemented on October 1, 1988.

There is hereby appropriated for the biennium ending June 30, 1989, the sum of one million three hundred thousand dollars, or as much thereof as is necessary, to the office of the governor from the state employees' insurance administrative account, for the purposes of implementing this subsection.

(2) Subsection (1) of this section, RCW 48.14.027 and 82.04.4331, and sections 13 and 31, chapter 107, Laws of 1988 are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 16, 1988.

(3) The remainder of this act shall take effect on October 1, 1988. [1988 c 107 § 36.]

Chapter 41.05A RCW OVERPAYMENTS OF ASSISTANCE AND COORDINATION OF BENEFITS

Sections

41.05A.005	Purpose—Collaboration with other agencies—Construction.
41.05A.010	Definitions.
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41.05A.190	Time periods for liens against vendors.
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41.05A.210	Remedies against vendors nonexclusive.
41.05A.220	Interest on overpayments to vendors.
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41.05A.250	Duties of director of labor and industries.
41.05A.260	Temporary total disability compensation recipients—Adjudicative proceeding.
41.05A.270	Application—Benefits under Title 51 RCW.
41.05A.280	Recording of notice of transfer or encumbrance of real property.

41.05A.005 Purpose—Collaboration with other agencies—Construction. The purpose of this chapter is to provide the health care authority with the powers, duties, and authority with respect to the collection of overpayments and the coordination of benefits that are currently provided to the department of social and health services in chapter 43.20B RCW. Providing the health care authority with these powers is necessary for the authority to administer medical services programs established under chapter 74.09 RCW currently administered by the department of social and health services programs but transferred to the authority under chapter 15,

Laws of 2011 1st sp. sess. The authority is authorized to collaborate with other state agencies in carrying out its duties under this chapter and, to the extent appropriate, may enter into agreements with such other agencies. Nothing in this chapter may be construed as diminishing the powers, duties, and authority granted to the department of social and health services in chapter 43.20B RCW with respect to the programs that will remain under its jurisdiction following enactment of chapter 15, Laws of 2011 1st sp. sess. [2011 1st sp.s. c 15 § 88.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Assistance" means all programs administered by the authority.

(2) "Authority" means the Washington state health care authority.

(3) "Director" means the director of the Washington state health care authority.

(4) "Overpayment" means any payment or benefit to a recipient or to a vendor in excess of that to which is entitled by law, rule, or contract, including amounts in dispute.

(5) "Vendor" means a person or entity that provides goods or services to or for clientele of the authority and that controls operational decisions. [2011 1st sp.s. c 15 § 89.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.030 Fees for services—Reimbursement collection. The authority is authorized to charge fees for services provided unless otherwise prohibited by law. The fees may be sufficient to cover the full cost of the service provided if practical or may be charged on an ability-to-pay basis if practical. This section does not supersede other statutory authority enabling the assessment of fees by the authority. Whenever the authority is authorized by law to collect total or partial reimbursement for the cost of its providing care or exercising custody over any person, the authority shall collect the reimbursement to the extent practical. [2011 1st sp.s. c 15 § 90.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.040 Time limit for collection of overpayments or other debts—Write-offs of debts. (1) Except as otherwise provided by law, including subsection (2) of this section, there may be no collection of overpayments and other debts due the authority after the expiration of six years from the date of notice of such overpayment or other debt unless the authority has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place. However, any amount due in a case thus extended ceases to be a debt due the authority at the expiration of ten years from the date of the notice of the overpayment or other debt unless a court-ordered remedy would be in effect for a longer period.

(2) There may be no collection of debts due the authority after the expiration of twenty years from the date a lien is recorded pursuant to RCW 41.05A.090.

(3) The authority, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of any debt due the authority if it is no longer cost-effective to pursue. The authority shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off of debts. [2011 1st sp.s. c 15 § 91.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.050 Form of lien. The form of the lien in RCW 41.05A.070 must be substantially as follows:

STATEMENT OF LIEN

Notice is hereby given that the State of Washington, Health Care Authority, has rendered assistance to, a person who was injured on or about the day of in the county of state of, and the said authority hereby asserts a lien, to the extent provided in RCW 41.05A.070, for the amount of such assistance, upon any sum due and owing (name of injured person) from, alleged to have caused the injury, and/or his or her insurer and from any other person or insurer liable for the injury or obligated to compensate the injured person on account of such injuries by contract or otherwise.

STATE OF WASHINGTON, HEALTH CARE AUTHORITY

By: (Title)

STATE OF WASHINGTON }
COUNTY OF } ss.

I,, being first duly sworn, on oath state: That I am (title); that I have read the foregoing Statement of Lien, know the contents thereof, and believe the same to be true.

Signed and sworn to or affirmed before me this day of,

by (name of person making statement).

(Seal or stamp)

.
Notary Public in and for the State of Washington
My appointment expires:

[2011 1st sp.s. c 15 § 92.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.060 Authorization to discharge or compromise lien. (1) No settlement made by and between a recipient and either the tortfeasor or insurer, or both, discharges or otherwise compromises the lien created in RCW 41.05A.070

without the express written consent of the director or the director's designee. Discretion to compromise such liens rests solely with the director or the director's designee.

(2) No settlement or judgment may be entered purporting to compromise the lien created by RCW 41.05A.070 without the express written consent of the director or the director's designee. [2011 1st sp.s. c 15 § 93.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.070 Filing of lien. (1) To secure reimbursement of any assistance paid as a result of injuries to or illness of a recipient caused by the negligence or wrong of another, the authority is subrogated to the recipient's rights against a tortfeasor or the tortfeasor's insurer, or both.

(2) The authority has the right to file a lien upon any recovery by or on behalf of the recipient from such tortfeasor or the tortfeasor's insurer, or both, to the extent of the value of the assistance paid by the authority: PROVIDED, That such lien is not effective against recoveries subject to wrongful death when there are surviving dependents of the deceased. The lien becomes effective upon filing with the county auditor in the county where the assistance was authorized or where any action is brought against the tortfeasor or insurer. The lien may also be filed in any other county or served upon the recipient in the same manner as a civil summons if, in the authority's discretion, such alternate filing or service is necessary to secure the authority's interest. The additional lien is effective upon filing or service.

(3) The lien of the authority may be against any claim, right of action, settlement proceeds, money, or benefits arising from an insurance program to which the recipient might be entitled (a) against the tortfeasor or insurer of the tortfeasor, or both, and (b) under any contract of insurance purchased by the recipient or by any other person providing coverage for the illness or injuries for which the assistance is paid or provided by the authority.

(4) If recovery is made by the authority under this section and the subrogation is fully or partially satisfied through an action brought by or on behalf of the recipient, the amount paid to the authority must bear its proportionate share of attorneys' fees and costs.

(a) The determination of the proportionate share to be borne by the authority must be based upon:

(i) The fees and costs approved by the court in which the action was initiated; or

(ii) The written agreement between the attorney and client which establishes fees and costs when fees and costs are not addressed by the court.

(b) When fees and costs have been approved by a court, after notice to the authority, the authority has the right to be heard on the matter of attorneys' fees and costs or its proportionate share.

(c) When fees and costs have not been addressed by the court, the authority shall receive at the time of settlement a copy of the written agreement between the attorney and client which establishes fees and costs and may request and examine documentation of fees and costs associated with the case. The authority may bring an action in superior court to void a settlement if it believes the attorneys' calculation of its

proportionate share of fees and costs is inconsistent with the written agreement between the attorney and client which establishes fees and costs or if the fees and costs associated with the case are exorbitant in relation to cases of a similar nature.

(5) The rights and remedies provided to the authority in this section to secure reimbursement for assistance, including the authority's lien and subrogation rights, may be delegated to a managed health care system by contract entered into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the authority to secure and recover assistance provided under a managed health care system consistent with its agreement with the authority. [2011 1st sp.s. c 15 § 94.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.080 Attorney representing recipient—Duties.

(1) An attorney representing a person who, as a result of injuries or illness sustained through the negligence or wrong of another, has received, is receiving, or has applied to receive shall:

(a) Notify the authority at the time of filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting a settlement offer from the tortfeasor or the tortfeasor's insurer, or both; and

(b) Give the authority thirty days' notice before any judgment, award, or settlement may be satisfied in any action or any claim by the applicant or recipient to recover damages for such injuries or illness.

(2) The proceeds from any recovery made pursuant to any action or claim described in RCW 41.05A.070 that is necessary to fully satisfy the authority's lien against recovery must be placed in a trust account or in the registry of the court until the authority's lien is satisfied. [2011 1st sp.s. c 15 § 95.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.090 Recovery for assistance by authority—Federal law—Foreclosure—Recipient's death. (1) The authority shall file liens, seek adjustment, or otherwise effect recovery for assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The authority shall adopt a rule providing for prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) Liens may be adjusted by foreclosure in accordance with chapter 61.12 RCW.

(3) In the case of an individual who was fifty-five years of age or older when the individual received assistance, the authority shall seek adjustment or recovery from the individual's estate, and from nonprobate assets of the individual as defined by RCW 11.02.005, but only for assistance consisting of services that the authority determines to be appropriate, and related hospital and prescription drug services. Recovery from the individual's estate, including foreclosure of liens imposed under this section, must be undertaken as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

(4) The authority shall apply the assistance estate recovery law as it existed on the date that benefits were received when calculating an estate's liability to reimburse the authority for those benefits.

(5)(a) The authority shall establish procedures consistent with standards established by the federal department of health and human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when such recovery would work an undue hardship. The authority shall recognize an undue hardship for a surviving domestic partner whenever recovery would not have been permitted if he or she had been a surviving spouse. The authority is not authorized to pursue recovery under such circumstances.

(b) Recovery of assistance from a recipient's estate may not include property made exempt from claims by federal law or treaty, including exemption for tribal artifacts that may be held by individual Native Americans.

(6) A lien authorized under this section relates back to attach to any real property that the decedent had an ownership interest in immediately before death and is effective as of that date or date of recording, whichever is earlier.

(7) The authority may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death. Such a lien enforced under this subsection may not end and must continue as provided in this subsection until the authority's lien has been satisfied.

(a) The value of the life estate subject to the lien is the value of the decedent's interest in the property subject to the life estate immediately prior to the decedent's death.

(b) The value of the joint tenancy interest subject to the lien is the value of the decedent's fractional interest the recipient would have owned in the jointly held interest in the property had the recipient and the surviving joint tenants held title to the property as tenants in common on the date of the recipient's death.

(c) The authority may not enforce the lien provided by this subsection against a bona fide purchaser or encumbrancer that obtains an interest in the property after the death of the recipient and before the authority records either its lien or the request for notice of transfer or encumbrance as provided by RCW 41.05A.280.

(d) The authority may not enforce a lien provided by this subsection against any property right that vested prior to July 1, 2005.

(8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and the conditions of this subsection (8), the authority is authorized to file a lien against the property of an individual prior to his or her death, and to seek adjustment and recovery from the individual's estate or sale of the property subject to the lien, if:

(i) The individual is an inpatient in a nursing facility, intermediate care facility for persons with intellectual disabilities, or other medical institution; and

(ii) The authority has determined after notice and opportunity for a hearing that the individual cannot reasonably be expected to be discharged from the medical institution and to return home.

(b) If the individual is discharged from the medical facility and returns home, the authority shall dissolve the lien.

(9) The authority is authorized to adopt rules to effect recovery under this section. The authority may adopt by rule later enactments of the federal laws referenced in this section.

(10) It is the responsibility of the authority to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered care subject to recovery of payments.

(11) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the authority shall provide a written description of the community service options. [2011 1st sp.s. c 15 § 96.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.100 Lien against real and personal property—Lien priority—Recovery by deduction or withholding of payments—Civil action. (1) Overpayments of assistance become a lien against the real and personal property of the recipient from the time of filing by the authority with the county auditor of the county in which the recipient resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(2) Debts due the state for overpayments of assistance may be recovered by the state by deduction from the subsequent assistance payments to such persons, lien and foreclosure, or order to withhold and deliver, or may be recovered by civil action. [2011 1st sp.s. c 15 § 97.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.110 Notice of overpayment of assistance. (1) Any person who owes a debt to the state for an overpayment of assistance must be notified of that debt by either personal service or certified mail, return receipt requested. Personal service, return of the requested receipt, or refusal by the debtor of such notice is proof of notice to the debtor of the debt owed. Service of the notice must be in the manner prescribed for the service of a summons in a civil action. The notice must include a statement of the debt owed; a statement that the property of the debtor will be subject to collection action after the debtor terminates from assistance; a statement that the property will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the overpayment debt. Action to collect the debt by lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver, is lawful after ninety days from the debtor's termination from assistance or the receipt of the notice of debt, whichever is later. This does not preclude the authority from recovering overpayments by deduction from subsequent assistance payments, not exceeding deductions as authorized under federal law with regard to financial assistance programs: PROVIDED, That subject to federal legal requirement, deductions may not exceed five percent of the grant payment standard if the overpayment resulted from error on the part of the authority or error on the part of the recipient without willful or knowing intent of the recipient in obtaining or retaining the overpayment.

(2016 Ed.)

(2) A current or former recipient who is aggrieved by a claim that he or she owes a debt for an overpayment of assistance has the right to an adjudicative proceeding pursuant to RCW 74.09.741. If no application is filed, the debt is subject to collection action as authorized under this chapter. If a timely application is filed, the execution of collection action on the debt is stayed pending the final adjudicative order or termination of the debtor from assistance, whichever occurs later. [2011 1st sp.s. c 15 § 98.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.120 Order to withhold and deliver. (1) After service of a notice of debt for an overpayment as provided for in RCW 41.05A.110, stating the debt accrued, the director may issue to any person, firm, corporation, association, political subdivision, or department of the state an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the director has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to the debtor. The order to withhold and deliver must state the amount of the debt, and must state in summary the terms of this section, RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal exemption laws applicable generally to debtors. The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made shall answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein. The director may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state. If any such person, firm, corporation, association, political subdivision, or department of the state possesses any property which may be subject to the claim of the authority, such property must be withheld immediately upon receipt of the order to withhold and deliver and must, after the twenty-day period, upon demand, be delivered forthwith to the director. The director shall hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the director a good and sufficient bond, satisfactory to the director, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, association, political subdivision, or department of the state subject to withdrawal by the debtor, such money must be delivered by remittance payable to the order of the director. Delivery to the director, subject to the exemptions under RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal law applicable generally to debtors, of the money or other property held or claimed satisfies the requirement of the

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order to withhold and deliver. Delivery to the director serves as full acquittance, and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the director pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter.

(2) The director shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address or, in the alternative, a copy of the order to withhold and deliver must be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order must be mailed or served together with a concise explanation of the right to petition for a hearing on any issue related to the collection. This requirement is not jurisdictional, but, if the copy is not mailed or served as provided in this section, or if any irregularity appears with respect to the mailing or service, the superior court, on its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the director's failure to serve on or mail to the debtor the copy. [2011 1st sp.s. c 15 § 99.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.130 Liability for failure to answer or comply with order to withhold and deliver or other violation. If any person, firm, corporation, association, political subdivision, or department of the state fails to answer an order to withhold and deliver within the time prescribed in RCW 41.05A.120, or fails or refuses to deliver property pursuant to the order, or after actual notice of filing of a lien as provided for in this chapter, pays over, releases, sells, transfers, or conveys real or personal property subject to such lien to or for the benefit of the debtor or any other person, or fails or refuses to surrender upon demand property distrained under RCW 41.05A.120, or fails or refuses to honor an assignment of wages presented by the director, such person, firm, corporation, association, political subdivision, or department of the state is liable to the authority in an amount equal to one hundred percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and reasonable attorneys' fees. [2011 1st sp.s. c 15 § 100.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.140 Employer required to honor assignment of earnings. Any person, firm, corporation, association, political subdivision, or department employing a person owing a debt for overpayment of assistance received shall honor, according to its terms, a duly executed assignment of earnings presented to the employer by the director as a plan to satisfy or retire an overpayment debt. This requirement to

honor the assignment of earnings is applicable whether the earnings are to be paid presently or in the future and continues in force and effect until released in writing by the director. Payment of moneys pursuant to an assignment of earnings presented to the employer by the director serves as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to the assignment of earnings. The director is released from liability for improper receipt of moneys under assignment of earnings upon return of any moneys so received. [2011 1st sp.s. c 15 § 101.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.150 Improper real property transfers. If an improper real property transfer is made as defined in RCW 74.08.331 through 74.08.338, the authority may request the attorney general to file suit to rescind the transaction except as to subsequent bona fide purchasers for value. If it is established by judicial proceedings that a fraudulent conveyance occurred, the value of any assistance which has been furnished may be recovered in any proceedings from the recipient or the recipient's estate. [2011 1st sp.s. c 15 § 102.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.160 Lien against real property. When the authority provides assistance to persons who possess excess real property under *RCW 74.04.005(11)(g), the authority may file a lien against or otherwise perfect its interest in such real property as a condition of granting such assistance, and the authority has the status of a secured creditor. [2011 1st sp.s. c 15 § 103.]

***Reviser's note:** RCW 74.04.005 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (11)(g) to (13)(g).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.170 Overpayment to vendor. (1) When the authority determines that a vendor was overpaid by the authority for either goods or services, or both, provided to authority clients, except nursing homes under chapter 74.46 RCW, the authority shall give written notice to the vendor. The notice must include the amount of the overpayment, the basis for the claim, and the rights of the vendor under this section.

(2) The notice may be served upon the vendor in the manner prescribed for the service of a summons in civil action or be mailed to the vendor at the last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The vendor has the right to an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW, and the rules of the authority. The vendor's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the authority's notice. The application must be served on and received by the authority within twenty-eight days of the vendor's receipt of the notice of

overpayment. The vendor must serve the authority in a manner providing proof of receipt.

(4) Where an adjudicative proceeding has been requested, the presiding or reviewing officer [officer] shall determine the amount, if any, of the overpayment received by the vendor.

(5) If the vendor fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice to be assessed against the vendor and subject to collection action by the authority.

(6) Failure to make an application for an adjudicative proceeding within twenty-eight days of the date of notice results in the establishment of a final debt against the vendor in the amount asserted by the authority and that amount is subject to collection action. The authority may also charge the vendor with any costs associated with the collection of any final overpayment or debt established against the vendor.

(7) The authority may enforce a final overpayment or debt through lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, or other collection action available to the authority to satisfy the debt due.

(8) Debts determined under this chapter are subject to collection action without further necessity of action by a presiding or reviewing officer. The authority may collect the debt in accordance with RCW 41.05A.120, 41.05A.130, and 41.05A.180. In addition, a vendor lien may be subject to distraint and seizure and sale in the same manner as prescribed for support liens in RCW 74.20A.130.

(9) Chapter 66, Laws of 1998 applies to overpayments for goods or services provided on or after July 1, 1998.

(10) The authority may adopt rules consistent with this section. [2011 1st sp.s. c 15 § 104.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.180 Lien against real property of vendor or other form of security.

(1) The authority may, at the director's discretion, secure the repayment of any outstanding overpayment, plus interest, if any, through the filing of a lien against the vendor's real property, or by requiring the posting of a bond, assignment of deposit, or some other form of security acceptable to the authority, or by doing both.

(a) Any lien is effective from the date of filing for record with the county auditor of the county in which the property is located and the lien claim has preference over the claims of all unsecured creditors.

(b) The authority shall review and determine the acceptability of all other forms of security.

(c) Any bond must be issued by a company licensed as a surety in the state of Washington.

(d) This subsection does not apply to nursing homes licensed under chapter 18.51 RCW or portions of hospitals licensed under chapter 70.41 RCW and operating as a nursing home, if those facilities are subject to chapter 74.46 RCW.

(2) The authority may recover any overpayment, plus interest, if any, by setoff or recoupment against subsequent payments to the vendor. [2011 1st sp.s. c 15 § 105.]

(2016 Ed.)

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.190 Time periods for liens against vendors.

Liens created under RCW 41.05A.180 bind the affected property for a period of ten years after the lien has been recorded or ten years after the resolution of all good faith disputes as to the overpayment, whichever is later. Any civil action by the authority to enforce such lien must be timely commenced before the ten-year period expires or the lien is released. A civil action to enforce such lien is not timely commenced unless the summons and complaint are filed within the ten-year period in a court having jurisdiction and service of the summons and complaint is made upon all parties in the manner prescribed by appropriate civil court rules. [2011 1st sp.s. c 15 § 106.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.200 Time limit for action to enforce vendor overpayment debt.

Any action to enforce a vendor overpayment debt must be commenced within six years from the date of the authority's notice to the vendor. [2011 1st sp.s. c 15 § 107.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.210 Remedies against vendors nonexclusive.

The remedies under RCW 41.05A.180 and 41.05A.190 are nonexclusive and nothing contained in this chapter may be construed to impair or affect the right of the authority to maintain a civil action or to pursue any other remedies available to it under the laws of this state to recover such debt. [2011 1st sp.s. c 15 § 108.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.220 Interest on overpayments to vendors.

(1) Except as provided in subsection (4) of this section, vendors shall pay interest on overpayments at the rate of one percent per month or portion thereof. Where partial repayment of an overpayment is made, interest accrues on the remaining balance. Interest must not accrue when the overpayment occurred due to authority error.

(2) If the overpayment is discovered by the vendor prior to discovery and notice by the authority, the interest begins accruing ninety days after the vendor notifies the authority of such overpayment.

(3) If the overpayment is discovered by the authority prior to discovery and notice by the vendor, the interest begins accruing thirty days after the date of notice by the authority to the vendor.

(4) This section does not apply to:

(a) Interagency or intergovernmental transactions; and

(b) Contracts for public works, goods and services procured for the exclusive use of the authority, equipment, or travel. [2011 1st sp.s. c 15 § 109.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.230 Recovery of temporary total disability compensation. (1) To avoid a duplicate payment of benefits, a recipient of assistance from the authority is deemed to have subrogated the authority to the recipient's right to recover temporary total disability compensation due to the recipient and the recipient's dependents under Title 51 RCW, to the extent of such assistance or compensation, whichever is less. However, the amount to be repaid to the authority must bear its proportionate share of attorneys' fees and costs, if any, incurred under Title 51 RCW by the recipient or the recipient's dependents.

(2) The authority may assert and enforce a lien and notice to withhold and deliver to secure reimbursement. The authority shall identify in the lien and notice to withhold and deliver the recipient of assistance and temporary total disability compensation and the amount claimed by the authority. [2011 1st sp.s. c 15 § 110.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.240 Recovery of temporary total disability compensation—Service of lien and notice to withhold and deliver. The effective date of the lien and notice to withhold and deliver provided in RCW 41.05A.230 is the day that it is received by the department of labor and industries or a self-insurer as defined in chapter 51.08 RCW. Service of the lien and notice to withhold and deliver may be made personally, by regular mail with postage prepaid, or by electronic means. A statement of lien and notice to withhold and deliver must be mailed to the recipient at the recipient's last known address by certified mail, return receipt requested, no later than two business days after the authority mails, delivers, or transmits the lien and notice to withhold and deliver to the department of labor and industries or a self-insurer. [2011 1st sp.s. c 15 § 111.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.250 Duties of director of labor and industries. The director of labor and industries or the director's designee, or a self-insurer as defined in chapter 51.08 RCW, following receipt of the lien and notice to withhold and deliver, shall deliver to the director of the authority or the director's designee any temporary total disability compensation payable to the recipient named in the lien and notice to withhold and deliver up to the amount claimed. The director of labor and industries or self-insurer shall withhold and deliver from funds currently in the director's or self-insurer's possession or from any funds that may at any time come into the director's or self-insurer's possession on account of temporary total disability compensation payable to the recipient named in the lien and notice to withhold and deliver. [2011 1st sp.s. c 15 § 112.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

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41.05A.260 Temporary total disability compensation recipients—Adjudicative proceeding. (1) A recipient feeling aggrieved by the action of the authority in recovering his or her temporary total disability compensation as provided in RCW 41.05A.230 through 41.05A.270 has the right to an adjudicative proceeding.

(2) A recipient seeking an adjudicative proceeding shall file an application with the director within twenty-eight days after the statement of lien and notice to withhold and deliver was mailed to the recipient. If the recipient files an application more than twenty-eight days after, but within one year of, the date the statement of lien and notice to withhold and deliver was mailed, the recipient is entitled to a hearing if the recipient shows good cause for the recipient's failure to file a timely application. The filing of a late application does not affect prior collection action pending the final adjudicative order. Until good cause for failure to file a timely application is decided, the authority may continue to collect under the lien and notice to withhold and deliver.

(3) The proceeding shall be governed by chapter 34.05 RCW, the administrative procedure act. [2011 1st sp.s. c 15 § 113.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.270 Application—Benefits under Title 51 RCW. RCW 41.05A.230 through 41.05A.260 and this section do not apply to persons whose eligibility for benefits under Title 51 RCW is based upon an injury or illness occurring prior to July 1, 1972. [2011 1st sp.s. c 15 § 114.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.280 Recording of notice of transfer or encumbrance of real property. (1) When an individual receives assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the authority may present to the county auditor for recording in the deed and mortgage records of a county a request for notice of transfer or encumbrance of the real property. The authority shall adopt a rule providing prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) The authority shall present to the county auditor for recording a termination of request for notice of transfer or encumbrance when, in the judgment of the authority, it is no longer necessary or appropriate for the authority to monitor transfers or encumbrances related to the real property.

(3) The authority shall adopt by rule a form for the request for notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the assistance recipient and a case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's assistance records;

(b) Contains the legal description of the real property;

(c) Contains a mailing address for the authority to receive the notice of transfer or encumbrance; and

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(d) Complies with the requirements for recording in RCW 36.18.010 for those forms intended to be recorded.

(4) The authority shall pay the recording fee required by the county clerk under RCW 36.18.010.

(5) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property. [2011 1st sp.s. c 15 § 115.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Chapter 41.06 RCW STATE CIVIL SERVICE LAW

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Qualifications for persons assessing real property—Examination: RCW 36.21.015.

Sexual misconduct by state employees: RCW 13.40.570 and 72.09.225.

41.06.010 Declaration of purpose. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, recruitment, retention, classification and pay plan, removal, discipline, training and career development, and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions,

and retention therein, in the state service, shall be made on the basis of policies hereinafter specified. [1980 c 118 § 1; 1961 c 1 § 1 (Initiative Measure No. 207, approved November 8, 1960).]

Additional notes found at www.leg.wa.gov

41.06.020 Definitions. Unless the context clearly indicates otherwise, the words used in this chapter have the meaning given in this section.

(1) "Affirmative action" means a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and disabled veterans are provided with increased employment opportunities. It shall not mean any sort of quota system.

(2) "Agency" means an office, department, board, commission, or other separate unit or division, however designated, of the state government and all personnel thereof; it includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

(3) "Board" means the Washington personnel resources board established under the provisions of RCW 41.06.110, except that this definition does not apply to the words "board" or "boards" when used in RCW 41.06.070.

(4) "Career development" means the progressive development of employee capabilities to facilitate productivity, job satisfaction, and upward mobility through work assignments as well as education and training that are both state-sponsored and are achieved by individual employee efforts, all of which shall be consistent with the needs and obligations of the state and its agencies.

(5) "Classified service" means all positions in the state service subject to the provisions of this chapter.

(6) "Comparable worth" means the provision of similar salaries for positions that require or impose similar responsibilities, judgments, knowledge, skills, and working conditions.

(7) "Competitive service" means all positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

(8) "Department" means an agency of government that has as its governing officer a person, or combination of persons such as a commission, board, or council, by law empowered to operate the agency responsible either to (a) no other public officer or (b) the governor.

(9) "Director" means the director of financial management or the director's designee.

(10) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(11) "Noncompetitive service" means all positions in the classified service for which a competitive examination is not required.

(12) "Related boards" means the state board for community and technical colleges; and such other boards, councils, and commissions related to higher education as may be established.

(13) "Training" means activities designed to develop job-related knowledge and skills of employees. [2015 3rd sp.s. c 1 § 314. Prior: 2011 1st sp.s. c 43 § 401; 1993 c 281 § 19; prior: 1985 c 461 § 1; 1985 c 365 § 3; 1983 1st ex.s. c 75 § 4; 1982 1st ex.s. c 53 § 1; 1980 c 118 § 2; 1970 ex.s. c 12 § 1; prior: 1969 ex.s. c 36 § 21; 1969 c 45 § 6; 1967 ex.s. c 8 § 48; 1961 c 1 § 2 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.022 "Manager"—Definition. For purposes of this chapter, "manager" means any employee who:

(1) Formulates statewide policy or directs the work of an agency or agency subdivision;

(2) Is responsible to administer one or more statewide policies or programs of an agency or agency subdivision;

(3) Manages, administers, and controls a local branch office of an agency or agency subdivision, including the physical, financial, or personnel resources;

(4) Has substantial responsibility in personnel administration, legislative relations, public information, or the preparation and administration of budgets; or

(5) Functionally is above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment.

No employee who is a member of the Washington management service may be included in a collective bargaining unit established under RCW 41.80.001 and 41.80.010 through 41.80.130. [2002 c 354 § 207; 1993 c 281 § 8.]

Additional notes found at www.leg.wa.gov

41.06.040 Scope of chapter. The provisions of this chapter apply to:

(1) Each board, commission or other multimember body, including, but not limited to, those consisting in whole or in part of elective officers;

(2) Each agency, and each employee and position therein, not expressly excluded or exempted under the provisions of RCW 41.06.070. [1969 ex.s. c 36 § 22; 1961 c 1 § 4 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.070 Exemptions—Right of reversion to civil service status—Exception. (1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

- (f) The chief executive officer of each agency;
- (g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;
- (h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:
 - (i) All members of such boards, commissions, or committees;
 - (ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;
 - (iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;
 - (iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;
- (i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;
- (j) Assistant attorneys general;
- (k) Commissioned and enlisted personnel in the military service of the state;
- (l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;
- (m) Officers and employees of the Washington state fruit commission;
- (n) Officers and employees of the Washington apple commission;
- (o) Officers and employees of the Washington state dairy products commission;
- (p) Officers and employees of the Washington tree fruit research commission;
- (q) Officers and employees of the Washington state beef commission;
- (r) Officers and employees of the Washington grain commission;
- (s) Officers and employees of any commission formed under chapter 15.66 RCW;
- (t) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;
- (u) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;
- (v) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and

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not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(w) Staff employed by the department of commerce to administer energy policy functions;

(x) The manager of the energy facility site evaluation council;

(y) A maximum of ten staff employed by the department of commerce to administer innovation and policy functions, including the three principal policy assistants exempted under (v) of this subsection;

(z) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5);

(aa) Officers and employees of the consolidated technology services agency created in RCW 43.105.006 that perform the following functions or duties: Systems integration; data center engineering and management; network systems engineering and management; information technology contracting; information technology customer relations management; and network and systems security;

(bb) The executive director of the Washington statewide reentry council.

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(c) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the director may provide for further exemptions pursuant to the following procedures. The governor or

other appropriate elected official may submit requests for exemption to the office of financial management stating the reasons for requesting such exemptions. The director shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, or is a senior expert in enterprise information technology infrastructure, engineering, or systems, the director shall grant the request. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (t) and (2) of this section, shall be determined by the director. Changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

From July 1, 2011, through June 29, 2013, salaries for all positions exempt from classification under this chapter are subject to RCW 41.04.820.

From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any position exempt from classification under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW, and except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources;

(b) The salary increase will not adversely impact the provision of client services; and

(c) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position exempt from classification under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position exempt from classification under this chapter shall submit a report to the fiscal com-

mittees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055. [2016 c 188 § 11. Prior: 2011 1st sp.s. c 43 § 1010; 2011 1st sp.s. c 39 § 4; 2011 1st sp.s. c 16 § 22; prior: 2010 c 271 § 801; 2010 c 2 § 2; 2010 c 1 § 1; 2009 c 33 § 36; 2009 c 5 § 1; 2002 c 354 § 209; 1998 c 245 § 40; prior: 1996 c 319 § 3; 1996 c 288 § 33; 1996 c 186 § 109; 1995 c 163 § 1; 1994 c 264 § 13; prior: 1993 sp.s. c 2 § 15; 1993 c 379 § 306; 1993 c 281 § 21; 1990 c 60 § 101; 1989 c 96 § 8; 1987 c 389 § 2; 1985 c 221 § 1; 1984 c 210 § 2; 1983 c 15 § 21; 1982 1st ex.s. c 53 § 2; 1981 c 225 § 2; 1980 c 87 § 14; 1973 1st ex.s. c 133 § 1; 1972 ex.s. c 11 § 1; prior: 1971 ex.s. c 209 § 1; 1971 ex.s. c 59 § 1; 1971 c 81 § 100; 1969 ex.s. c 36 § 23; 1967 ex.s. c 8 § 47; 1961 c 179 § 1; 1961 c 1 § 7 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.060.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Findings—2010 c 2: "The legislature finds that the current economic crisis is requiring sacrifices by citizens and businesses all across the state. The legislature acknowledges the sacrifices also being made by the many state employees who have volunteered for unpaid furlough days including those, such as our ferry workers, who volunteered for pay freezes. The recession requires us to continue to find every possible cost savings while striving to continue to deliver key services to our citizens. Therefore, the legislature finds it necessary to immediately suspend recognition awards given to state employees. Until the economic climate permits the resumption of appropri-

ate cash awards, the legislature encourages supervisors throughout state agencies to look for nonmonetary ways to acknowledge outstanding contributions to Washington's citizens by our state's civil servants." [2010 c 2 § 1.]

Effective date—2010 c 2: "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 [February 15, 2010]." [2010 c 2 § 7.]

Effective date—2010 c 1: "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 [February 15, 2010]." [2010 c 1 § 9.]

Effective date—2009 c 5: "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 [February 18, 2009]." [2009 c 5 § 13.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

County road administration board: RCW 36.78.060.

State agencies and departments—Certain personnel exempted from chapter basic health plan: RCW 70.47.040.

board of health: RCW 43.20.030.

caseload forecast supervisor and staff: RCW 41.06.087.

center for volunteerism and citizen service: RCW 43.150.040.

Columbia River Gorge commission: RCW 43.97.015.

commission on judicial conduct: RCW 2.64.050.

department of

agriculture: RCW 41.06.084.

consolidated technology services: RCW 41.06.094.

corrections: RCW 41.06.071.

ecology: RCW 41.06.073, 43.21A.100.

enterprise services, supervisor of motor transport: RCW 43.19.585.

health: RCW 43.70.020.

retirement systems: RCW 41.50.070.

services for the blind: RCW 74.18.050.

social and health services: RCW 43.20A.090.

transportation: RCW 41.06.079, 47.01.081.

veterans affairs: RCW 41.06.077.

economic and revenue forecast supervisor and staff: RCW 41.06.087.

gambling commission: RCW 9.46.080.

law revision commission: RCW 41.06.083.

office of

administrative hearings: RCW 34.12.030.

financial management: RCW 41.06.075, 43.41.080.

minority and women's business enterprises: RCW 39.19.030.

state actuary: RCW 44.44.030.

state internship program: RCW 41.06.088.

state investment board: RCW 43.33A.100.

state lottery commission: RCW 67.70.050.

state school directors' association: RCW 41.06.086.

state treasurer: RCW 43.08.120.

state veterinarian: RCW 41.06.084.

superintendent of public instruction: RCW 28A.300.020.

Washington conservation corps: RCW 43.220.070.

Washington service corps: RCW 50.65.110.

Washington state patrol, drug control assistance unit: RCW 43.43.640.

world fair commission: RCW 41.06.085.

Additional notes found at www.leg.wa.gov

41.06.071 Department of corrections—Certain personnel exempted from chapter. In addition to the exemptions provided under RCW 41.06.070, the provisions of this chapter shall not apply in the department of corrections to the secretary, the secretary's personal secretary, the deputy secretaries and their personal secretaries, all assistant deputy secretaries and their personal secretaries, all regional administrators and program administrators, all facility superintendents and associate superintendents for facilities with a resident capacity of fifty or more, and all management and sales staff

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of correctional industries. [1999 c 122 § 1; 1989 c 185 § 1; 1983 c 175 § 1; 1981 c 136 § 28.]

Additional notes found at www.leg.wa.gov

41.06.072 Department of community, trade, and economic development—Certain personnel exempted from chapter. In addition to the exemptions set forth in this chapter, this chapter shall not apply within the *department of community, trade, and economic development to the director, one confidential secretary, the deputy directors, all assistant directors, the state historic preservation officer, and up to two professional staff members within the emergency management program. [1995 c 399 § 59; 1986 c 266 § 8.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

41.06.073 Department of ecology—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of ecology to the director, his or her confidential secretary, his or her deputy director, and not to exceed six assistant directors. [2012 c 117 § 8; 1970 ex.s. c 62 § 11.]

Additional notes found at www.leg.wa.gov

41.06.074 Department of health—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of health to any deputy secretary, assistant secretary, or person who administers the necessary divisions, offices, bureaus, and programs and five additional positions involved in policy or program direction. [1989 1st ex.s. c 9 § 813.]

Additional notes found at www.leg.wa.gov

41.06.075 Office of financial management—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the office of financial management to the director, his or her confidential secretary, not to exceed two deputy directors and not to exceed seven assistant directors. [2012 c 117 § 9; 1979 c 151 § 56; 1969 ex.s. c 239 § 7.]

Office of financial management: Chapter 43.41 RCW.

41.06.076 Department of social and health services—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of social and health services to the secretary; the secretary's executive assistant, if any; not to exceed six assistant secretaries, thirteen division directors, six regional directors; one confidential secretary for each of the above-named officers; not to exceed six bureau chiefs; and all superintendents of institutions of which the average daily population equals or exceeds one hundred residents. [2011 1st sp.s. c 43 § 402; 1997 c 386 § 1; 1993 c 281 § 22; 1980 c 73 § 1; 1970 ex.s. c 18 § 8.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.077 Department of veterans affairs—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of veterans affairs to the director, the deputy director, no more than two assistant directors, a confidential secretary for the deputy director, and a confidential secretary for each assistant director. [2001 c 84 § 1; 1975-'76 2nd ex.s. c 115 § 7.]

41.06.079 Department of transportation—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of transportation to the secretary, a deputy secretary, an administrative assistant to the secretary, if any, one assistant secretary for each division designated pursuant to RCW 47.01.081, one confidential secretary for each of the above-named officers, up to six transportation district administrators and one confidential secretary for each district administrator, up to six additional new administrators or confidential secretaries designated by the secretary of the department of transportation and approved by the Washington personnel resources board pursuant to the provisions of RCW 41.06.070, the legislative liaison for the department, the state construction engineer, the state aid engineer, the personnel manager, the state project development engineer, the state maintenance and operations engineer, one confidential secretary for each of the last-named five positions, and a confidential secretary for the public affairs administrator. The individuals appointed under this section shall be exempt from the provisions of the state civil service law, and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for individuals exempt from the operation of the state civil service law. [2002 c 354 § 239; 1993 c 281 § 23; 1985 c 178 § 1; 1977 ex.s. c 151 § 13.]

*Reviser's note: "section 3 of this 1977 amendatory act" is codified as RCW 47.01.031.

Additional notes found at www.leg.wa.gov

41.06.080 Human resource services available on request to certain governmental entities—Reimbursement. Notwithstanding the provisions of this chapter, the office of financial management and the department of enterprise services may make their human resource services available on request, on a reimbursable basis, to:

- (1) Either the legislative or the judicial branch of the state government;
- (2) Any county, city, town, or other municipal subdivision of the state;
- (3) The institutions of higher learning;
- (4) Any agency, class, or position set forth in RCW 41.06.070. [2011 1st sp.s. c 43 § 403; 1970 ex.s. c 12 § 2. Prior: 1969 ex.s. c 152 § 2; 1969 c 45 § 5; 1961 c 1 § 8 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.082 Office of minority and women's business enterprises—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, this chapter shall not apply in the office of minority and

women's business enterprises to the director, the director's confidential secretary, and the deputy director. [1983 c 120 § 14.]

Additional notes found at www.leg.wa.gov

41.06.083 Law revision commission—Personnel exempted from chapter. The provisions of this chapter do not apply to any position in or employee of the Washington law revision commission. [1982 c 183 § 10.]

41.06.084 Department of agriculture—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of agriculture to the director, the director's confidential secretary, the deputy director, not more than eight assistant directors, the state veterinarian, and the milk pooling administrator employed under RCW 15.35.100. [1992 c 58 § 3; 1990 c 37 § 2; 1983 c 248 § 11.]

41.06.085 World fair commission—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply to the executive director and one confidential secretary of the world fair commission created in chapter 177, Laws of 1983. [1983 c 177 § 6.]

41.06.086 Washington state school directors' association—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply to officers and employees of the Washington state school directors' association. [1983 c 187 § 5.]

Additional notes found at www.leg.wa.gov

41.06.087 Economic and revenue forecast supervisor and staff—Caseload forecast supervisor and staff—Exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, this chapter does not apply to the economic and revenue forecast supervisor and staff employed under RCW 82.33.010 or the caseload forecast supervisor and staff employed under RCW 43.88C.010. [1997 c 168 § 4; 1990 c 229 § 3; 1984 c 138 § 2.]

Additional notes found at www.leg.wa.gov

41.06.088 State internship program—Positions exempt from chapter. This chapter does not apply to positions under the state internship program established under RCW 43.06.410. [1985 c 442 § 8.]

Additional notes found at www.leg.wa.gov

41.06.093 Washington state patrol—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the Washington state patrol to confidential secretaries of agency bureau chiefs, or their functional equivalent, and a confidential secretary for the chief of staff. [2011 1st sp.s. c 43 § 404; 1993 c 281 § 24; 1990 c 14 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.094 Consolidated technology services agency—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the consolidated technology services agency to up to twelve positions in the planning component involved in policy development and/or senior professionals. [2015 c 225 § 54; 1987 c 504 § 7.]

Additional notes found at www.leg.wa.gov

41.06.095 Office of archaeology and historic preservation—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, this chapter does not apply in the department of archaeology and historic preservation to the director, the director's personal secretary, the deputy director, all division directors and assistant directors, and one confidential secretary for each of these officers. [2005 c 333 § 9.]

41.06.096 Life sciences discovery fund authority—Personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, this chapter does not apply to employees of the life sciences discovery fund authority under chapter 43.350 RCW. [2005 c 424 § 14.]

Additional notes found at www.leg.wa.gov

41.06.097 Department of early learning—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of early learning to the director, the director's personal secretary, and any other exempt staff members provided for in RCW 43.215.030(2). [2006 c 265 § 110.]

Effective date—2006 c 265: See RCW 43.215.905.

41.06.098 Puget Sound partnership—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the Puget Sound partnership to the executive director, to one confidential secretary, and to all professional staff. [2007 c 341 § 45.]

Effective date—2007 c 341: See RCW 90.71.907.

41.06.099 Department of enterprise services—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, this chapter does not apply in the department of enterprise services to the director, the director's confidential secretary, deputy and assistant directors, and any other exempt staff members provided for in RCW 43.19.008. [2011 1st sp.s. c 43 § 106.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.101 Office of the chief information officer—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter do not apply in the office of the chief information officer to the chief information officer, the chief information officer's confidential secretary, assistant directors, and any other exempt staff members provided for in *RCW 43.41A.015. [2011 1st sp.s. c 43 § 723.]

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*Reviser's note: RCW 43.41A.015 was repealed by 2015 3rd sp.s. c 1 § 224.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.110 Washington personnel resources board—Created—Term—Qualifications, conditions—Compensation, travel expenses—Officers, quorum, records. (1) There is hereby created a Washington personnel resources board composed of three members appointed by the governor, subject to confirmation by the senate. The members of the personnel board serving June 30, 1993, shall be the members of the Washington personnel resources board, and they shall complete their terms as under the personnel board. Each odd-numbered year thereafter the governor shall appoint a member for a six-year term. Each member shall continue to hold office after the expiration of the member's term until a successor has been appointed. Persons so appointed shall have clearly demonstrated an interest and belief in the merit principle, shall not hold any other employment with the state, shall not have been an officer of a political party for a period of one year immediately prior to such appointment, and shall not be or become a candidate for partisan elective public office during the term to which they are appointed;

(2) Each member of the board shall be compensated in accordance with RCW 43.03.250. The members of the board may receive any number of daily payments for official meetings of the board actually attended. Members of the board shall also be reimbursed for travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

(3) At its first meeting following the appointment of all of its members, and annually thereafter, the board shall elect a chair and vice chair from among its members to serve one year. The presence of at least two members of the board shall constitute a quorum to transact business. A written public record shall be kept by the board of all actions of the board. The director shall serve as secretary.

(4) The board may appoint and compensate hearing officers to hear and conduct appeals. Such compensation shall be paid on a contractual basis for each hearing, in accordance with the provisions of chapter 43.88 RCW and rules adopted pursuant thereto, as they relate to personal service contracts. [2011 1st sp.s. c 43 § 405; 2002 c 354 § 210; 1993 c 281 § 25; 1984 c 287 § 69; 1982 c 10 § 8. Prior: 1981 c 338 § 20; 1981 c 311 § 16; 1977 c 6 § 2; prior: 1975-'76 2nd ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 34 § 86; 1961 c 1 § 11 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Adoption of rules for leave sharing program: RCW 41.04.670.

Appointment and compensation of institutional chaplains: RCW 72.01.210.

Additional notes found at www.leg.wa.gov

41.06.120 Meetings of board—Hearings authorized, notice—Majority to approve release of findings—Administration of oaths. (1) In the necessary conduct of its work, the board shall meet monthly unless there is no pending business requiring board action and may hold hearings, such

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hearings to be called by (a) the chair of the board, or (b) a majority of the members of the board. An official notice of the calling of the hearing shall be filed with the secretary, and all members shall be notified of the hearing within a reasonable period of time prior to its convening.

(2) No release of material or statement of findings shall be made except with the approval of a majority of the board.

(3) In the conduct of hearings or investigations, a member of the board or the director, or the hearing officer, may administer oaths. [2012 c 117 § 10; 2011 1st sp.s. c 43 § 406; 1981 c 311 § 17; 1975-'76 2nd ex.s. c 43 § 2; 1961 c 1 § 12 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.133 Rules of director—Personnel administration—Required agency report. (1) The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(a) The reduction, dismissal, suspension, or demotion of an employee;

(b) Training and career development;

(c) Probationary periods of six to twelve months and rejections of probationary employees, depending on the job requirements of the class, except as follows:

(i) Entry-level state park rangers shall serve a probationary period of twelve months; and

(ii) The probationary period of campus police officer appointees who are required to attend the Washington state criminal justice training commission basic law enforcement academy shall extend from the date of appointment until twelve months from the date of successful completion of the basic law enforcement academy, or twelve months from the date of appointment if academy training is not required. The director shall adopt rules to ensure that employees promoting to campus police officer who are required to attend the Washington state criminal justice training commission basic law enforcement academy shall have the trial service period extend from the date of appointment until twelve months from the date of successful completion of the basic law enforcement academy, or twelve months from the date of appointment if academy training is not required;

(d) Transfers;

(e) Promotional preferences;

(f) Sick leaves and vacations;

(g) Hours of work;

(h) Layoffs when necessary and subsequent reemployment, except for the financial basis for layoffs;

(i) The number of names to be certified for vacancies;

(j) Subject to RCW 41.04.820, adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units. The rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located. Such adoption and revision is subject to approval by the

director of financial management in accordance with chapter 43.88 RCW;

(k) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service. From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any exempt position under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW, and except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(i) The salary increase can be paid within existing resources;

(ii) The salary increase will not adversely impact the provision of client services; and

(iii) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management;

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position exempt under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases;

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position exempt under this chapter shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases;

(l) Optional lump sum relocation compensation approved by the agency director, whenever it is reasonably necessary that a person make a domiciliary move in accepting a transfer or other employment with the state. An agency must provide lump sum compensation within existing resources. If the person receiving the relocation payment terminates or causes termination with the state, for reasons other than layoff, disability separation, or other good cause as determined by an agency director, within one year of the date of the employment, the state is entitled to reimbursement of the lump sum compensation from the person;

(m) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their surviving spouses by giving such eligible veterans and their surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the director, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a

release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given. However, the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service. For the purposes of this section, "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month.

(2) Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director.

(3) Rules adopted by the director under this section may be superseded by the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of such rules shall only affect employees in the respective collective bargaining units.

(4)(a) The director shall require that each state agency report annually the following data:

(i) The number of classified, Washington management service, and exempt employees in the agency and the change compared to the previous report;

(ii) The number of bonuses and performance-based incentives awarded to agency staff and the base wages of such employees; and

(iii) The cost of each bonus or incentive awarded.

(b) A report that compiles the data in (a) of this subsection for all agencies will be provided annually to the governor and the appropriate committees of the legislature and must be posted for the public on the office of financial management's agency web site.

(5) From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055. [2011 1st sp.s. c 43 § 407; 2011 1st sp.s. c 39 § 5. Prior: 2010 c 2 § 3; 2010 c 1 § 2; prior: 2009 c 534 § 2; 2009 c 5 § 2; 2002 c 354 § 204.]

Reviser's note: This section was amended by 2011 1st sp.s. c 39 § 5 and by 2011 1st sp.s. c 43 § 407, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

Effective date—2010 c 1: See note following RCW 41.06.070.

Finding—Intent—2009 c 534: "The legislature finds that information technologies have substantially altered the roles and responsibilities of employees in many state agencies since the creation of the Washington management service. With the understanding that the current economic crisis dictates finding every possible efficiency, the legislature intends to review

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the state's senior management and exempt services and understands that possible refinements in the service are needed. A review, in consultation with the various stakeholders and in light of current best practices, is warranted." [2009 c 534 § 1.]

Effective date—2009 c 5: See note following RCW 41.06.070.

Additional notes found at www.leg.wa.gov

41.06.142 Purchasing services by contract—Effect on employees in the classified service—Criteria to be met—Bidding—Definitions. (1) Any department, agency, or institution of higher education may purchase services, including services that have been customarily and historically provided by employees in the classified service under this chapter, by contracting with individuals, nonprofit organizations, businesses, employee business units, or other entities if the following criteria are met:

(a) The invitation for bid or request for proposal contains measurable standards for the performance of the contract;

(b) Employees in the classified service whose positions or work would be displaced by the contract are provided an opportunity to offer alternatives to purchasing services by contract and, if these alternatives are not accepted, compete for the contract under competitive contracting procedures in subsection (4) of this section;

(c) The contract with an entity other than an employee business unit includes a provision requiring the entity to consider employment of state employees who may be displaced by the contract;

(d) The department, agency, or institution of higher education has established a contract monitoring process to measure contract performance, costs, service delivery quality, and other contract standards, and to cancel contracts that do not meet those standards; and

(e) The department, agency, or institution of higher education has determined that the contract results in savings or efficiency improvements. The contracting agency must consider the consequences and potential mitigation of improper or failed performance by the contractor.

(2) Any provision contrary to or in conflict with this section in any collective bargaining agreement in effect on July 1, 2005, is not effective beyond the expiration date of the agreement.

(3) Contracting for services that is expressly mandated by the legislature or was authorized by law prior to July 1, 2005, including contracts and agreements between public entities, shall not be subject to the processes set forth in subsections (1), (4), and (5) of this section.

(4) Competitive contracting shall be implemented as follows:

(a) At least ninety days prior to the date the contracting agency requests bids from private entities for a contract for services provided by classified employees, the contracting agency shall notify the classified employees whose positions or work would be displaced by the contract. The employees shall have sixty days from the date of notification to offer alternatives to purchasing services by contract, and the agency shall consider the alternatives before requesting bids.

(b) If the employees decide to compete for the contract, they shall notify the contracting agency of their decision. Employees must form one or more employee business units

for the purpose of submitting a bid or bids to perform the services.

(c) The department of enterprise services, with the advice and assistance of the office of financial management, shall develop and make available to employee business units training in the bidding process and general bid preparation.

(d) The director of enterprise services, with the advice and assistance of the office of financial management, shall, by rule, establish procedures to ensure that bids are submitted and evaluated in a fair and objective manner and that there exists a competitive market for the service. Such rules shall include, but not be limited to: (i) Prohibitions against participation in the bid evaluation process by employees who prepared the business unit's bid or who perform any of the services to be contracted; (ii) provisions to ensure no bidder receives an advantage over other bidders and that bid requirements are applied equitably to all parties; and (iii) procedures that require the contracting agency to receive complaints regarding the bidding process and to consider them before awarding the contract. Appeal of an agency's actions under this subsection is an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, with the final decision to be rendered by an administrative law judge assigned under chapter 34.12 RCW.

(e) An employee business unit's bid must include the fully allocated costs of the service, including the cost of the employees' salaries and benefits, space, equipment, materials, and other costs necessary to perform the function. An employee business unit's cost shall not include the state's indirect overhead costs unless those costs can be attributed directly to the function in question and would not exist if that function were not performed in state service.

(f) A department, agency, or institution of higher education may contract with the department of enterprise services to conduct the bidding process.

(5) As used in this section:

(a) "Employee business unit" means a group of employees who perform services to be contracted under this section and who submit a bid for the performance of those services under subsection (4) of this section.

(b) "Indirect overhead costs" means the pro rata share of existing agency administrative salaries and benefits, and rent, equipment costs, utilities, and materials associated with those administrative functions.

(c) "Competitive contracting" means the process by which classified employees of a department, agency, or institution of higher education compete with businesses, individuals, nonprofit organizations, or other entities for contracts authorized by subsection (1) of this section.

(6) The processes set forth in subsections (1), (4), and (5) of this section do not apply to:

(a) *RCW 74.13.031(5);

(b) The acquisition of printing services by a state agency; and

(c) Contracting for services or activities by the department of enterprise services under RCW 43.19.008 and the department may continue to contract for such services and activities after June 30, 2018.

(7) The processes set forth in subsections (1), (4), and (5) of this section do not apply to the consolidated technology

services agency when contracting for services or activities as follows:

(a) Contracting for services and activities that are necessary to establish, operate, or manage the state data center, including architecture, design, engineering, installation, and operation of the facility that are approved by the technology services board created in **RCW 43.41A.070.

(b) Contracting for services and activities recommended by the chief information officer through a business plan and approved by the technology services board created in **RCW 43.41A.070. [2011 1st sp.s. c 43 § 408; 2008 c 267 § 9; 2002 c 354 § 208.]

Reviser's note: *(1) RCW 74.13.031 was amended by 2012 c 259 § 8, changing subsection (5) to subsection (6), effective December 1, 2013.

***(2) RCW 43.41A.070 was recodified as RCW 43.105.285 pursuant to 2015 3rd sp.s. c 1 § 221.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.150 Rules of director—Mandatory subjects—Personnel administration. The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(1) Certification of names for vacancies;

(2) Examinations for all positions in the competitive and noncompetitive service;

(3) Appointments;

(4) Permitting agency heads to delegate the authority to appoint, reduce, dismiss, suspend, or demote employees within their agencies if such agency heads do not have specific statutory authority to so delegate: PROVIDED, That the director may not authorize such delegation to any position lower than the head of a major subdivision of the agency;

(5) Assuring persons who are or have been employed in classified positions before July 1, 1993, will be eligible for employment, reemployment, transfer, and promotion in respect to classified positions covered by this chapter;

(6) Affirmative action in appointment, promotion, transfer, recruitment, training, and career development; development and implementation of affirmative action goals and timetables; and monitoring of progress against those goals and timetables.

The director shall consult with the human rights commission in the development of rules pertaining to affirmative action.

Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director. [2011 1st sp.s. c 43 § 409. Prior: 2002 c 371 § 906; 2002 c 354 § 203; 2002 c 354 § 202; 2002 c 110 § 1; 1999 c 297 § 3; 1996 c 319 § 2; 1995 2nd sp.s. c 18 § 911; prior: 1993 sp.s. c 24 § 913; 1993 c 281 § 27; 1990 c 60 § 103; prior: 1985 c 461 § 2; 1985 c 365 § 5; 1983 1st ex.s. c 75 § 5; 1982 1st ex.s. c 53 § 4; prior: 1982 c 79 § 1; 1981 c 311 § 18; 1980 c 118 § 3; 1979 c 151 § 57; 1977 ex.s. c 152 § 1; 1973 1st ex.s. c 75 § 1; 1973 c 154 § 1; 1971 ex.s. c 19 § 2; 1967 ex.s. c 108 § 13; 1961 c 1 § 15 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—1999 c 297: See note following RCW 43.03.125.

Leave for public employees
military: RCW 38.40.060.
vacation: RCW 43.01.040.

Public employees' collective bargaining: Chapter 41.56 RCW.

Additional notes found at www.leg.wa.gov

41.06.152 Job classification revisions, class studies, salary adjustments—Limitations. (1) The director shall adopt only those job classification revisions, class studies, and salary adjustments under RCW 41.06.157 that:

(a) As defined by the director, are due to documented recruitment or retention difficulties, salary compression or inversion, classification plan maintenance, higher level duties and responsibilities, or inequities; and

(b) Are such that the office of financial management has reviewed the affected agency's fiscal impact statement and has concurred that the affected agency can absorb the biennialized cost of the reclassification, class study, or salary adjustment within the agency's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia.

(2) This section does not apply to the higher education hospital special pay plan or to any adjustments to the classification plan under RCW 41.06.157 that are due to emergent conditions. Emergent conditions are defined as emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare. [2011 1st sp.s. c 43 § 410; 2007 c 489 § 1; 2002 c 354 § 241; 2002 c 354 § 240; 1999 c 309 § 914; 1996 c 319 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.155 Salaries—Implementation of changes to achieve comparable worth. Salary changes necessary to achieve comparable worth shall be implemented during the 1983-85 biennium under a schedule developed by the department. Increases in salaries and compensation solely for the purpose of achieving comparable worth shall be made at least annually. Comparable worth for the jobs of all employees under this chapter shall be fully achieved not later than June 30, 1993. [1993 c 281 § 28; 1983 1st ex.s. c 75 § 6.]

Additional notes found at www.leg.wa.gov

41.06.157 Comprehensive classification plan for classified positions—Contents—Salary surveys. (1) To promote the most effective use of the state's workforce and improve the effectiveness and efficiency of the delivery of services to the citizens of the state, the director shall adopt and maintain a comprehensive classification plan for all positions in the classified service. The classification plan must:

(a) Be simple and streamlined;

(b) Support state agencies in responding to changing technologies, economic and social conditions, and the needs of its citizens;

(c) Value workplace diversity;

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(d) Facilitate the reorganization and decentralization of governmental services;

(e) Enhance mobility and career advancement opportunities; and

(f) Consider rates in other public employment and private employment in the state.

(2) An appointing authority and an employee organization representing classified employees of the appointing authority for collective bargaining purposes may jointly request the director of financial management to initiate a classification study.

(3) For institutions of higher education and related boards, the director may adopt special salary ranges to be competitive with positions of a similar nature in the state or the locality in which the institution of higher education or related board is located.

(4) The director may undertake salary surveys of positions in other public and private employment to establish market rates. Any salary survey information collected from private employers which identifies a specific employer with salary rates which the employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2015 3rd sp.s. c 1 § 315; 2011 1st sp.s. c 43 § 411.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.160 Classification and salary schedules to consider rates in other public and private employment—Wage and fringe benefits surveys—Limited public disclosure exemption. In preparing classification and salary schedules as set forth in RCW 41.06.150 the department of personnel shall give full consideration to prevailing rates in other public employment and in private employment in this state. For this purpose the department shall undertake comprehensive salary and fringe benefit surveys.

Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2005 c 274 § 278; 2002 c 354 § 211; 1993 c 281 § 29; 1985 c 94 § 2; 1980 c 11 § 1; 1979 c 151 § 58; 1977 ex.s. c 152 § 2; 1961 c 1 § 16 (Initiative Measure No. 207, approved November 8, 1960).]

Additional notes found at www.leg.wa.gov

41.06.162 State salary schedule. The director of financial management shall adopt and maintain a state salary schedule. Such adoption and revision is subject to approval by the director in accordance with chapter 43.88 RCW. [2011 1st sp.s. c 43 § 412.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.167 Compensation surveys required for officers and officer candidates of the Washington state patrol—Limited public disclosure exemption. The director of financial management shall undertake comprehensive compensation surveys for officers and entry-level officer candidates of the Washington state patrol, with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legis-

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lature. Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2015 3rd sp.s. c 1 § 316; 2011 1st sp.s. c 43 § 413; 2005 c 274 § 279; 2002 c 354 § 212; 1991 c 196 § 1; 1986 c 158 § 7; 1985 c 94 § 3; 1980 c 11 § 2; 1979 c 151 § 60; 1977 ex.s. c 152 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.169 Employee performance evaluations—Standardized procedures and forms required to be developed. After consultation with state agency heads, employee organizations, and other interested parties, the director shall develop standardized employee performance evaluation procedures and forms which shall be used by state agencies for the appraisal of employee job performance at least annually. These procedures shall include means whereby individual agencies may supplement the standardized evaluation process with special performance factors peculiar to specific organizational needs. Performance evaluation procedures shall place primary emphasis on recording how well the employee has contributed to efficiency, effectiveness, and economy in fulfilling state agency and job objectives. [2011 1st sp.s. c 43 § 414; 1985 c 461 § 3; 1982 1st ex.s. c 53 § 5; 1977 ex.s. c 152 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.170 Reduction, suspension, dismissal, demotion of employee—Right to appeal. (1) The director, in the adoption of rules governing suspensions for cause, shall not authorize an appointing authority to suspend an employee for more than fifteen calendar days as a single penalty or more than thirty calendar days in any one calendar year as an accumulation of several penalties. The director shall require that the appointing authority give written notice to the employee not later than one day after the suspension takes effect, stating the reasons for and the duration thereof.

(2) Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the director, or any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the Washington personnel resources board. The employee shall be furnished with specified charges in writing when a reduction, dismissal, suspension, or demotion action is taken. Such appeal shall be in writing. Decisions of the Washington personnel resources board on appeals filed after June 30, 2005, shall be final and not subject to further appeal.

(3) Any employee whose position has been exempted after July 1, 1993, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the Washington personnel resources board. If the position

being exempted is vacant, the exclusive bargaining unit representative may act in lieu of an employee for the purposes of appeal.

(4) An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

(5) Subsections (1) and (2) of this section do not apply to any employee who is subject to the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. [2011 1st sp.s. c 43 § 415; 2009 c 534 § 3; 2002 c 354 § 213; 1993 c 281 § 31; 1981 c 311 § 19; 1975-'76 2nd ex.s. c 43 § 3; 1961 c 1 § 17 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—Intent—2009 c 534: See note following RCW 41.06.133.

***Reviser's note:** RCW 41.06.111 was repealed by 2011 1st sp.s. c 43 § 478.

Additional notes found at www.leg.wa.gov

41.06.176 Employee performance evaluations—Written notification of deficiencies. Each employee whose work is judged unsatisfactory shall be notified in writing of the areas in which the work is considered deficient. Unless the deficiency is extreme, the employee shall be given an opportunity to demonstrate improvement. [1985 c 461 § 4.]

Additional notes found at www.leg.wa.gov

41.06.186 Employee performance evaluations—Termination of employment—Rules. The director shall adopt rules designed to terminate the state employment of any employee whose performance is so inadequate as to warrant termination. [2002 c 354 § 215; 1993 c 281 § 32; 1985 c 461 § 5.]

Additional notes found at www.leg.wa.gov

41.06.196 Employee performance evaluations—Termination of supervisors tolerating inadequate employee performance. The director shall adopt rules designed to remove from supervisory positions those supervisors who in violation of the rules adopted under RCW 41.06.186 have tolerated the continued employment of employees under their supervision whose performance has warranted termination from state employment. [2002 c 354 § 216; 1993 c 281 § 33; 1985 c 461 § 6.]

Duty of state officers to identify employees whose performance warrants termination from state employment: RCW 43.01.125.

Additional notes found at www.leg.wa.gov

41.06.204 Use of false academic credentials—Penalties. A person who issues or uses a false academic credential is subject to RCW 28B.85.220 and 9A.60.070. [2006 c 234 § 7.]

41.06.220 Reinstatement after appeal, guaranteed rights and benefits. Any employee, when fully reinstated after appeal, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, retire-

ment and OASDI credits. [2011 1st sp.s. c 43 § 416; 1961 c 1 § 22 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.250 Political activities. (1) Solicitation for or payment to any partisan, political organization or for any partisan, political purpose of any compulsory assessment or involuntary contribution is prohibited: PROVIDED, HOWEVER, That officers of employee associations shall not be prohibited from soliciting dues or contributions from members of their associations. No person shall solicit on state property or property of a political subdivision of this state any contribution to be used for partisan, political purposes.

(2) Employees of the state or any political subdivision thereof shall have the right to vote and to express their opinions on all political subjects and candidates and to hold any political party office or participate in the management of a partisan, political campaign. Nothing in this section shall prohibit an employee of the state or any political subdivision thereof from participating fully in campaigns relating to constitutional amendments, referendums, initiatives, and issues of a similar character, and for nonpartisan offices.

(3) A classified civil service employee shall not hold a part time public office in a political subdivision of the state when the holding of such office is incompatible with, or substantially interferes with, the discharge of official duties in state employment.

(4) For persons employed in state agencies or agencies of any political subdivision of the state the operation of which is financed in total or primarily by federal grant-in-aid funds political activity will be regulated by the rules and regulations of the United States civil service commission.

(5) The provisions of this section shall supersede all statutes, charter provisions, ordinances, resolutions, regulations, and requirements promulgated by the state or any subdivision thereof, including any provision of any county charter, insofar as they may be in conflict with the provisions of this section. [1974 ex.s. c 136 § 1; 1961 c 1 § 25 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.260 Conflict with federal requirements—Effect—Rules to conform chapter. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The office of financial management and the department of enterprise services, as appropriate, shall make such rules and regulations as may be necessary to meet federal requirements which are a condition precedent to the receipt of federal funds by the state. [2011 1st sp.s. c 43 § 417; 1961 c 1 § 26 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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41.06.270 Salary withheld unless employment is in accord with chapter—Certification of payrolls, procedures. A disbursing officer shall not pay any employee holding a position covered by this chapter unless the employment is in accordance with this chapter or the rules, regulations and orders issued hereunder. The directors of enterprise services and financial management shall jointly establish procedures for the certification of payrolls. [2011 1st sp.s. c 43 § 418; 2002 c 354 § 217; 1979 c 151 § 61; 1961 c 1 § 27 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.280 Personnel service fund—Created—Charges to agencies, payment—Use, disbursement. There is hereby created a fund within the state treasury, designated as the "personnel service fund," to be used by the office of financial management as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60 RCW. An amount not to exceed one and one-half percent of the salaries and wages for all positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the personnel service fund as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director from time to time which, together with income derived from services rendered under RCW 41.06.080, will provide the office of financial management with funds to meet its anticipated expenditures during the allotment period, including the training requirements in RCW 41.06.500 and 41.06.530. All revenues, net of expenditures, previously derived from services provided by the department of enterprise services under RCW 41.06.080 must be transferred to the enterprise services account.

The director shall fix the terms and charges for services rendered by the office of financial management pursuant to RCW 41.06.080, which amounts shall be credited to the personnel service fund and charged against the proper fund or appropriation of the recipient of such services on a monthly basis. Payment for services so rendered under RCW 41.06.080 shall be made on a monthly basis to the state treasurer and deposited in the personnel service fund.

Moneys from the personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the office of financial management.

During the 2013-2015 and 2015-2017 fiscal biennium [biennia], the legislature may transfer from the personnel service fund to the state general fund such amounts as reflect the excess fund balance of the account. [2016 1st sp.s. c 36 § 919; 2013 2nd sp.s. c 4 § 968; 2013 2nd sp.s. c 4 § 967; 2013 c 251 § 1; 2011 1st sp.s. c 43 § 419; 1993 c 379 § 309; 1993 c 281 § 34; 1987 c 248 § 4; 1984 c 7 § 45; 1982 c 167 § 13; 1963 c 215 § 1; 1961 c 1 § 28 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—2016 1st sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Residual balance of funds—2013 c 251: "Any residual balance of funds remaining in the public printing revolving account repealed by section 13 of this act on June 30, 2013, shall be transferred to the enterprise services account. Any residual balance of funds remaining in the Puyallup tribal settlement account repealed by section 13 of this act on June 30, 2013, shall be transferred to the motor vehicle fund. Any residual balance of funds remaining in any other account abolished in this act on June 30, 2013, shall be transferred by the state treasurer to the state general fund." [2013 c 251 § 17.]

Effective date—2013 c 251: "Except for section 4 of this act, 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 June 30, 2013." [2013 c 251 § 18.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Legislative findings—Purpose—1987 c 248: See note following RCW 41.04.362.

Additional notes found at www.leg.wa.gov

41.06.285 Higher education personnel service fund.

(1) There is hereby created a fund within the state treasury, designated as the "higher education personnel service fund," to be used by the office of financial management as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of chapter 41.06 RCW and applicable provisions of chapters 41.04 and 41.60 RCW. Subject to the requirements of subsection (2) of this section, an amount not to exceed one-half of one percent of the salaries and wages for all positions in the classified service shall be contributed from the operations appropriations of each institution and the state board for community and technical colleges and credited to the higher education personnel service fund as such allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, such amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time, which will provide the office of financial management with funds to meet its anticipated expenditures during the allotment period.

(2) If employees of institutions of higher education cease to be classified under this chapter pursuant to an agreement authorized by *RCW 41.56.201, each institution of higher education and the state board for community and technical colleges shall continue, for six months after the effective date of the agreement, to make contributions to the higher education personnel service fund based on employee salaries and wages that includes the employees under the agreement. At the expiration of the six-month period, the director of financial management shall make across-the-board reductions in allotments of the higher education personnel service fund for the remainder of the biennium so that the charge to the institutions of higher education and state board for community and technical colleges based on the salaries and wages of the remaining employees of institutions of higher education and related boards classified under this chapter does not increase during the biennium, unless an increase is authorized by the legislature.

(3) Moneys from the higher education personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the office of financial manage-

ment. [2011 1st sp.s. c 43 § 420; 1998 c 245 § 41; 1993 c 379 § 308.]

***Reviser's note:** RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

41.06.290 Personnel subject to chapter 47.64 RCW not affected. Nothing in this chapter shall be interpreted as changing the provisions of or affecting the conditions of employment for personnel covered by chapter 47.64 RCW. [1961 c 1 § 29 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.340 Determination of appropriate bargaining units—Unfair labor practices provisions applicable to chapter. (1) With respect to collective bargaining as authorized by RCW 41.80.001 and 41.80.010 through 41.80.130, the public employment relations commission created by chapter 41.58 RCW shall have authority to adopt rules, on and after June 13, 2002, relating to determination of appropriate bargaining units within any agency. In making such determination the commission shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees. The public employment relations commission created in chapter 41.58 RCW shall adopt rules and make determinations relating to the certification and decertification of exclusive bargaining representatives.

(2) Each and every provision of RCW 41.56.140 through 41.56.160 shall be applicable to this chapter as it relates to state civil service employees.

(3) A collective bargaining agreement entered into under RCW 41.06.150 before July 1, 2004, covering employees subject to RCW 41.80.001 and 41.80.010 through 41.80.130 that expires after July 1, 2004, shall remain in full force during its duration, or until superseded by a collective bargaining agreement entered into by the parties under RCW 41.80.001 and 41.80.010 through 41.80.130. However, an agreement entered into before July 1, 2004, may not be renewed or extended beyond July 1, 2005, or until superseded by a collective bargaining agreement entered into under RCW 41.80.001 and 41.80.010 through 41.80.130, whichever is later. [2002 c 354 § 232; 1993 c 281 § 35; 1969 ex.s. c 215 § 13.]

Additional notes found at www.leg.wa.gov

41.06.350 Acceptance of federal funds authorized. The director is authorized to receive federal funds now available or hereafter made available for the assistance and improvement of public personnel administration, which may be expended in addition to the personnel service fund established by RCW 41.06.280. [2011 1st sp.s. c 43 § 421; 2002 c 354 § 218; 1993 c 281 § 36; 1969 ex.s. c 152 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.395 Training programs on sexual harassment.

The director shall adopt rules establishing guidelines for policies, procedures, and mandatory training programs on sexual harassment for state employees to be adopted by state agencies. The department of enterprise services shall establish reporting requirements for state agencies on compliance with RCW 43.01.135. [2011 1st sp.s. c 43 § 422; 2007 c 76 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.400 Training and career development programs—Powers and duties of department of enterprise services. (1) In addition to other powers and duties specified in this chapter, the department of enterprise services in consultation with the office of financial management shall:

(a) By rule, prescribe the purpose and minimum standards for training and career development programs and, in so doing, regularly consult with and consider the needs of individual agencies and employees;

(b) Provide training and career development programs which may be conducted more efficiently and economically on an interagency basis;

(c) Promote interagency sharing of resources for training and career development;

(d) Monitor and review the impact of training and career development programs to ensure that the responsibilities of the state to provide equal employment opportunities are diligently carried out.

(2) At an agency's request, the department of enterprise services may provide training and career development programs for an agency's internal use which may be conducted more efficiently and economically by the department of enterprise services. [2011 1st sp.s. c 43 § 423; 2002 c 354 § 219; 1980 c 118 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.410 Agency training and career development plans—Budget. Each agency subject to the provisions of this chapter shall:

(1) Prepare an employee training and career development plan which shall at least meet minimum standards established by the department of enterprise services;

(2) Provide for training and career development for its employees in accordance with the agency plan;

(3) Budget for training and career development in accordance with procedures of the office of financial management. [2011 1st sp.s. c 43 § 424; 2002 c 354 § 220; 1980 c 118 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.420 Entry-level management training course—Rules—Requirements—Suspension—Waiver—Designation of supervisory or management positions. (1) The office of financial management, by rule, shall prescribe the conditions under which an employee appointed to a supervisory or management position after June 12, 1980, shall be required to successfully complete an entry-level management training course as approved by the director. Such training

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shall not be required of any employee who has completed a management training course prior to the employee's appointment which is, in the judgment of the director, at least equivalent to the entry-level course required by this section.

(2) The office of financial management, by rule, shall establish procedures for the suspension of the entry-level training requirement in cases where the ability of an agency to perform its responsibilities is adversely affected, or for the waiver of this requirement in cases where a person has demonstrated experience as a substitute for training.

(3) Agencies subject to the provisions of this chapter, in accordance with rules prescribed by the office of financial management, shall designate individual positions, or groups of positions, as being "supervisory" or "management" positions. Such designations shall be subject to review by the director. [2011 1st sp.s. c 43 § 425; 1980 c 118 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.450 Destruction or retention of information relating to employee misconduct. (1) The director shall adopt rules applicable to each agency to ensure that information relating to employee misconduct or alleged misconduct is destroyed or maintained as follows:

(a) All such information determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing, shall be promptly destroyed;

(b) All such information having no reasonable bearing on the employee's job performance or on the efficient and effective management of the agency, shall be promptly destroyed;

(c) All other information shall be retained only so long as it has a reasonable bearing on the employee's job performance or on the efficient and effective management of the agency.

(2) Notwithstanding subsection (1) of this section, an agency may retain information relating to employee misconduct or alleged misconduct if:

(a) The employee requests that the information be retained; or

(b) The information is related to pending legal action or legal action may be reasonably expected to result.

(3) In adopting rules under this section, the director shall consult with the public disclosure commission to ensure that the public policy of the state, as expressed in chapters *42.17 and 42.56 RCW, is adequately protected. [2005 c 274 § 280; 2002 c 354 § 221; 1993 c 281 § 37; 1982 c 208 § 10.]

***Reviser's note:** Provisions in chapter 42.17 RCW relating to public disclosure were recodified in chapter 42.56 RCW by 2005 c 274.

Legislative finding—Purpose—RCW 41.06.450: "The legislature finds that, under some circumstances, maintaining information relating to state employee misconduct or alleged misconduct is unfair to employees and serves no useful function to the state. The purpose of RCW 41.06.450 is to direct the personnel board to adopt rules governing maintenance of employee records so that the records are maintained in a manner which is fair to employees, which ensures proper management of state governmental affairs, and which adequately protects the public interest." [1982 c 208 § 9.]

Application of public disclosure law to information relating to employee misconduct: RCW 42.56.110.

Employee inspection of personnel file: RCW 49.12.240 through 49.12.260.

Additional notes found at www.leg.wa.gov

41.06.455 Destruction of employee records authorized if consistent with other laws. RCW 41.06.450 does not prohibit an agency from destroying identifying information in records relating to employee misconduct or alleged misconduct if the agency deems the action is consistent with the policy expressed in RCW 41.06.450 and in chapter 42.56 RCW. [2005 c 274 § 281; 1982 c 208 § 11.]

Additional notes found at www.leg.wa.gov

41.06.460 Application of RCW 41.06.450 and 41.06.455 to classified and exempt employees. Notwithstanding RCW 41.06.040, 41.06.450 and 41.06.455 apply to all classified and exempt employees of the state, including employees of the institutions of higher education. [1982 c 208 § 12.]

41.06.475 Employees with unsupervised access to children—Rules for background investigation. The director shall adopt rules, in cooperation with the director of the department of early learning, for the background investigation of current employees and of persons being actively considered for positions with the department who will or may have unsupervised access to children. The director shall also adopt rules, in cooperation with the director of the department of early learning, for background investigation of positions otherwise required by federal law to meet employment standards. "Considered for positions" includes decisions about (1) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (2) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer. [2007 c 387 § 8; 2002 c 354 § 222; 1993 c 281 § 38; 1986 c 269 § 2.]

Children and vulnerable adults: RCW 43.43.830 through 43.43.842.

State hospitals: RCW 72.23.035.

Supervision, care, or treatment of children or individuals with developmental disabilities or other vulnerable persons—State employment—Investigation of conviction records or pending charges: RCW 43.20A.710.

Additional notes found at www.leg.wa.gov

41.06.476 Background investigation rules—Updating. (1) The office of financial management shall amend any existing rules established under RCW 41.06.475 and adopt rules developed in cooperation and agreement with the department of social and health services to implement the provisions of chapter 296, Laws of 2001.

(2) The legislature's delegation of authority to the agency under chapter 296, Laws of 2001 is strictly limited to:

(a) The minimum delegation necessary to administer the clear and unambiguous directives of chapter 296, Laws of 2001; and

(b) The administration of circumstances and behaviors foreseeable at the time of enactment. [2011 1st sp.s. c 43 § 426; 2001 c 296 § 6.]

***Reviser's note:** 2001 c 296 attained final passage by the legislature on April 20, 2001, was signed by the governor and filed with the secretary of state on May 14, 2001, and took effect July 22, 2001.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2001 c 296: See note following RCW 9.96A.060.

41.06.490 State employee return-to-work program.

In addition to the rules adopted under RCW 41.06.150, the director shall adopt rules establishing a state employee return-to-work program. The program shall, at a minimum:

(1) Direct each agency to adopt a return-to-work policy. The program shall allow each agency program to take into consideration the special nature of employment in the agency;

(2) Provide for eligibility in the return-to-work program, for a minimum of two years from the date the temporary disability commenced, for any permanent employee who is receiving compensation under RCW 51.32.090 and who is, by reason of his or her temporary disability, unable to return to his or her previous work, but who is physically capable of carrying out work of a lighter or modified nature;

(3) Require each agency to name an agency representative responsible for coordinating the return-to-work program of the agency;

(4) Provide that applicants receiving appointments for classified service receive an explanation of the return-to-work policy;

(5) Require training of supervisors on implementation of the return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; and

(6) Coordinate participation of applicable employee assistance programs, as appropriate. [2011 1st sp.s. c 43 § 427; 2002 c 354 § 223; 1990 c 204 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Purpose—1990 c 204: See note following RCW 51.44.170.

Additional notes found at www.leg.wa.gov

41.06.500 Managers—Rules—Goals. (1) Except as provided in RCW 41.06.070 and subject to RCW 41.04.820, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in RCW 41.06.022. These rules shall not apply to managers employed by institutions of higher education or related boards or whose positions are exempt. The rules shall govern recruitment, appointment, classification and allocation of positions, examination, training and career development, hours of work, probation, certification, compensation, transfer, affirmative action, promotion, layoff, reemployment, performance appraisals, discipline, and any and all other personnel practices for managers. These rules shall be separate from rules adopted for other employees, and to the extent that the rules adopted under this section apply only to managers shall take precedence over rules adopted for other employees, and are not subject to review by the board.

(2) In establishing rules for managers, the director shall adhere to the following goals:

(a) Development of a simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(b) Creation of a compensation system that provides flexibility in setting and changing salaries, and shall require review and approval by the director in the case of any salary changes greater than five percent proposed for any group of employees;

(c) Establishment of a performance appraisal system that emphasizes individual accountability for program results and efficient management of resources; effective planning, organization, and communication skills; valuing and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(d) Strengthening management training and career development programs that build critical management knowledge, skills, and abilities; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(e) Permitting flexible recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(f) Providing that managers may only be reduced, dismissed, suspended, or demoted for cause; and

(g) Facilitating decentralized and regional administration.

(3) From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any position under this section, except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources;

(b) The salary increase will not adversely impact the provision of client services; and

(c) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position under this section shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position under this section shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases.

(4) From February 15, 2010, until June 30, 2013, no monetary performance-based awards or growth and development progression adjustments may be granted by the director or employers to the Washington management service employees covered by the rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

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From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055.

From July 1, 2011, through June 29, 2013, salaries for all positions under this section are subject to RCW 41.04.820. [2011 1st sp.s. c 39 § 6. Prior: 2010 c 2 § 4; 2010 c 1 § 3; 2009 c 5 § 3; 2002 c 354 § 243; 2002 c 354 § 242; 1996 c 319 § 4; 1993 c 281 § 9.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

Effective date—2010 c 1: See note following RCW 41.06.070.

Effective date—2009 c 5: See note following RCW 41.06.070.

Additional notes found at www.leg.wa.gov

41.06.510 Institutions of higher education—Designation of personnel officer. Each institution of higher education and each related board shall designate an officer who shall perform duties as personnel officer. The personnel officer at each institution or related board shall direct, supervise, and manage administrative and technical personnel activities for the classified service at the institution or related board consistent with policies established by the institution or related board and in accordance with the provisions of this chapter and the rules adopted under this chapter. Institutions may undertake jointly with one or more other institutions to appoint a person qualified to perform the duties of personnel officer, provide staff and financial support and may engage consultants to assist in the performance of specific projects. The services of the department of enterprise services and the office of financial management may also be used by the institutions or related boards pursuant to RCW 41.06.080.

The state board for community and technical colleges shall have general supervision and control over activities undertaken by the various community colleges pursuant to this section. [2011 1st sp.s. c 43 § 428; 1993 c 281 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.530 Personnel resource and management policy—Implementation. (1) The legislature recognizes that:

(a) The labor market and the state government workforce are diverse in terms of gender, race, ethnicity, age, and the presence of disabilities.

(b) The state's personnel resource and management practices must be responsive to the diverse nature of its workforce composition.

(c) Managers in all agencies play a key role in the implementation of all critical personnel policies.

It is therefore the policy of the state to create an organizational culture in state government that respects and values individual differences and encourages the productive potential of every employee.

(2) To implement this policy:

(a) The office of financial management shall, in consultation with agencies, employee organizations, employees, institutions of higher education, and related boards, review

civil service rules and related policies to ensure that they support the state's policy of valuing and managing diversity in the workplace; and

(b) The department of enterprise services, in consultation with agencies, employee organizations, and employees, institutions of higher education, and related boards, develop training programs for all managers to enhance their ability to implement diversity policies and to provide a thorough grounding in all aspects of the state civil service law and merit system rules, and how the proper implementation and application thereof can facilitate and further the mission of the agency.

(3) The department of enterprise services and the office of financial management shall coordinate implementation of this section with the institutions of higher education and related boards to reduce duplication of effort. [2011 1st sp.s. c 43 § 429; 1993 c 281 § 12.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.540 Joint employee-management committees.

Meaningful and effective involvement of employees and their representatives is essential to the efficient and effective delivery of state government services. To accomplish this, agencies shall use joint employee-management committees to collaborate on the desired goals of streamlined organizational structures, continuous improvement in all systems and processes, empowerment of line level employees to solve workplace and system delivery problems, managers functioning as coaches and facilitators, and employee training and development as an investment in the future. If employees are represented by an exclusive bargaining representative, the representative shall select the employee committee members and also be on the committee. In addition, the committees shall be used for improvement of the quality of work life for state employees resulting in more productive and efficient service delivery to the general public and customers of state government. Nothing in this section supplants any collective bargaining process or provision. [1993 c 281 § 13.]

Additional notes found at www.leg.wa.gov

41.06.550 Volunteer firefighters—Call to duty. An agency must allow an employee who is a volunteer firefighter to respond, without pay, to a fire, natural disaster, or medical emergency when called to duty. The agency may choose to grant leave with pay. [2007 c 112 § 1.]

41.06.560 Monetary performance-based awards or incentives—Restrictions. From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This section does not prohibit the payment of awards provided for in chapter 41.60 RCW. For institutions of higher education, this section does not prohibit the payment of specific cash awards from private donations from individuals or businesses including, but not limited to, endowments.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance manage-

ment confirmation granted by the department of personnel under WAC 357-37-055. [2012 2nd sp.s. c 7 § 916; 2011 1st sp.s. c 39 § 11; 2010 c 2 § 6.]

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

41.06.900 Short title. This chapter shall be referred to as the state civil service law. [1961 c 1 § 34 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 86.]

Chapter 41.07 RCW

CENTRAL PERSONNEL-PAYROLL SYSTEM

Sections

41.07.010	Definitions.
41.07.020	Administration, maintenance, and operation of system— Intent.
41.07.030	Costs.
41.07.901	Effective date—1975 1st ex.s. c 239.

41.07.010 Definitions. (1) As used in this chapter "state agency" means all offices, departments, agencies, institutions, boards, and commissions of state government including those headed by an elected official and including institutions of higher education.

(2) As used in this chapter "central personnel-payroll system" means an automated data processing system capable of keeping records and processing necessary transactions in the process of employing persons, changing their employment status, and paying employees of any or all state agencies. Such system shall include production of reports and documents required or authorized by state or federal agencies. [1975 1st ex.s. c 239 § 1.]

41.07.020 Administration, maintenance, and operation of system—Intent. The consolidated technology services agency is authorized to administer, maintain, and operate the central personnel-payroll system and to provide its services for any state agency designated jointly by the consolidated technology services agency and the director of financial management.

State agencies shall convert personnel and payroll processing to the central personnel-payroll system as soon as administratively and technically feasible as determined by the office of financial management and the consolidated technology services agency. It is the intent of the legislature to provide, through the central personnel-payroll system, for uniform reporting to the office of financial management and to the legislature regarding salaries and related costs, and to reduce present costs of manual procedures in personnel and payroll recordkeeping and reporting. [2015 3rd sp.s. c 1 § 107; 2011 1st sp.s. c 43 § 441; 1979 c 151 § 62; 1975 1st ex.s. c 239 § 2.]

Effective date—2015 3rd sp.s. c 1 §§ 101-109, 201-224, 406-408, 410, 501-507, 601, and 602: See note following RCW 43.105.007.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.07.030 Costs. The costs of administering, maintaining, and operating the central personnel-payroll system shall be distributed to the using state agencies. In order to insure proper and equitable distribution of costs the department of enterprise services shall utilize cost accounting procedures to identify all costs incurred in the administration, maintenance, and operation of the central personnel-payroll system. In order to facilitate proper and equitable distribution of costs to the using state agencies the department of enterprise services is authorized to utilize the data processing revolving fund created by *RCW 43.19.791 and the personnel service fund created by RCW 41.06.280. [2011 1st sp.s. c 43 § 611; 2011 1st sp.s. c 43 § 442; 1975 1st ex.s. c 239 § 3.]

Reviser's note: *(1) RCW 43.19.791 was repealed by 2015 3rd sp.s. c 1 § 506, effective January 1, 2016.

(2) This section was amended by 2011 1st sp.s. c 43 § 442 and by 2011 1st sp.s. c 43 § 611, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.07.901 Effective date—1975 1st ex.s. c 239. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975. [1975 1st ex.s. c 239 § 6.]

Chapter 41.08 RCW

CIVIL SERVICE FOR CITY FIREFIGHTERS

Sections

41.08.010	Application of chapter.
41.08.020	Excluded cities—Repeal of local law—Effect.
41.08.030	Civil service commission created—Appointment—Terms—Removal—Quorum.
41.08.040	Organization of commission—Secretary—Powers and duties of commission.
41.08.050	Persons included—Competitive examinations—Transfers, discharges, and reinstatements.
41.08.060	Existing firefighters blanketed under civil service.
41.08.070	Qualifications of applicants.
41.08.075	Residency as condition of employment—Discrimination because of lack of residency—Prohibited.
41.08.080	Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges.
41.08.090	Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal.
41.08.100	Filling of vacancies—Probationary period.

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41.08.110	Power to create offices, make appointments and fix salaries not infringed.
41.08.120	Approval of payrolls.
41.08.130	Leaves of absence—Notice—Filling vacancy.
41.08.140	Enforcement by civil action—Legal counsel.
41.08.150	Deceptive practices, false marks, etc., prohibited.
41.08.160	Political contributions and services—Not required—Solicitation and coercion prohibited.
41.08.170	Local legislation required—Penalty.
41.08.180	Office and supplies to be furnished—Penalty for not providing.
41.08.183	Time limit for creation of commission—Penalty.
41.08.185	Duty of commission to organize and function—Penalty for violation.
41.08.190	Cooperation of city officers and employees enjoined.
41.08.200	Appropriation for expenses.
41.08.210	Penalty—Jurisdiction.
41.08.220	Definitions.
41.08.910	Repeal.

Civil service for employees of fire protection districts: RCW 52.30.040.

41.08.010 Application of chapter. The provisions of this chapter shall have no application to cities and towns which at the present time have provided for civil service in the fire department or which shall subsequently provide for civil service in the fire department by local charter or other regulations which said local charter or regulations substantially accomplish the purpose of this chapter. [1935 c 31 § 1; RRS § 9558-1.]

41.08.020 Excluded cities—Repeal of local law—Effect. If any of the cities or towns referred to in RCW 41.08.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for firefighters as referred to in RCW 41.08.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the fire department. [2007 c 218 § 2; 1935 c 31 § 2; RRS § 9558-2.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.030 Civil service commission created—Appointment—Terms—Removal—Quorum. There is hereby created in every city, town or municipality except those referred to in RCW 41.08.010, having a full paid fire department a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ the chief of a fire department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good

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cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party. [2007 c 218 § 3; 1935 c 31 § 3; RRS § 9558-3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.040 Organization of commission—Secretary—Powers and duties of commission. Immediately after appointment the commission shall organize by electing one of its members chair and hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and chief examiner, who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The secretary and chief examiner shall be appointed as a result of competitive examination which examination may be either original and open to all properly qualified citizens of the city, town or municipality, or promotional and limited to persons already in the service of the fire department or of the fire department and other departments of said city, town or municipality, as the commission may decide. The secretary and chief examiner may be subject to suspension, reduction or discharge in the same manner and subject to the same limitations as are provided in the case of members of the fire department. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(2) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and/or of manual skill.

(3) The rules and regulations adopted by the commission shall provide for a credit in accordance with RCW 41.04.010 in favor of all applicants for appointment under civil service, who, in time of war, or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the army, navy, and marine corps and the American Red Cross. These credits apply to entrance examinations only.

(4) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents and accounts appertaining to the investigation and also to cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a superior court judge in his or her judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such.

(5) All hearings and investigations before the commission, or designated commissioner, or chief examiner, shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission: PROVIDED, HOWEVER, That no order, decision, rule or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members.

(6) To hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; the rejection of an examination, and such other matters as may be referred to the commission.

(7) Establish and maintain in card or other suitable form a roster of officers and employees.

(8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof

establish eligible lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed.

(9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as a provisional appointee in any one fiscal year.

(10) Keep such records as may be necessary for the proper administration of this chapter. [1993 c 47 § 4; 1973 1st ex.s. c 154 § 60; 1935 c 31 § 5; RRS § 9558-5.]

Preferred rights in employment, examinations, appointments, etc., limited to actual members of armed forces: RCW 73.04.090.

Veterans' scoring criteria status in examinations: RCW 41.04.010.

Additional notes found at www.leg.wa.gov

41.08.050 Persons included—Competitive examinations—Transfers, discharges, and reinstatements. The classified civil service and provisions of this chapter shall include all full paid employees of the fire department of each city, town or municipality coming within its purview, except that individuals appointed as fire chief after July 1, 1987, may be excluded by the legislative body of the city, town, or municipality. All appointments to and promotions in said department shall be made solely on merit, efficiency and fitness, which shall be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in, or transferred, suspended or discharged from any such place, position or employment contrary to the provisions of this chapter. [1987 c 339 § 1; 1935 c 31 § 4; RRS § 9558-4.]

Additional notes found at www.leg.wa.gov

41.08.060 Existing firefighters blanketed under civil service. For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment of this chapter, all persons holding a position in the fire department of any such city, including the chief thereof, when this chapter takes effect, who shall have served in such position for a period of at least six months last past continuously, are hereby declared eligible for permanent appointment under civil service to the offices, places, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation; and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. [1935 c 31 § 6; RRS § 9558-6.]

41.08.070 Qualifications of applicants. An applicant for a position of any kind under civil service, must be a citi-

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zen of the United States of America who can read and write the English language.

An applicant for a position of any kind under civil service must be of an age suitable for the position applied for, in ordinary good health, of good moral character and of temperate and industrious habits; these facts to be ascertained in such manner as the commission may deem advisable. [1972 ex.s. c 37 § 2; 1963 c 95 § 1; 1935 c 31 § 7; RRS § 9558-7.]

Purpose—1972 ex.s. c 37: "It is the purpose of this 1972 amendatory act to increase the availability of qualified applicants for employment in positions of public safety in municipal government; namely, firemen and policemen; and to eliminate present inequities that result from the application of residency requirements under existing statutes pertaining to such employment." [1972 ex.s. c 37 § 1.]

41.08.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited. No city, town, or municipality shall require any person applying for or holding an office, place, position, or employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.08.010 to reside within the limits of such municipal corporation as a condition of employment, or to discriminate in any manner against any such person because of his or her residence outside of the limits of such city, town, or municipality. [2007 c 218 § 4; 1972 ex.s. c 37 § 4.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.08.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges. The tenure of every one holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the functions and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed

in the public service. [2007 c 218 § 5; 1935 c 31 § 8; RRS § 9558-8.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the

determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. [2007 c 218 § 6; 1935 c 31 § 9; RRS § 9558-9.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.100 Filling of vacancies—Probationary period. Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him or her, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him or her unfit or unsatisfactory for service in the department. Whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. [2007 c 218 § 7; 1935 c 31 § 11; RRS § 9558-11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.110 Power to create offices, make appointments and fix salaries not infringed. All offices, places, positions and employments coming within the purview of this chapter, shall be created by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, chief, common council, commission or otherwise, is or are vested by law with power and authority to select,

appoint, or employ any person coming within the purview of this chapter, and nothing herein contained shall infringe upon the power and authority of any such person or group of persons, or appointing power, to fix the salaries and compensation of all employees employed hereunder. [1935 c 31 § 12; RRS § 9558-12.]

41.08.120 Approval of payrolls. No treasurer, auditor, comptroller or other officer or employee of any city, town or municipality in which this chapter is effective, shall approve the payment of or be in any manner concerned in paying, auditing or approving any salary, wage or other compensation for services, to any person subject to the jurisdiction and scope of this chapter, unless a payroll, estimate or account for such salary, wage or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on said payroll, bears the certificate of the civil service commission or of its secretary or other duly authorized agent, that the persons named in such payroll, estimate or account have been appointed or employed in compliance with the terms of this chapter and with the rules of the commission, and that the said payroll, estimate or account is, so far as known to the said commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who shall wilfully or through culpable negligence violate or fail to comply with this chapter or with the rules of the commission. [1935 c 31 § 13; RRS § 9558-13.]

41.08.130 Leaves of absence—Notice—Filling vacancy. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: PROVIDED, That such appointing power shall give notice of such leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1935 c 31 § 14; RRS § 9558-14.]

41.08.140 Enforcement by civil action—Legal counsel. It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and of the rules of the commission. The commission shall be represented in such suits by the chief legal officer of the city, but said commission may in any case be represented by special counsel appointed by it. [1935 c 31 § 15; RRS § 9558-15.]

41.08.150 Deceptive practices, false marks, etc., prohibited. No commissioner or any other person shall, by himself or herself, or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representa-

tion concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration or application or request to be examined or registered. [2007 c 218 § 8; 1935 c 31 § 16; RRS § 9558-16.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.160 Political contributions and services—Not required—Solicitation and coercion prohibited. No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or services, or any other valuable thing, for any political purpose. [1935 c 31 § 17; RRS § 9558-17.]

Political activities of public employees: RCW 41.06.250.

41.08.170 Local legislation required—Penalty. The various cities affected by the provisions of this chapter, shall, immediately upon the taking effect thereof, enact appropriate legislation for carrying this chapter into effect, and the failure upon the part of the duly constituted authorities of any such city so to do shall be considered a violation of this chapter and be punishable as such. [1935 c 31 § 18; RRS § 9558-18.]

41.08.180 Office and supplies to be furnished—Penalty for not providing. The duly constituted authorities of each and every city coming within the purview of this chapter, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such city coming within the purview of this chapter; and the failure upon the part of the duly constituted authorities to do so, shall be considered a violation of this chapter and shall be punishable as such. [1935 c 31 § 19; RRS § 9558-19.]

41.08.183 Time limit for creation of commission—Penalty. In ninety days after the taking effect of this chapter, it shall be the duty of the duly constituted authorities in each such city, subject to the provisions of this chapter, to appoint and create a civil service commission as provided for in RCW 41.08.010, and the failure upon the part of said duly constituted authorities, or any of them, so to do, shall be deemed a violation of this chapter, and shall be punishable as such. [1935 c 31 § 20; RRS § 9558-20.]

41.08.185 Duty of commission to organize and function—Penalty for violation. It shall be the duty of each commission appointed subject to the provisions of this chapter, to immediately organize and see to it that the provisions thereof are carried into effect, and to this end to make suitable rules and regulations not inconsistent with the purpose of this chapter, for the purpose of carrying the provisions thereof into effect; and the failure upon the part of said commission, or any individual member thereof to do so, shall be deemed a violation of this chapter, and shall be punishable as such. [1935 c 31 § 21; RRS § 9558-21.]

41.08.190 Cooperation of city officers and employees enjoined. It shall be the duty of all officers and employees of any such city to aid in all proper ways of carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission thereunder and to afford the commission, its members and employees, all reasonable facilities and assistance to inspect all books, papers, documents and accounts applying or in any way appertaining to any and all offices, places, positions and employments, subject to civil service, and also to produce said books, papers, documents and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1935 c 31 § 10; RRS § 9558-10.]

41.08.200 Appropriation for expenses. For the purpose of carrying out the provisions of this chapter, such city, town or municipality is hereby authorized to appropriate from the general fund not to exceed four-tenths of one percent of the total payroll of those included under the jurisdiction and scope of the chapter: PROVIDED, HOWEVER, That if the city council or other proper legislative body shall make an appropriation for the support of said commission equal to or more than the said continuing appropriation in any year, this section shall not be operative for said year but otherwise shall be in full force and effect. [1935 c 31 § 22; RRS § 9558-22.]

41.08.210 Penalty—Jurisdiction. Any person who shall wilfully violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars and by imprisonment in the county jail for not longer than thirty days, or by both such fine and imprisonment. The court of original and unlimited jurisdiction in civil suits shall have jurisdiction of all such offenses defined by this chapter. [1935 c 31 § 23; RRS § 9558-23.]

41.08.220 Definitions. As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid fire department.

The term "full paid fire department" means that the officers and firefighters employed in such are paid regularly by the city and devote their whole time to firefighting. [2007 c 218 § 9; 1935 c 31 § 24; RRS § 9558-24.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.08.910 Repeal. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed insofar as they conflict with the provisions of this chapter. [1935 c 31 § 26; RRS § 9558-26.]

Chapter 41.12 RCW CIVIL SERVICE FOR CITY POLICE

Sections

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41.12.010 Application of chapter. The provisions of this chapter shall have no application to cities and towns which at the present time have provided for civil service in the police department or which shall subsequently provide for civil service in the police department by local charter or other regulations which said local charter or regulations substantially accomplish the purpose of this chapter, nor to cities having a police force of not more than two persons including the chief of police. [1937 c 13 § 1; RRS § 9558a-1.]

41.12.020 Excluded cities—Repeal of local law—Effect. If any of the cities or towns referred to in RCW 41.12.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for police officers as referred to in RCW 41.12.010, in

that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the police department. [2007 c 218 § 10; 1937 c 13 § 2; RRS § 9558a-2.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.030 Civil service commission—Appointment—Terms—Removal—Quorum. There is hereby created in every city, town or municipality except those referred to in RCW 41.12.010, having fully paid police officers a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with the power and authority to select, appoint, or employ the chief of a police department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party. [2007 c 218 § 11; 1937 c 13 § 3; RRS § 9558a-3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.040 Organization of commission—Secretary—Powers and duties of commission. Immediately after appointment the commission shall organize by electing one of its members chair and hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and chief examiner, who shall keep the records for the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The secretary and chief examiner shall be appointed as a result of competitive examination which examination may be

either original and open to all properly qualified citizens of the city, town, or municipality, or promotional and limited to persons already in the service of the police department or of the police department and other departments of the city, town, or municipality, as the commission may decide. The secretary and chief examiner may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case of members of the police department. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution. Such rules and regulations may be changed from time to time;

(2) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and/or of manual skill;

(3) The rules and regulations adopted by the commission shall provide for a credit in accordance with RCW 41.04.010 in favor of all applicants for appointment under civil service, who, in time of war, or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the army, navy, and marine corps and the American Red Cross. These credits apply to entrance examinations only;

(4) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions, and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and also to cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force

and effect as the oaths administered by a superior court judge in his or her judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such;

(5) Hearings and Investigations: How conducted. All hearings and investigations before the commission, or designated commissioner, or chief examiner, shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission: PROVIDED, HOWEVER, That no order, decision, rule or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members;

(6) To hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; the rejection of an examination, and such other matters as may be referred to the commission;

(7) Establish and maintain in card or other suitable form a roster of officers and employees;

(8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed;

(9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as provisional appointee in any one fiscal year;

(10) Keep such records as may be necessary for the proper administration of this chapter. [1993 c 47 § 5; 1937 c 13 § 5; RRS § 9558a-5.]

Preferred rights in employment, examinations, appointments, etc., limited to actual members of armed forces: RCW 73.04.090.

Veterans' scoring criteria status in examinations: RCW 41.04.010.

41.12.050 Persons included—Restricted exemptions—Competitive examinations—Transfers, discharges, and reinstatements. (1) For police departments with fewer than six commissioned officers, including the police chief, the classified civil service and provisions of this chapter includes all full paid employees of the department of the city, town, or municipality.

(2) For police departments with six or more commissioned officers, including the police chief, the legislative

body of a city, town, or municipality may exempt from civil service individuals appointed as police chief after July 1, 1987.

(a) If the police chief is not exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, including the police chief.

(b) If the police chief is exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, except the police chief and an additional number of positions, designated the unclassified service, determined as follows:

Department Personnel	Unclassified Position Appointments
6 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

(3) The unclassified position appointments authorized by subsection (2)(b) of this section may only include selections from the following positions up to the limit of the number of positions authorized: Assistant chief, deputy chief, bureau commander, and administrative assistant or administrative secretary. The initial selection of specific positions to be in the unclassified service and exempt from civil service shall be made by the police chief, who shall notify the civil service commission of his or her selection. Subsequent changes in the designation of which positions are in the unclassified service may be made only with the concurrence of the police chief, the mayor or the city administrator, and the civil service commission, and then only after the civil service commission has heard the issue in an open meeting. If a position initially selected by the police chief to be in the unclassified service is in the classified civil service at the time of the selection, and if the position is occupied, the employee occupying the position has the right to return to the next highest position or a like position in the classified civil service.

(4) All appointments to and promotions in the department shall be made solely on merit, efficiency, and fitness except as provided in RCW 35.13.360 through 35.13.400, which shall be ascertained by open competitive examination and impartial investigation. No person in the unclassified service shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of this chapter. [2002 c 143 § 1; 1993 c 189 § 1; 1987 c 339 § 2; 1937 c 13 § 4; RRS § 9558a-4.]

Chief of police or marshal—Eligibility requirements: RCW 35.21.333.

Additional notes found at www.leg.wa.gov

41.12.070 Qualifications of applicants. An applicant for a position of any kind under civil service, must be a citizen of the United States of America who can read and write the English language.

An applicant for a position of any kind under civil service must be of an age suitable for the position applied for, in

ordinary good health, of good moral character and of temperate and industrious habits; these facts to be ascertained in such manner as the commission may deem advisable. [1972 ex.s. c 37 § 3; 1963 c 95 § 2; 1937 c 13 § 7; RRS § 9558a-7.]

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.12.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited.

No city, town, or municipality shall require any person applying for or holding an office, place, position, or employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.12.010 to reside within the limits of such municipal corporation as a condition of employment or to discriminate in any manner against any such person because of his or her residence outside of the limits of such city, town, or municipality. [2007 c 218 § 12; 1972 ex.s. c 37 § 5.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.12.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges.

The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [2007 c 218 § 13; 1937 c 13 § 8; RRS § 9558a-8.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal.

No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted

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or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. [2007 c 218 § 14; 1937 c 13 § 9; RRS § 9558a-9.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.100 Filling of vacancies—Probationary period. Whenever a position in the classified service becomes vacant,

the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him or her, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him or her unfit or unsatisfactory for service in the department, whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. [2007 c 218 § 15; 1937 c 13 § 11; RRS § 9558a-11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.110 Power to create offices, make appointments and fix salaries not infringed. All offices, places, positions and employments coming within the purview of this chapter, shall be created by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, chief, common council, commission or otherwise, it is vested by law with power and authority to select, appoint, or employ any person coming within the purview of this chapter, and nothing herein contained shall infringe upon the power and authority of any such person or group of persons, or appointing power, to fix the salaries and compensation of all employees employed hereunder. [1937 c 13 § 12; RRS § 9558a-12.]

41.12.120 Approval of payrolls. No treasurer, auditor, comptroller or other officer, or employee of any city, town or

municipality in which this chapter is effective, shall approve the payment of or be in any manner concerned in paying, auditing or approving any salary, wage, or other compensation for services, to any person subject to the jurisdiction and scope of this chapter, unless a payroll, estimate or account for such salary, wage or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on said payroll, bears the certificate of the civil service commission or of its secretary or other duly authorized agent, that the persons named in such payroll, estimate or account have been appointed or employed in compliance with the terms of this chapter and with the rules of the commission, and that the said payroll, estimate or account is, so far as known to the said commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who shall wilfully or through culpable negligence violate or fail to comply with this chapter or with the rules of the commission. [1937 c 13 § 13; RRS § 9558a-13.]

41.12.130 Leaves of absence—Notice—Filling vacancy. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: PROVIDED, That such appointing power shall give notice of such leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1937 c 13 § 14; RRS § 9558a-14.]

41.12.140 Enforcement by civil action—Legal counsel. It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and of the rules of the commission. The commission shall be represented in such suits by the chief legal officer of the city, but said commission may in any case be represented by special counsel appointed by it. [1937 c 13 § 15; RRS § 9558a-15.]

41.12.150 Deceptive practices, false marks, etc., prohibited. No commissioner or any other person shall, by himself or herself, or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration of application or request to be examined or registered. [2007 c 218 § 16; 1937 c 13 § 16; RRS § 9558a-16.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.160 Political contributions and services. No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or services, or any other valuable thing, for any political purpose. [1937 c 13 § 17; RRS § 9558a-17.]

Political activities of public employees: RCW 41.06.250.

41.12.170 Local legislation required—Penalty. The various cities affected by the provisions of this chapter, shall immediately upon the taking effect thereof, enact appropriate legislation for carrying this chapter into effect, and the failure upon the part of the duly constituted authorities of any such city so to do shall be considered a violation of this chapter and be punishable as such. [1937 c 13 § 18; RRS § 9558a-18.]

41.12.180 Office and supplies to be furnished—Penalty for not providing. The duly constituted authorities of each and every city coming within the purview of this chapter, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such city coming within the purview of this chapter; and the failure upon the part of the duly constituted authorities to do so, shall be considered a violation of this chapter and shall be punishable as such. [1937 c 13 § 19; RRS § 9558a-19.]

41.12.183 Time limit for creation of commission—Penalty. In ninety days after the taking effect of this chapter, it shall be the duty of the duly constituted authorities in each such city, subject to the provisions of this chapter, to appoint and create a civil service commission as provided for in RCW 41.12.010, and the failure upon the part of said duly constituted authorities, or any of them, so to do, shall be deemed a violation of this chapter, and shall be punishable as such. [1937 c 13 § 20; RRS § 9558a-20.]

41.12.185 Duty of commission to organize and function—Penalty for violation. It shall be the duty of each commission appointed subject to the provisions of this chapter, to immediately organize and see to it that the provisions thereof are carried into effect, and to this end to make suitable rules and regulations not inconsistent with the purpose of this chapter, for the purpose of carrying the provisions thereof into effect; and the failure upon the part of said commission, or any individual member thereof to do so, shall be deemed a

violation of this chapter, and shall be punishable as such. [1937 c 13 § 21; RRS § 9558a-21.]

41.12.190 Cooperation of city officers and employees enjoined. It shall be the duty of all officers and employees of any such city to aid in all proper ways of carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission thereunder and to afford the commission, its members and employees, all reasonable facilities and assistance to inspect all books, papers, documents and accounts applying or in any way appertaining to any and all offices, places, positions and employments, subject to civil service, and also to produce said books, papers, documents and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1937 c 13 § 10; RRS § 9558a-10.]

41.12.200 Appropriation for expenses. For the purpose of carrying out the provisions of this chapter, such city, town or municipality is hereby authorized to appropriate from the general fund not to exceed four-tenths of one percent of the total payroll of those included under the jurisdiction and scope of the chapter: PROVIDED, HOWEVER, That if the city council or other proper legislative body shall make an appropriation for the support of said commission equal to or more than the said continuing appropriation in any year, this section shall not be operative for said year but otherwise shall be in full force and effect. [1937 c 13 § 22; RRS § 9558a-22.]

41.12.210 Penalty—Jurisdiction. Any person who shall wilfully violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars and by imprisonment in the county jail for not longer than thirty days, or by both such fine and imprisonment. The court of original and unlimited jurisdiction in civil suits shall have jurisdiction of all such offenses defined by this chapter. [1937 c 13 § 23; RRS § 9558a-23.]

41.12.220 Definitions. As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, invested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid police department.

The term "full paid police department" means that the officers and police officers employed in such are paid regularly by the city and devote their whole time to police duty: PROVIDED, "full paid police department" whenever used in

this chapter shall also mean "full paid police officers." [2007 c 218 § 17; 1937 c 13 § 24; RRS § 9558a-24.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.12.910 Repeal. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed insofar as they conflict with the provisions of this chapter. [1937 c 13 § 26; RRS § 9558a-26.]

Chapter 41.14 RCW CIVIL SERVICE FOR SHERIFF'S OFFICE

Sections

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41.14.010 Declaration of purpose. The general purpose of this chapter is to establish a merit system of employment for county deputy sheriffs and other employees of the office of county sheriff, thereby raising the standards and efficiency of such offices and law enforcement in general. [1987 c 251 § 1; 1985 c 429 § 3; 1959 c 1 § 1 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.020 Terms defined. Definition of terms:

(1) "Appointing power" means the county sheriff who is invested by law with power and authority to select, appoint, or employ any deputy, deputies, or other necessary employees subject to civil service;

(2) "Appointment" includes all means of selecting, appointing, or employing any person to any office, place, position, or employment subject to civil service;

(3) "Commission" means the civil service commission, or combined county civil service commission, herein created, and "commissioner" means any one of the members of any such commission;

(4) "County" means any county of the state, or any counties combined pursuant to RCW 41.14.040 for the purpose of carrying out the provisions of this chapter;

(5) "Deputy sheriff or other members of the office of county sheriff" means all persons regularly employed in the office of county sheriff either on a part time or full time basis. [2009 c 112 § 1; 1959 c 1 § 2 (Initiative Measure No. 23, approved November 4, 1958).]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

41.14.030 Civil service commission—Appointment, terms, qualifications, compensation, etc. (1) There is created in each county and in each combination of counties, combined pursuant to RCW 41.14.040 to carry out the provisions of this chapter, a civil service commission which shall be composed of three persons, or five persons under subsection (2) of this section. The commission members shall be appointed by the board of county commissioners, or boards of county commissioners of each combination of counties, within sixty days after December 4, 1958. No person shall be appointed to the commission who is not a citizen of the United States, a resident of the county, or one of the counties combined, for at least two years immediately preceding his or her appointment, and an elector of the county wherein he or she resides. The term of office of the commissioners shall be six years, except that the first three members of the commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of the commission may be removed from office for incompetency, incompatibility, or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, That no member of the commission shall be removed until charges have been preferred, in writing, due notice, and a full hearing had. Any vacancy in the commission shall be filled by the county commissioners for the unexpired term. Two members of the commission shall constitute a quorum and the votes of any two members concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission. Confirmation of the appointment of commissioners by any legislative body shall not be required. At the time of appointment not more than two commissioners shall be adherents of the same political party. No member after appointment shall hold any salaried public office or engage in county employment, other than his or her commission duties. The members of the commission shall serve without compensation.

(2)(a) Each county and each combination of counties under RCW 41.14.040 may, by ordinance, increase the number of members serving on a commission from three to five members. If a commission is increased to five members, the terms of the three commissioners serving at the time of the

increase are not affected. The initial term of office for the two additional commissioners is six years.

(b) Three commissioners constitute a quorum for a five-member commission and the votes of three commissioners concurring are sufficient for the decision of all matters and the transaction of all business decided or transacted by a five-member commission.

(c) At the time of appointment of the two additional commissioners, no more than three commissioners may be adherents of the same political party.

(d) Except as provided otherwise in this subsection (2), subsection (1) of this section applies to five-member commissions. [2012 c 117 § 11; 2009 c 112 § 2; 1959 c 1 § 3 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.040 Combined system authorized in counties with populations of less than forty thousand. Any counties with populations of less than forty thousand, whether contiguous or not, are authorized to establish and operate a combined civil service system to serve all counties so combined. The combination of any such counties shall be effective whenever each board of county commissioners of the counties involved adopts a resolution declaring intention to participate in the operation of a combined county civil service system in accordance with agreements made between any such counties. Any such combined county civil service commission shall serve the employees of each county sheriff's office impartially and according to need.

All matters affecting the combined civil service commission, including the selection of commissioners, shall be decided by majority vote of all the county commissioners of the counties involved.

All the provisions of this chapter shall apply equally to any such combined civil service system. [1991 c 363 § 114; 1959 c 1 § 4 (Initiative Measure No. 23, approved November 4, 1958).]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.14.050 Commission—Organization, meetings—Chief examiner, qualifications, duties. Immediately after appointment the commission shall organize by electing one of its members as chair and shall hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of its duties.

The commission shall appoint a chief examiner who shall also serve as secretary of the commission and such assistants as may be necessary. The commission has supervisory responsibility over the chief examiner. The chief examiner shall keep the records for the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The chief examiner shall be appointed as a result of competitive examination, which examination must be open to all properly qualified citizens of the county or of an adjacent county: PROVIDED, That no appointee of the commission, either as chief examiner or as an assistant to the chief examiner, shall be an employee of the sheriff's department. The chief examiner may be subject to suspension, reduction, or discharge in the same manner and subject to the same limita-

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tions as are provided in the case of members of the classified service. [2016 c 82 § 1; 2007 c 12 § 1; 1979 ex.s. c 153 § 1; 1959 c 1 § 5 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.060 Powers and duties of commission. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions hereof. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, reallocations, transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(2) To give practical tests which shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made. Such tests may include tests of physical fitness or manual skill or both.

(3) To make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; to inspect all departments, offices, places, positions, and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, may administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation and also cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered and the subpoenas issued hereunder shall have the same force and effect as the oaths administered and subpoenas issued by a superior court judge in his or her judicial capacity; and the failure of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such.

(4) To conduct hearings and investigations in accordance with this chapter and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule, or regulation made,

approved, or confirmed by the commission: PROVIDED, That no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members.

(5) To hear and determine appeals or complaints respecting the allocation of positions, the rejection of an examinee, and such other matters as may be referred to the commission.

(6) To provide for, formulate, and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and provide that persons laid off, or who have accepted voluntary demotion in lieu of layoff, because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed or reinstated in their former job class.

(7) To certify to the appointing authority, when a vacant position is to be filled, on written request, the names of the three persons highest on the eligible list for the class. If there is no such list, to authorize a provisional or temporary appointment list for such class. A temporary appointment expires after four months. However, the appointing authority may extend the temporary appointment beyond the four-month period up to one year if the commission continues to advertise and test for the position. If, after one year from the date the initial temporary appointment was first made, there are less than three persons on the eligible list for the class, then the appointing authority may fill the position with any person or persons on the eligible list.

(8) To keep such records as may be necessary for the proper administration of this chapter. [2012 c 117 § 12; 2001 c 232 § 1; 1979 ex.s. c 153 § 2; 1959 c 1 § 6 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.065 Delegation of powers and duties of commission in county with a population of one million or more. Any county with a population of one million or more may assign the powers and duties of the commission to such county agencies or departments as may be designated by charter or ordinance: PROVIDED, That the powers and duties of the commission under RCW 41.14.120 shall not be assigned to any other body but shall continue to be vested in the commission, which shall exist to perform such powers and duties, together with such other adjudicative functions as may be designated by charter or ordinance. [1991 c 363 § 115; 1987 c 251 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.14.070 Classified and unclassified service designated—Procedures. (1) The classified civil service and provisions of this chapter shall include all deputy sheriffs and other employees of the office of sheriff in each county except the county sheriff in every county and an additional number of positions, designated the unclassified service, determined as follows:

Staff Personnel	Unclassified Position Appointments
1 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

(2) The unclassified position appointments authorized by this section must include selections from the following positions up to the limit of the number of positions authorized: Undersheriff, inspector, chief criminal deputy, chief civil deputy, jail superintendent, and administrative assistant or administrative secretary. The initial selection of specific positions to be exempt shall be made by the sheriff, who shall notify the civil service commission of his or her selection. Subsequent changes in the designation of which positions are to be exempt may be made only with the concurrence of the sheriff and the civil service commission, and then only after the civil service commission has heard the issue in open meeting. Should the position or positions initially selected by the sheriff to be exempt (unclassified) pursuant to this section be under the classified civil service at the time of such selection, and should it (or they) be occupied, the employee(s) occupying said position(s) shall have the right to return to the next highest position or a like position under classified civil service.

(3) In counties with a sheriff's department that operates the 911 emergency communications system, in addition to the unclassified positions authorized in subsections (1), (2), and (4) of this section, the sheriff may designate one unclassified position for the 911 emergency communications system.

(4) In addition to the unclassified positions authorized in this section, the county legislative authority of any county with a population of five hundred thousand or more operating under a home rule charter may designate unclassified positions of administrative responsibility not to exceed twenty positions. [2001 c 151 § 1; 1997 c 62 § 1; 1991 c 363 § 116; 1979 ex.s. c 153 § 3; 1975 1st ex.s. c 186 § 1; 1959 c 1 § 7 (Initiative Measure No. 23, approved November 4, 1958).]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.14.080 Classified service—Appointment, promotion, transfer, suspension, discharge. All appointments to and promotions to positions in the classified civil service of the office of county sheriff shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation: PROVIDED, That before June 30, 1981, employees in an existing county personnel system may be transferred to newly created and classified positions within such county's sheriff's office, in order to permanently transfer the functions of these positions, without meeting the open competitive examination requirements of this section if the transfer is approved by the civil service commission created in RCW 41.14.030. No per-

son in the classified civil service shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of this chapter. [1980 c 108 § 1; 1959 c 1 § 8 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.090 Status of existing employees in classified service. For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment hereof, all persons holding a position which is deemed classified by RCW 41.14.070 for a continuous period of six months prior to December 4, 1958, are eligible for permanent appointment under civil service to the offices, places, positions, or employments which they then held without examination or other act on their part, and not on probation; and every such person is automatically adopted and inducted permanently into civil service, into the office, place, position, or employment which he or she then held as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. [2012 c 117 § 13; 1959 c 1 § 9 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.100 Qualifications of applicants for position. An applicant for a position of any kind under civil service, must be a citizen of the United States who can read and write the English language. [1963 c 95 § 3; 1959 c 1 § 10 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.110 Tenure—Grounds for deprivation. The tenure of every person holding an office, place, position, or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency, or inattention to, or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid, or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [2012 c 117 § 14; 1959 c 1 § 11 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.120 Removal, suspension, demotion, or discharge—Procedure—Appeal. No person in the classified civil service who has been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted, or discharged except for cause, and only upon written accusation of the appointing power or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, discharged, or demoted may within ten days from the time of his or her removal, suspension, discharge, or demotion file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. Upon receipt of the written demand for an investigation, the commission shall within ten days set a date for a public hearing which will be held within thirty days from the date of receipt. The investigation shall be confined to the determination of the question of whether the removal, suspension, demotion, or discharge was made in good faith for cause. After such investigation the commission shall render a written decision within ten days and may affirm the removal, suspension, demotion, or discharge, or if it finds that removal, suspension, demotion, or discharge was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position, or employment from which he or she was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission so provides, be retroactive, and entitle such person to pay or compensation from the time of the removal, suspension, demotion, or discharge. The commission upon such investigation, in lieu of affirming a removal, suspension, demotion, or discharge, may modify the order by directing the removal, suspension, demotion, or discharge without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay. The findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to this section shall be by public hearing, after reasonable notice to the accused of the time and place thereof, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If order of removal, suspension, demotion, or discharge is concurred in by the commission or a majority thereof, the accused may appeal therefrom to the superior court of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of its order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to its order, be filed by the commission with the court. The commission shall, within ten days after the filing of the notice, make, certify, and file such transcript with the court. The court shall thereupon proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension, demotion, or discharge made by the commission, was or was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds. The decision of the superior court may be

appealed to the supreme court or the court of appeals. [2012 c 117 § 15; 1984 c 199 § 1; 1982 c 133 § 1; 1971 c 81 § 102; 1959 c 1 § 12 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.130 Filling vacancies in classified service—Eligibility list—Probation. Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall requisition the commission for the names and addresses of persons eligible for appointment thereto. Before a requisition can be made, the appointing authority shall give employees of the appointing authority who are in layoff status or who have been notified of an intended layoff an opportunity to qualify for any class within the office of the appointing authority. The commission shall certify the names of the three persons highest on the eligible list for the class to which the vacant position has been allocated, who are willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the names of the three persons standing highest on the list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint a person from those certified to the vacant position.

To enable the appointing power to exercise a greater degree of choice in the filling of positions, no appointment, employment, or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of one year's probationary service, as may be provided in the rules of the civil service commission, during which the appointing power may terminate the employment of the person appointed, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems such person unfit or unsatisfactory for service in the office of county sheriff. Thereupon the appointing power shall again requisition the commission for the names and addresses of persons eligible for appointment in the manner provided by this section and the person appointed in the manner provided by this section shall likewise enter upon said duties for the probationary period, until some person is found who is deemed fit for appointment, employment, or promotion whereupon the appointment, employment, or promotion shall be deemed complete. [1984 c 199 § 2; 1979 ex.s. c 153 § 4; 1959 c 1 § 13 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.140 Power to fill positions—Consent of county commissioners—Salaries and compensation. All offices, places, positions, and employments coming within the purview of this chapter, shall be filled by the appointing power with the consent of the board of county commissioners, and nothing herein contained shall infringe upon such authority that an appointing power may have to fix the salaries and compensation of all employees employed hereunder. [1959 c 1 § 14 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.150 Procedure for payment of compensation—Refusal to pay. No treasurer, auditor or other officer, or employee of any county subject to this chapter shall approve the payment of or be in any manner concerned in paying,

auditing, or approving any salary, wage, or other compensation for services, to any person subject to the jurisdiction and scope of this chapter, unless a payroll, estimate, or account for such salary, wage, or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on such payroll, bears the certificate of the civil service commission, or of its chief examiner or other duly authorized agent, that the persons named therein have been appointed or employed in compliance with the terms of this chapter and the rules of the commission, and that the payroll, estimate, or account is, insofar as known to the commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who wilfully or through culpable negligence, violates or fails to comply with this chapter or with the rules of the commission. [1959 c 1 § 15 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.160 Leaves of absence. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: PROVIDED, That such appointing power gives notice of the leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1959 c 1 § 16 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.170 Actions to enforce chapter—Duties of prosecuting attorneys. The commission shall begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and rules of the commission. The commission shall be represented in such suits by the prosecuting attorney of the county. In the case of combined counties any one or more of the prosecuting attorneys of each county so combined may be selected by the commission to represent it. [1959 c 1 § 17 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.180 Prohibited acts relating to registration, examination, certification—Discrimination prohibited. No commissioner or any other person, shall, by himself or herself or in cooperation with others, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations, or falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified pursuant to this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered, or certified, or persuade any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration of application or request to be examined or registered.

The right of any person to an appointment or promotion to any position in a sheriff's office shall not be withheld because of his or her race, color, creed, national origin, political affiliation or belief, nor shall any person be dismissed, demoted, or reduced in grade for such reason. [2012 c 117 § 16; 1959 c 1 § 18 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.190 Political activities regulated. No person holding any office, place, position, or employment subject to civil service, shall contribute to any political fund or render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service or promise or threaten so to do for giving or withholding, or neglecting to make any contribution of money, or service, or any other valuable thing, for any political purpose. [1959 c 1 § 19 (Initiative Measure No. 23, approved November 4, 1958).]

Political activities of public employees: RCW 41.06.250.

41.14.200 Cooperation and aid by other county officers and employees. All officers and employees of each county shall aid in all proper ways in carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission and afford the commission, its members, and employees, all reasonable facilities and assistance in the inspection of books, papers, documents, and accounts applying or in any way appertaining to any and all offices, places, positions, and employments, subject to civil service, and also shall produce such books, papers, documents, and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1959 c 1 § 20 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.210 Funds for commission in counties with populations of two hundred ten thousand or more—County budget—Surplus. The county legislative authority or [of] each county with a population of two hundred ten thousand or more may provide in the county budget for each fiscal year a sum equal to one percent of the preceding year's total payroll of those included under the jurisdiction and scope of this chapter. The funds so provided shall be used for the support of the commission. Any part of the funds so provided and not expended for the support of the commission during the fiscal year shall be placed in the general fund of the county, or counties according to the ratio of contribution, on the first day of January following the close of such fiscal year. [1991 c 363 § 117; 1971 ex.s. c 214 § 3; 1959 c 1 § 21 (Initiative Measure No. 23, approved November 4, 1958).]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.14.220 Penalty—Jurisdiction. Any person who wilfully violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars

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and by imprisonment in the county jail for not longer than thirty days or by both such fine and imprisonment. The superior court shall have jurisdiction of all such offenses. [1959 c 1 § 22 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.250 City contracts to obtain sheriff's office law enforcement services—Transfer of police department employees. When any city or town shall contract with the county sheriff's office to obtain law enforcement services to the city or town, any employee of the police department of such city or town who (1) was at the time such contract was entered into employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the county sheriff's office under such contract (2) will, as a direct consequence of such contract, be separated from the employ of the city or town, and (3) meets the minimum standards and qualifications of the county sheriff's office, then such employee may transfer his or her employment to the county sheriff's office as provided for in RCW 41.14.260 and 41.14.270. [2012 c 117 § 17; 1972 ex.s. c 48 § 1.]

41.14.260 City contracts to obtain sheriff's office law enforcement services—Transfer of police department employees into county civil service for sheriff's office—Seniority for employment. (1) An eligible employee may transfer into the county civil service system for the sheriff's office by filing a written request with the county civil service commission and by giving written notice thereof to the legislative authority of the city or town. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (1) be on probation for the same period as are new employees of the sheriff's office, (2) be eligible for promotion after completion of the probationary period as completed, (3) receive a salary at least equal to that of other new employees of the sheriff's office, and (4) in all other matters, such as retirement, vacation, etc., have, within the county civil service system, all the rights, benefits, and privileges that he or she would have been entitled to had he or she been a member of the county sheriff's office from the beginning of his or her employment with the city or town police department. The city or town shall, upon receipt of such notice, transmit to the county civil service commission a record of the employee's service with the city or town which shall be credited to such member as a part of his or her period of employment in the county sheriff's office. The sheriff may appoint the transferring employee to whatever duties he or she feels are in the best interest of the department and the individual.

(2) If in the process of contracting for law enforcement services economies or efficiencies are achieved or if the city or town intends by such contract to curtail expenditures and the level of services to the city or town, then only so many of the transferring employees shall be placed upon the payroll of the sheriff's office as the sheriff determines are needed to provide the contracted services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in RCW 41.14.250, 41.14.260, and 41.14.270 shall head the list of their respective class or job listing in the civil service system in order of their seniority, to

the end that they shall be the first to be reemployed in the county sheriff's office when appropriate positions become available. [2012 c 117 § 18; 1972 ex.s. c 48 § 2.]

41.14.270 City contracts to obtain sheriff's office law enforcement services—Layoffs—Notice—Time limitation for transfers. When a city or town shall contract with the county sheriff's office for law enforcement services and as a result thereof lays off any employee who is eligible to transfer to the county sheriff's office pursuant to RCW 41.14.250 and 41.14.260, the city or town shall notify such employee of his or her right to so transfer and such employee shall have ninety days to transfer his or her employment to the county sheriff's office: PROVIDED, That any employee layed off [laid off] during the year prior to February 21, 1972 shall have ninety days after the effective date to transfer his or her employment. [2012 c 117 § 19; 1972 ex.s. c 48 § 3.]

41.14.280 City contracts to obtain sheriff's office law enforcement services—Rules and regulations. In addition to its other duties prescribed by law, the civil service commission shall make such rules and regulations as may be necessary to provide for the orderly integration of employees of a city or town who shall transfer to the county sheriff's office pursuant to RCW 41.14.250, 41.14.260, and 41.14.270. [1972 ex.s. c 48 § 4.]

41.14.290 Appointment of classified employee to exempt position—Return to regular position. Any classified employee having civil service status in a position may take an appointment in an exempt position in the same county and maintain the right to return to his or her regular position or to a like position at the conclusion of such appointment. Such employee must apply to return to classified service within thirty calendar days of:

- (1) Termination of employment in such exempt position; or
- (2) Termination of employment in any other exempt position in which the employee subsequently serves provided there was no break in service with the county of more than thirty calendar days. [1979 ex.s. c 153 § 5.]

Chapter 41.16 RCW

FIREFIGHTERS' RELIEF AND PENSIONS—1947 ACT

Sections

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41.16.920	Construction—1959 c 5—Benefits retroactively authorized.
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41.16.922	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Prior acts relating to firefighters' relief and pensions: 1935 c 39; 1929 c 86; 1919 c 196; 1909 c 50 were repealed by 1947 c 91 § 12 (codified herein as RCW 41.16.230).

Firefighters' relief and pensions—1955 act: Chapter 41.18 RCW.

Rights of firefighter injured outside corporate limits of municipality: RCW 35.84.050.

Volunteer firefighters' relief and pensions: Chapter 41.24 RCW.

41.16.010 Terms defined. For the purpose of this chapter, unless clearly indicated by the context, words and phrases shall have the following meaning:

(1) "Beneficiary" shall mean any person or persons designated by a firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased firefighter under this chapter.

(2) "Board" shall mean the municipal firefighters' pension board.

(3) "Child or children" shall mean a child or children unmarried and under eighteen years of age.

(4) "Contributions" shall mean and include all sums deducted from the salary of firefighters and paid into the fund as hereinafter provided.

(5) "Disability" shall mean and include injuries or sickness sustained as a result of the performance of duty.

(6) "Firefighter" shall mean any person regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, who has passed a civil service examination for firefighter and who is actively employed as a firefighter; and shall include any "prior firefighter."

(7) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firefighters of the municipality.

(8) "Fund" shall mean the firefighters' pension fund created herein.

(9) "Municipality" shall mean every city and town having a regularly organized full time, paid, fire department employing firefighters.

(10) "Performance of duty" shall mean the performance of work and labor regularly required of firefighters and shall include services of an emergency nature rendered while off regular duty, but shall not include time spent in traveling to work before answering roll call or traveling from work after dismissal at roll call.

(11) "Prior firefighter" shall mean a firefighter who was actively employed as a firefighter of a fire department prior to the first day of January, 1947, and who continues such employment thereafter.

(12) "Retired firefighter" shall mean and include a person employed as a firefighter and retired under the provisions of chapter 50, Laws of 1909, as amended.

(13) "Widow or widower" means the surviving wife, husband, or state registered domestic partner of a retired firefighter who was retired on account of length of service and who was lawfully married to, or in a state registered domestic partnership with, such firefighter; and whenever that term is used with reference to the wife or former wife, husband or former husband, or current or former state registered domestic partner of a retired firefighter who was retired because of disability, it shall mean his or her lawfully married wife, husband, or state registered domestic partner on the date he or she sustained the injury or contracted the illness that resulted in his or her disability. Said term shall not mean or include a surviving wife, husband, or state registered domestic partner who by process of law within one year prior to the retired firefighter's death, collected or attempted to collect from him or her funds for the support of herself or himself or for his or her children. [2009 c 521 § 88; 2007 c 218 § 18; 2003 c 30 § 1; 1973 1st ex.s. c 154 § 61; 1947 c 91 § 1; Rem. Supp. 1947 § 9578-40.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.020 Pension board created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each city and town a municipal firefighters' pension board to consist of the following five members, ex officio, the mayor, or in a city of the first class, the mayor or a designated representative who shall be an elected official of the city, who shall be chairperson of the board, the city comptroller or clerk, the chairperson of finance of the city council, or if there is no chairperson of finance, the city treasurer, and in addition, two regularly employed or retired firefighters elected by secret ballot of those employed and retired firefighters who are subject to the jurisdiction of the board. The members to be elected by the firefighters shall be elected annually for a two year term. The two firefighters elected as members shall, in turn, select a third eligible member who shall serve as an alternate in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firefighters or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairperson to act, the board may select a chairperson pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairperson. A majority of the members of the board shall constitute a quorum and have power to transact business. [2007 c 218 § 19; 2003 c 30 § 2; 1988 c 164 § 2; 1973 1st ex.s. c 19 § 1; 1961 c 255 § 10; 1947 c 91 § 2; Rem. Supp. 1947 § 9578-41. Prior: 1935 c 39 § 1; 1919 c 196 § 3; 1909 c 50 §§ 1, 2.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.030 Meetings. The board shall meet at least once quarterly, the date to be fixed by regulation of the board, at

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such other regular times as may be fixed by a regulation of the board; and at any time upon call of the chairperson, of which due advance notice shall be given the other members of the board. [2007 c 218 § 20; 2002 c 15 § 1; 1947 c 91 § 3; Rem. Supp. 1947 § 9578-42. Prior: 1929 c 86 § 1; 1919 c 196 § 3; 1909 c 50 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.040 Powers and duties. The board shall have such general powers as are vested in it by the provisions of this chapter, and in addition thereto, the power to:

(1) Generally supervise and control the administration of this chapter and the firefighters' pension fund created hereby.

(2) Pass upon and allow or disallow all applications for pensions or other benefits provided by this chapter.

(3) Provide for payment from said fund of necessary expenses of maintenance and administration of said pension system and fund.

(4) Invest the moneys of the fund in a manner consistent with the investment policies outlined in RCW 35.39.060. Authorized investments shall include investment grade securities issued by the United States, state, municipal corporations, other public bodies, corporate bonds, and other investments authorized by RCW 35.39.030, 35.58.510, 35.81.070, 35.82.070, 36.29.020, 39.58.020, 39.58.080, 39.58.130, 39.60.010, 39.60.020, 68.52.060, and 68.52.065.

(5) Employ such agents, employees and other personnel as the board may deem necessary for the proper administration of this chapter.

(6) Compel witnesses to appear and testify before it, in the same manner as is or may be provided by law for the taking of depositions in the superior court. Any member of the board may administer oaths to witnesses who testify before the board of a nature and in a similar manner to oaths administered by superior courts of the state of Washington.

(7) Issue vouchers approved by the chairperson and secretary and to cause warrants therefor to be issued and paid from said fund for the payment of claims allowed by it.

(8) Keep a record of all its proceedings, which record shall be public; and prepare and file with the city treasurer and city clerk or comptroller prior to the date when any payments are to be made from the fund, a list of all persons entitled to payment from the fund, stating the amount and purpose of such payment, said list to be certified to and signed by the chairperson and secretary of the board and attested under oath.

(9) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same.

(10) Appoint one or more duly licensed and practicing physicians who shall examine and report to the board upon all applications for relief and pension under this chapter. Such physicians shall visit and examine all sick firefighters and firefighters who are disabled when, in their judgment, the best interests of the relief and pension fund require it or when ordered by the board. They shall perform all operations on such sick and injured firefighters and render all medical aid and care necessary for the recovery of such firefighters on account of sickness or disability received while in the performance of duty as defined in this chapter. Such physicians shall be paid from said fund, the amount of said fees or salary

to be set and agreed upon by the board and the physicians. No physician not regularly appointed or specially appointed and employed, as hereinafter provided, shall receive or be entitled to any fees or compensation from said fund as attending physician to a sick or injured firefighter. If any sick or injured firefighter refuses the services of the appointed physicians, or the specially appointed and employed physician, he or she shall be personally liable for the fees of any other physician employed by him or her. No person shall have a right of action against the board or the municipality for negligence of any physician employed by it. The board shall have the power and authority to select and employ, besides the regularly appointed physician, such other physician, surgeon or specialist for consultation with, or assistance to the regularly appointed physician, or for the purpose of performing operations or rendering services and treatment in particular cases, as it shall deem advisable, and to pay fees for such services from said fund. Said board shall hear and decide all applications for such relief or pensions under this chapter, and its decisions on such applications shall be final and conclusive and not subject to revision or reversal except by the board. [2015 1st sp.s. c 4 § 30; 2007 c 218 § 21; 1992 c 89 § 1; 1967 ex.s. c 91 § 1; 1947 c 91 § 4; Rem. Supp. 1947 § 9578-43. Prior: 1929 c 86 § 1; 1919 c 196 § 3; 1909 c 50 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.050 Firefighters' pension fund—How constituted. There is hereby created and established in the treasury of each municipality a fund which shall be known and designated as the firefighters' pension fund, which shall consist of: (1) All bequests, fees, gifts, emoluments, or donations given or paid thereto; (2) twenty-five percent of all moneys received by the state from taxes on fire insurance premiums; (3) taxes paid pursuant to the provisions of RCW 41.16.060; (4) interest on the investments of the fund; and (5) contributions by firefighters as provided for herein. The moneys received from the tax on fire insurance premiums under the provisions of this chapter shall be distributed in the proportion that the number of paid firefighters in the city, town, or fire protection district bears to the total number of paid firefighters throughout the state to be ascertained in the following manner: The secretary of the firefighters' pension board of each city, town, and fire protection district now or hereafter coming under the provisions of this chapter shall within thirty days after June 7, 1961, and on or before the fifteenth day of January thereafter, certify to the state treasurer the number of paid firefighters in the fire department in such city, town, or fire protection district. For any city or town annexed by a fire protection district at any time before, on, or after June 9, 1994, the city or town shall continue to certify to the state treasurer the number of paid firefighters in the city or town fire department immediately before annexation until all obligations against the firefighters' pension fund in the city or town have been satisfied. For the purposes of the calculation in this section, the state treasurer shall subtract the number certified by the annexed city or town from the number of paid firefighters certified by an annexing fire protection district. The state treasurer shall on or before the first day of June of each year deliver to the treasurer of each city, town, and fire protection district coming under the provisions of this chapter his or her warrant, payable to each city, town, or fire protec-

tion district for the amount due such city, town or fire protection district ascertained as herein provided and the treasurer of each such city, town, or fire protection district shall place the amount thereof to the credit of the firefighters' pension fund of such city, town, or fire protection district. [2007 c 218 § 22; 1999 c 117 § 3; 1994 c 273 § 23; 1986 c 296 § 3; 1982 1st ex.s. c 35 § 16; 1967 c 42 § 1; 1961 c 255 § 8; 1949 c 45 § 1; 1947 c 91 § 5; Rem. Supp. 1949 § 9578-44. Prior: 1929 c 86 § 11; 1919 c 196 § 14.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Insurance premiums taxes: RCW 48.14.020.

Additional notes found at www.leg.wa.gov

41.16.060 Tax levy for fund. It shall be the duty of the legislative authority of each municipality, each year as a part of its annual tax levy, to levy and place in the fund a tax of twenty-two and one-half cents per thousand dollars of assessed value against all the taxable property of such municipality: PROVIDED, That if a report by a qualified actuary on the condition of the fund establishes that the whole or any part of said dollar rate is not necessary to maintain the actuarial soundness of the fund, the levy of said twenty-two and one-half cents per thousand dollars of assessed value may be omitted, or the whole or any part of said dollar rate may be levied and used for any other municipal purpose.

It shall be the duty of the legislative authority of each municipality, each year as a part of its annual tax levy and in addition to the city levy limit set forth in RCW 84.52.043, to levy and place in the fund an additional tax of twenty-two and one-half cents per thousand dollars of assessed value against all taxable property of such municipality: PROVIDED, That if a report by a qualified actuary establishes that all or any part of the additional twenty-two and one-half cents per thousand dollars of assessed value levy is unnecessary to meet the estimated demands on the fund under this chapter for the ensuing budget year, the levy of said additional twenty-two and one-half cents per thousand dollars of assessed value may be omitted, or the whole or any part of such dollar rate may be levied and used for any other municipal purpose: PROVIDED FURTHER, That cities that have annexed to library districts according to RCW 27.12.360 through 27.12.395 and/or fire protection districts according to RCW 52.04.061 through 52.04.081 shall not levy this additional tax to the extent that it causes the combined levies to exceed the statutory or constitutional limits.

The amount of a levy under this section allocated to the pension fund may be reduced in the same proportion as the regular property tax levy of the municipality is reduced by chapter 84.55 RCW. [1987 c 319 § 2; 1980 c 155 § 4; 1973 1st ex.s. c 195 § 43; 1973 1st ex.s. c 195 § 144; 1970 ex.s. c 92 § 2; 1965 ex.s. c 45 § 1; 1961 c 255 § 9; 1951 c 72 § 1; 1947 c 91 § 6; Rem. Supp. 1947 § 9578-45. Prior: 1929 c 86 § 12; 1919 c 196 § 15; 1909 c 50 § 14.]

Additional notes found at www.leg.wa.gov

41.16.070 Contributions by firefighters. (1) Every firefighter employed on and after January 1, 1947, shall contribute to the fund and there shall be deducted from his or her pay and placed in the fund an amount in accordance with the following table:

Firefighter whose age at last birthday at time of entry of service was:	Contributions and deductions from salary
21 and under	5.00%
22	5.24%
23	5.50%
24	5.77%
25	6.07%
26	6.38%
27	6.72%
28	7.09%
29	7.49%
30 and over	7.92%

(2) Every firefighter employed prior to January 1, 1947, and continuing active employment shall contribute to the fund and there shall be deducted from his or her salary and placed in the fund, five percent of his or her salary.

(3) Every firefighter actively employed and eligible for retirement and not retired shall contribute to the fund and there shall be deducted from his or her salary and placed in the fund, four percent of his or her salary. [2007 c 218 § 23; 1947 c 91 § 7; Rem. Supp. 1947 § 9578-46. Prior: 1929 c 86 § 14; 1919 c 196 § 18.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.080 Retirement for service. Any firefighter employed in a fire department on and before the first day of January, 1947, hereinafter in this section and RCW 41.16.090 to 41.16.190 inclusive, referred to as "firefighter," and who shall have served twenty-five or more years and having attained the age of fifty-five years, as a member of the fire department, shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement any firefighter shall be paid a pension based upon the average monthly salary drawn for the five calendar years before retirement, the number of years of his or her service and a percentage factor based upon his or her age on entering service, as follows:

Entrance age at last birthday	Salary percentage factor
20 and under	1.50%
21	1.55%
22	1.60%
23	1.65%
24	1.70%
25	1.75%
26	1.80%
27	1.85%
28	1.90%
29	1.95%
30 and over	2.00%

Said monthly pension shall be in the amount of his or her average monthly salary for the five calendar years before retirement, times the number of years of service, times the applicable percentage factor. [2007 c 218 § 24; 1959 c 5 § 2; 1957 c 82 § 2. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part;

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1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.090 Limit of pension. All pensioners receiving a pension under the provisions of this chapter as provided for in section 12, chapter 91, Laws of 1947 and RCW 41.16.230, shall from and after April 25, 1973 receive a minimum pension of three hundred dollars per month. [1973 1st ex.s. c 181 § 1; 1967 ex.s. c 91 § 2; 1959 c 5 § 3; 1957 c 82 § 3. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

41.16.100 Payment on death of retired firefighter. The widow or widower, child, children or beneficiary of any firefighter retired under this chapter shall receive an amount equal to his or her accumulated contributions to the fund, plus earned interest thereon compounded semiannually: PROVIDED, That there shall be deducted from said sum the amount paid to decedent in pensions and the remainder shall be paid to his or her widow or widower, child, children or beneficiary: PROVIDED FURTHER, That the amount paid shall not be less than one thousand dollars. [2007 c 218 § 25; 1973 1st ex.s. c 154 § 62; 1959 c 5 § 4; 1957 c 82 § 4. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.110 Payment on death of eligible pensioner before retirement. Whenever any firefighter shall die while eligible to retirement on account of years of service, and shall not have been retired, benefits shall be paid in accordance with RCW 41.16.100. [2007 c 218 § 26; 1959 c 5 § 5; 1957 c 82 § 5. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.120 Payment on death in line of duty. Whenever any active firefighter or firefighter retired for disability shall die as the result of an accident or other fortuitous event occurring while in the performance of his or her duty, his widow or her widower may elect to accept a monthly pension equal to one-half the deceased firefighter's salary but in no case in excess of one hundred fifty dollars per month, or the sum of five thousand dollars cash. The right of election must be exercised within sixty days of the firefighter's death. If not so exercised, the pension benefits shall become fixed and shall be paid from the date of death. Such pension shall cease if, and when, he or she remarries. If there is no widow or widower, then such pension benefits shall be paid to his or her child or children. [2007 c 218 § 27; 1973 1st ex.s. c 154 § 63; 1959 c 5 § 6; 1957 c 82 § 6. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 5, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.130 Payment upon disablement in line of duty.

(1) Any firefighter who shall become disabled as a result of the performance of his or her duty or duties as defined in this chapter, may be retired at the expiration of six months from the date of his or her disability, upon his or her written request filed with his or her retirement board. The board may upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his or her duties in the fire department, the board may refuse to recommend his or her retirement.

(2) If the board deems it for the good of the fire department or the pension fund, it may recommend the applicant's retirement without any request therefor by him or her, after giving him or her a thirty days' notice. Upon his or her retirement he or she shall be paid a monthly disability pension in [an] amount equal to one-half of his or her monthly salary at date of retirement, but which shall not exceed one hundred fifty dollars a month. If he or she recovers from his or her disability he or she shall thereupon be restored to active service, with the same rank he or she held when he or she retired.

(3) If the firefighter dies during disability and not as a result thereof, RCW 41.16.160 shall apply. [2007 c 218 § 28; 1959 c 5 § 7; 1957 c 82 § 7. Prior: 1947 c 91 § 8, part; 1935 c 39 § 3, part; 1929 c 86 § 3, part; 1919 c 196 § 5, part; 1909 c 50 § 5, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.140 Payment upon disablement not in line of duty. Any firefighter who has served more than fifteen years and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, shall within sixty days exercise his or her choice either to receive his or her contribution to the fund, plus earned interest compounded semiannually, or be retired and paid a monthly pension based on the factor of his or her age shown in RCW 41.16.080, times his or her average monthly salary as a member of the fire department of his or her municipality at the date of his or her retirement, times the number of years of service rendered at the time he or she sustained such disability. If such firefighter shall die leaving surviving him a wife or surviving her a husband, or child or children, then such wife or husband, or if he leaves no wife or she leaves no husband, then his or her child or children shall receive the sum of his or her contributions, plus accumulated compound interest, and such payment shall be reduced in the amount of the payments made to deceased. [2007 c 218 § 29; 1973 1st ex.s. c 154 § 64; 1959 c 5 § 8; 1957 c 82 § 8. Prior: 1947 c 91 § 8, part; 1935 c 39 § 6, part; 1929 c 86 § 7, part; 1919 c 196 § 9, part; 1909 c 50 § 9, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.145 Annual increase in benefits payable on retirement for service, death in line of duty, and disability—Appeals. The amount of all benefits payable under the provisions of RCW 41.16.080, 41.16.120, 41.16.130, 41.16.140 and 41.16.230 shall be increased annually as hereafter in this section provided. The local pension board shall

meet subsequent to March 31st but prior to June 30th of each year for the purposes of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative. The increased benefits authorized by this section shall not affect any benefit payable under the provisions of chapter 41.16 RCW in which the benefit payment is attached to a current salary of the rank held at time of retirement. A beneficiary of benefit increases provided for pursuant to this section is hereby authorized to appeal a decision on such increases or the failure of the local pension board to order such increased benefits or the amount of such benefits to the Washington law enforcement officers' and firefighters' system retirement board provided for in *RCW 41.26.050.

For the purpose of this section the term "consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [2007 c 218 § 30; 1975-'76 2nd ex.s. c 44 § 1; 1975 1st ex.s. c 178 § 1; 1974 ex.s. c 190 § 1; 1970 ex.s. c 37 § 3; 1969 ex.s. c 209 § 38.]

***Reviser's note:** RCW 41.26.050 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the Washington law enforcement officers' and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.150 Payment on separation from service. (1) Any firefighter who has served twenty years or more and who shall resign or be dismissed, shall have the option of receiving all his or her contributions plus earned interest compounded semiannually, or a monthly pension in the amount of his or her average monthly salary times the number of years of service rendered, times one and one-half percent. Payment of such pension shall commence at the time of severance from the fire department, or at the age of fifty-five years, whichever shall be later. The firefighter shall have sixty days from the severance date to elect which option he or she will take. In the event he or she fails to exercise his or her right of election then he or she shall receive the amount of his or her contributions plus accrued compounded interest. In the event he or she elects such pension, but dies before attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves no widower, then his or her child or children shall receive only his or her contribution, plus accrued compounded interest. In the event he or she elects to take a pension and dies after attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves

no widower, then child or children shall receive his or her contributions, plus accrued compounded interest, less the amount of pension payments made to such firefighter during his or her lifetime.

(2) Any firefighter who shall have served for a period of less than twenty years, and shall resign or be dismissed, shall be paid the amount of his or her contributions, plus accrued compounded interest. [2007 c 218 § 31; 1973 1st ex.s. c 154 § 65; 1959 c 5 § 9; 1957 c 82 § 9. Prior: 1947 c 91 § 8, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.160 Payment on death not in line of duty.

Whenever any firefighter, after four years of service, shall die from natural causes, or from an injury not sustained in the performance of his or her duty and for which no pension is provided in this chapter, and who has not been retired on account of disability, his widow or her widower, if he or she was his wife or her husband at the time he or she was stricken with his or her last illness, or at the time he or she received the injuries from which he or she died; or if there is no such widow, then his or her child or children shall be entitled to the amount of his or her contributions, plus accrued compounded interest, or the sum of one thousand dollars, whichever sum shall be the greater. In case of death as above stated, before the end of four years of service, an amount based on the proportion of the time of service to four years shall be paid such beneficiaries. [2007 c 218 § 32; 1973 1st ex.s. c 154 § 66; 1959 c 5 § 10; 1957 c 82 § 10. Prior: 1947 c 91 § 8, part; 1929 c 86 § 7, part; 1919 c 196 § 9, part; 1909 c 50 § 9, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.170 Payment on death of firefighter with no dependents. Whenever a firefighter dies leaving no widow or widower or children, the amount of his or her accumulated contributions, plus accrued compounded interest only, shall be paid his or her beneficiary. [2007 c 218 § 33; 1973 1st ex.s. c 154 § 67; 1959 c 5 § 11; 1957 c 82 § 11. Prior: 1947 c 91 § 8, part; 1935 c 39 § 5; 1929 c 86 § 6, part; 1919 c 196 § 8, part; 1909 c 50 § 8, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.180 Funeral expense. Upon the death of any active firefighter, firefighter who is disabled, or retired firefighter, the board shall pay from the fund the sum of two hundred dollars to assist in defraying the funeral expenses of such firefighter. [2007 c 218 § 34; 1959 c 5 § 12; 1957 c 82 § 12. Prior: 1947 c 91 § 8, part; 1935 c 39 § 10; 1929 c 86 § 15; 1919 c 196 § 18; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.190 Waiting period—Disability retirement. No firefighter disabled in the performance of duty shall receive a pension until six months has elapsed after such disability was sustained. Therefore, whenever the retirement

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board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a firefighter has been disabled while in the performance of his or her duties, it shall declare him or her inactive. For a period of six months from the time he or she became disabled, he or she shall continue to draw full pay from his or her municipality and in addition thereto he or she shall, at the expense of the municipality, be provided with such medical, hospital and nursing care as the retirement board deems proper. If the board finds at the expiration of six months that the firefighter is unable to return to and perform his or her duties, then he or she shall be retired as herein provided. [2007 c 218 § 35; 1959 c 5 § 13; 1957 c 82 § 13. Prior: 1947 c 91 § 8, part; 1935 c 39 § 4, part; 1929 c 86 § 5, part; 1919 c 196 § 7, part; 1909 c 50 § 7, part; Rem. Supp. 1947 § 9578-47, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.200 Examination of disability pensioners—Restoration to duty.

The board shall require all firefighters receiving disability pensions to be examined every six months. All such examinations shall be made by physicians duly appointed by the board. If a firefighter shall fail to submit to such examination within ten days of having been so ordered in writing by said retirement board all pensions or benefits paid to said firefighter under this chapter, shall immediately cease and the disbursing officer in charge of such payments shall issue no further payments to such firefighter. If such firefighter fails to present himself or herself for examination within thirty days after being ordered so to do, he or she shall forfeit all rights under this chapter. If such firefighter, upon examination as aforesaid, shall be found fit for service, he or she shall be restored to duty in the same rank held at the time of his or her retirement, or if unable to perform the duties of said rank, then, at his or her request, in such other rank, the duties of which he or she is then able to perform. The board shall thereupon so notify the firefighter and shall require him or her to resume his or her duties as a member of the fire department. If, upon being so notified, such member shall fail to report for employment within ten days, he or she shall forfeit all rights to any benefits under this chapter. [2007 c 218 § 36; 1947 c 91 § 9; Rem. Supp. 1947 § 9578-48. Prior: 1929 c 86 § 8; 1919 c 196 § 10; 1909 c 50 § 10.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.210 Transfer of assets to new fund—Assumption of obligations.

(1) Funds or assets on hand in the firefighters' relief and pension fund of any municipality established under the provisions of chapter 50, Laws of 1909, as amended, after payment of warrants drawn upon and payable therefrom, shall, by the city treasurer, be transferred to and placed in the firefighters' pension fund created by this chapter; and the firefighters' pension fund created by this chapter shall be liable for and there shall be paid therefrom in the order of their issuance any and all unpaid warrants drawn upon said firefighters' relief and pension fund.

(2) Any moneys loaned or advanced by a municipality from the general or any other fund of such municipality to the firefighters' relief and pension fund created under the provisions of chapter 50, Laws of 1909, as amended, and not repaid shall be an obligation of the firefighters' pension fund

created under this chapter, and shall at such times and in such amounts as is directed by the board be repaid. [2007 c 218 § 37; 1947 c 91 § 10; Rem. Supp. 1947 § 9578-49.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.220 Credit for military service. Any person who was a member of the fire department and within the provisions of chapter 50, Laws of 1909, as amended, at the time he or she entered, and who is a veteran, as defined in RCW 41.04.005, shall have added and accredited to his or her period of employment as a firefighter as computed under this chapter his or her period of war service in such armed forces upon payment by him or her of his or her contribution for the period of his or her absence, at the rate provided by chapter 50, Laws of 1909, as amended, for other members: PROVIDED, HOWEVER, Such accredited service shall not in any case exceed five years. [2007 c 218 § 38; 1969 ex.s. c 269 § 7; 1947 c 91 § 11; Rem. Supp. 1947 § 9578-50.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.230 Repeal does not affect accrued rights. Chapter 50, Laws of 1909; chapter 196, Laws of 1919; chapter 86, Laws of 1929, and chapter 39, Laws of 1935 (secs. 9559 to 9578, incl., Rem. Rev. Stat.; secs. 396-1 to 396-43, incl., PPC) and all other acts or parts of acts in conflict herewith are hereby repealed: PROVIDED, That the repeal of said laws shall not affect any "prior firefighter," his widow, her widower, child or children, any firefighter eligible for retirement but not retired, his widow, her widower, child or children, or the rights of any retired firefighter, his widow, her widower, child or children, to receive payments and benefits from the firefighters' pension fund created under this chapter, in the amount, and in the manner provided by said laws which are hereby repealed and as if said laws had not been repealed. [2007 c 218 § 39; 1973 1st ex.s. c 154 § 68; 1947 c 91 § 12; Rem. Supp. 1947 § 9578-51.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.16.240 Application of chapter to fire protection districts. Any fire protection district having a full paid fire department may by resolution of its board of fire commissioners provide for the participation of its full time employees in a pension program in the same manner, with the same powers, and with the same force and effect as to such districts as the pension program provided by chapter 41.16 RCW for cities, towns and municipalities, or fire protection districts. [1955 c 46 § 1.]

41.16.250 Retirement and job security rights preserved upon annexation, etc., of district. If all or any portion of a fire protection district is annexed to or incorporated into a city or town, or is succeeded by a metropolitan municipal corporation or county fire department, no full time paid firefighter affected by such annexation, incorporation or succession shall receive a reduction in his or her retirement and job security rights: PROVIDED, That this section shall not apply to any retirement and job security rights authorized under chapter 41.24 RCW. [2007 c 218 § 40; 1963 c 63 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.16.260 Transfer of credit from city employees' retirement system to firefighters' pension system. See RCW 41.18.210.

41.16.920 Construction—1959 c 5—Benefits retroactively authorized. The provisions of chapter 5, Laws of 1959 are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of chapter 5, Laws of 1959. [1959 c 5 § 14.]

41.16.921 Construction—1975 1st ex.s. c 178, RCW 41.16.145. (1) The provisions of this section are procedural and remedial.

(2) The application and effect of chapter 178, Laws of 1975 1st ex. sess. shall be retroactive to and including May 6, 1974. Each benefit being paid on June 4, 1975, shall then be adjusted as if chapter 178, Laws of 1975 1st ex. sess. had been in existence since May 6, 1974. Additionally, any amounts which would have been paid had chapter 178, Laws of 1975 1st ex. sess. been in effect since May 6, 1974, shall then be due as a one-time lump sum payment.

(3) The provisions of RCW 41.16.145 shall be construed and read to have granted the percentage increase provided by that section to those receiving benefits pursuant to RCW 41.16.230, until and including July 1, 1974, at which time those persons shall be regarded as eligible for the benefits granted by chapter 190, Laws of 1974 ex. sess., as provided in subsection (2) of this section. Any amounts now payable due to a failure to so construe and read RCW 41.16.145 are now due as a one-time lump sum payment. [1975 1st ex.s. c 178 § 5.]

41.16.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 87.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.18 RCW

FIREFIGHTERS' RELIEF AND PENSIONS—1955 ACT

Sections

41.18.010	Definitions.
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41.18.020	Powers and duties of board.
41.18.030	Contributions by firefighters.

- 41.18.040 Retirement for service—Widow's or widower's pension—Payments to children.
- 41.18.042 Actuarially reduced retirement allowance—Spousal benefit.
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- 41.18.050 Disabling in line of duty—Retirement.
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- 41.18.102 Applicability of RCW 41.18.040 and 41.18.100.
- 41.18.104 Annual increase in benefits payable on retirement for service or disability—Appeals.
- 41.18.130 Payment on separation—With less than twenty-five years service or less than fifty years of age—Option to be classified as vested firefighter.
- 41.18.140 Funeral expenses.
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- 41.18.160 Certain firefighters may elect to be covered under other law.
- 41.18.165 Credit for membership in private organization acquired by municipality.
- 41.18.170 Application of chapter.
- 41.18.180 Firefighter contributor under prior law may obtain benefits of chapter—Refunds.
- 41.18.190 Transfer of membership authorized.
- 41.18.200 Minimum pension.
- 41.18.210 Transfer of credit from city employees' retirement system to firefighters' pension system.
- 41.18.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Prior acts relating to firefighters' relief and pensions: 1935 c 39; 1929 c 86; 1919 c 196; 1909 c 50 were repealed by 1947 c 91 § 12 (codified as RCW 41.16.230).

Firefighters' relief and pensions—1947 act: Chapter 41.16 RCW.

Volunteer firefighters' relief and pensions: Chapter 41.24 RCW.

41.18.010 Definitions. For the purpose of this chapter, unless clearly indicated otherwise by the context, words and phrases shall have the meaning hereinafter ascribed.

(1) "Basic salary" means the basic monthly salary, including longevity pay, attached to the rank held by the retired firefighter at the date of his or her retirement, without regard to extra compensation which such firefighter may have received for special duties assignments not acquired through civil service examination: PROVIDED, That such basic salary shall not be deemed to exceed the salary of a battalion chief.

(2) "Beneficiary" shall mean any person or persons designated by a firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased firefighter under this chapter.

(3) "Board" shall mean the municipal firefighters' pension board.

(4) "Child" or "children" means a firefighter's child or children under the age of eighteen years, unmarried, and in the legal custody of such firefighter at the time of his death or her death.

(5) "Contributions" shall mean and include all sums deducted from the salary of firefighters and paid into the fund as hereinafter provided.

(6) "Disability" shall mean and include injuries or sickness sustained by a firefighter.

(7) "Earned interest" means and includes all annual increments to the firefighters' pension fund from income earned by investment of the fund. The earned interest payable to any firefighter when he or she leaves the service and accepts his or her contributions, shall be that portion of the

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total earned income of the fund which is directly attributable to each individual firefighter's contributions. Earnings of the fund for the preceding year attributable to individual contributions shall be allocated to individual firefighters' accounts as of January 1st of each year.

(8) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firefighters of the municipality.

(9) "Firefighter" means any person hereafter regularly or temporarily, or as a substitute newly employed and paid as a member of a fire department, who has passed a civil service examination for firefighters and who is actively employed as a firefighter or, if provided by the municipality by appropriate local legislation, as a fire dispatcher: PROVIDED, Nothing in chapter 209, Laws of 1969 ex. sess. shall impair or permit the impairment of any vested pension rights of persons who are employed as fire dispatchers at the time chapter 209, Laws of 1969 ex. sess. takes effect; and any person heretofore regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, and who has contributed under and been covered by the provisions of chapter 41.16 RCW as now or hereafter amended and who has come under the provisions of this chapter in accordance with RCW 41.18.170 and who is actively engaged as a firefighter or as a member of the fire department as a firefighter or fire dispatcher.

(10) "Fund" shall have the same meaning as in RCW 41.16.010 as now or hereafter amended. Such fund shall be created in the manner and be subject to the provisions specified in chapter 41.16 RCW as now or hereafter amended.

(11) "Municipality" shall mean every city, town and fire protection district having a regularly organized full time, paid, fire department employing firefighters.

(12) "Performance of duty" shall mean the performance of work or labor regularly required of firefighters and shall include services of an emergency nature normally rendered while off regular duty.

(13) "Retired firefighter" means and includes a person employed as a firefighter and retired under the provisions of this chapter.

(14) "Widow or widower" means the surviving spouse of a firefighter and shall include the surviving wife, husband, or state registered domestic partner of a firefighter, retired on account of length of service, who was lawfully married to, or in a state registered domestic partnership with, him or to her for a period of five years prior to the time of his or her retirement; and the surviving wife, husband, or state registered domestic partner of a firefighter, retired on account of disability, who was lawfully married to, or in a state registered domestic partnership with, him or her at and prior to the time he or she sustained the injury or contracted the illness resulting in his or her disability. The word shall not mean the divorced wife or husband or former state registered domestic partner of an active or retired firefighter. [2009 c 521 § 90; 2007 c 218 § 41; 1973 1st ex.s. c 154 § 69; 1969 ex.s. c 209 § 40; 1965 ex.s. c 45 § 2; 1961 c 255 § 1; 1955 c 382 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.015 Pension boards in fire districts created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each fire protection district which qualifies under this chapter, a firefighters' pension board to consist of the following five members, the chairperson of the fire commissioners for said district who shall be chairperson of the board, the county auditor, county treasurer, and in addition, two regularly employed or retired firefighters elected by secret ballot of the employed and retired firefighters. Retired members who are subject to the jurisdiction of the pension board have both the right to elect and the right to be elected under this section. The first members to be elected by the firefighters shall be elected annually for a two-year term. The two firefighter elected members shall, in turn, select a third eligible member who shall serve in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firefighter or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairperson to act, the board may select a chairperson pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairperson. A majority of the members of said board shall constitute a quorum and have power to transact business. [2007 c 218 § 42; 1992 c 6 § 1; 1961 c 255 § 11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.020 Powers and duties of board. The board, in addition to such general and special powers as are vested in it by the provisions of chapter 41.16 RCW, which powers the board shall have with respect to this chapter shall have power to:

- (1) Generally supervise and control the administration of this chapter;
- (2) Pass upon and allow or disallow applications for pensions or other benefits provided by this chapter;
- (3) Provide for payment from the firefighters' pension fund of necessary expenses of maintenance and administration required by the provisions of this chapter;
- (4) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same;
- (5) Require the physicians appointed under the provisions of chapter 41.16 RCW, to examine and report to the board upon all applications for relief and pensions under this chapter; and
- (6) Perform such acts, receive such compensation and enjoy such immunity as provided in RCW 41.16.040. [2007 c 218 § 43; 1955 c 382 § 2.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.030 Contributions by firefighters. Every firefighter to whom this chapter applies shall contribute to the firefighters' pension fund a sum equal to six percent of his or her basic salary which shall be deducted therefrom and placed in the fund. [2007 c 218 § 44; 1961 c 255 § 2; 1955 c 382 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.040 Retirement for service—Widow's or widower's pension—Payments to children. Whenever any firefighter, *at the time of taking effect of this act or thereafter, shall have been appointed under civil service rules and have served for a period of twenty-five years or more as a member in any capacity of the regularly constituted fire department of any city, town or fire protection district which may be subject to the provisions of this chapter, and shall have attained the age of fifty years, he or she shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement such firefighter shall be paid a monthly pension which shall be equal to fifty percent of the basic salary now or hereafter attached to the same rank and status held by the said firefighter at the date of his or her retirement: PROVIDED, That a firefighter hereafter retiring who has served as a member for more than twenty-five years, shall have his or her pension payable under this section increased by two percent of the basic salary per year for each full year of such additional service to a maximum of five additional years.

Upon the death of any such retired firefighter, his or her pension shall be paid to his widow or her widower, at the same monthly rate that the retired firefighter would have received had he or she lived, if such widow or widower was his wife or her husband for a period of five years prior to the time of his or her retirement. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever occurs first. [2007 c 218 § 45; 1973 1st ex.s. c 154 § 70; 1969 ex.s. c 209 § 29; 1965 ex.s. c 45 § 3; 1961 c 255 § 3; 1955 c 382 § 4.]

***Reviser's note:** The phrase "at the time of taking effect of this act or thereafter" first appears in the 1961 amendment, which became effective at midnight June 7, 1961 (see preface, 1961 session laws). The basic act, 1955 c 382, became effective at midnight June 8, 1955 (see preface, 1955 session laws).

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.042 Actuarially reduced retirement allowance—Spousal benefit. (1) Any retired firefighter married to a spouse ineligible for survivor benefits under RCW 41.18.040, 41.18.080, and 41.18.100 may choose an actuarially equivalent benefit adopted by the board that pays the retired firefighter a reduced retirement allowance, and upon death such portion of the retired firefighter's reduced retirement allowance as designated by the retired firefighter shall be continued throughout the life of the spouse.

(2) A retired firefighter who married a spouse ineligible for survivor benefits under RCW 41.18.040, 41.18.080, and 41.18.100 prior to July 26, 2009, has one year after July 26, 2009, to designate their spouse as a survivor beneficiary.

(3) The benefit provided to a child survivor beneficiary under RCW 41.18.040, 41.18.080, and 41.18.100 shall not be affected or reduced by the retired firefighter's selection of the actuarially reduced spousal survivor benefit provided by this section, and shall be equivalent to the amount payable as if the choice under subsection (1) of this section was not made.

(4)(a) Any retired firefighter who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the board proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the beneficiary's death shall be the current monthly amount payable as if the selection under subsection (1) of this section was not made. [2009 c 156 § 1.]

41.18.045 Pension benefits for widows or widowers of unretired, eligible firefighters—Retroactive. Upon the death of a firefighter who is eligible to retire under RCW 41.18.040 as now or hereafter amended, but who has not retired, a pension shall be paid to his widow or her widower at the same monthly rate that he or she was eligible to receive at the time of his or her death, if such widow or widower was his wife or her husband for a period of five years prior to his or her death. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever comes first.

This section shall apply retroactively for the benefit of all widows or widowers and survivors of firefighters who died after January 1, 1967, if such firefighters were otherwise eligible to retire on the date of death. [2007 c 218 § 46; 1973 1st ex.s. c 154 § 71; 1969 ex.s. c 209 § 25.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.050 Disablement in line of duty—Retirement. Every firefighter who shall become disabled as a result of the performance of duty may be retired at the expiration of six months from the date of his or her disability, upon his or her written request filed with his or her retirement board. The board may, upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his or her duties in the fire department, the board may refuse to recommend his or her retirement. If, after the expiration of six months from the date of his or her disability, the board deems it for the good of the fire department or the pension fund it may recommend the retirement of a firefighter disabled as a result of the performance of duty without any request for the same by him or her, and after having been given by the board a thirty days' written notice of such recommendation he or she shall be retired. [2007 c 218 § 47; 1955 c 382 § 5.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.060 Disablement in line of duty—Inactive period—Allowance—Medical, hospital, nursing care. Whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a firefighter has been disabled while in the performance of his or her duties it shall declare the firefighter

inactive. For a period of six months from the time of the disability the firefighter shall draw from the pension fund a disability allowance equal to his or her basic monthly salary and, in addition, shall be provided with medical, hospital and nursing care as long as the disability exists. The board may, at its discretion, elect to reimburse the firefighter who is disabled for premiums the firefighter has paid for medical insurance that supplements medicare, including premiums the firefighter has paid for medicare part B coverage. If the board finds at the expiration of six months that the firefighter is unable to return to and perform his or her duties, the firefighter shall be retired at a monthly sum equal to fifty percent of the amount of his or her basic salary at any time thereafter attached to the rank which he or she held at the date of retirement: PROVIDED, That where, at the time of retirement hereafter for disability under this section, the firefighter has served honorably for a period of more than twenty-five years as a member, in any capacity of the regularly constituted fire department of a municipality, the firefighter shall have his or her pension payable under this section increased by two percent of his or her basic salary per year for each full year of additional service to a maximum of five additional years. [2007 c 218 § 48; 1992 c 22 § 1; 1969 ex.s. c 209 § 30; 1961 c 255 § 4; 1955 c 382 § 6.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.080 Payment upon disablement not in line of duty. Any firefighter who has completed his or her probationary period and has been permanently appointed, and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, may request to be retired by filing a written request with his or her retirement board within sixty days from the date of his or her disability. The board may, upon such request being filed, consult such medical advice as it deems fit and proper. If the board finds the firefighter capable of performing his or her duties, it may refuse to recommend retirement and order the firefighter back to duty. If no request for retirement has been received after the expiration of sixty days from the date of his or her disability, the board may recommend retirement of the firefighter. The board shall give the firefighter a thirty-day written notice of its recommendation, and he or she shall be retired upon expiration of said notice. Upon retirement he or she shall receive a pension equal to fifty percent of his or her basic salary. For a period of ninety days following such disability the firefighter shall receive an allowance from the fund equal to his or her basic salary. He or she shall during said ninety days be provided with such medical, hospital, and nursing care as the board deems proper. No funds shall be expended for such disability if the board determines that the firefighter was gainfully employed or engaged for compensation in other than fire department duty when the disability occurred, or if such disability was the result of dissipation or abuse. Whenever any firefighter shall die as a result of a disability sustained not in the line of duty, his widow or her widower shall receive a monthly pension equal to one-third of his or her basic salary; if such widow or widower has dependent upon her or him for support a child or children of such deceased firefighter, he or she shall receive an additional pension as follows: One child, one-eighth of the deceased's basic

salary; two children, one-seventh; three or more children, one-sixth. If there be no widow or widower, monthly payments equal to one-third of the deceased firefighter's basic salary shall be made to his or her child or children. The widow or widower may elect at any time in writing to receive a cash settlement, and if the board after hearing finds it financially beneficial to the pension fund, he or she may receive the sum of five thousand dollars cash in lieu of all future monthly pension payments, and other benefits, including benefits to any child and/or children. [2009 c 156 § 2; 2007 c 218 § 49; 1973 1st ex.s. c 154 § 72; 1965 c 109 § 1; 1961 c 255 § 5; 1955 c 382 § 9.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.090 Examination of disability pensioners—Restoration to active duty. The board shall require all firefighters receiving disability pensions to be examined every six months: PROVIDED, That no such examinations shall be required if upon certification by physicians the board shall formally enter upon its records a finding of fact that the disability is and will continue to be of such a nature that return to active duty can never reasonably be expected. All examinations shall be made by physicians duly appointed by the board. If a firefighter shall willfully fail to present himself or herself for examination, within thirty days after being ordered so to do, he or she shall forfeit all rights under this chapter. If such firefighter, upon examination as aforesaid, shall be found fit for service, he or she shall be restored to duty in the same rank held at the time of his or her retirement, or if unable to perform the duties of said rank then, at his or her request, in such other like or lesser rank as may be or become open and available, the duties of which he or she is then able to perform. The board shall thereupon so notify the firefighter and shall require him or her to resume his or her duties as a member of the fire department. If, upon being so notified, such member shall willfully fail to report for employment within ten days, he or she shall forfeit all rights to any benefit under this chapter. [2007 c 218 § 50; 1955 c 382 § 15.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.100 Payment on death in line of duty or while retired on account of service-connected disability. In the event a firefighter is killed in the performance of duty, or in the event a firefighter retired on account of service-connected disability shall die from any cause, his widow or her widower shall receive a monthly pension under one of the following applicable provisions: (1) If a firefighter is killed in the line of duty his widow or her widower shall receive a monthly pension equal to fifty percent of his or her basic salary at the time of his or her death; (2) if a firefighter who has retired on account of a service-connected disability dies, his widow or her widower shall receive a monthly pension equal to the amount of the monthly pension such retired firefighter was receiving at the time of his or her death. If she or he at any time so elects in writing and the board after hearing finds it to be financially beneficial to the pension fund, he or she may receive in lieu of all future monthly pension and other benefits, including benefits to child or children, the sum of five thousand dollars in cash. If there be no widow or widower at the time of such firefighter's death or upon the widow's or

widower's death the monthly pension benefits provided for under this section shall be paid to and divided among his or her child or children share and share alike, until they reach the age of eighteen or are married, whichever occurs first. A pension payable under the provisions of this section shall not be less than that specified under RCW 41.18.200. [2009 c 156 § 3; 2007 c 218 § 51; 1975 1st ex.s. c 178 § 4; 1973 1st ex.s. c 154 § 73; 1969 ex.s. c 209 § 28; 1965 ex.s. c 45 § 4; 1955 c 382 § 8.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.102 Applicability of RCW 41.18.040 and 41.18.100. The provisions of RCW 41.18.040 and 41.18.100 shall be applicable to all firefighters employed prior to March 1, 1970, but shall not apply to any former firefighter who has terminated his or her employment prior to July 1, 1969. [2007 c 218 § 52; 1969 ex.s. c 209 § 32.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.104 Annual increase in benefits payable on retirement for service or disability—Appeals. The amount of all benefits payable under the provisions of RCW 41.18.040, 41.18.080, 41.18.100 and 41.18.200 as now or hereafter amended, shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purpose of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased as authorized by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative. The increased benefits authorized by this section shall not affect any benefit payable under the provisions of chapter 41.18 RCW in which the benefit payment is attached to a current salary of the rank held at time of retirement. A beneficiary of benefit increases provided for pursuant to this section is hereby authorized to appeal a decision on such increases or the failure of the local pension board to order such increased benefits or the amount of such benefits to the Washington law enforcement officers' and firefighters' system retirement board provided for in *RCW 41.26.050.

For the purpose of this section the term

"Consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [1975-'76 2nd ex.s. c 44 § 2; 1975 1st ex.s. c 178 § 2; 1974 ex.s. c 190 § 2; 1970 ex.s. c 37 § 1; 1969 ex.s. c 209 § 33.]

*Reviser's note: RCW 41.26.050 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the Washington law enforcement officers'

and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections.

Additional notes found at www.leg.wa.gov

41.18.130 Payment on separation—With less than twenty-five years service or less than fifty years of age—Option to be classified as vested firefighter. Any firefighter who shall have served for a period of less than twenty-five years, or who shall be less than fifty years of age, and shall resign, or be dismissed from the fire department for a reason other than conviction for a felony, shall be paid the amount of his or her contributions to the fund plus earned interest: PROVIDED, That in the case of any firefighter who has completed twenty years of service, such firefighter, upon termination for any cause except for a conviction of a felony, shall have the option of electing, in lieu of recovery of his or her contributions as herein provided, to be classified as a vested firefighter in accordance with the following provisions:

(1) Written notice of such election shall be filed with the board within thirty days after the effective date of such firefighter's termination;

(2) During the period between the date of his or her termination and the date upon which he or she becomes a retired firefighter as hereinafter provided, such vested firefighter and his or her spouse or dependent children shall be entitled to all benefits available under chapter 41.18 RCW to a retired firefighter and his or her spouse or dependent children with the exception of the service retirement allowance as herein provided for: PROVIDED, That any claim for medical coverage under RCW 41.18.060 shall be attributable to service connected illness or injury;

(3) Any firefighter electing to become a vested firefighter shall be entitled at such time as he or she otherwise would have completed twenty-five years of service had he or she not terminated, to receive a service retirement allowance computed on the following basis: Two percent of the amount of salary attached to the position held by the vested firefighter for the year preceding the date of his or her termination, for each year of service rendered prior to the date of his or her termination. [2007 c 218 § 53; 1969 ex.s. c 209 § 31; 1961 c 255 § 6; 1955 c 382 § 11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

41.18.140 Funeral expenses. The board shall pay from the firefighters' pension fund upon the death of any active or retired firefighter the sum of five hundred dollars, to assist in defraying the funeral expenses of such firefighter. [2007 c 218 § 54; 1961 c 255 § 7; 1955 c 382 § 13.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.150 Credit for military service. Every person who was a member of the fire department at the time he or she entered and served in the armed forces of the United States in time of war, whether as a draftee, or inductee, and who shall have been discharged from such armed forces under conditions other than dishonorable, shall have added and accredited to his or her period of employment as a firefighter his or her period of war or peacetime service in the

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armed forces: PROVIDED, That such added and accredited service shall not as to any individual exceed five years. [2007 c 218 § 55; 1955 c 382 § 14.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.160 Certain firefighters may elect to be covered under other law. Every firefighter as defined in this chapter heretofore employed as a member of a fire department, whether or not as a prior firefighter as defined in chapter 41.16 RCW, who desires to make the contributions and avail himself or herself of the pension and other benefits of said chapter 41.16 RCW, can do so by handing to and leaving with the firefighters' pension board of his or her municipality a written notice of such intention within sixty days of the effective date of this chapter, or if he or she was on disability retirement under chapter 41.16 RCW, at the effective date of this chapter and has been recalled to active duty by the retirement board, shall give such notice within sixty days of his or her return to active duty, and not otherwise. [2007 c 218 § 56; 1955 c 382 § 17.]

Reviser's note: Effective date of chapter 41.18 RCW is midnight June 8, 1955; see preface 1955 session laws.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.165 Credit for membership in private organization acquired by municipality. Every person who was a member of a firefighting organization operated by a private enterprise, which firefighting organization shall be hereafter acquired before September 1, 1959, by a municipality as its fire department as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such firefighting organization, shall have added and accredited to his or her period of employment as a firefighter his or her period of service with said private enterprise, except that this shall apply only to those persons who are in the service of such firefighting organization at the time of its acquisition by the municipality and who remain in the service of that municipality until this chapter shall become applicable to such persons.

No such person shall have added and accredited to his or her period of employment as a firefighter his or her period of service with said private enterprise unless he, she, or a third party shall pay to the municipality his or her contribution for the period of such service with the private enterprise at the rate provided in RCW 41.18.030, or, if he or she shall be entitled to any private pension or retirement benefits as a result of such service with the private enterprise, unless he or she agrees at the time of his or her employment by the municipality to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added and accredited service by the amount of those private pension or retirement benefits received. For the purposes of RCW 41.18.030, the date of entry of service shall be deemed the date of entry into service with the private enterprise, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private enterprise.

The city may receive payments for these purposes from a third party and shall make from such payments contribu-

tions with respect to such prior service as may be necessary to enable the fund to assume its obligations. [2007 c 218 § 57; 1959 c 69 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.170 Application of chapter. The provisions of this chapter governing contributions, pensions, and benefits shall have exclusive application (1) to firefighters as defined in this chapter hereafter becoming members of a fire department, (2) to firefighters as defined in this chapter heretofore employed in a department who have not otherwise elected as provided for in RCW 41.18.160, and (3) to firefighters on disability retirement under chapter 41.16 RCW, at the effective date of this chapter, who thereafter shall have been returned to active duty by the retirement board, and who have not otherwise elected as provided for in RCW 41.18.160 within sixty days after return to active duty. [2007 c 218 § 58; 1955 c 382 § 16.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.180 Firefighter contributor under prior law may obtain benefits of chapter—Refunds. Any firefighter who has made contributions under any prior act may elect to avail himself or herself of the benefits provided by this chapter or under such prior act by filing written notice with the board within sixty days from June 7, 1961: PROVIDED, That any firefighter who has received refunds by reason of selecting the benefits of prior acts shall return the amount of such refunds as a condition to coverage under chapter 255, Laws of 1961. [2007 c 218 § 59; 1961 c 255 § 12.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.190 Transfer of membership authorized. Any firefighter as defined in RCW 41.18.010 who has prior to July 1, 1969 been employed as a member of a fire department and who desires to make contributions and avail himself or herself of the pension and other benefits of chapter 41.18 RCW as now law or hereafter amended, may transfer his or her membership from any other pension fund, except the Washington law enforcement officers' and firefighters' retirement system, to the pension fund provided in chapter 41.18 RCW: PROVIDED, That such firefighter transmits written notice of his or her intent to transfer to the pension board of his or her municipality prior to September 1, 1969. [2007 c 218 § 60; 1969 ex.s. c 209 § 41.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Law enforcement officers' and firefighters' retirement system: Chapter 41.26 RCW.

Additional notes found at www.leg.wa.gov

41.18.200 Minimum pension. All retirees and survivors receiving a pension under the provisions of this chapter shall from and after April 25, 1973 receive a minimum pension of three hundred dollars per month. [1973 1st ex.s. c 181 § 2.]

41.18.210 Transfer of credit from city employees' retirement system to firefighters' pension system. Any former employee of a department of a city of the first class, who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the fire depart-

ment of such city, may transfer his or her former membership credit from the city employees' retirement system to the firefighter's pension system created by chapters 41.16 and 41.18 RCW by filing a written request with the board of administration and the municipal firefighters' pension board, respectively.

Upon the receipt of such request, the transfer of membership to the city's firefighter's pension system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration shall transmit to the municipal firefighters' pension board a record of service credited to such member which shall be computed and credited to such member as a part of his or her period of employment in the city's firefighter's pension system. For the purpose of the transfer contemplated by this section, those affected individuals who have formerly withdrawn funds from the city employees' retirement system shall be allowed to restore contributions withdrawn from that retirement system directly to the firefighter's pension system and receive credit in the firefighter's pension system for their former membership service in the prior system.

Any employee so transferring shall have all the rights, benefits, and privileges that he or she would have been entitled to had he or she been a member of the city's firefighter's pension system from the beginning of his or her employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon such service with the city.

The right of any employee to file a written request for transfer of membership as set forth in this section shall expire December 31, 1974. [2007 c 218 § 61; 1974 ex.s. c 148 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

41.18.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 89.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.20 RCW

POLICE RELIEF AND PENSIONS IN FIRST-CLASS CITIES

Sections

- 41.20.005 Definitions.
- 41.20.010 Board of trustees—Composition.

41.20.020	Officers of board—Annual report.
41.20.030	Meetings—Disbursements of fund—Quorum.
41.20.040	Additional powers of board.
41.20.050	Pension on retirement for years of service.
41.20.060	Pension on retirement for duty connected disability.
41.20.061	Increase in presently payable benefits for service or disability authorized.
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41.20.070	Certificate of disability.
41.20.080	Pension on death before or after retirement.
41.20.085	Pension on death before or after retirement—Surviving spouse not formerly covered—"Surviving spouse" defined.
41.20.086	Increase in certain presently payable death benefits authorized.
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41.20.100	Examination of disability pensioners—Emergency duty.
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41.20.005 Definitions. As used in chapter 41.20 RCW:

- (1) "Rank" means civil service rank.
- (2) "Position" means the particular employment held at any particular time, which may or may not be the same as civil service rank.
- (3) Words importing masculine gender shall extend to females also.
- (4) "Salary" means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages. [1969 ex.s. c 209 § 39; 1959 c 78 § 1.]

Additional notes found at www.leg.wa.gov

41.20.010 Board of trustees—Composition. (1) The mayor or his or her designated representative who shall be an elected official of the city, and the clerk, treasurer, president of the city council or mayor pro tem of each city of the first class, or in case any such city has no city council, the commissioner who has supervision of the police department, together with three active or retired members of the police department, to be elected as herein provided, in addition to the duties now required of them, are constituted a board of trustees of the relief and pension fund of the police department of each such city, and shall provide for the disbursement of the fund, and designate the beneficiaries thereof.

(2) The police department and the retired law enforcement officers of each city of the first class shall elect three members to act as members of the board. Members shall be elected for three year terms. Existing members shall continue in office until replaced as provided for in this section.

(3) Such election shall be held in the following manner. Not more than thirty nor less than fifteen days preceding the first day of June in each year, written notice of the nomination of any member or retired member of the department for membership on the board may be filed with the secretary of the board. Each notice of nomination shall be signed by not less than five members or retired members of the department,

and nothing herein contained shall prevent any member or retired member of the department from signing more than one notice of nomination. The election shall be held on a date to be fixed by the secretary during the month of June. Notice of the dates upon which notice of nomination may be filed and of the date fixed for the election of such members of the board shall be given by the secretary of the board by posting written notices thereof in a prominent place in the police headquarters. For the purpose of such election, the secretary of the board shall prepare and furnish printed or typewritten ballots in the usual form, containing the names of all persons regularly nominated for membership and shall furnish a ballot box for the election. Each member and each retired member of the police department shall be entitled to vote at the election for one nominee as a member of the board. The chief of the department shall appoint two members to act as officials of the election, who shall be allowed their regular wages for the day, but shall receive no additional compensation therefor. The election shall be held in the police headquarters of the department and the polls shall open at 7:30 a.m. and close at 8:30 p.m. The one nominee receiving the highest number of votes shall be declared elected to the board and his or her term shall commence on the first day of July succeeding the election. In the first election the nominee receiving the greatest number of votes shall be elected to the three year term, the second greatest to the two year term and the third greatest to the one year term. Retired members who are subject to the jurisdiction of the board have both the right to elect and the right to be elected under this section. Ballots shall contain all names of those nominated, both active and retired. Notice of nomination and voting by retired members shall be conducted by the board. [2012 c 117 § 20; 1988 c 164 § 3; 1973 1st ex.s. c 16 § 1; 1955 c 69 § 1; 1911 c 18 § 1; 1909 c 39 § 1; RRS § 9579.]

41.20.020 Officers of board—Annual report. The mayor, or his or her designated representative, shall be ex officio chair, the clerk shall be ex officio secretary, and the treasurer shall be ex officio treasurer of said board. The secretary of said board, at the time of making his or her annual reports as said city clerk, shall annually report the condition of said fund, the receipts and disbursements on account of the same, together with a complete list of the beneficiaries of said fund, and the amounts paid to each of them. [2012 c 117 § 21; 1973 1st ex.s. c 16 § 2; 1909 c 39 § 2; RRS § 9580.]

41.20.030 Meetings—Disbursements of fund—Quorum. The board herein provided for shall hold monthly meetings on the first Mondays of each month and upon the call of its president. It shall issue warrants, signed by its president and secretary, to the persons entitled thereto under provisions of this chapter other than RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 for the amounts of money ordered paid to such persons from such fund by said board, which warrants shall state for what purpose such payments are made; it shall keep a record of its proceedings, which record shall be a public record; it shall, at each monthly meeting, send to the treasurer of such city a written or printed list of all persons entitled to payment under provisions of this chapter other than RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 from the fund herein provided for, stating the

amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The treasurer of such city shall thereupon enter a copy of said list upon a book to be kept for that purpose and which shall be known as "the police relief and pension fund book", and the said board shall direct payment of the amounts named therein to the persons entitled thereto, out of such fund. The treasurer shall prepare and enter into such book an additional list showing those persons entitled to payment under RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 and shall on the last day of each month issue warrants in the appropriate amounts to such persons. A majority of all the members of said board herein provided for shall constitute a quorum, and have power to transact business. [1973 c 143 § 1; 1911 c 18 § 5; 1909 c 39 § 11; RRS § 9589.]

41.20.040 Additional powers of board. The board shall, in addition to other powers herein granted, have power:

(1) To compel witnesses to attend and testify before it upon all matters connected with the administration of this chapter, in the same manner as provided by law for the taking of testimony in courts of record in this state, and its president or any member of the board may administer oaths to such witnesses.

(2) To provide for the payment from the fund of all necessary expenses and printing.

No compensation or emolument shall be paid to any member of the board for any duty required or performed under this chapter.

Each board may make all needful rules and regulations for its guidance in the administration of and in conformity with the provisions of this chapter. [1955 c 69 § 2; 1909 c 39 § 12; RRS § 9590.]

41.20.050 Pension on retirement for years of service.

Whenever a person has been duly appointed, and has served honorably for a period of twenty-five years, as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the board, after hearing, if one is requested in writing, may order and direct that such person be retired, and the board shall retire any member so entitled, upon his or her written request therefor. The member so retired *hereafter shall be paid from the fund during his or her lifetime a pension equal to fifty percent of the amount of salary *at any time hereafter attached to the position held by the retired member for the year preceding the date of his or her retirement: PROVIDED, That, except as to a position higher than that of captain held for at least three calendar years prior to date of retirement, no such pension shall exceed an amount equivalent to fifty percent of the salary of captain, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED FURTHER, That a person *hereafter retiring who has served as a member for more than twenty-five years, shall have his or her pension payable under this section increased by two percent of his or her salary per year for each full year of such additional service to a maximum of five additional years.

Any person who has served in a position higher than the rank of captain for a minimum of three years may elect to

retire at such higher position and receive for his or her lifetime a pension equal to fifty percent of the amount of the salary *at any time hereafter attached to the position held by such retired member for the year preceding his or her date of retirement: PROVIDED, That such person make the said election to retire at a higher position by September 1, 1969 and at the time of making the said election, pay into the relief and pension fund in addition to the contribution required by RCW 41.20.130: (1) an amount equal to six percent of that portion of all monthly salaries previously received upon which a sum equal to six percent has not been previously deducted and paid into the police relief and pension fund; (2) and such person agrees to continue paying into the police relief and pension fund until the date of retirement, in addition to the contributions required by RCW 41.20.130, an amount equal to six percent of that portion of monthly salary upon which a six percent contribution is not currently deducted pursuant to RCW 41.20.130.

Any person affected by this chapter who at the time of entering the armed services was a member of such police department and is a veteran as defined in RCW 41.04.005, shall have added to his or her period of employment as computed under this chapter, his or her period of war service in the armed forces, but such credited service shall not exceed five years and such period of service shall be automatically added to each member's service upon payment by him or her of his or her contribution for the period of his or her absence at the rate provided in RCW 41.20.130. [2012 c 117 § 22; 1973 1st ex.s. c 181 § 3; 1969 ex.s. c 269 § 6; 1969 ex.s. c 219 § 1; 1969 ex.s. c 209 § 36; 1969 c 123 § 1; 1961 c 191 § 1; 1959 c 78 § 3; 1959 c 6 § 1. Prior: 1957 c 84 § 1; 1955 c 69 § 3; 1945 c 45 § 1; 1937 c 24 § 1; 1915 c 40 § 2; 1911 c 18 § 2; 1909 c 39 § 4; Rem. Supp. 1945 § 9582.]

*Reviser's note: The words "hereafter" and "at any time hereafter" first appear in the 1961 amendment.

Additional notes found at www.leg.wa.gov

41.20.060 Pension on retirement for duty connected disability. Whenever any person, while serving as a police officer in any such city becomes physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his or her duties as a police officer, or becomes incapacitated for service on account of any duty connected disability, such incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, the board may, upon his or her written request filed with the secretary, or without such written request, if it deems it to be for the benefit of the public, retire such person from the department, and order and direct that he or she be paid from the fund during his or her lifetime, a pension equal to fifty percent of the amount of salary *at any time hereafter attached to the position which he or she held in the department at the date of his or her retirement, but not to exceed an amount equivalent to fifty percent of the salary of captain except as to a position higher than that of captain held for at least three calendar years prior to the date of retirement in which case as to such position the provisions of RCW 41.20.050 shall apply, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED, That where, at the time of retirement hereafter for duty connected disability under this

section, such person has served honorably for a period of more than twenty-five years as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the foregoing percentage factors to be applied in computing the pension payable under this section shall be increased by two percent of his or her salary per year for each full year of such additional service to a maximum of five additional years.

Whenever such disability ceases, the pension shall cease, and such person shall be restored to active service at the same rank he or she held at the time of his or her retirement, and at the current salary attached to said rank at the time of his or her return to active service.

Disability benefits provided for by this chapter shall not be paid when the police officer is disabled while he or she is engaged for compensation in outside work not of a police or special police nature. [2012 c 117 § 23; 1998 c 157 § 3; 1973 1st ex.s. c 181 § 4; 1969 ex.s. c 219 § 2; 1969 ex.s. c 209 § 37; 1969 c 123 § 2; 1961 c 191 § 2; 1959 c 78 § 4; 1959 c 6 § 2; 1957 c 84 § 2; 1955 c 69 § 5; 1937 c 24 § 2; 1911 c 18 § 3; 1909 c 39 § 5; RRS § 9583.]

***Reviser's note:** The words "at any time hereafter" first appear in the 1961 amendment.

Purpose—1998 c 157 §§ 2-5: "The purpose of sections 2 through 5 of this act is to clarify that the intent of the legislature in enacting RCW 41.20.060, insofar as that section provides benefits to members for disabilities incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees for personal injuries incurred in the course of employment. Accordingly this act amends and divides RCW 41.20.060 into two separate sections. Section 3 of this act clarifies and emphasizes the legislature's intent that the disability benefits granted by RCW 41.20.060, as amended, are granted only to those members who become disabled by any injury or incapacity that is incurred in the line of duty. Section 4 of this act continues to provide disability retirement benefits to members who become disabled by an injury or incapacity not incurred in the line of duty." [1998 c 157 § 2.]

Additional notes found at www.leg.wa.gov

41.20.061 Increase in presently payable benefits for service or disability authorized. See RCW 41.26.250.

41.20.065 Pension on retirement for nonduty disability. Whenever any person, while serving as a police officer in any such city becomes physically disabled by reason of any bodily injury not incurred in the line of duty, or becomes incapacitated for service, such incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, the board may, upon his or her written request filed with the secretary, or without such written request, if it deems it to be for the benefit of the public, retire such person from the department, and order and direct that he or she be paid from the fund during his or her lifetime, a pension equal to fifty percent of the amount of salary at any time hereafter attached to the position which he or she held in the department at the date of his or her retirement, but not to exceed an amount equivalent to fifty percent of the salary of captain, except as to a position higher than that of captain held for at least three calendar years prior to the date of retirement, in which case as to such position the provisions of RCW 41.20.050 shall apply, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED, That where, at the time of retirement hereafter for disability under this section, such

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person has served honorably for a period of more than twenty-five years as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the foregoing percentage factors to be applied in computing the pension payable under this section shall be increased by two percent of his or her salary per year for each full year of such additional service, to a maximum of five additional years.

Whenever such disability ceases, the pension shall cease, and such person shall be restored to active service at the same rank he or she held at the time of his or her retirement, and at the current salary attached to said rank at the time of his or her return to active service.

Disability benefits provided for by this chapter shall not be paid when the police officer is disabled while he or she is engaged for compensation in outside work not of a police or special police nature. [2012 c 117 § 24; 1998 c 157 § 4.]

Purpose—1998 c 157 §§ 2-5: See note following RCW 41.20.060.

Additional notes found at www.leg.wa.gov

41.20.070 Certificate of disability. No person shall be retired, as provided in RCW 41.20.060, or receive any benefit from said fund, unless there shall be filed with said board certificate of his or her disability, which certificate shall be subscribed and sworn to by said person, and by the city physician (if there be one) and two regularly licensed and practicing physicians of such city, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid. [2012 c 117 § 25; 1909 c 39 § 6; RRS § 9584.]

41.20.080 Pension on death before or after retirement. Whenever any member of the police department of any such city loses his or her life while actually engaged in the performance of duty, or as the proximate result thereof, leaving a surviving spouse or child or children under the age of eighteen years, upon satisfactory proof of such facts made to it, the board shall order and direct that a pension, equal to one-half of the amount of the salary *at any time hereafter attached to the position which such member held in the police department at the time of his or her death, shall be paid to the surviving spouse for life, or if there is no surviving spouse, or if the surviving spouse shall die, then to the child or children until they are eighteen years of age: PROVIDED, That if such spouse or child or children marry, the person so marrying shall thereafter receive no further pension from the fund: PROVIDED FURTHER, That all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973.

If any member so losing his or her life, leaves no spouse, or child or children under the age of eighteen years, the board shall pay the sum of two hundred dollars toward the funeral expenses of such member. [2012 c 117 § 26; 1973 1st ex.s. c 181 § 5; 1961 c 191 § 3; 1959 c 78 § 5; 1959 c 6 § 3; 1957 c 84 § 3; 1955 c 69 § 6; 1937 c 24 § 3; 1915 c 40 § 3; 1909 c 39 § 7; RRS § 9585.]

***Reviser's note:** The words "at any time hereafter" first appear in the 1961 amendment.

41.20.085 Pension on death before or after retirement—Surviving spouse not formerly covered—"Surviv-

ing spouse" defined. Whenever any member of the police department of any such city shall die, or shall have heretofore died, or whenever any such member who has been heretofore retired or who is hereafter retired for length of service or a disability, shall have died, or shall die, leaving a surviving spouse or child or children under the age of eighteen years, upon satisfactory proof of such facts made to it, the board shall order and direct that a pension equal to one-third of the amount of salary at any time hereafter attached to the position held by such member in the police department at the time of his or her death or retirement, not to exceed one-third of the salary of captain, shall be paid to the surviving spouse during the surviving spouse's life, and in addition, to the child or children, until they are eighteen years of age, as follows: For one child, one-eighth of the salary on which such pension is based; for two children, a total of one-seventh of said salary; and for three or more children, a total of one-sixth of said salary: PROVIDED, If such spouse or child or children marry, the person so marrying shall receive no further pension from the fund. In case there is no surviving spouse, or if the surviving spouse shall die, the child or children shall be entitled to the spouse's share in addition to the share specified herein until they reach eighteen years of age. No spouse shall be entitled to any payments on the death of a retired officer unless such surviving spouse has been married to such officer for a period of at least five years prior to the date of his or her retirement.

As of April 25, 1973, a surviving spouse not otherwise covered by the provisions of section 2, chapter 78, Laws of 1959, shall be entitled to a pension of three hundred dollars per month.

"Surviving spouse" as used in this section means surviving female or male spouse. [2012 c 117 § 27; 1973 1st ex.s. c 181 § 6; 1969 ex.s. c 209 § 26; 1961 c 140 § 1; 1959 c 78 § 2.]

Additional notes found at www.leg.wa.gov

41.20.086 Increase in certain presently payable death benefits authorized. See RCW 41.26.260.

41.20.090 Lump sum payment on death before or after retirement. Whenever any member of the police department of such city shall, after five years of service in said department, die, his or her surviving spouse or, if there is no surviving spouse, the child or children under the age of eighteen years, or if there is no surviving spouse or child or children, then his or her parents or unmarried sister or sisters, minor brother or brothers, dependent upon him or her for support, shall be entitled to the sum of one thousand dollars from such fund. This section to apply to members who shall have been retired, for any reason, from active service under the provisions of this chapter. [2012 c 117 § 28; 1959 c 78 § 6; 1937 c 24 § 4; 1915 c 40 § 4; 1911 c 18 § 4; 1909 c 39 § 8; RRS § 9586.]

Additional notes found at www.leg.wa.gov

41.20.100 Examination of disability pensioners—Emergency duty. Any person retired for disability under this chapter may be summoned before the board herein provided for, at any time thereafter, and shall submit himself or herself thereto for examination as to his or her fitness for

duty, and shall abide the decision and order of said board with reference thereto; and all members of such police force who may be retired under the provisions of this chapter, shall report to the chief of police of such city where so retired on the first Mondays of April, July, October, and January of each year; and in cases of emergency, may be assigned to and shall perform such duty as said chief of police may direct, and such persons shall have no claim against such city for payment for such duty so performed. [2012 c 117 § 29; 1909 c 39 § 9; RRS § 9587.]

41.20.110 Withdrawal of pension—Grounds. Whenever any person who shall have received any benefit from said fund shall be convicted of any felony, or shall become an habitual drunkard, or shall fail to report himself or herself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board then such board shall order and direct that such pension or allowance that may have been granted to such person shall immediately cease, and such person shall receive no further pension or allowance or benefit under this chapter, but in lieu thereof the said pension or allowance or benefit may, at the discretion of the board, be paid to those immediately dependent upon him or her, or to his or her legally appointed guardian. [2012 c 117 § 30; 1937 c 24 § 5; 1909 c 39 § 10; RRS § 9588.]

Additional notes found at www.leg.wa.gov

41.20.120 Sick benefits. Whenever any active member of the police department, or any member *hereafter retired, on account of service, sickness or disability, not caused or brought on by dissipation or abuse, of which the board shall be judge, is confined in any hospital or in his or her home and, whether or not so confined, requires nursing, care, or attention, the board shall pay for the active member the necessary hospital, care, and nursing expenses of the member out of the fund; and the board may pay for the retired member hospital, care, and nursing expenses as are reasonable, in the board's discretion. The board may, at its discretion, elect, in lieu of paying some or all such expenses for the retired member, to reimburse the retired member for premiums the member has paid for medical insurance that supplements medicare, including premiums the member has paid for medicare part B coverage. The salary of the active member shall continue while he or she is necessarily confined to the hospital or home or elsewhere during the period of recuperation, as determined by the board, for a period not exceeding six months; after which period the other provisions of this chapter shall apply: PROVIDED, That the board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all his or her rights to benefits under this section: PROVIDED FURTHER, That the board shall designate the hospital and medical services available to the police officer who is sick or disabled. [2012 c 117 § 31; 1992 c 22 § 2; 1961 c 191 § 4; 1959 c 78 § 7; 1955

c 69 § 7; 1915 c 40 § 5; 1911 c 18 § 6; 1909 c 39 § 13; RRS § 9591.]

*Reviser's note: The words "hereafter retired" first appear in the 1961 amendment.

41.20.130 Fund created. There is created in each city subject to the provisions of this chapter a police relief and pension fund. The fund shall be constituted as follows:

A sum equal to six percent thereof shall be deducted monthly from the salary of each police officer by the city treasurer and placed in the fund, but the maximum deduction shall not exceed six percent of the monthly salary of captain.

At the time the annual tax levy of the city is made, the city council, or other legislative body, shall order the transfer of an amount of money into the fund, sufficient with the salary deductions, to meet the financial requirements thereof:

(1) From moneys collected or received from all licenses issued;

(2) From fines and forfeitures collected or received in money for violation of city ordinances. [1959 c 78 § 8; 1955 c 69 § 8; 1933 c 30 § 1; 1929 c 101 § 3; 1923 c 54 § 1; 1915 c 40 § 1; 1909 c 39 § 3; RRS § 9581.]

41.20.140 Pension payments monthly—Surplus to general fund. Payments provided for in this chapter shall be made monthly upon proper vouchers. If at any time there is more money in the fund provided for in this chapter than is necessary for the purposes of this chapter, then such surplus shall be transferred from such fund to the general fund of the city: PROVIDED, That at all times enough money shall be kept in said fund to meet all payments provided for in this chapter. [1911 c 18 § 7; 1909 c 39 § 14; RRS § 9592.]

41.20.150 Return of member's contributions—Option to be classified as vested member. Whenever any member affected by this chapter terminates his or her employment prior to the completion of twenty-five years of service he or she shall receive seventy-five percent of his or her contributions made after *the effective date of this act and he or she shall not receive any contributions made prior thereto: PROVIDED, That in the case of any member who has completed twenty years of service, such member, upon termination for any cause except for a conviction of a felony, shall have the option of electing, in lieu of recovery of his or her contributions as herein provided, to be classified as a vested member in accordance with the following provisions:

(1) Written notice of such election shall be filed with the board within thirty days after the effective date of such member's termination;

(2) During the period between the date of his or her termination and the date upon which he or she becomes a retired member as hereinafter provided, such vested member and his or her spouse or dependent children shall be entitled to all benefits available under chapter 41.20 RCW to a retired member and his or her spouse or dependent children with the exception of the service retirement allowance as herein provided for: PROVIDED, That any claim for medical coverage under RCW 41.20.120 shall be attributable to service connected illness or injury;

(3) Any member electing to become a vested member shall be entitled at such time as he or she otherwise would

have completed twenty-five years of service had he or she not terminated, to receive a service retirement allowance computed on the following basis: Two percent of the amount of salary at any time hereafter attached to the position held by the vested member for the year preceding the date of his or her termination, for each year of service rendered prior to the date of his or her termination. At such time the vested member shall be regarded as a retired member and, in addition to the retirement allowance herein provided for, shall continue to be entitled to all such other benefits as are by chapter 41.20 RCW made available to retired members. [2012 c 117 § 32; 1969 c 123 § 3; 1955 c 69 § 4.]

*Reviser's note: The words "the effective date of this act" first appear in 1955 c 69 § 4, which became effective midnight June 8, 1955.

41.20.155 Return of member's contributions—Applicability. The provisions of RCW 41.20.050, 41.20.060 and 41.20.150 shall be applicable to all members employed on June 12, 1969, and to those who shall thereafter become members, but shall not apply to any former member who has terminated his or her employment prior to June 12, 1969. [2012 c 117 § 33; 1969 c 123 § 4.]

41.20.160 Credit for membership in private organization acquired by city of first class. Any person affected by this chapter who was a member of a police organization operated by a private enterprise which police organization shall be hereafter acquired before September 1, 1959, by a city of the first class as its police department as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such police organization, shall have added to his or her period of employment as computed under this chapter his or her period of service with said private enterprise, except that this shall apply only to those persons who are in the service of such police organization at the time of its acquisition by the city of the first class and who remain in the service of that city until this chapter shall become applicable to such persons.

No such person shall have added to his or her period of employment as computed under this chapter his or her period of service with said private enterprise unless he or she or a third party shall pay to the city his or her contribution for the period of such service with the private enterprise, or, if he or she shall be entitled to any private pension or retirement benefits as a result of such service with the private enterprise, unless he or she agrees at the time of his or her employment by the city to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added service by the amount of those private pension or retirement benefits received. The rate of such contribution shall be two percent of the wage or salary of such person during that added period of service with the private enterprise before midnight, June 8, 1955, and four and one-half percent of such wage or salary after midnight, June 8, 1955. Such contributions shall be paid into the police relief and pension fund and shall be held subject to the provisions of RCW 41.20.150, except that all such contributions shall be deemed to have been made after June 8, 1955. Such contributions may be invested in investments permitted under chapter 35.39 RCW and may be kept invested until required to meet payments of benefits to such persons.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the police relief and pension fund to assume its obligations. [2012 c 117 § 34; 1983 c 3 § 92; 1959 c 71 § 1.]

Additional notes found at www.leg.wa.gov

41.20.170 Transfer of membership. Any former employee of a department of a city of the first class who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the police department of such city, may transfer his or her membership from the city employees' retirement system to the city's police relief and pension fund system by filing a written request with the board of administration and the board of trustees, respectively, of the two systems.

Upon the receipt of such request, the transfer of membership to the city's police relief and pension fund system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration of the city's employees' retirement system shall transmit to the board of trustees of the city's police relief and pension fund system a record of service credited to such member which shall be computed and credited to such member as a part of his or her period of employment in the city's police relief and pension fund system. For the purpose of the transfer contemplated by this section, the affected individuals shall be allowed to restore withdrawn contributions to the city employees' retirement system and reinstate their membership service records.

Any employee so transferring shall have all the rights, benefits and privileges that he or she would have been entitled to had he or she been a member of the city's police relief and pension fund system from the beginning of his or her employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon service with the city.

The right of any employee to file a written request for transfer of membership as set forth herein shall expire December 31, 1973. [2012 c 117 § 35; 1973 c 143 § 2; 1969 ex.s. c 209 § 27; 1963 c 82 § 1.]

Additional notes found at www.leg.wa.gov

41.20.175 Transfer of service credit from firefighters' pension system to city's police pension system. A former employee of a fire department of a city of the first class who (1) was a member of the firefighters' pension system created by chapters 41.16 or 41.18 RCW, and (2) is now employed within the police department of such city, will be regarded as having received membership service credit for such service to the fire department in the city's police and relief pension system at the time he or she recovers such service credit by paying withdrawn contributions to the Washington law enforcement officers' and firefighters' retirement system pursuant to RCW 41.26.030(28). [2012 c 117 § 36; 1974 ex.s. c 148 § 2.]

41.20.180 Exemption from taxation and judicial process—Exception—Assignability. The right of a person to a

[Title 41 RCW—page 118]

pension, an annuity, or retirement allowance, or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any person under the provisions of this chapter, and any fund created hereby, and all moneys and investments and income thereof, are exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable: PROVIDED, That benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [2012 c 159 § 19; 1979 ex.s. c 205 § 2; 1965 c 33 § 1.]

41.20.900 Construction—1959 c 6—Benefits retroactively authorized. The provisions of *this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of *this act. [1959 c 6 § 4.]

*Reviser's note: "this act" appears in chapter 6, Laws of 1959, which reenacted RCW 41.20.050, 41.20.060, and 41.20.080. These sections were subsequently amended by chapter 78, Laws of 1959.

41.20.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 91.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.22 RCW

LAW ENFORCEMENT CHAPLAINS

Sections

- 41.22.010 Legislative findings.
- 41.22.020 Washington state patrol and the department of fish and wildlife—Volunteer chaplain authorized.
- 41.22.030 Local law enforcement agencies—Volunteer chaplains authorized.
- 41.22.040 Volunteer chaplains—Duties.

State-employed chaplains—Housing allowance: RCW 41.04.360.

41.22.010 Legislative findings. The career of a police officer is highly stressful, resulting in unacceptable rates of divorce, alcoholism, low morale and suicide. The nature of

law enforcement work requires that much information be kept confidential, unfairly burdening the emotional capacity of law enforcement personnel. Police officers may become the hidden victims of society because of their daily work with crisis.

The legislature finds that law enforcement chaplains can provide emotional support for law enforcement personnel, including counseling, stress management, and family life counseling. The legislature also finds that law enforcement chaplains can serve as a crisis intervention resource for personnel of police, fire, and corrections departments, and medical examiners or coroners. [1985 c 223 § 1.]

41.22.020 Washington state patrol and the department of fish and wildlife—Volunteer chaplain authorized. The Washington state patrol and the department of fish and wildlife may utilize the services of a volunteer chaplain. [2009 c 204 § 2; 1985 c 223 § 2.]

41.22.030 Local law enforcement agencies—Volunteer chaplains authorized. The legislature authorizes local law enforcement agencies to use the services of volunteer chaplains associated with an agency. [1985 c 223 § 3.]

41.22.040 Volunteer chaplains—Duties. The duties of a volunteer law enforcement chaplain include counseling, training, and crises intervention for law enforcement personnel, their families and the general public. [1985 c 223 § 4.]

Chapter 41.24 RCW

VOLUNTEER FIREFIGHTERS' AND RESERVE OFFICERS' RELIEF AND PENSIONS

Sections

- 41.24.010 Definitions.
- 41.24.020 Enrollment of firefighters—Death, disability, retirement benefits.
- 41.24.023 Retired participant may resume volunteer service—Board approval required.
- 41.24.030 Volunteer firefighters' and reserve officers' relief and pension principal fund created—Composition—Investment—Use—Treasurer's report.
- 41.24.035 Legal, medical expenses—May be paid from earnings of the principal fund and administrative fund.
- 41.24.040 Fees, when payable—Interest—Effect of nonpayment.
- 41.24.050 Emergency medical technicians or first aid vehicle operators—Restriction on retirement system membership.
- 41.24.060 Board of trustees—How constituted.
- 41.24.070 Officers of board—Record of proceedings—Forms.
- 41.24.080 Duties of board and state board—Disbursements.
- 41.24.090 Meetings.
- 41.24.100 Compelling attendance of witnesses—Oaths—Rules and regulations.
- 41.24.110 Reimbursement of physicians and medical staff.
- 41.24.120 Hearing of application for benefits—Appeal to state board.
- 41.24.130 Quorum—Vote on allowance of claims.
- 41.24.140 Guardian may be appointed.
- 41.24.150 Disability payments.
- 41.24.155 Vocational rehabilitation—Purpose—Costs—Administration—Discretion of state board.
- 41.24.160 Death benefits.
- 41.24.170 Retirement pensions.
- 41.24.1701 Purchasing retirement pension coverage—Criteria.
- 41.24.172 Retirement pensions—Options—Election.
- 41.24.175 Disability or retirement payments—Computation according to latest legislative expression.
- 41.24.176 Disability or retirement payments—Construction.
- 41.24.180 Lump sum payments.
- 41.24.185 Lump sum payments—Monthly pension under fifty dollars.
- 41.24.190 Proof of service.

- 41.24.200 Service need not be continuous nor in a single department or agency.
- 41.24.210 Report of accident—Time limitation for filing report and claim.
- 41.24.215 Injured volunteer—Recovery from third party.
- 41.24.220 Hospitalization, surgery, etc.
- 41.24.230 Funeral and burial expenses.
- 41.24.240 Benefits not transferable or subject to legal process—Exceptions—Chapter not exclusive.
- 41.24.245 Payments to spouse or ex spouse pursuant to court order.
- 41.24.250 State board for volunteer firefighters and reserve officers—Composition—Terms—Vacancies—Oath.
- 41.24.260 State board for volunteer firefighters and reserve officers—Meetings—Quorum.
- 41.24.270 State board for volunteer firefighters and reserve officers—Compensation—Travel expenses.
- 41.24.280 State board for volunteer firefighters and reserve officers—Attorney general is legal advisor.
- 41.24.290 State board for volunteer firefighters and reserve officers—Powers and duties.
- 41.24.300 State board for volunteer firefighters and reserve officers—Vouchers, warrants.
- 41.24.310 State board for volunteer firefighters and reserve officers—Secretary, duties, compensation.
- 41.24.320 State board for volunteer firefighters and reserve officers—State actuary to provide actuarial services.
- 41.24.330 Emergency medical service districts—Board of trustees—Creation.
- 41.24.340 Emergency medical service districts—Board of trustees—Officers—Annual report.
- 41.24.400 Reserve officers—Enrollment—Limitations.
- 41.24.410 Reserve officers—Credit for service.
- 41.24.430 Reserve officers—Eligibility for benefit.
- 41.24.450 Reserve officers—Municipality adoption of relief benefits.
- 41.24.460 Reserve officers—Board of trustees.
- 41.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Prior acts relating to volunteer firefighters' relief and pensions: (1) 1935 c 121 (repealed by 1945 c 261 § 27).

(2) Benefits extended to volunteer firefighters of fire protection districts: 1943 c 137.

Fire protection districts: Title 52 RCW.

Firefighters' relief and pensions: Chapters 41.16, 41.18 RCW.

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

(1) "Administrative fund" means the volunteer firefighters' and reserve officers' administrative fund created under RCW 41.24.030.

(2) "Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

(3) "Board of trustees" or "local board" means: (a) For matters affecting firefighters, a firefighter board of trustees created under RCW 41.24.060; (b) for matters affecting an emergency worker, an emergency medical service district board of trustees created under RCW 41.24.330; or (c) for matters affecting reserve officers, a reserve officer board of trustees created under RCW 41.24.460.

(4) "Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include emergency medical service personnel who are eligible for participation in the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(5) "Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer firefighters, or any part-paid and part-volunteer fire department duly organized and maintained by

any municipality: PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

(6) "Firefighter" includes any firefighter or emergency worker who is a member of any fire department of any municipality but shall not include firefighters who are eligible for participation in the Washington law enforcement officers' and firefighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(7) "Municipal corporation" or "municipality" includes any county, city, town or combination thereof, fire protection district, local law enforcement agency, or any emergency medical service district or other special district, authorized by law to protect life or property within its boundaries through a fire department, emergency workers, or reserve officers.

(8) "Participant" means: (a) For purposes of relief, any reserve officer who is or may become eligible for relief under this chapter or any firefighter or emergency worker; and (b) for purposes of retirement pension, any firefighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit.

(9) "Performance of duty" or "performance of service" shall be construed to mean and include any work in and about company quarters, any fire station, any law enforcement office or precinct, or any other place under the direction or general orders of the chief or other officer having authority to order such member to perform such work; performing other officially assigned duties that are secondary to his or her duties as a firefighter, emergency worker, or reserve officer such as maintenance, public education, inspections, investigations, court testimony, and fund-raising for the benefit of the department; being on call or on standby under the orders of the chief or designated officer of the department, except at the individual's home or place of business; responding to, working at, or returning from an alarm of fire, emergency call, or law enforcement duties; drill or training; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department or local law enforcement agency.

(10) "Principal fund" means the volunteer firefighters' and reserve officers' relief and pension principal fund created under RCW 41.24.030.

(11) "Relief" means all medical, death, and disability benefits available under this chapter that are made necessary from death, sickness, injury, or disability arising in the performance of duty, including benefits provided under RCW 41.24.110, 41.24.150, 41.24.160, 41.24.175, 41.24.220, and 41.24.230, but does not include retirement pensions provided under this chapter.

(12) "Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW, but shall not include enforcement officers who are eligible for participation in the Washington law enforcement officers' and firefighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(13) "Retired participant" means any participant who is at least sixty-five years of age and has been retired by the board of trustees under RCW 41.24.170 and has been in receipt of a monthly pension for no less than three months.

(14) "Retirement pension" means retirement payments for the performance of service, as provided under RCW 41.24.170, 41.24.172, 41.24.175, 41.24.180, and 41.24.185.

(15) "State board" means the state board for volunteer firefighters and reserve officers. [2010 c 60 § 2; 2006 c 26 § 1; 2005 c 37 § 1; 1999 c 148 § 1; 1995 c 11 § 1; 1993 c 331 § 1; 1989 c 91 § 8; 1970 ex.s. c 6 § 18; 1955 c 263 § 1; 1945 c 261 § 1; Rem. Supp. 1945 § 9578-15.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Fire protection district having full paid fire department: RCW 41.16.240.

Additional notes found at www.leg.wa.gov

41.24.020 Enrollment of firefighters—Death, disability, retirement benefits. (1) Every municipal corporation maintaining and operating a regularly organized fire department shall make provision by appropriate legislation for the enrollment of every firefighter under the relief provisions of this chapter for the purpose of providing protection for all its firefighters and their families from death, sickness, injury, or disability arising in the performance of their duties as firefighters. Nothing in this chapter shall prohibit any municipality from providing such additional protection for relief as it may deem proper.

(2) Any municipal corporation maintaining and operating a regularly organized fire department may make provision by appropriate legislation allowing any member of its fire department to enroll under the retirement pension provisions of this chapter.

(3) Every municipal corporation shall make provisions for the collection and payment of the fees provided under this chapter, and shall continue to make such provisions for all firefighters who come under this chapter as long as they shall continue to be members of its fire department. [1999 c 148 § 2; 1989 c 91 § 9; 1945 c 261 § 2; Rem. Supp. 1945 § 9578-16.]

Additional notes found at www.leg.wa.gov

41.24.023 Retired participant may resume volunteer service—Board approval required. (1) A local municipality may, at its discretion, permit a retired participant to make application to the local board to resume volunteer service as a firefighter, under the following conditions:

(a) A retired participant who chooses to resume volunteer service is not eligible for disability payments pursuant to RCW 41.24.150 in the event that the retired participant becomes disabled as the result of the performance of his or her duties.

(b) Prior to permitting a retired participant to resume volunteer service, a local board shall require that a retired participant submit to annual examinations by a physician or other medical staff. A retired participant may resume volunteer service only if the examining physician or other medical staff certifies each year that the retired participant meets appropriate medical and health standards. Physicians and medical staff that examine retired participants shall be reimbursed by

the local municipality, and report to the local and state boards, consistent with RCW 41.24.110.

(c) A local municipality that elects to permit retired participants to resume volunteer service shall be required to pay an additional annual charge based on the increased cost of medical and relief benefits for retired participants. The amount of the additional annual charge shall be set by the state board, in consultation with the state actuary.

(2) No period of volunteer service performed by a retired participant may be used in calculating a retirement pension under RCW 41.24.170.

(3) The legislature reserves the right to amend or repeal this section in the future and no participant, retired participant, or beneficiary has a contractual right to resume volunteer service while in receipt of a retirement pension. [2010 c 60 § 1.]

41.24.030 Volunteer firefighters' and reserve officers' relief and pension principal fund created—Composition—Investment—Use—Treasurer's report. (1) The volunteer firefighters' and reserve officers' relief and pension principal fund is created in the state treasury as a trust fund for the benefit of the participants covered by this chapter consisting of:

(a) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording relief provided in this chapter for firefighters as follows:

(i) Thirty dollars for each volunteer or part-paid member of its fire department;

(ii) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(c) An annual fee for each emergency worker of an emergency medical service district paid by the district that is sufficient to pay the full costs of covering the emergency worker under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(d) Where a municipal corporation has elected to make relief provisions of this chapter available to its reserve officers, an annual fee for each reserve officer paid by the municipal corporation that is sufficient to pay the full costs of covering the reserve officer under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(e) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to members of its fire department, an annual fee of sixty dollars for each of its firefighters electing to enroll, thirty dollars of which shall be paid by the municipality and thirty dollars of which shall be paid by the firefighter. However, nothing in this section prohibits any municipality from voluntarily paying the firefighters' fee for this retirement pension coverage.

(f) Where an emergency medical service district has elected to make the retirement pension provisions of this chapter available to its emergency workers, for each emer-

gency worker electing to enroll: (i) An annual fee of thirty dollars shall be paid by the emergency worker; and (ii) an annual fee paid by the emergency medical service district that, together with the thirty dollar fee per emergency worker, is sufficient to pay the full costs of covering the emergency worker under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in this section prohibits any emergency medical service district from voluntarily paying the emergency workers' fees for this retirement pension coverage.

(g) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to its reserve officers, for each reserve officer electing to enroll: (i) An annual fee of thirty dollars shall be paid by the reserve officer; and (ii) an annual fee paid by the municipal corporation that, together with the thirty dollar fee per reserve officer, is sufficient to pay the full costs of covering the reserve officer under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in this section prohibits any municipal corporation from voluntarily paying the reserve officers' fees for this retirement pension coverage.

(h) Moneys transferred from the administrative fund, as provided under subsection (4) of this section, which may only be used to pay relief and retirement pensions for firefighters.

(i) Earnings from the investment of moneys in the principal fund.

(2) The state investment board, upon request of the state treasurer shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired from that portion of the amounts credited to the principal fund as is not, in the judgment of the state board, required to meet current withdrawals. Investments shall be made in the manner prescribed by RCW 43.84.150 and not otherwise.

All bonds, investments, or other obligations purchased by the state investment board shall be placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds, investments, or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

(3) The interest, earnings, and proceeds from the sale and redemption of any investments held by the principal fund and invested by the state investment board shall be credited to and form a part of the principal fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160.

Subject to restrictions contained in this chapter, all amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

(4) The volunteer firefighters' and reserve officers' administrative fund is created in the state treasury. Moneys in the fund, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation, and may be used only for operating expenses of the volunteer firefighters'

and reserve officers' relief and pension principal fund, the operating expenses of the volunteer firefighters' and reserve officers' administrative fund, or for transfer from the administrative fund to the principal fund.

(a) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund.

(b) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

(c) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative funds, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium. [2005 c 37 § 2; 1999 c 148 § 3. Prior: 1995 c 45 § 1; 1995 c 11 § 3; 1992 c 97 § 1; 1991 sp.s. c 13 § 98; prior: 1989 c 194 § 1; 1989 c 91 § 1; 1986 c 296 § 4; 1982 1st ex.s. c 35 § 17; 1981 c 3 § 26; 1973 1st ex.s. c 170 § 1; 1970 ex.s. c 6 § 19; 1967 c 160 § 2; 1957 c 116 § 1; 1955 c 223 § 1; 1945 c 261 § 3; Rem. Supp. 1945 § 9578-17; prior: 1935 c 121 § 1; RRS § 9578-1.]

Insurance premium taxes: RCW 48.14.020.

Additional notes found at www.leg.wa.gov

41.24.035 Legal, medical expenses—May be paid from earnings of the principal fund and administrative fund. The state board is authorized to pay from the earnings of the principal fund and administrative fund lawful obligations of the system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the principal fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings. [1999 c 148 § 4; 1989 c 194 § 2.]

Additional notes found at www.leg.wa.gov

41.24.040 Fees, when payable—Interest—Effect of nonpayment. On or before the first day of March of each year, every municipality shall pay such amount as shall be due from it to the principal fund, together with the amounts collected from the participants. A participant shall not forfeit his or her right to participate in the relief provisions of this chapter by reason of the municipal corporation failing to pay the amount due from it. A participant shall not forfeit his or her right to participate in the retirement pension provisions of this chapter until after March 1st of the year in which the municipality fails to make the required payments. Where a municipality has failed to pay or remit the annual fees required within the time provided, such delinquent payment shall bear interest at the rate of one percent per month from March 1st until paid or remitted. Where a participant has for-

feited his or her right to participate in the retirement provisions of this chapter that participant may be reinstated so as to participate to the same extent as if all fees had been paid by the payment of all back fees with interest at the rate of one percent per month provided he or she has at all times been otherwise eligible. [1999 c 148 § 5; 1995 c 11 § 5; 1989 c 91 § 10; 1945 c 261 § 4; Rem. Supp. 1945 § 9578-18. Prior: 1935 c 121 § 10; RRS § 9578-10.]

Additional notes found at www.leg.wa.gov

41.24.050 Emergency medical technicians or first aid vehicle operators—Restriction on retirement system membership. No person serving as an emergency medical technician or first aid vehicle operator under chapter 18.73 RCW shall be permitted to join the law enforcement officers' and firefighters' retirement system solely on the basis of such service. In no case shall the membership of any fire department coming under the provisions of this chapter be limited to less than fifteen firefighters. [2002 c 11 § 1; 1989 c 91 § 11; 1975-'76 2nd ex.s. c 67 § 1; 1945 c 261 § 5; Rem. Supp. 1945 § 9578-19. Prior: 1935 c 121 § 9; RRS § 9578-9.]

Additional notes found at www.leg.wa.gov

41.24.060 Board of trustees—How constituted. A firefighter board of trustees is created and established to administer this chapter in every municipal corporation maintaining a regularly organized fire department. A firefighter board of trustees shall consist of the mayor, city clerk or comptroller, and one councilmember of such municipality, the chief of the fire department, and one member of the fire department to be elected by the members of such fire department for a term of one year and annually thereafter. Where a municipality is governed by a board, the chair, one member of the board, and the secretary or clerk thereof shall serve as members of the firefighter board of trustees in lieu of the mayor, clerk or comptroller, and councilmember. [1999 c 148 § 6; 1981 c 213 § 7; 1945 c 261 § 6; 1943 c 137 § 2; Rem. Supp. 1945 § 9578-20. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.070 Officers of board—Record of proceedings—Forms. The mayor or chair of the board or commission of any municipality with a fire department, or his or her designee, shall be chair of the firefighter board of trustees, and the clerk or comptroller or secretary of any such municipality, board, or commission, or his or her designee, shall be the secretary-treasurer of the board of trustees.

The secretary shall keep a public record of all proceedings and of all receipts and disbursements made by the board of trustees, shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of the principal fund in the municipality, and shall make all required reports to the state board. The state board shall provide all necessary forms to firefighter boards of trustees. [1999 c 148 § 7; 1969 c 118 § 1; 1945 c 261 § 7; Rem. Supp. 1945 § 9578-21. Prior: 1935 c 121 § 3; RRS § 9578-3.]

41.24.080 Duties of board and state board—Disbursements. The board of trustees of each municipal corporation shall provide for enrollment of all members of its fire department under the relief provisions of this chapter; provide for enrollment of all its reserve officers under the relief

provisions of this chapter if it has extended these relief provisions to its reserve officers; receive all applications for the enrollment under the retirement pension provisions of this chapter when the municipality has extended these retirement pension provisions to its firefighters or reserve officers; provide for disbursements of relief; determine the eligibility of firefighters and reserve officers for retirement pensions; and pass on all claims and direct payment thereof from the principal fund to those entitled thereto. Vouchers shall be issued to the persons entitled thereto by the local board. It shall send to the state board, after each meeting, a voucher for each person entitled to payment from the principal fund, stating the amount of such payment and for what granted, which voucher shall be certified and signed by the chair and secretary of the local board. The state board, after review and approval, shall cause a warrant to be issued on the principal fund for the amount specified and approved on each voucher. However, in retirement pension cases after the applicant's eligibility for pension is verified, the state board shall authorize the regular issuance of monthly warrants or electronic transfers of funds in payment of the retirement pension without further action of the board of trustees of any such municipality. [1999 c 148 § 8; 1989 c 91 § 12; 1969 c 118 § 2; 1955 c 263 § 9; 1945 c 261 § 8; Rem. Supp. 1945 § 9578-22. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Additional notes found at www.leg.wa.gov

41.24.090 Meetings. A board of trustees shall meet on the call of its chair on a regular monthly meeting day when there is business to come before it. The chair shall be required to call a meeting on any regular meeting day at the request of any member of the fund or his or her beneficiary claiming any relief or retirement pension. [1999 c 148 § 9; 1945 c 261 § 9; Rem. Supp. 1945 § 9578-23.]

41.24.100 Compelling attendance of witnesses—Oaths—Rules and regulations. The board of trustees herein, in addition to other powers herein granted, shall have power to compel the attendance of witnesses to testify before it on all matters connected with the operation of this chapter, and its chair or any member of said board may administer oaths to such witnesses; to make all necessary rules and regulations for its guidance in conformity with the provisions of this chapter: PROVIDED, HOWEVER, That no compensation or emoluments shall be paid to any member of said board of trustees for any duties performed under this chapter as such trustees. [2012 c 117 § 37; 1945 c 261 § 10; Rem. Supp. 1945 § 9578-24. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.110 Reimbursement of physicians and medical staff. The local board shall make provisions for reimbursing regularly licensed practicing physicians and other medical staff who examine participants making application for membership. Physicians and other medical staff shall perform such services and operations and render all medical aid and care necessary for the recovery and treatment of participants on account of injury, sickness, or disability received while in the performance of duties and shall be paid for these services from the principal fund, but not in excess of the schedule of fees for like services approved by the director of labor and industries under Title 51 RCW. A physician or other medical

staff, who is not approved by the local board, shall not receive or be entitled to any compensation from the principal fund as the private or attending physician or other private or attending medical staff of any participant. A person shall not have any right of action against the local board for the negligence of any physician or other medical staff who is reimbursed from the principal fund. Any physician or other medical staff who is reimbursed from the principal fund for providing service or care for a participant shall report his or her findings in writing to the local board and the state board. [1999 c 148 § 10; 1989 c 91 § 13; 1953 c 253 § 6; 1949 c 145 § 1; 1945 c 261 § 11; Rem. Supp. 1949 § 9578-25. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Additional notes found at www.leg.wa.gov

41.24.120 Hearing of application for benefits—Appeal to state board. The local board shall initially hear and decide all applications for relief or retirement pensions under this chapter, subject to review by, or appeal by the proper person to, the state board where decision on such review or appeal shall be final and conclusive. [1999 c 148 § 11; 1969 c 118 § 3; 1955 c 263 § 10; 1945 c 261 § 12; Rem. Supp. 1945 § 9578-27. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.130 Quorum—Vote on allowance of claims. A majority of the board of trustees shall constitute a quorum, and no business shall be transacted when a majority is not present, and no claim shall be allowed where a majority of the board has not voted favorably thereon. [1945 c 261 § 13; Rem. Supp. 1945 § 9578-27. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.140 Guardian may be appointed. A local board may appoint a guardian whenever and wherever the claim of a participant or his or her beneficiary would, in the opinion of the local board, be best served by the appointment. The local board shall have full power to make and direct the payments under this chapter to any person entitled to the payments without the necessity of any guardianship or administration proceedings, when in its judgment, it shall determine it to be for the best interests of the beneficiary. [1999 c 148 § 12; 1989 c 91 § 14; 1945 c 261 § 14; Rem. Supp. 1945 § 9578-28. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Additional notes found at www.leg.wa.gov

41.24.150 Disability payments. (1)(a) Whenever a participant becomes physically or mentally disabled, injured, or sick, in consequence or as the result of the performance of his or her duties, so as to be wholly prevented from engaging in each and every duty of his or her regular occupation, business, or profession, he or she shall be paid from the principal fund monthly, an amount (i) equal to his or her monthly wage as certified by the local board or (ii) two thousand five hundred fifty dollars, whichever is less, for a period not to exceed six months, or an amount equal to his or her daily wage as certified by the local board or eighty-five dollars, whichever is less, per day for such period as is part of a month, after which period, if the member is incapacitated to such an extent that he or she is thereby prevented from engaging in any occupation or performing any work for compensation or profit or if the member sustained an injury after October 1,

1978, which resulted in the loss or paralysis of both legs or arms, or one leg and one arm, or total loss of eyesight, but such injury has not prevented the member from engaging in an occupation or performing work for compensation or profit, he or she is entitled to draw from the fund monthly, the sum of one thousand two hundred seventy-five dollars so long as the disability continues, except as *provided. However, if the participant has a wife or husband and/or a child or children unemancipated or under eighteen years of age, he or she is entitled to draw from the fund monthly the additional sums of two hundred fifty-five dollars because of the fact of his wife or her husband, and one hundred ten dollars because of the fact of each child unemancipated or under eighteen years of age, all to a total maximum amount of two thousand five hundred fifty dollars.

(b) Beginning on July 1, 2001, and each July 1st thereafter, the compensation amounts specified in (a)(ii) of this subsection shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30th immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) The state board may at any time reopen the grant of such disability pension if the pensioner is gainfully employed, and may reduce it in the proportion that the annual income from such gainful employment bears to the annual income received by the pensioner at the time of his or her disability.

(3) Where a participant sustains a permanent partial disability the state board may provide that the injured participant receive a lump sum compensation therefor to the same extent as is provided for permanent partial disability under the workers' compensation act under Title 51 RCW in lieu of such monthly disability payments. [2001 c 134 § 1; 1999 c 148 § 13; 1996 c 57 § 1; 1989 c 91 § 2; 1987 c 185 § 10; 1986 c 163 § 1; 1981 c 21 § 1; 1975-'76 2nd ex.s. c 76 § 1; 1969 c 118 § 4; 1965 c 86 § 1; 1957 c 159 § 1; 1953 c 253 § 1; 1945 c 261 § 15; Rem. Supp. 1945 § 9578-29. Prior: 1935 c 121 § 4; RRS § 9578-4.]

*Reviser's note: 1999 c 148 § 13 deleted "hereinafter."

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Additional notes found at www.leg.wa.gov

41.24.155 Vocational rehabilitation—Purpose—Costs—Administration—Discretion of state board. (1) One of the primary purposes of this section is to enable injured participants to return to their regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit. To this end, the state board shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the state board in such programs of vocational rehabilitation as may be reasonable to make the participant return to his or her regular occupation, business,

or profession, or to engage in any occupation or perform any work for compensation or profit consistent with his or her physical and mental status. After evaluation and recommendation by such individuals or organizations and prior to final evaluation of the participant's permanent disability, if in the sole opinion of the state board, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured participant to return to his or her regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit, the state board may, in its sole discretion, pay the cost as provided in subsection (3) or (4) of this section.

(2) When, in the sole discretion of the state board, vocational rehabilitation is both necessary and likely to make the participant return to his or her regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the state board under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses in an amount not to exceed four thousand dollars. This amount must be used within fifty-two weeks of the determination that vocational rehabilitation is permitted under this section.

(b) The expenses allowed under (a) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the state board, after its review, be extended for an additional fifty-two weeks or portion thereof by written order of the state board. However, under no circumstances shall the total amount of benefit paid under this section exceed four thousand dollars.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the state board, be expended for: (a) Accommodations for an injured participant that are medically necessary for participation in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured participant is seeking employment, con-

sistent with the retraining plan or the recommendations of a vocational evaluation. The injured participant's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection shall not exceed five thousand dollars.

(5) The state board shall follow the established criteria set forth by the department of labor and industries to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state board shall make referrals for vocational rehabilitation services based on these performance criteria.

(6) The state board may engage, where feasible and cost-effective, in a cooperative program with the state employment security department to provide job placement services under this section.

(7) Except as otherwise provided in this section, the vocational benefits provided for in this section are available to participants who have claims currently pending as of April 17, 2007, or whose injury occurred on or after January 1, 2006. [2007 c 57 § 1.]

Effective date—2007 c 57: "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 [April 17, 2007]." [2007 c 57 § 2.]

41.24.160 Death benefits. (1)(a) Whenever a participant dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment from the principal fund of (i) the sum of two hundred fourteen thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her dependent parents or either of them, or if there are no dependent parents or parent, then the death benefit shall be paid to the member's estate, and (ii)(A) the sum of one thousand two hundred seventy-five dollars per month to his widow or her widower, with (B) an additional amount of five hundred dollars per month paid to the legal guardian or surviving parent of each birth or legally adopted child, unemancipated or under eighteen years of age, and dependent upon the member for support at the time of his or her death.

(b) Beginning on July 1, 2001, and each July 1st thereafter, the compensation amounts specified in (a)(ii)(A) and (B) of this subsection shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30th immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twenty-five thousand dollars, equal or proportionate, as the case may be,

to the actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and shall rest in the discretion of the state board; or the state board is authorized to make, and authority is given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule under this subsection the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. [2013 c 100 § 1; 2001 c 134 § 2. Prior: 1999 c 148 § 14; 1999 c 117 § 5; 1998 c 151 § 1; 1996 c 57 § 2; 1989 c 91 § 3; 1986 c 163 § 2; 1981 c 21 § 2; 1975-76 2nd ex.s. c 76 § 2; 1973 1st ex.s. c 154 § 74; 1965 c 86 § 2; 1961 c 57 § 1; 1957 c 159 § 2; 1953 c 253 § 2; 1951 c 103 § 2; 1945 c 261 § 16; Rem. Supp. 1945 § 9578-30; prior: 1935 c 121 § 6; RRS § 9578-6.]

Additional notes found at www.leg.wa.gov

41.24.170 Retirement pensions. Except as provided in RCW 41.24.410, whenever any participant has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized fire department or law enforcement agency of any municipality in this state, and which municipality has adopted appropriate legislation allowing its firefighters or reserve officers to enroll in the retirement pension provisions of this chapter, and the participant has enrolled under the retirement pension provisions and has reached the age of sixty-five years, the board of trustees shall order and direct that he or she be retired and be paid a monthly pension from the principal fund as provided in this section.

Whenever a participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and he or she has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of twenty-five years, the board of trustees shall order and direct that he or she be retired and such participant be paid a monthly pension of three hundred dollars from the fund for the balance of that participant's life.

Whenever any participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and the participant has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such participant shall receive a minimum monthly pension of fifty dollars increased by the sum of ten dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension provided in this section, for the balance of the participant's life.

No pension provided in this section may become payable before the sixty-fifth birthday of the participant, nor for any service less than twenty-five years: PROVIDED, HOWEVER, That:

(1) Any participant, who is older than fifty-nine years of age, less than sixty-five years of age, and has completed twenty-five years or more of service may irrevocably elect a reduced monthly pension in lieu of the pension that participant would be entitled to under this section at age sixty-five. The participant who elects this option shall receive the reduced pension for the balance of his or her life. The reduced monthly pension is calculated as a percentage of the pension the participant would be entitled to at age sixty-five. The percentage used in the calculation is based upon the age of the participant at the time of retirement as follows:

Age 60	Sixty percent
Age 61	Sixty-eight percent
Age 62	Seventy-six percent
Age 63	Eighty-four percent
Age 64	Ninety-two percent

(2) If a participant is age sixty-five or older but has less than twenty-five years of service, the participant is entitled to a reduced benefit. The reduced benefit shall be computed as follows:

(a) Upon completion of ten years, but less than fifteen years of service, a monthly pension equal to twenty percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service;

(b) Upon completion of fifteen years, but less than twenty years of service, a monthly pension equal to thirty-five percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service; and

(c) Upon completion of twenty years, but less than twenty-five years of service, a monthly pension equal to seventy-five percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service.

(3) If a participant with less than twenty-five years of service elects to retire after turning age sixty but before turning age sixty-five, the participant's retirement allowance is subject:

(a) First to the reduction under subsection (2) of this section based upon the participant's years of service; and

(b) Second to the reduction under subsection (1) of this section based upon the participant's age. [2003 c 62 § 1. Prior: 1999 c 148 § 15; 1999 c 117 § 4; 1995 c 11 § 7; 1992 c 97 § 2; 1989 c 91 § 4; 1981 c 21 § 4; 1979 ex.s. c 157 § 1; 1973 1st ex.s. c 170 § 2; 1969 c 118 § 5; 1961 c 57 § 2; 1953 c 253 § 3; 1951 c 103 § 1; 1945 c 261 § 17; Rem. Supp. 1945 § 9578-31.]

Additional notes found at www.leg.wa.gov

41.24.1701 Purchasing retirement pension coverage—Criteria. (1) At any time prior to or upon retiring and prior to receiving any pension disbursements, a participant is allowed to:

(a) Purchase retirement pension coverage as provided in subsection (2) of this section for years of service credited prior to their enrollment in the pension system, and for which reinstatement of years of service is not available under RCW 41.24.040; or

(b) Purchase retirement pension coverage as provided in subsection (2) of this section for years of service that were lost due to the withdrawal of pension fees.

(2) The participant and/or the municipality must make payment for the purchase of retirement pension coverage by paying the actuarial value of the resulting benefit increase in a manner defined by the state board.

(3) Retirement pension coverage may only be purchased for the period in which service was performed as defined in RCW 41.24.010(9) and in a manner consistent with this section. [2012 c 239 § 1.]

41.24.172 Retirement pensions—Options—Election. Before beginning to receive the retirement pension provided for in RCW 41.24.170, the participant shall elect, in a writing filed with the state board, to have the retirement pension paid under either option 1 or 2, with option 2 calculated so as to be actuarially equivalent to option 1.

(1) Option 1. A participant electing this option shall receive a monthly pension payable throughout the participant's life. However, if the participant dies before the total retirement pension paid to the participant equals the amount paid on behalf of the participant into the principal fund, then the balance shall be paid to the participant's surviving spouse, or if there be no surviving spouse, then to the participant's legal representatives.

(2) Option 2. A participant electing this option shall receive a reduced monthly pension, which upon the participant's death shall be continued throughout the life of and paid to the participant's surviving spouse named in the written election filed with the state board, however, in the event that the surviving spouse dies before the participant, the participant's monthly retirement allowance shall increase, effective the first day of the following month, to the monthly amount that would have been received had the participant elected option 1. [1999 c 148 § 16; 1999 c 117 § 6; 1995 c 11 § 9; 1989 c 91 § 6.]

Reviser's note: This section was amended by 1999 c 117 § 6 and by 1999 c 148 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

41.24.175 Disability or retirement payments—Computation according to latest legislative expression. Payments to persons who are now receiving, or who may hereafter receive any disability or retirement payments under the provisions of chapter 41.24 RCW shall be computed in accordance with the last act enacted by the legislature relative thereto: PROVIDED HOWEVER, That nothing herein contained shall be construed as reducing the amount of any pension to which any firefighter shall have been eligible to receive under the provisions of section 1, chapter 103, Laws of 1951. [1989 c 91 § 15; 1959 c 9 § 1.]

Additional notes found at www.leg.wa.gov

41.24.176 Disability or retirement payments—Construction. The provisions of *this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroac-

tively included and authorized as part of *this act. [1959 c 9 § 2.]

*Reviser's note: "this act" appears in 1959 c 9, which is codified as RCW 41.24.175 and 41.24.176.

41.24.180 Lump sum payments. The board of trustees of any municipal corporation shall direct payment from the principal fund in the following cases:

(1) To any participant, upon his or her request, upon attaining the age of sixty-five years, who, for any reason, is not qualified to receive the monthly retirement pension provided under this chapter and who was enrolled in the retirement provisions and on whose behalf annual fees for retirement pension were paid, a lump sum amount equal to the amount paid into the fund by the participant.

(2) If any participant who has not completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or (3) of this section, there shall be paid to the participant's surviving spouse, or if there be no surviving spouse, then to such participant's legal representatives, a lump sum amount equal to the amount paid into the fund by the participant. If any participant who has completed at least ten years of service dies other than as the result of injuries received or sickness contracted in consequence or as the result of the performance of his or her duties, without having requested a lump sum payment under subsection (1) or (3) of this section and before beginning to receive the monthly pension provided for in this chapter, the participant's surviving spouse shall elect to receive either:

(a) A monthly pension computed as provided for in RCW 41.24.170 actuarially adjusted to reflect option 2 of RCW 41.24.172 and further actuarially reduced to reflect the difference in the number of years between the participant's age at death and age sixty-five; or

(b) A lump sum amount equal to the amount paid into the principal fund by the participant and the municipality or municipalities in whose department he or she has served.

If there be no such surviving spouse, then there shall be paid to the participant's legal representatives a lump sum amount equal to the amount paid into the fund by the participant.

(3) If any participant retires from service before attaining the age of sixty-five years, the participant may make application for the return in a lump sum of the amount paid into the fund by himself or herself. [1999 c 148 § 17; 1989 c 91 § 5; 1975-'76 2nd ex.s. c 76 § 3; 1974 ex.s. c 26 § 1. Prior: 1973 1st ex.s. c 170 § 3; 1973 1st ex.s. c 154 § 75; 1961 c 57 § 3; 1945 c 261 § 18; Rem. Supp. 1945 § 9578-22.]

Conversion of death benefits to lump sum: RCW 41.24.160.

Additional notes found at www.leg.wa.gov

41.24.185 Lump sum payments—Monthly pension under fifty dollars. Any monthly pension, payable under this chapter, which will not amount to fifty dollars may be converted into a lump sum payment equal to the actuarial equivalent of the monthly pension. The conversion may be made either upon written application to the state board and shall rest at the discretion of the state board; or the state board may make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due. Any person

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receiving a monthly payment of less than twenty-five dollars at the time of September 1, 1979, may elect, within two years, to convert such payments into a lump sum payment as provided in this section. [2003 c 62 § 2; 1989 c 91 § 7.]

Additional notes found at www.leg.wa.gov

41.24.190 Proof of service. The filing of reports of enrollment shall be prima facie evidence of the service of the participants therein listed for the year of such report as to service rendered subsequent to July 6, 1945. Proof of service of firefighters [participants] prior to that date shall be by documentary evidence, or such other evidence reduced to writing and sworn to under oath, as shall be submitted to the state board and certified by it as sufficient. [1995 c 11 § 11; 1989 c 91 § 16; 1969 c 118 § 6; 1953 c 253 § 4; 1945 c 261 § 19; Rem. Supp. 1945 § 9578-33.]

Additional notes found at www.leg.wa.gov

41.24.200 Service need not be continuous nor in a single department or agency. The aggregate term of service of any participant need not be continuous nor need it be confined to a single fire department or law enforcement agency nor a single municipality in this state to entitle such participant to a retirement pension if the participant has been duly enrolled in a fire department or law enforcement agency of a municipality which has elected to extend the retirement pension provisions of this chapter to its firefighters or reserve officers at the time he or she becomes eligible for the retirement pension and has paid all fees prescribed. To be eligible to the full pension a participant must have an aggregate of twenty-five years service, have made twenty-five annual payments into the fund, and be sixty-five years of age at the time the participant commences drawing the pension provided for by this chapter, all of which twenty-five years service must have been in the fire department or law enforcement agency of a municipality or municipalities which have elected to extend the retirement pension provisions of this chapter to its firefighters or reserve officers. Nothing in this chapter shall require any participant having twenty-five years active service to continue as a firefighter or reserve officer and no participant who has completed twenty-five years of active service for which annual retirement pension fees have been paid and who continues as a firefighter or reserve officer shall be required to pay any additional annual pension fees. [1999 c 148 § 18; 1995 c 11 § 12; 1989 c 91 § 17; 1973 1st ex.s. c 170 § 4; 1961 c 57 § 4; 1953 c 253 § 5; 1945 c 261 § 20; Rem. Supp. 1945 § 9578-34.]

Additional notes found at www.leg.wa.gov

41.24.210 Report of accident—Time limitation for filing report and claim. A participant shall not receive relief for disability, sickness, or injuries received in the performance of his or her duties, unless there is filed with the board of trustees a report of accident, which report shall be subscribed to by the claimant, the head of the department, and the authorized attending physician, if there is one. A claim for benefits arising from disability, sickness, or injuries incurred in consequence or as a result of the performance of duties shall not be allowed by the state board unless there has been filed with it a report of accident within ninety days after its occurrence and a claim based thereon within one year after

the occurrence of the accident on which such claim is based. The state board may require such other or further evidence as it deems advisable before ordering any relief. [1999 c 148 § 19; 1989 c 91 § 18; 1969 c 118 § 7; 1957 c 159 § 3; 1945 c 261 § 21; Rem. Supp. 1945 § 9578-35.]

Additional notes found at www.leg.wa.gov

41.24.215 Injured volunteer—Recovery from third party. (1) If an injured volunteer seeks damages from a third party, the state board may also seek recovery of actual costs from the responsible third party. A volunteer seeking damages from a third party is required to notify the state board about the legal proceeding.

(2) The state board is responsible for its proportionate share of the costs and attorneys' fees of the legal proceedings.

(3) Any recovery is subject to a lien by the state board for its share under this section.

(4) This section does not restrict or prohibit the state board's right to seek recovery from a third party when a volunteer firefighter is injured. [2005 c 37 § 3.]

41.24.220 Hospitalization, surgery, etc. Whenever any participant becomes injured, disabled, or sick in consequence or as the result of the performance of his or her duties by reason of which he or she is confined to any hospital or other medical facility, an amount not exceeding the daily ward rate of the hospital or regular fees for such service shall be allowed and paid from the principal fund. This allowance shall not be in lieu of but in addition to any other allowance provided in this chapter. In addition, the costs of surgery, medicine, laboratory fees, X-ray, special therapies, and similar additional costs shall be paid. When extended treatment, not available in the injured, disabled, or sick participant's home area, is required, the participant may be reimbursed for actual mileage to and from the place of extended treatment pursuant to RCW 43.03.060. [1999 c 148 § 20; 1989 c 91 § 19; 1975-'76 2nd ex.s. c 76 § 4; 1965 c 86 § 3; 1961 c 57 § 5; 1957 c 159 § 4; 1953 c 253 § 7; 1951 c 103 § 3; 1949 c 145 § 2; 1945 c 261 § 22; Rem. Supp. 1949 § 9578-36. Prior: 1935 c 121 § 5; RRS § 9578-5.]

Additional notes found at www.leg.wa.gov

41.24.230 Funeral and burial expenses. Upon the death of any participant resulting from injuries or sickness in consequence or as the result of the performance of his or her duties, the board of trustees shall authorize the issuance of a voucher for the sum of two thousand dollars, and upon the death of any participant who is receiving any disability payments provided for in this chapter, the board of trustees shall authorize the issuance of a voucher for the sum of five hundred dollars, to help defray the funeral expenses and burial of the participant, which voucher shall be paid in the manner provided for payment of other charges against the principal fund. [1999 c 148 § 21; 1989 c 91 § 20; 1986 c 163 § 3; 1981 c 21 § 3; 1975-'76 2nd ex.s. c 76 § 5; 1961 c 57 § 6; 1957 c 159 § 5; 1951 c 103 § 4; 1945 c 261 § 23; Rem. Supp. 1945 § 9578-37. Prior: 1935 c 121 § 7; RRS § 9578-7.]

Additional notes found at www.leg.wa.gov

41.24.240 Benefits not transferable or subject to legal process—Exceptions—Chapter not exclusive. The right of

any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23, or 74.20A RCW. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter. [1995 c 11 § 13. Prior: 1989 c 360 § 26; 1989 c 91 § 21; 1979 ex.s. c 205 § 3; 1957 c 159 § 6; 1945 c 261 § 24; Rem. Supp. 1945 § 9578-38.]

Additional notes found at www.leg.wa.gov

41.24.245 Payments to spouse or ex spouse pursuant to court order. (1) If the state board or the secretary makes payments to a spouse or ex spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to a court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the state board, the secretary, or the principal fund for the state board or secretary to show that the payments were made pursuant to a court decree.

(2) All payments made to a nonmember spouse or ex spouse pursuant to RCW 41.24.240 shall cease upon the death of such a nonmember spouse or ex spouse. Upon such a death, the state board and the secretary shall pay to the member his or her full monthly entitlement of benefits.

(3) The provisions of RCW 41.24.240 and this section shall apply to all court decrees of dissolution or legal separation and court-approved property settlement agreements, regardless of when entered, but shall apply only to those persons who have actually retired or who have requested withdrawal of any or all of their contributions to the principal fund: PROVIDED, That the state board or secretary shall not be responsible for making court-ordered divisions of withdrawals unless the order is filed with the state board at least thirty days before the withdrawal payment date. [1999 c 148 § 22; 1987 c 326 § 19.]

Mandatory assignment of retirement benefits to spouse or ex spouse: RCW 41.50.500 through 41.50.660.

Additional notes found at www.leg.wa.gov

41.24.250 State board for volunteer firefighters and reserve officers—Composition—Terms—Vacancies—Oath. The state board for volunteer firefighters and reserve officers is created to consist of five members who are participants under this chapter, at least three of whom are not receiving relief or retirement pension payments under this chapter, no two of whom shall be from the same congressional district. The members are appointed by the governor to

serve overlapping terms of six years. Of members first appointed, one shall be appointed for a term of six years, one for five years, one for four years, one for three years, and one for two years. The governor may consider participants who are recommended for appointment by the appropriate state associations. Upon the expiration of a term, a successor shall be appointed by the governor for a term of six years. Any vacancy shall be filled by the governor for the unexpired term. Each member of the state board, before entering on the performance of his or her duties, shall take an oath that he or she will not knowingly violate or willingly permit the violation of any provision of law applicable to this chapter, which oath shall be filed with the secretary of state.

The state board is not unlawfully constituted and a member of the board is not ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. [2007 c 56 § 1; 1999 c 148 § 23; 1989 c 91 § 22; 1982 1st ex.s. c 30 § 11; 1955 c 263 § 2.]

Additional notes found at www.leg.wa.gov

41.24.260 State board for volunteer firefighters and reserve officers—Meetings—Quorum. The state board shall hold regular semiannual meetings in April and October of each year, and special meetings not more than once monthly at such times and places as may be called by the chair or by two of its members. No action shall be taken by the state board without the approval of two members. [2012 c 117 § 38; 1955 c 263 § 3.]

41.24.270 State board for volunteer firefighters and reserve officers—Compensation—Travel expenses. Each member of the state board shall be compensated in accordance with RCW 43.03.240. Each member shall also receive travel expenses, including going to and from meetings of the state board or other authorized business of the state board, in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 70; 1975-'76 2nd ex.s. c 34 § 87; 1969 c 118 § 8; 1955 c 263 § 4.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

41.24.280 State board for volunteer firefighters and reserve officers—Attorney general is legal advisor. The attorney general shall be the legal advisor for the state board. [1999 c 148 § 24; 1955 c 263 § 5.]

41.24.290 State board for volunteer firefighters and reserve officers—Powers and duties. The state board shall:

(1) Generally supervise and control the administration of this chapter;

(2) Promulgate, amend, or repeal rules and regulations not inconsistent with this chapter for the purpose of effecting a uniform and efficient manner of carrying out the provisions of this chapter and the purposes to be accomplished thereby, and for the government of boards of trustees of the municipalities of this state in the discharge of their functions under this chapter;

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(3) Review any action, and hear and determine any appeal which may be taken from the decision of the board of trustees of any municipality made pursuant to this chapter;

(4) Take such action as may be necessary to secure compliance of the municipalities governed by this chapter and to provide for the collection of all fees and penalties which are, or may be, due and delinquent from any such municipality;

(5) Review the action of the board of trustees of any municipality authorizing any pension as provided by this chapter; and authorize the regular issuance of monthly warrants in payment thereof without further action of the board of trustees of such municipality;

(6) Require periodic reports from the recipient of any benefits under this chapter for the purpose of determining their continued eligibility therefor;

(7) Maintain such records as may be necessary and proper for the proper maintenance and operation of the principal fund, including records of the names of every person enrolled under this chapter, and provide all necessary forms to enable local boards of trustees to effectively carry out their duties as provided by this chapter;

(8) Compel the taking of testimony from witnesses under oath before the state board, or any member or the secretary thereof, or before the local board of trustees or any member thereof, for the purpose of obtaining evidence, at any time, in connection with any claim or pension pending or authorized for payment. For such purpose the state board shall have the same power of subpoena as prescribed in RCW 51.52.100. Failure of any claimant to appear and give any testimony as herein provided shall suspend any rights or eligibility to receive payments for the period of such failure to appear and testify;

(9) Appoint a secretary to hold office at the pleasure of the state board, fix the secretary's compensation at such sum as it shall deem appropriate, and prescribe the secretary's duties not otherwise provided by this chapter. [1999 c 148 § 25; 1989 c 91 § 23; 1955 c 263 § 6.]

Additional notes found at www.leg.wa.gov

41.24.300 State board for volunteer firefighters and reserve officers—Vouchers, warrants. All expenses incurred by the state board shall be accomplished by vouchers signed by the secretary and one member of the state board and issued to the persons entitled thereto and sent to the proper state agency. The proper state agency shall issue a warrant on the principal fund or administrative fund for the amount specified. [1999 c 148 § 26; 1979 ex.s. c 157 § 2; 1969 c 118 § 9; 1955 c 263 § 7.]

41.24.310 State board for volunteer firefighters and reserve officers—Secretary, duties, compensation. The secretary shall maintain an office at Olympia at a place to be provided, wherein the secretary shall:

(1) Keep a record of all proceedings of the state board, which shall be public;

(2) Maintain a record of all members of the pension fund, including such pertinent information relative thereto as may be required by law or rule of the state board;

(3) Receive and promptly remit to the state treasurer all moneys received for the principal fund;

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(4) Transmit periodically to the proper state agency for payment all claims payable from the principal fund, stating the amount and purpose of such payment;

(5) Certify monthly for payment a list of all persons approved for retirement pensions and the amount to which each is entitled; and

(6) Perform such other and further duties as shall be prescribed by the state board.

The secretary shall receive such compensation as shall be fixed by the state board, together with travel expenses in carrying out his or her duties authorized by the state board in accordance with RCW 43.03.050 and 43.03.060. [1999 c 148 § 27; 1989 c 91 § 24; 1975-'76 2nd ex.s. c 34 § 88; 1969 c 118 § 10; 1955 c 263 § 8.]

Additional notes found at www.leg.wa.gov

41.24.320 State board for volunteer firefighters and reserve officers—State actuary to provide actuarial services. The state actuary shall provide actuarial services for the state board. [1999 c 148 § 28; 1989 c 91 § 25.]

Additional notes found at www.leg.wa.gov

41.24.330 Emergency medical service districts—Board of trustees—Creation. An emergency medical service district board of trustees is created to administer this chapter in every county maintaining a regularly organized emergency medical service district. The emergency medical service district board shall consist of two of the members of the county legislative authority or their designees, the county auditor or the auditor's designee, the head of the emergency medical service district, and one emergency worker from the emergency medical service district to be elected by the emergency workers of the emergency medical service district for a term of one year and annually thereafter.

The emergency medical service district shall make provisions for the collection and payment of the fees provided under this chapter and shall continue to make such provisions for all emergency workers who come under this chapter as long as they shall continue to be members of the fire department. [1999 c 148 § 29; 1993 c 331 § 2.]

41.24.340 Emergency medical service districts—Board of trustees—Officers—Annual report. The chair of the county legislative authority, or the chair's designee, shall be chair of the emergency medical service district board of trustees, and the county auditor, or the auditor's designee, shall be the secretary-treasurer of the emergency medical service district board of trustees.

The secretary shall keep a public record of all proceedings and of all receipts and disbursements made by the emergency medical service district board of trustees, shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of the principal fund in the county, and shall make all required reports to the state board. The state board shall provide all necessary forms to emergency worker boards of trustees. [1999 c 148 § 30; 1993 c 331 § 3.]

41.24.400 Reserve officers—Enrollment—Limitations. (1) Except as provided in subsection (2) of this section, any municipality may make provision by appropriate legislation and payment of fees required by RCW

41.24.030(1) solely for the purpose of enabling any reserve officer to enroll under the retirement pension provisions of this chapter or fees required under RCW 41.24.030(1) to pay for the costs of extending the relief provisions of this chapter to its reserve officers.

(2) A reserve officer is not eligible to receive a benefit under the retirement provisions of this chapter for service under chapter 41.26, 41.32, 41.35, 41.37, or 41.40 RCW.

(3) Every municipality shall make provisions for the collection and payment of the fees required under this chapter, and shall continue to make provisions for all reserve officers who come under this chapter as long as they continue to be employed as reserve officers.

(4) Except as provided under RCW 41.24.450, a reserve officer is not eligible to receive a benefit under the relief provisions of this chapter. [2007 c 492 § 7; 1999 c 148 § 31; 1998 c 307 § 4; 1995 c 11 § 2.]

41.24.410 Reserve officers—Credit for service. Credit for service as a reserve officer shall not be counted for purposes of RCW 41.24.170 except as stated in this section: Within one year of an election to cover reserve officers under the retirement provisions of this chapter, the municipality must elect, on a one-time basis, one of the following:

(1)(a) To count credit for service only after July 23, 1995;

(b) To pay annual fees only for service after July 23, 1995; or

(2)(a) To count credit for all service as a reserve officer, but only if the actuarial cost, as determined by the state board, is paid by the municipality. The municipality may charge reserve officers for any portion of the cost; and

(b) To pay annual fees only for service after July 23, 1995; or

(3)(a) To count credit for all service as a reserve officer, but only if the actuarial cost, as determined by the state board, is paid by the municipality. The municipality may charge reserve officers for any portion of the cost; and

(b) To pay annual fees for service prior to July 23, 1995, if:

(i) The reserve officer elects, within one year of the municipality's election under this section, to pay the annual fee plus one percent per month interest for each year of past service counted; and

(ii) The municipality pays the actuarial cost, as determined by the state board, of the benefit provided in (b) of this subsection. The municipality may charge reserve officers for any portion of the cost.

Payments under this section may be made in a lump sum or in a manner prescribed by the state board. [1995 c 11 § 4.]

41.24.430 Reserve officers—Eligibility for benefit. A reserve officer shall not receive a retirement benefit under this chapter unless he or she completes at least three years of service after July 23, 1995. [1995 c 11 § 8.]

41.24.450 Reserve officers—Municipality adoption of relief benefits. A municipality employing reserve officers may adopt appropriate legislation extending the relief provisions of this chapter to its reserve officers. The relief provisions of this chapter may not be extended to reserve officers

if the municipality has extended industrial insurance coverage to its reserve officers under RCW 51.12.140 or 51.12.035(2), or any other provision of law. A municipality that adopts appropriate legislation extending the relief provisions of this chapter to its reserve officers shall enjoy the same extent of immunity from civil actions for personal injuries to its reserve officers that arises if the reserve officers were covered under Title 51 RCW. [1999 c 148 § 32; 1998 c 307 § 1.]

41.24.460 Reserve officers—Board of trustees. A municipality that adopts appropriate legislation extending the relief provisions of this chapter to its reserve officers shall create a reserve officer board of trustees to administer this chapter composed as follows:

(1) A county reserve officer board of trustees shall consist of the following five members: (a) Two members of the county legislative authority and the county auditor, or their designees; (b) the sheriff; and (c) one reserve officer who is elected by reserve officers of the county for an annual one-year term.

(2) Any other reserve officer board of trustees shall consist of the following five members: (a) The mayor, if one exists for the municipality, and one member of the municipality's legislative authority, or two members of the municipality's legislative authority if a mayor does not exist for the municipality, or their designees; (b) the clerk, comptroller, or chief fiscal officer of the municipality; (c) the head of the law enforcement agency; and (d) one reserve officer who is elected by reserve officers of the municipality for an annual term of one year.

(3) The secretary of the board of trustees shall keep a public record of all proceedings and of all receipts and disbursements made by the board of trustees, shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of the principal fund in the municipality, and shall make all required reports to the state board. The state board shall provide the boards of trustees with all necessary forms. [1999 c 148 § 33; 1998 c 307 § 2.]

41.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 92.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

(2016 Ed.)

Chapter 41.26 RCW
LAW ENFORCEMENT OFFICERS' AND
FIREFIGHTERS' RETIREMENT SYSTEM

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Reviser's note: Throughout chapter 41.26 RCW, the phrase "this act" has been changed to "this chapter." 1969 ex.s. c 209 consists of this chapter and RCW 41.16.145, 41.18.010, 41.18.040, 41.18.045, 41.18.060, 41.18.100, 41.18.102, 41.18.104, 41.18.130, 41.18.190, 41.20.005, 41.20.085, 41.20.170, 41.20.050, and 41.20.060.

Emergency medical technician or first aid vehicle operator prohibited from joining system solely on basis of such service: RCW 41.24.050.

Additional notes found at www.leg.wa.gov

"PROVISIONS APPLICABLE TO PLAN 1 AND PLAN 2"

41.26.005 Provisions applicable to "plan 1" and "plan 2." RCW 41.26.010 through 41.26.062 shall apply to members of plan 1 and plan 2. [1992 c 72 § 2; 1991 c 35 § 12; 1989 c 273 § 10; 1985 c 102 § 5; 1979 ex.s. c 249 § 1; 1977 ex.s. c 294 § 18.]

Intent—1991 c 35: "(1) The legislature intends to reorganize chapter 41.26 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the Washington law enforcement officers' and firefighters' retirement system plan 1, the Washington law enforcement officers' and firefighters' retirement system plan 2, and those provisions relating to both plan 1 and plan 2 into three separate subchapters within chapter 41.26 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.26 RCW or other statutory provisions or rules adopted under those provisions.

(2) The legislature intends to reorganize chapter 41.32 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the Washington teachers' retirement system plan 1, the Washington teachers' retirement system plan 2, and both plan 1 and plan 2 into three separate subchapters within chapter 41.32 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.32 RCW or other statutory provisions or rules adopted under those provisions.

(3) The legislature intends to reorganize chapter 41.40 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the public employees' retirement system plan 1, the public employees' retirement system plan 2, and both plan 1 and plan 2 into three separate subchapters within chapter 41.40 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.40 RCW or other statutory provisions or rules adopted under those provisions.

(4) This act is technical in nature and shall not have the effect of terminating or in any way modifying any rights, proceedings, or liabilities, civil or criminal, which exist on July 28, 1991." [1991 c 35 § 1.]

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

Additional notes found at www.leg.wa.gov

41.26.010 Short title. This chapter shall be known and cited as the "Washington Law Enforcement Officers' and Firefighters' Retirement System Act". [1969 ex.s. c 209 § 1.]

41.26.020 Purpose of chapter. The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and firefighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty. [1969 ex.s. c 209 § 2.]

41.26.030 Definitions. 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 non-legislative 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.

(c) Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an "employer." The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an "employer," but is

based solely on the relationship between a government contractor's employee and an "employer" under this chapter.

(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:

(i) 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, temporary reduction in pay implemented prior to December 11, 2010, or temporary lay-offs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

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

(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 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 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. A general authority law enforcement agency under this chapter does not include a government contractor.

(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 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 retirement 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. [2012 c 236 § 2; 2011 1st sp.s. c 5 § 1; 2010 2nd sp.s. c 1 § 903; 2010 1st sp.s. c 32 § 6. Prior: 2009 c 523 § 3; 2005 c 459 § 1; 2003 c 388 § 2; 2002 c 128 § 3; prior: 1996 c 178 § 11; 1996 c 38 § 2; prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

Purpose—Application—2012 c 236: "(1) On August 18, 2011, the state supreme court entered an opinion in the matter of *Dolan v. King County*, Cause No. 82842-3. The court recognized that a public employees' retirement system eligible employee must work for a public employees' retirement system employer under RCW 41.40.010. However, the court did not explain how such an employee can be an employee of a government contractor and also of a government employer. The legislature determines it necessary and appropriate to affirmatively state that a governmental contractor is not an employer for purposes of the state's public pension systems, including the public employees' retirement system, whether or not the contractor is providing mandatory or discretionary governmental services, and whether or not the contractor is a for-profit or not-for-profit entity.

(2) The legislature has not intended in its pension legislation to provide retirement system eligibility to employees of government contractors. Only in specific circumstances, such as employees of entities, including nonprofits, created by government under the interlocal cooperation act in chapter 39.34 RCW, has the legislature and department of retirement systems permitted retirement system eligibility for employees of government contractors. The department's rules in WAC 415-02-110 conform to the purpose and intent of the legislature regarding public pension eligibility.

(3) It is the purpose of this act to more clearly state and to confirm that employees of for-profit or not-for-profit corporations or other entities providing services under governmental contracts are not, as a result of providing such governmental service, eligible for membership in the various public retirement programs. The state and its local governments have not provided for such eligibility and such eligibility would create unfunded liability for state and local governments and potential impacts on the integrity of the public pension systems.

(4) This act provides cross-references to existing statutes that affect eligibility for pensions under the retirement systems authorized by chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 41.50 RCW and to the relevant definition sections of those chapters. Except as provided, this act is technical in nature and neither enhances nor diminishes existing pension rights. It is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of eligibility and benefits authorized in chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 41.50 RCW.

(5) This act shall apply solely to eligibility for state-sponsored public employee pension plans under chapters 41.26, 41.32, 41.35, 41.37, and 41.40 RCW and shall not affect any other statute or rule regarding employee benefits, status, or workplace protections.

(6) This act is curative and remedial, but does not affect the state supreme court decision in *Dolan v. King County*, Cause No. 82842-3, and the right established therein of King county public defenders and staff to public employees' retirement system enrollment and eligibility." [2012 c 236 § 1.]

Effective date—2011 1st sp.s. c 5: "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 July 1, 2011." [2011 1st sp.s. c 5 § 7.]

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—1981 c 256: "It is the primary purpose of this act to assure that the provisions of RCW 41.04.250 and 41.04.260 and of any deferred compensation plan established thereunder, are in conformity with the requirements of 26 U.S.C. Sec. 457 and any other requirements of federal law relating to such a deferred compensation plan. This act shall be construed in such a manner as to accomplish this purpose." [1981 c 256 § 1.]

Purpose—1971 ex.s. c 257: "It is the purpose of this act to provide minimum medical and health standards for membership coverage into the Washington law enforcement officers' and firefighters' retirement system act, for the improvement of the public service, and to safeguard the integrity and

actuarial soundness of their pension systems, and to improve their retirement and pension systems and related provisions." [1971 ex.s. c 257 § 1.]

Additional notes found at www.leg.wa.gov

41.26.035 "Minimum medical and health standards" defined. The term "minimum medical and health standards" means minimum medical and health standards adopted by the department under this chapter. [1991 c 35 § 14; 1971 ex.s. c 257 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.040 System created—Membership—Funds. The Washington law enforcement officers' and firefighters' retirement system is hereby created for firefighters and law enforcement officers.

(1) Notwithstanding RCW 41.26.030(20), all firefighters and law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter with respect to all periods of service as such, to the exclusion of any pension system existing under any prior act.

(2) Any employee serving as a law enforcement officer or firefighter on March 1, 1970, who is then making retirement contributions under any prior act shall have his or her membership transferred to the system established by this chapter as of such date. Upon retirement for service or for disability, or death, of any such employee, his or her retirement benefits earned under this chapter shall be computed and paid. In addition, his or her benefits under the prior retirement act to which he or she was making contributions at the time of this transfer shall be computed as if he or she had not transferred. For the purpose of such computations, the employee's creditability of service and eligibility for service or disability retirement and survivor and all other benefits shall continue to be as provided in such prior retirement act, as if transfer of membership had not occurred. The excess, if any, of the benefits so computed, giving full value to survivor benefits, over the benefits payable under this chapter shall be paid whether or not the employee has made application under the prior act. If the employee's prior retirement system was the Washington public employees' retirement system, payment of such excess shall be made by that system; if the employee's prior retirement system was the statewide city employees' retirement system, payment of such excess shall be made by the employer which was the member's employer when his or her transfer of membership occurred: PROVIDED, That any death in line of duty lump sum benefit payment shall continue to be the obligation of that system as provided in RCW 41.44.210; in the case of all other prior retirement systems, payment of such excess shall be made by the employer which was the member's employer when his or her transfer of membership occurred.

(3) All funds held by any firefighters' or police officers' relief and pension fund shall remain in that fund for the purpose of paying the obligations of the fund. The municipality shall continue to levy the dollar rate as provided in RCW 41.16.060, and this dollar rate shall be used for the purpose of paying the benefits provided in chapters 41.16 and 41.18

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RCW. The obligations of chapter 41.20 RCW shall continue to be paid from whatever financial sources the city has been using for this purpose. [2012 c 117 § 39; 1991 c 35 § 15; 1989 c 273 § 11; 1979 ex.s. c 45 § 1; 1974 ex.s. c 120 § 7; 1973 1st ex.s. c 195 § 44; 1970 ex.s. c 6 § 2; 1969 ex.s. c 209 § 4.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.045 Minimum medical and health standards.

(1) Notwithstanding any other provision of law after February 19, 1974 no law enforcement officer or firefighter, may become eligible for coverage in the pension system established by this chapter, until the individual has met and has been certified as having met minimum medical and health standards: PROVIDED, That an elected sheriff or an appointed chief of police or fire chief, shall not be required to meet the age standard: PROVIDED FURTHER, That in cities and towns having not more than two law enforcement officers and/or not more than two firefighters and if one or more of such persons do not meet the minimum medical and health standards as required by the provisions of this chapter, then such person or persons may join any other pension system that the city has available for its other employees: AND PROVIDED FURTHER, That for one year after February 19, 1974 any such medical or health standard now existing or hereinafter adopted, insofar as it establishes a maximum age beyond which an applicant is to be deemed ineligible for coverage, shall be waived as to any applicant for employment or reemployment who is otherwise eligible except for his or her age, who has been a member of any one or more of the retirement systems created by chapter 41.20 of the Revised Code of Washington and who has restored all contributions which he or she has previously withdrawn from any such system or systems.

(2) This section shall not apply to persons who initially establish membership in the retirement system on or after July 1, 1979. [2012 c 117 § 40; 1979 ex.s. c 249 § 3; 1977 ex.s. c 294 § 20; 1974 ex.s. c 120 § 8; 1971 ex.s. c 257 § 3.]

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.046 Minimum medical and health standards—Board to adopt—Publication and distribution—Employer certification procedures. By July 31, 1971, the *retirement board shall adopt minimum medical and health standards for membership coverage into the Washington law enforcement officers' and firefighters' retirement system act. In adopting such standards the *retirement board shall consider existing standards recommended by the international association of chiefs of police and the international association of firefighters, and shall adopt equal or higher standards, together with appropriate standards and procedures to insure uniform compliance with this chapter. The standards when adopted shall be published and distributed to each employer, and each employer shall adopt certification procedures and such other procedures as are required to insure that no law enforcement officer or firefighter receives membership coverage unless and until he or she has actually met minimum medical and health standards: PROVIDED, That an elected

sheriff or an appointed chief of police, fire chief, or director of public safety shall not be required to meet the age standard. The *retirement board may amend the minimum medical and health standards as experience indicates, even if the standards as so amended are lower or less rigid than those recommended by the international associations mentioned above. The cost of the medical examination contemplated by this section is to be paid by the employer. [2012 c 117 § 41; 1987 c 418 § 2; 1977 ex.s. c 294 § 21; 1974 ex.s. c 120 § 12; 1972 ex.s. c 131 § 2; 1971 ex.s. c 257 § 4.]

***Reviser's note:** Powers, duties, and functions of the Washington law enforcement officers' and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.047 Minimum medical and health standards—Exemptions—Employer may adopt higher standards. Nothing in RCW 41.26.035, 41.26.045 and 41.26.046 shall apply to any firefighters or law enforcement officers who are employed as such on or before August 1, 1971, as long as they continue in such employment; nor to promotional appointments after becoming a member in the police or fire department of any employer nor to the reemployment of a law enforcement officer or firefighter by the same or a different employer within six months after the termination of his or her employment, nor to the reinstatement of a law enforcement officer or firefighter who has been on military or disability leave, disability retirement status, or leave of absence status. Nothing in this chapter shall be deemed to prevent any employer from adopting higher medical and health standards than those which are adopted by the *retirement board. [2012 c 117 § 42; 1972 ex.s. c 131 § 3; 1971 ex.s. c 257 § 5.]

***Reviser's note:** Powers, duties, and functions of the Washington law enforcement officers' and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.048 Special death benefit—Death in the course of employment—Death from disease or infection arising from employment—Annual adjustment. (1) A two hundred fourteen thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determina-

tion of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(3)(a) Beginning July 1, 2010, and every year thereafter, the department shall determine the following information:

(i) The index for the 2008 calendar year, to be known as "index A;"

(ii) The index for the calendar year prior to the date of determination, to be known as "index B;" and

(iii) The ratio obtained when index B is divided by index A.

(b) The value of the ratio obtained shall be the annual adjustment to the original death benefit and shall be applied beginning every July 1st. In no event, however, shall the annual adjustment:

(i) Produce a benefit which is lower than two hundred fourteen thousand dollars;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

(c) For the purposes of this section, "index" means, for any calendar year, that year's 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. [2010 c 261 § 2; 2009 c 523 § 4; 2007 c 487 § 2; 2006 c 351 § 1; 1996 c 226 § 1.]

Application—2010 c 261: "Sections 2 and 7 of this act apply to the benefits of all members killed in the course of employment since January 1, 2009." [2010 c 261 § 9.]

Additional notes found at www.leg.wa.gov

41.26.053 Exemption from judicial process, taxes—Exceptions—Deduction for insurance upon request. (1) Subject to subsections (2) and (3) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction

issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 21. Prior: 1991 c 365 § 20; 1991 c 35 § 25; 1989 c 360 § 24; 1987 c 326 § 22; 1979 ex.s. c 205 § 4; 1971 ex.s. c 257 § 12; 1970 ex.s. c 6 § 15; 1969 ex.s. c 209 § 23. Formerly RCW 41.26.180.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.056 No bond required on appeal to court. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a decision of the director affecting such claimant's right to retirement or disability benefits. [1984 c 184 § 18; 1971 c 81 § 103; 1969 ex.s. c 209 § 21. Formerly RCW 41.26.230.]

Additional notes found at www.leg.wa.gov

41.26.057 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 1.]

41.26.059 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 1.]

41.26.061 Disability retirement—Criminal conduct. A member shall not receive a disability retirement benefit under RCW 41.26.120, 41.26.125, 41.26.130, or 41.26.470 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1997 c 103 § 1.]

Additional notes found at www.leg.wa.gov

41.26.062 Falsification—Penalty. Any employer, member or beneficiary who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in an attempt to defraud the retirement system, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 217; 1972 ex.s. c 131 § 10. Formerly RCW 41.26.300.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

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"PLAN 1"

41.26.075 Provisions applicable to plan 1. RCW 41.26.080 through 41.26.3903 shall apply only to members of plan 1. [1992 c 72 § 3; 1991 c 35 § 101.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.26.080 Funding total liability of plan 1 system. (1) Except as set forth under subsection (2) of this section, the total liability of the plan 1 system shall be funded as follows:

(a) Every plan 1 member shall have deducted from each payroll a sum equal to six percent of his or her basic salary for each pay period.

(b) Every employer shall contribute monthly a sum equal to six percent of the basic salary of each plan 1 employee who is a member of this retirement system. The employer shall transmit the employee and employer contributions with a copy of the payroll to the retirement system monthly.

(c) The remaining liabilities of the plan 1 system shall be funded as provided in chapter 41.45 RCW.

(d) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contributions shall be a complete discharge of all claims and demands whatsoever for the services rendered by such person during the period covered by such payments, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter.

(2) No employer or member contribution is required after June 30, 2000, unless the most recent valuation study for law enforcement officers' and firefighters' retirement system plan 1 indicates the plan has unfunded liabilities. The legislature clarifies the enactment of section 907, chapter 1, Laws of 2000 2nd sp. sess. and affirms the suspension of employer and member contributions to plan 1 of the law enforcement officers' and firefighters' retirement system, effective June 30, 2000, as provided in this subsection. The legislature intends this 2007 amendment of this subsection to be curative, remedial, and retrospectively applicable to June 30, 2000. [2007 c 492 § 8; 2000 2nd sp.s. c 1 § 907; 1991 c 35 § 17; 1989 c 273 § 13; 1969 ex.s. c 209 § 8.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.090 Retirement for service. Retirement of a member for service shall be made by the department as follows:

(1) Any member having five or more service credit years of service and having attained the age of fifty years shall be eligible for a service retirement allowance and shall be retired upon the member's written request effective the first day following the date upon which the member is separated from service.

(2) Any member having five or more service credit years of service, who terminates his or her employment with any employer, may leave his or her contributions in the fund. Any employee who so elects, upon attaining age fifty, shall be eligible to apply for and receive a service retirement allowance based on his or her years of service, commencing on the first day following his or her attainment of age fifty.

(3) Any member selecting optional vesting under subsection (2) of this section with less than twenty service credit years of service shall not be covered by the provisions of RCW 41.26.150, and the member's survivors shall not be entitled to the benefits of RCW 41.26.160 unless his or her death occurs after he or she has attained the age of fifty years. Those members selecting this optional vesting with twenty or more years service shall not be covered by the provisions of RCW 41.26.150 until the attainment of the age of fifty years. A member selecting this optional vesting, with less than twenty service credit years of service credit, who dies prior to attaining the age of fifty years, shall have paid from the Washington law enforcement officers' and firefighters' retirement fund, to such member's surviving spouse, if any, otherwise to such beneficiary as the member shall have designated in writing, or if no such designation has been made, to the personal representative of his or her estate, a lump sum which is equal to the amount of such member's accumulated contributions plus accrued interest. If the vested member has twenty or more service credit years of service credit the surviving spouse or children shall then become eligible for the benefits of RCW 41.26.160 regardless of the member's age at the time of his or her death, to the exclusion of the lump sum amount provided by this subsection.

(4) Any member who has attained the age of sixty years shall be retired on the first day of the calendar month next succeeding that in which said member shall have attained the age of sixty and may not thereafter be employed as a law enforcement officer or firefighter: PROVIDED, That for any member who is elected or appointed to the office of sheriff, chief of police, or fire chief, his or her election or appointment shall be considered as a waiver of the age sixty provision for retirement and nonemployment for whatever number of years remain in his or her present term of office and any succeeding periods for which he or she may be so elected or appointed. The provisions of this subsection shall not apply to any member who is employed as a law enforcement officer or firefighter on March 1, 1970. [1991 sp.s. c 11 § 4. Prior: 1991 c 343 § 15; 1991 c 35 § 18; 1977 ex.s. c 294 § 22; 1972 ex.s. c 131 § 6; 1971 ex.s. c 257 § 8; 1970 ex.s. c 6 § 4; 1969 ex.s. c 209 § 9.]

Purpose—1991 sp.s. c 11: "The purpose of this act is to correct certain double amendments created during the 1991 regular session that the code reviser's office is unable to merge under RCW 1.12.025. The session laws repealed by section 2 of this act are strictly technical in nature and affect no policy. Sections *3 through 6 of this act are being reenacted to effectuate a legislative directive contained in 1991 c 35 s 2." [1991 sp.s. c 11 § 1.]

*Reviser's note: 1991 sp.s. c 11 § 3 was repealed by 1991 sp.s. c 12 § 3.

*Reviser's note: 1991 sp.s. c 11 § 3 was repealed by 1991 sp.s. c 12 § 3.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.100 Allowance on retirement for service. A member upon retirement for service shall receive a monthly retirement allowance computed according to his or her completed creditable service credit years of service as follows: Five years but under ten years, one-twelfth of one percent of his or her final average salary for each month of service; ten

years but under twenty years, one-twelfth of one and one-half percent of his or her final average salary for each month of service; and twenty years and over one-twelfth of two percent of his or her final average salary for each month of service: PROVIDED, That the recipient of a retirement allowance who shall return to service as a law enforcement officer or firefighter shall be considered to have terminated his or her retirement status and he or she shall immediately become a member of the retirement system with the status of membership he or she had as of the date of retirement. Retirement benefits shall be suspended during the period of his or her return to service and he or she shall make contributions and receive service credit. Such a member shall have the right to again retire at any time and his or her retirement allowance shall be recomputed, and paid, based upon additional service rendered and any change in final average salary. [2006 c 350 § 1; 1991 c 343 § 16; 1974 ex.s. c 120 § 3; 1972 ex.s. c 131 § 7; 1971 ex.s. c 257 § 9; 1970 ex.s. c 6 § 5; 1969 ex.s. c 209 § 10.]

Effective date—2006 c 350 § 1: "Section 1 of this act takes effect July 1, 2006." [2006 c 350 § 3.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.105 Purchase of actuarially equivalent life annuity benefit upon retirement—Purchase by past retirees. (1) At the time of retirement, plan 1 members may purchase an optional actuarially equivalent life annuity benefit from the Washington law enforcement officers' and firefighters' retirement system plan 1 retirement fund established in RCW 41.50.075. A minimum payment of twenty-five thousand dollars is required.

(2) Subject to rules adopted by the department, a member purchasing an annuity under this section must pay all of the cost with an eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan.

(a) The department shall adopt rules to ensure that all eligible rollovers and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(b) "Eligible retirement plan" means a tax qualified plan offered by a governmental employer.

(3) Plan 1 members whose retirement was effective prior to June 9, 2016, may purchase an annuity under this section between January 1, 2017, and June 1, 2017. [2016 c 222 § 2.]

41.26.110 City and county disability boards authorized—Composition—Terms—Reimbursement for travel expenses—Duties. (1) All claims for disability shall be acted upon and either approved or disapproved by either type of disability board authorized to be created in this section.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by those cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor; one active or retired firefighter employed by or retired from the city to be elected by the firefighters employed by or retired from the city who are subject to the jurisdiction of the board; one active or retired law enforcement officer employed by or retired from the city to be elected by the law enforcement officers employed by or retired from the city who are subject to the jurisdiction of the board; and one member from the public at large who resides within the city to be appointed by the other four members designated in this subsection. Only those active or retired firefighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All firefighters and law enforcement officers employed by or retired from the city are eligible for election. Each of the elected members shall serve a two year term. If there are either no firefighters or law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers or firefighters eligible to vote. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing firefighters' pension boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon and approve or disapprove claims for disability by firefighters or law enforcement officers as provided under the Washington law enforcement officers' and firefighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members employed by or retired from an employer within the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body; one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to (a) of this subsection to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board; one active firefighter or retired firefighter employed by or retired from an employer within the county to be elected by the firefighters employed or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; one law enforcement officer or retired law enforcement officer employed by or retired from an employer within the county to be elected by the law enforcement officers employed in or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four

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members designated in this subsection. However, in counties with a population less than sixty thousand, the member of the disability board appointed by a majority of the mayors of the cities and towns within the county that do not contain a city disability board must be a resident of one of the cities and towns but need not be a member of a city or town legislative body. Only those active or retired firefighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All firefighters and law enforcement officers employed by or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established are eligible for election. All members appointed or elected pursuant to this subsection shall serve for two year terms. If there are no firefighters under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers eligible to vote. If there are no law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible representative shall be elected by the firefighters eligible to vote.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but the members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter. [2013 c 213 § 1; 2013 c 23 § 69; 2005 c 66 § 1; 2003 c 30 § 3; 2000 c 234 § 1; 1988 c 164 § 1; 1982 c 12 § 1; 1974 ex.s. c 120 § 9; 1970 ex.s. c 6 § 6; 1969 ex.s. c 219 § 3; 1969 ex.s. c 209 § 11.]

Reviser's note: This section was amended by 2013 c 23 § 69 and by 2013 c 213 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

41.26.115 Director of retirement systems to adopt rules governing disability boards—Remand of orders not in accordance with rules. (1) The director of retirement systems shall adopt rules, in accordance with chapter 34.05 RCW, under which each disability board shall execute its disability retirement duties under this chapter. The rules shall include, but not be limited to, the following:

(a) Standards governing the type and manner of presentation of medical, employability, and other evidence before disability boards; and

(b) Standards governing the necessity and frequency of medical and employability reexaminations of persons receiving disability benefits.

(2) If the director determines that an order or determination of a disability board was not processed in accordance with the rules established under this section, the director may remand the order or determination for further proceedings consistent with the rules. [1981 c 294 § 1.]

Additional notes found at www.leg.wa.gov

41.26.120 Retirement for disability incurred in the line of duty. Any member, regardless of age or years of service may be retired by the disability board, subject to

approval by the director as hereinafter provided, for any disability incurred in the line of duty which has been continuous since his or her discontinuance of service and which renders the member unable to continue service. No disability retirement allowance shall be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of his or her application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to the full monthly salary and shall continue to receive all other benefits provided to active employees from the employer for such period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, the disability leave allowance shall be canceled and the member shall be restored to duty in the same rank or position, if any, held by the beneficiary at the time the member became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he or she is or is believed to be physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of said member, or a person acting in his or her behalf, stating that said member is disabled, either physically or mentally: PROVIDED, That no such application shall be considered unless said member or someone in his or her behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability has been continuous from the discontinuance of service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter as now or hereafter amended, granting the member a disability retirement allowance; otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a duty disability retirement allowance, the disability board shall make a finding that the disability was incurred in line of duty.

(3) Every order of a disability board granting a duty disability retirement allowance shall forthwith be reviewed by the director except the finding that the disability was incurred in the line of duty. The director may affirm the decision of the disability board or remand the case for further proceedings, or the director may reverse the decision of the disability board if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or

(f) Arbitrary or capricious.

(4) Every member who can establish, to the disability board, that he or she is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability will be in existence for a period of at least six months may waive the six-month period of disability leave and be immediately granted a duty disability retirement allowance, subject to the approval of the director as provided in subsection (3) of this section. [1991 c 35 § 19; 1986 c 176 § 5; 1985 c 102 § 2; 1981 c 294 § 2; 1974 ex.s. c 120 § 10; 1972 ex.s. c 131 § 8; 1970 ex.s. c 6 § 7; 1969 ex.s. c 209 § 12.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—1985 c 102: "As expressed in RCW 41.26.270, the intent of the legislature in enacting the law enforcement officers' and firefighters' retirement system was to provide in RCW 41.26.120 a statute in the nature of a workers' compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. The sole purpose of this 1985 act is to clarify that intent." [1985 c 102 § 1.]

Disability leave supplement for law enforcement officers and firefighters: RCW 41.04.500 through 41.04.550.

Additional notes found at www.leg.wa.gov

41.26.125 Retirement for disability not incurred in the line of duty. Any member, regardless of age or years of service, may be retired by the disability board, subject to approval by the director as provided in this section, for any disability not incurred in the line of duty which has been continuous since discontinuance of service and which renders the member unable to continue service. No disability retirement allowance may be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of the member's application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to the member's full monthly salary and shall continue to receive all other benefits provided to active employees from the member's employer for the period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, the disability leave allowance shall be canceled and the member shall be restored to duty in the same rank or position, if any, held by the member at the time the member became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he or she is, or is believed to be, physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of the member, or a person acting in the member's behalf, stating that the member is disabled, either physically or mentally: PROVIDED, That no such application shall be considered unless the member or someone acting in the member's behalf, in case of the incapacity of a member, has filed the application within a period of one year from and after the discontinuance of service of the member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was not incurred in the line of duty, and that such disability had been continuous from the discontinuance of service, the disability board shall enter its written decision and

order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter, granting the member a disability retirement allowance. Otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a nonduty disability retirement allowance, the disability board shall make a finding that the disability was not incurred in the line of duty.

(3) Every order of a disability board granting a nonduty disability retirement allowance shall forthwith be reviewed by the director except the finding that the disability was not incurred in the line of duty. The director may affirm the decision of the disability board or remand the case for further proceedings, or the director may reverse the decision of the disability board if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(4) Every member who can establish to the disability board that the member is physically or mentally disabled from the further performance of duty, that such disability was not incurred in the line of duty, and that such disability will be in existence for a period of at least six months, may waive the six-month period of disability leave and be immediately granted a nonduty disability retirement allowance, subject to the approval of the director as provided in subsection (3) of this section. [1986 c 176 § 6; 1985 c 102 § 3.]

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

41.26.130 Allowance on retirement for disability. (1) Upon retirement for disability a member shall be entitled to receive a monthly retirement allowance computed as follows: (a) A basic amount of fifty percent of final average salary at time of disability retirement, and (b) an additional five percent of final average salary for each child as defined in *RCW 41.26.030(7), (c) the combined total of (a) and (b) of this subsection shall not exceed a maximum of sixty percent of final average salary.

(2) A disabled member shall begin receiving the disability retirement allowance as of the expiration of his or her six month period of disability leave or, if his or her application was filed after the sixth month of discontinuance of service but prior to the one year time limit, the member's disability retirement allowance shall be retroactive to the end of the sixth month.

(3) Benefits under this section will be payable until the member recovers from the disability or dies. If at the time that the disability ceases the member is over the age of fifty, he or she shall then receive either disability retirement allowance or retirement for service allowance, whichever is greater.

(4) Benefits under this section for a disability that is incurred while in other employment will be reduced by any

amount the member receives or is entitled to receive from workers' compensation, social security, group insurance, other pension plan, or any other similar source provided by another employer on account of the same disability.

(5) A member retired for disability shall be subject to periodic examinations by a physician approved by the disability board prior to attainment of age fifty, pursuant to rules adopted by the director under RCW 41.26.115. Examinations of members who retired for disability prior to July 26, 1981, shall not exceed two medical examinations per year. [1991 c 35 § 20; 1987 c 185 § 11; 1981 c 294 § 3; 1970 ex.s. c 6 § 8; 1969 ex.s. c 209 § 13.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (6).

Intent—1991 c 35: See note following RCW 41.26.005.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Additional notes found at www.leg.wa.gov

41.26.135 Cessation of disability—Determination.

(1) A disabled member who believes that his or her disability has ceased in accordance with RCW 41.26.130(3) may make application to the disability board which originally found the member to be disabled, for a determination that the disability has ceased.

(2) Every order of a disability board determining that a member's disability has ceased pursuant to RCW 41.26.130(3) shall forthwith be reviewed by the director. The director may affirm the decision of the disability board or remand the case for further proceedings if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(3) Determinations of whether a disability has ceased under RCW 41.26.130(3) and this section shall be made in accordance with the same procedures and standards governing other cancellations of disability retirement. [1985 c 103 § 1.]

41.26.140 Reexaminations of disability beneficiaries—Reentry—Appeal. (1) Upon the basis of reexaminations of members on disability retirement as provided in RCW 41.26.130, the disability board shall determine whether such disability beneficiary is still unable to perform his or her duties either physically or mentally for service in the department where he or she was employed.

(2) If the disability board shall determine that the beneficiary is not so incapacitated the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the beneficiary at the time of his or her retirement or if unable to perform the duties of said rank, then, at his or her request, in such other like or lesser rank as may be or become open and available, the duties of which he or she is then able to perform. In no event,

shall a beneficiary previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the said beneficiary at the date of retirement for disability. If the disability board determines that the beneficiary is able to return to service he or she shall be entitled to notice and a hearing, both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, as now or hereafter amended.

(3) Should a disability beneficiary reenter service and be eligible for membership in the retirement system, the retirement allowance shall be canceled and he or she shall immediately become a member of the retirement system.

(4) Should any disability beneficiary under age fifty refuse to submit to examination, the retirement allowance shall be discontinued until withdrawal of such refusal, and should such refusal continue for one year or more, the retirement allowance shall be canceled.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) Any person feeling aggrieved by an order of a disability board determining that a beneficiary's disability has not ceased, pursuant to RCW 41.26.130(3) has the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability board and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the record, the director may affirm the order of the disability board or may remand the case for further proceedings if the director finds that the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious. [1991 c 35 § 21; 1985 c 103 § 2; 1981 c 294 § 4; 1974 ex.s. c 120 § 4; 1970 ex.s. c 6 § 9; 1969 ex.s. c 209 § 14.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.150 Sickness or disability benefits—Medical services. (1) Whenever any active member, or any member hereafter retired, on account of service, sickness, or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be judge, is confined in any hospital or in home, and whether or not so confined, requires medical services, and the employer shall pay for the active or

retired member the necessary medical services not payable from some other source as provided for in subsection (2) of this section. In the case of active or retired firefighters the employer may make the payments provided for in this section from the firefighters' pension fund established pursuant to RCW 41.16.050 where the fund had been established prior to March 1, 1970. If this pension fund is depleted, the employer shall have the obligation to pay all benefits payable under chapters 41.16 and 41.18 RCW.

(a) The disability board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the disability board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the disability board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all rights to benefits under this section for the period of the refusal.

(b) The disability board shall designate the medical services available to any sick or disabled member.

(2) The medical services payable under this section will be reduced by any amount received or eligible to be received by the member under workers' compensation, social security including the changes incorporated under Public Law 89-97, insurance provided by another employer, other pension plan, or any other similar source. Failure to apply for coverage if otherwise eligible under the provisions of Public Law 89-97 shall not be deemed a refusal of payment of benefits thereby enabling collection of charges under the provisions of this chapter.

(3) Upon making the payments provided for in subsection (1) of this section, the employer shall be subrogated to all rights of the member against any third party who may be held liable for the member's injuries or for payment of the cost of medical services in connection with a member's sickness or disability to the extent necessary to recover the amount of payments made by the employer.

(4) Any employer under this chapter, either singly, or jointly with any other such employer or employers through an association thereof as provided for in chapter 48.21 RCW, may provide for all or part of one or more plans of group hospitalization and medical aid insurance to cover any of its employees who are members of the Washington law enforcement officers' and firefighters' retirement system, and/or retired former employees who were, before retirement, members of the retirement system, through contracts with regularly constituted insurance carriers, with health maintenance organizations as defined in chapter 48.46 RCW, or with health care service contractors as defined in chapter 48.44 RCW. Benefits payable under the plan or plans shall be deemed to be amounts received or eligible to be received by the active or retired member under subsection (2) of this section.

(5) Any employer under this chapter may, at its discretion, elect to reimburse a retired former employee under this chapter for premiums the retired former employee has paid for medical insurance that supplements medicare, including premiums the retired former employee has paid for medicare part B coverage. [2013 c 23 § 70; 1992 c 22 § 3; 1991 c 35 § 22; 1987 c 185 § 12; 1983 c 106 § 23; 1974 ex.s. c 120 § 11;

1971 ex.s. c 257 § 10; 1970 ex.s. c 6 § 10; 1969 ex.s. c 219 § 4; 1969 ex.s. c 209 § 15.]

Intent—1991 c 35: See note following RCW 41.26.005.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.160 Death benefits—Duty or military service connected. (1) In the event of the duty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on duty connected disability leave or retired for duty connected disability, or upon the death of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the surviving spouse shall become entitled, subject to RCW 41.26.162, to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for duty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in *RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the duty connected death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for duty connected disability, or at the time of the death of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section: PROVIDED, That if a member dies as a result of a disability incurred in the line of duty or while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, then if he or she was married at the time he or she was disabled or left the employ of an employer due to service in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the surviving spouse shall be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's duty connected death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average

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salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in *RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of the member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in *RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date. [2009 c 226 § 1; 2005 c 62 § 1; 2002 c 158 § 1; 1999 c 134 § 2; 1991 sp.s. c 11 § 5. Prior: 1991 c 343 § 17; 1991 c 35 § 23; 1986 c 176 § 7; 1977 ex.s. c 294 § 23; 1974 ex.s. c 120 § 5; 1972 ex.s. c 131 § 9; 1971 ex.s. c 257 § 11; 1970 ex.s. c 6 § 12; 1969 ex.s. c 209 § 17.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (6).

Purpose—1999 c 134: "The purpose of sections 1 through 4 of this act is to clarify that the intent of the legislature in enacting RCW 41.26.160, insofar as that section provides benefits to members or surviving spouses for deaths incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees or surviving spouses for personal injuries or deaths incurred in the course of employment. Accordingly, this act amends and divides RCW 41.26.160 into two separate sections. Section 2 of this act clarifies and emphasizes the legislature's intent that the death benefits granted by RCW 41.26.160, as amended, are granted only to those members who die or become disabled by any injury or incapacity that is incurred in the line of duty. Section 3 of this act continues to provide death retirement benefits to members or surviving spouses for deaths not incurred in the line of duty." [1999 c 134 § 1.]

Purpose—Effective dates—1991 sp.s. c 11: See notes following RCW 41.26.090.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.161 Death benefits—Nonduty connected. (1) In the event of the nonduty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on disability leave or retired, whether for nonduty connected disability or service, the surviving spouse shall become entitled, subject to RCW 41.26.162, to receive

a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for service or nonduty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in *RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for service or disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in *RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of said member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in *RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date. [2005 c 62 § 2; 2002 c 158 § 2; 1999 c 134 § 3.]

*Reviser's note: RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (6).

Purpose—Effective date—1999 c 134: See notes following RCW 41.26.160.

41.26.162 Ex spouse qualifying as surviving spouse.

(1) An ex spouse of a law enforcement officers' and firefighters' retirement system retiree shall qualify as surviving spouse under RCW 41.26.160 or 41.26.161 if the ex spouse has been provided benefits under any currently effective court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. Such an ex spouse shall continue to receive the court-awarded portion of the member's benefit after the member's death as if the member was still alive.

(2) An ex spouse whose benefit resumes as a result of chapter 62, Laws of 2005 shall receive an initial payment equivalent to that portion of the member's benefit received prior to its suspension. The benefit will not be adjusted under RCW 41.26.240 for the period the allowance was suspended.

(3) Chapter 62, Laws of 2005 shall not result in the payment of benefits for the period during which benefits were suspended.

(4) This section shall apply retroactively. [2005 c 62 § 3; 2002 c 158 § 3; 1991 sp.s. c 12 § 2.]

41.26.164 Optional reduced retirement allowance—Continues for spouse otherwise ineligible for survivor benefits.

(1) No later than July 1, 2005, the department shall adopt rules to allow a member who meets the criteria set forth in subsection (2) of this section to choose an actuarially equivalent benefit that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161.

(2) To choose an actuarially equivalent benefit according to subsection (1) of this section, a member shall:

(a) Have a portion of the retirement allowance payable to the retiree that is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670; and

(b) Choose an actuarially reduced benefit equivalent to that portion not subject to periodic payments under (a) of this subsection during a one-year period beginning one year after the date of marriage to the survivor benefit-ineligible spouse.

(3)(a) A member who married a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161 prior to the effective date of the rules adopted under this section and satisfies subsection (2)(a) of this section has one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A member who married a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161, has been married to that spouse for at least two years prior to September 1, 2015, and satisfies subsection (2)(a) of this section has one year from September 1, 2015, to designate their spouse as a survivor beneficiary. The office of the state actuary must provide the department with administrative factors to ensure that the benefits provided under this section are actuarially equivalent.

(c) A deceased member's spouse who was eligible to be provided a survivor benefit under RCW 41.26.164(1) [subsection (1) of this section] but the member did not select a

survivor benefit, and who prior to March 1, 2015, exhausted all administrative remedies with the department for establishing eligibility for a benefit under RCW 41.26.164 [this section], is eligible beginning August 1, 2015, for a retirement allowance equal to two-thirds of the gross monthly retirement allowance the retired member received at the time of death.

(4) No benefit provided to a child survivor beneficiary under RCW 41.26.160 or 41.26.161 is affected or reduced by the member's selection of the actuarially reduced spousal survivor benefit provided by this section.

(5)(a) Any member who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the beneficiary's death shall be increased by the following:

(i) One hundred percent multiplied by the result of (b)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor. [2016 c 120 § 1; 2005 c 67 § 1; 2002 c 158 § 4.]

Additional notes found at www.leg.wa.gov

41.26.170 Refund of contributions on discontinuance of service—Reentry. (1) Should service of a member be discontinued except by death, disability, or retirement, the member shall, upon application therefor, be paid the accumulated contributions within sixty days after the day of application and the rights to all benefits as a member shall cease: PROVIDED, That any member with at least five years' service may elect the provisions of RCW 41.26.090(2).

(2) Any member whose contributions have been paid in accordance with subsection (1) of this section and who reenters the service of an employer shall upon the restoration of withdrawn contributions, which restoration must be completed within a total period of five years of service following resumption of employment, then receive credit toward retirement for the period of previous service which these contributions are to cover.

(3) If the member fails to meet the time limitations of subsection (2) of this section, the member may make the payment required under RCW 41.50.165(2) prior to retirement. The member shall then receive credit toward retirement for the period of previous service that the withdrawn contributions cover. [1994 c 197 § 6; 1991 c 35 § 24; 1970 ex.s. c 6 § 14; 1969 ex.s. c 209 § 22.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.26.190 Credit for military service. Each person affected by this chapter who at the time of entering the armed services was a member of this system, and has honorably served in the armed services of the United States, shall have added to the period of service as computed under this chapter, the period of service in the armed forces: PROVIDED, That

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such credited service shall not exceed five years. [1991 c 35 § 26; 1970 ex.s. c 6 § 13; 1969 ex.s. c 209 § 18.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.26.192 Credit for service under prior pension system—Restoration of withdrawn contributions. If a member of plan 1 served as a law enforcement officer or firefighter under a prior pension system and that service is not creditable to plan 1 because the member withdrew his or her contributions plus accrued interest from the prior pension system, the member's prior service as a law enforcement officer shall be credited to plan 1 if the member pays to the retirement system the amount under RCW 41.50.165(2) prior to retirement. [1994 c 197 § 7; 1992 c 157 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.26.194 Credit for service under prior pension system—Service not covered under prior system. If a plan 1 member's prior service as a law enforcement officer or firefighter under a prior pension system is not creditable because, although employed in a position covered by a prior pension act, the member had not yet become a member of the pension system governed by the act, the member's prior service as a law enforcement officer or firefighter shall be creditable under plan 1, if the member pays to the plan the amount set forth under RCW 41.50.165(2) prior to retirement. [1994 c 197 § 8; 1992 c 157 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.26.195 Transfer of service credit from other retirement system—Irrevocable election allowed. Any member of the teachers' retirement system plans 1, 2, or 3, the public employees' retirement system plans 1, 2, or 3, the public safety employees' retirement system plan 2, the school employees' retirement system plans 2 or 3, or the Washington state patrol retirement system plans 1 or 2 who has previously established service credit in the law enforcement officers' and firefighters' retirement system plan 1 may make an irrevocable election to have such service transferred to their current retirement system and plan subject to the following conditions:

(1) If the individual is employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than July 1, 1998. If the individual is not employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than one year from the date they are employed by an employer in an eligible position.

(2) An individual transferring service under this section forfeits the rights to all benefits as a member of the law enforcement officers' and firefighters' retirement system plan 1 and will be permanently excluded from membership.

(3) Any individual choosing to transfer service under this section will have transferred to their current retirement system and plan: (a) All the individual's accumulated contributions; (b) an amount sufficient to ensure that the employer contribution rate in the individual's current system and plan

will not increase due to the transfer; and (c) all applicable months of service, as defined in *RCW 41.26.030(14)(a).

(4) If an individual has withdrawn contributions from the law enforcement officers' and firefighters' retirement system plan 1, the individual may restore the contributions, together with interest as determined by the director, and recover the service represented by the contributions for the sole purpose of transferring service under this section. The contributions must be restored before the transfer can occur and the restoration must be completed within the time limitations specified in subsection (1) of this section.

(5) Service transferred under this section is applicable for meeting the total service required for military service credit as defined in RCW 41.40.170(3) but is not applicable for meeting the total service credit required for military service credit under RCW 43.43.260(3). This subsection applies to members who retired on or after January 1, 1998.

(6) If an individual does not meet the time limitations of subsection (1) of this section, the individual may elect to restore any withdrawn contributions and transfer service under this section by paying the amount required under subsection (3)(b) of this section less any employee contributions transferred. [2010 c 260 § 1; 2007 c 492 § 9; 2003 c 294 § 2; 1997 c 122 § 1.]

*Reviser's note: RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (14)(a) to subsection (28)(a).

41.26.197 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.26.080 through 41.26.3903.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 3.]

Additional notes found at www.leg.wa.gov

41.26.199 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.26.090 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible

rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 5.]

Effective date—2006 c 214: See note following RCW 41.40.034.

41.26.200 Appeal to director of retirement systems. Any person feeling aggrieved by any order or determination of a disability board denying disability leave or disability retirement, or canceling a previously granted disability retirement allowance, shall have the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the applicable disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability board and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the record, the director may affirm the order of the disability board or may remand the case for such further proceedings as he or she may direct, in accordance with such rules of procedure as the director shall promulgate. [1981 c 294 § 5; 1974 ex.s. c 120 § 6; 1971 ex.s. c 257 § 13; 1970 ex.s. c 6 § 11; 1969 ex.s. c 209 § 16.]

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.211 Notice for hearing required prior to petitioning for judicial review. Any person aggrieved by any final decision of the director must, before petitioning for judicial review, file with the director of the retirement system by mail or personally within sixty days from the day such decision was communicated to such person, a notice for a hearing. The notice of hearing shall set forth in full detail the grounds upon which such person considers such decision unjust or unlawful and shall include every issue to be considered, and it must contain a detailed statement of facts upon which such person relies in support thereof. Such persons shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1984 c 184 § 16; 1981 c 294 § 6; 1969 ex.s. c 209 § 19. Formerly RCW 41.26.052, 41.26.210.]

Additional notes found at www.leg.wa.gov

41.26.221 Hearing—Conduct. A hearing shall be held by the director, or the director's duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be de novo and shall conform to the provisions of chapter 34.05 RCW, as now or hereafter amended. The disability board and the department shall be entitled to appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the director shall be governed by the provisions of chapter 34.05 RCW as now law or hereafter amended. [1984 c 184 § 17; 1981 c 294 § 7; 1969 ex.s. c 209 § 20. Formerly RCW 41.26.054, 41.26.220.]

Additional notes found at www.leg.wa.gov

41.26.240 Increases or decreases in retirement allowances to be determined by department in accordance with consumer price index. For purposes of this section:

(1) "Index" shall mean, for any calendar year, that year's average Consumer Price Index—Seattle, Washington area for urban wage earners and clerical workers, all items (1957-1959=100), compiled by the Bureau of Labor Statistics, United States Department of Labor;

(2) "Retirement allowance" shall mean the retirement allowance provided for in RCW 41.26.100 and 41.26.130, and the monthly allowance provided for in RCW 41.26.160.

Effective April 1 of 1971, and of each succeeding year, every retirement allowance which has been in effect for more than one year shall be adjusted to that dollar amount which exceeds its original dollar amount by the percentage difference which the department finds to exist between the index for the previous calendar year and the index for the calendar year prior to the effective retirement date of the person to whom, or on behalf of whom, such retirement allowance is being paid.

For the purposes of this section, basic allowance shall mean that portion of a total retirement allowance, and any cost of living adjustment thereon, attributable to a member (individually) and shall not include the increased amounts attributable to the existence of a child or children. In those cases where a child ceases to be qualified as an eligible child, so as to lessen the total allowance, the allowance shall, at that time, be reduced to the basic allowance plus the amount attributable for the appropriate number of eligible children. In those cases where a child qualifies as an eligible child subsequent to the retirement of a member so as to increase the total allowance payable, such increased allowance shall at the time of the next and appropriate subsequent cost of living adjustments, be considered the original dollar amount of the allowance. [1991 c 35 § 27; 1974 ex.s. c 120 § 13; 1970 ex.s. c 6 § 16; 1969 ex.s. c 209 § 24.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.250 Increase in presently payable benefits for service or disability authorized. All benefits presently payable pursuant to the provisions of RCW 41.20.050, 41.20.060 and 41.20.080 as such RCW sections existed prior to the effective date of the amendment of such RCW sections by sections 1, 2, 3, chapter 191, Laws of 1961 to persons who retired prior to the effective date of the said 1961 amendatory act, shall be increased annually as hereafter in this section

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provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purpose of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased as authorized by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative.

For the purpose of this section the term

"Consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [1975 1st ex.s. c 178 § 3; 1974 ex.s. c 190 § 3; 1970 ex.s. c 37 § 2; 1969 ex.s. c 209 § 34.]

Additional notes found at www.leg.wa.gov

41.26.260 Increase in certain presently payable death benefits authorized. All benefits presently payable pursuant to the provisions of RCW 41.20.085 which are not related to the amount of current salary attached to the position held by the deceased member, shall be increased annually in the same manner and to the same extent as provided for pursuant to RCW 41.26.250. [1974 ex.s. c 190 § 4; 1969 ex.s. c 209 § 35.]

41.26.270 Declaration of policy respecting benefits for injury or death—Civil actions abolished. The legislature of the state of Washington hereby declares that the relationship between members of the law enforcement officers' and firefighters' retirement system and their governmental employers is similar to that of workers to their employers and that the sure and certain relief granted by this chapter is desirable, and as beneficial to such law enforcement officers and firefighters as workers' compensation coverage is to persons covered by Title 51 RCW. The legislature further declares that removal of law enforcement officers and firefighters from workers' compensation coverage under Title 51 RCW necessitates the (1) continuance of sure and certain relief for personal injuries incurred in the course of employment or occupational disease, which the legislature finds to be accomplished by the provisions of this chapter and (2) protection for the governmental employer from actions at law; and to this end the legislature further declares that the benefits and remedies conferred by this chapter upon law enforcement officers and firefighters covered hereunder, shall be to the exclusion of any other remedy, proceeding, or compensation for personal injuries or sickness, caused by the governmental employer except as otherwise provided by this chapter; and to that end all civil actions and civil causes of actions by such law enforcement officers and firefighters against their governmental employers for personal injuries or sickness are hereby abolished, except as otherwise provided in this chap-

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ter. [1989 c 12 § 13; 1987 c 185 § 13; 1985 c 102 § 4; 1971 ex.s. c 257 § 14.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.281 Cause of action for injury or death, when.

If injury or death results to a member from the intentional or negligent act or omission of a member's governmental employer, the member, the widow, widower, child, or dependent of the member shall have the privilege to benefit under this chapter and also have cause of action against the governmental employer as otherwise provided by law, for any excess of damages over the amount received or receivable under this chapter. [1991 c 35 § 28; 1971 ex.s. c 257 § 15. Formerly RCW 41.26.058, 41.26.280.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.3901 Severability—1969 ex.s. c 209. If any provision of *this 1969 amendatory 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. [1969 ex.s. c 209 § 42. Formerly RCW 41.26.900.]

***Reviser's note:** "this 1969 amendatory act," see note following chapter digest.

41.26.3902 Act to control inconsistencies. To the extent that the provisions of *this 1969 amendatory act are inconsistent with the provisions of any other law, the provisions of *this 1969 amendatory act shall be controlling. [1969 ex.s. c 209 § 43. Formerly RCW 41.26.910.]

***Reviser's note:** "this 1969 amendatory act," see note following chapter digest.

41.26.3903 Effective date—1969 ex.s. c 209. *This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1969. [1969 ex.s. c 209 § 45. Formerly RCW 41.26.920.]

***Reviser's note:** "This 1969 amendatory act," see note following chapter digest.

"PLAN 2"

41.26.410 Provisions applicable to plan 2. RCW 41.26.420 through 41.26.550 shall apply only to plan 2 members. [1991 c 35 § 29; 1977 ex.s. c 294 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.26.420 Computation of the retirement allowance. Except as provided in RCW 41.26.530, a member of the retirement system shall receive a retirement allowance equal to two percent of such member's final average salary for each

year of service. [1993 c 517 § 2; 1979 ex.s. c 249 § 4; 1977 ex.s. c 294 § 3.]

Purpose—1993 c 517: "The legislature recognizes the demanding, physical nature of law enforcement and firefighting, and the resulting need to allow law enforcement officers and firefighters to make transitions into other careers when these employees feel they can no longer pursue law enforcement or firefighting. The legislature also recognizes the challenge and cost of maintaining the viability of a retired employee's benefit over longer periods of retirement as longevity increases, and that this problem is compounded for employees who leave a career before they retire from the workforce.

Therefore, the purpose of this act is to: (1) Provide full retirement benefits to law enforcement officers and firefighters at an appropriate age that reflects the unique and physically demanding nature of their work; (2) provide a fair and reasonable value from the retirement system for those who leave the law enforcement or firefighting profession before retirement; (3) increase flexibility for law enforcement officers and firefighters to make transitions into other public or private sector employment; (4) increase employee options for addressing retirement needs, personal financial planning, and career transitions; and (5) continue the legislature's established policy of having employees pay a fifty percent share of the contributions toward their retirement benefits and any enhancements." [1993 c 517 § 1.]

Additional notes found at www.leg.wa.gov

41.26.425 Lump sum retirement allowance—Reentry—Conditions for reinstatement of service.

(1) On or after June 10, 1982, the director may pay a beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.26.420 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations set forth under subsection (3) of this section, the member may reinstate all previous service under RCW 41.50.165(2) prior to retirement. The sum deposited shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.26.420 or an earned disability allowance under RCW 41.26.470 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 9; 1982 c 144 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.26.430 Retirement for service. (1) NORMAL RETIREMENT. Any member with at least five service credit years of service who has attained at least age fifty-three shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.26.420.

(2) EARLY RETIREMENT. Any member who has completed at least twenty service credit years of service and has attained age fifty shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.26.420, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age fifty-three.

(3) ALTERNATE EARLY RETIREMENT. Any member who has completed at least twenty service credit years and has attained age fifty shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.26.420, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age fifty-three. [2000 c 247 § 904; 1993 c 517 § 3; 1991 c 343 § 18; 1977 ex.s. c 294 § 4.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Additional notes found at www.leg.wa.gov

41.26.432 Additional service credit purchase—Rules.

(1) A member eligible to retire under RCW 41.26.430 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2005 c 21 § 1.]

Additional notes found at www.leg.wa.gov

41.26.435 Transfer of service credit from other retirement system—Enforcement officer for department

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of fish and wildlife. (1) A member of plan 2 who was a member of the public employees' retirement system plan 2 or plan 3 while employed as an enforcement officer for the department of fish and wildlife has the option to make an election no later than December 31, 2009, filed in writing with the department of retirement systems, to transfer all service credit previously earned as an enforcement officer in the public employees' retirement system plan 2 or plan 3 to the law enforcement officers' and firefighters' retirement system plan 2. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system under this section shall be transferred no earlier than June 30, 2012, and only after the member completes payment as provided in subsection (2) of this section.

(2)(a) A member who elects to transfer service credit under subsection (1) of this section shall make the payments required by this subsection prior to having service credit earned as an enforcement officer with the department of fish and wildlife under the public employees' retirement system plan 2 or plan 3 transferred to the law enforcement officers' and firefighters' retirement system plan 2.

(b) A member who elects to transfer service credit from the public employees' retirement system plan 2 under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than June 30, 2014, and must be made prior to retirement.

(c) A member who elects to transfer service credit from the public employees' retirement system plan 3 under this subsection shall transfer to the law enforcement officers' and firefighters' retirement system plan 2, for the applicable period of service, the full balance of the member's defined contribution account within plan 3 as of the effective date of the transfer. At no time will the member pay, for the applicable period of service, a sum less than the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest as determined by the director. This transfer and any additional payment, if necessary, must be made no later than June 30, 2014, and must be made prior to retirement.

(d) Upon completion of the payment required in (b) of this subsection, the department shall transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and all of the applicable employer contributions plus interest; and (ii) all applicable months of service, as defined in RCW 41.26.030(28)(b), credited to the employee under this chapter for service as an enforcement officer with the department of fish and wildlife as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(e) Upon completion of the payment required in (c) of this subsection, the department shall transfer from the public

employees' retirement system to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and all of the applicable employer contributions plus interest; and (ii) all applicable months of service, as defined in RCW 41.26.030(28)(b), credited to the employee under this chapter for service as an enforcement officer with the department of fish and wildlife as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(f) If a member who elected to transfer pursuant to this section dies or retires for disability prior to June 30, 2012, the member's benefit is calculated as follows:

(i) All of the applicable service credit, accumulated contributions, and interest is transferred to the law enforcement officers' and firefighters' retirement system plan 2 and used in the calculation of a benefit.

(ii) If a member's obligation under (b) or (c) of this subsection has not been paid in full at the time of death or disability retirement, the member, or in the case of death the surviving spouse or eligible minor children, have the following options:

(A) Pay the bill in full;

(B) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under (b) or (c) of this subsection; or

(C) Continue to make payment against the obligation under (b) or (c) of this subsection, provided that payment in full is made no later than June 30, 2014.

(g) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service related to time served as an enforcement officer with the department of fish and wildlife under the public employees' retirement system plan 2 or plan 3. [2012 c 248 § 1; 2009 c 157 § 1.]

41.26.440 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's 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. [1977 ex.s. c 294 § 5.]

Additional notes found at www.leg.wa.gov

41.26.450 Port districts and institutions of higher education—Must make both employer and state contributions. Port districts established under Title 53 RCW and institutions of higher education as defined in RCW 28B.10.016 shall contribute both the employer and state shares of the cost of the retirement system for any of their employees who are law enforcement officers. Institutions of higher education shall contribute both the employer and the state shares of the cost of the retirement system for any of their employees who are firefighters. [2000 c 247 § 801; 1996 c 38 § 3; 1993 c 502 § 2; 1989 c 273 § 14; 1986 c 268 § 1; 1984 c 184 § 10; 1977 ex.s. c 294 § 6.]

Additional notes found at www.leg.wa.gov

41.26.460 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.26.430 or disability retirement under RCW 41.26.470, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse or domestic partner; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse or domestic partner, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married or a domestic partner, must provide the written consent of his or her spouse or domestic partner to the option selected under this section, except as provided in (b) of this subsection. If a member is married or a domestic partner and both the member and member's spouse or domestic partner do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's

spouse or domestic partner as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal or domestic partner consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal or domestic partner consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse or domestic partner from a postretirement marriage or domestic partnership as a survivor during a one-year period beginning one year after the date of the postretirement marriage or domestic partnership provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage or domestic partnership prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse or domestic partner as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse or a person not their domestic partner as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.26.530(1) and the member's divorcing spouse or domestic partner be divided into two separate benefits payable over the life of each spouse or domestic partner.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried or in a domestic partnership at the time of retirement remains subject to the spousal or domestic partner consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse or former domestic partner shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 41.26.430(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse or domestic partner if the nonmember ex spouse or former domestic partner was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse or domestic partner shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2009 c 523 § 5; 2003 c 294 § 3; 2002 c 158 § 7; 2000 c 186 § 1; 1998 c 340 § 5; 1996 c 175 § 3; 1995 c 144 § 17; 1990 c 249 § 3; 1977 ex.s. c 294 § 7.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.26.463 Optional actuarially equivalent life annuity benefit—Rules—Definition. (1) At the time of retirement, plan 2 members may purchase an optional actuarially equivalent life annuity benefit from the [Washington] law enforcement officers' and firefighters' retirement system plan 2 retirement fund established in RCW 41.50.075. A minimum payment of twenty-five thousand dollars is required.

(2) Subject to rules adopted by the department, a member purchasing an annuity under this section must pay all of the cost with an eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan.

(a) The department shall adopt rules to ensure that all eligible rollovers and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(b) "Eligible retirement plan" means a tax qualified plan offered by a governmental employer. [2014 c 91 § 1.]

41.26.470 Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient—Disabled in the line of duty—Total disability—Reimbursement for certain payments—Disabled while providing emergency management services. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the administrative procedure act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.45.060 and 41.45.067.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse or domestic partner, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse or domestic partner, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(8) A member who became disabled in the line of duty before January 1, 2001, and is receiving an allowance under RCW 41.26.430 or subsection (1) of this section shall be entitled to receive a minimum retirement allowance equal to ten

percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five, and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three. An additional benefit shall not result in a total monthly benefit greater than that provided in subsection (1) of this section.

(9) A member who is totally disabled in the line of duty is entitled to receive a retirement allowance equal to seventy percent of the member's final average salary. The allowance provided under this subsection shall be offset by:

(a) Temporary disability wage-replacement benefits or permanent total disability benefits provided to the member under Title 51 RCW; and

(b) Federal social security disability benefits, if any; so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line-of-duty disability retirement allowance as provided in subsection (7) of this section.

Any person in receipt of an allowance under the provisions of this section is subject to comprehensive medical examinations as may be required by the department under subsection (2) of this section in order to determine continued eligibility for such an allowance.

(10)(a) In addition to the retirement allowance provided in subsection (9) of this section, the retirement allowance of a member who is totally disabled in the line of duty shall include reimbursement for any payments made by the member after June 10, 2010, for premiums on employer-provided medical insurance, insurance authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA), medicare part A (hospital insurance), and medicare part B (medical insurance). A member who is entitled to medicare must enroll and maintain enrollment in both medicare part A and medicare part B in order to remain eligible for the reimbursement provided in this subsection. The legislature reserves the right to amend or repeal the benefits provided in this subsection in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time.

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(b) The retirement allowance of a member who is not eligible for reimbursement provided in (a) of this subsection shall include reimbursement for any payments made after June 30, 2013, for premiums on other medical insurance. However, in no instance shall the reimbursement exceed the amount reimbursed for premiums authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA).

(11) A member who has left the employ of an employer due to service in the national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States department of health and human services and who becomes totally incapacitated for continued employment by an employer as determined by the director while performing service in response to a disaster, major emergency, special event, federal exercise, or official training on or after March 22, 2014, shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 except such allowance is not subject to an actuarial reduction for early retirement as provided in RCW 41.26.430. The member's retirement allowance is computed under RCW 41.26.420, except that the member shall be entitled to a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five. [2016 c 115 § 3; 2013 c 287 § 2; 2010 c 259 § 2. Prior: 2009 c 523 § 6; 2009 c 95 § 1; 2006 c 39 § 1; 2005 c 451 § 1; 2004 c 4 § 1; 2001 c 261 § 2; 2000 c 247 § 1104; 1999 c 135 § 1; 1995 c 144 § 18; 1993 c 517 § 4; 1990 c 249 § 19; prior: 1989 c 191 § 1; 1989 c 88 § 1; 1982 c 12 § 2; 1981 c 294 § 9; 1977 ex.s. c 294 § 8.]

Short title—2013 c 287: "This act may be known as the Wynn Loiland act." [2013 c 287 § 1.]

Short title—2010 c 259: "This act may be known as the Jason McKissack act." [2010 c 259 § 1.]

Effective date—2006 c 39: "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 [March 14, 2006]." [2006 c 39 § 3.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Findings—1990 c 249: See note following RCW 2.10.146.

Disability leave supplement for law enforcement officers and firefighters: RCW 41.04.500 through 41.04.550.

Additional notes found at www.leg.wa.gov

41.26.473 Disabled in the line of duty—Continuation of service credit—Conditions. Those members subject to this chapter who became disabled in the line of duty on or after July 1, 2002, and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) State contribution shall be as provided in RCW 41.45.060 and 41.45.067.

(6) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(7) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(8) This section does not abridge service credit rights granted in RCW 41.26.470(3). However, members receiving service credit under RCW 41.26.470(3) may not receive service credit under this section.

(9) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 1.]

41.26.476 Use of shared leave—Impact on calculation of service credit and final average salary. (1) A member in receipt of employer-authorized shared leave after June 10, 2010, shall receive the same treatment in respect to service credit and final average salary that the member would normally receive if using accrued annual leave or sick leave.

(2) For purposes of this section shared leave includes, but is not limited to:

(a) Direct transfers of annual leave, sick leave, or other leave from one employee to another;

(b) Indirect transfers of annual leave, sick leave, or other leave via leave banks or a similar pool of donated leave; or

(c) Shift trades or employees working shifts on behalf of a member.

(3) Shared leave that has been reported to the department prior to June 10, 2010, and for which contributions have been made, remains creditable for service credit and final average salary. [2010 c 50 § 1. Formerly RCW 41.26.033.]

41.26.480 Industrial insurance. Notwithstanding any other provision of law, members shall be eligible for industrial insurance as provided by Title 51 RCW, as now or hereafter amended, and shall be included in the payroll of the employer for such purpose. [1977 ex.s. c 294 § 9.]

Additional notes found at www.leg.wa.gov

41.26.490 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.26.430, 41.26.470, or 41.26.510 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.26.430 shall accrue from the first day of the calendar month immediately following such member's separation from service.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.26.430, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.26.470 shall accrue from the first day of the calendar month immediately following such member's separation from service for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.26.510 shall accrue from the first day of the calendar month immediately following the member's death.

(5) A person is separated from service on the date a person has terminated all employment with an employer. [1997 c 254 § 2; 1977 ex.s. c 294 § 10.]

Intent—Construction—1997 c 254: "(1) This act, which defines separation from service and restrictions concerning postretirement employment, is intended to clarify existing statutory provisions regarding these issues. As a result of this act, the legal standard for determining separation from service and the impact to a retiree's benefit should they return to work following retirement, are either the same as under the prior law, or less restrictive. Accordingly, this act does not constitute a diminution of benefits and applies to all members of the affected retirement systems.

(2) This act, which addresses the determination of employee status, is intended to clarify existing law. The clarifications are consistent with long-standing common law of the state of Washington and long-standing department of retirement systems' interpretations of the appropriate standard to be used in determining employee status. Accordingly, sections 3(49) and 10(22) of this act do not constitute a diminution of benefits and apply to all members of the teachers' retirement system and the public employees' retirement system." [1997 c 254 § 1.]

Additional notes found at www.leg.wa.gov

41.26.500 Suspension of retirement allowance upon reemployment—Reinstatement—Option to enter into membership. (1) Except under subsection (3) of this section, a retiree under the provisions of plan 2 shall not be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.37.010, or 41.35.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030. If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

(3) A member or retiree who becomes employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010 shall have the option to enter into membership in the corresponding retirement system for that position notwithstanding any provision of RCW 41.04.270. A retiree who elects to enter into plan membership shall have his or her benefits suspended as provided in subsection (1) of this section. A retiree who does not elect to enter into plan membership shall continue to receive his or her benefits without interruption. [2005 c 372 § 2; (2005 c 372 § 1 expired July 1, 2006); 2004 c 242 § 54; 1998 c 341 § 604; 1990 c 274 § 12; 1977 ex.s. c 294 § 11.]

(2) The department shall adopt rules implementing this section.

(3) A member or retiree who becomes employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010 shall have the option to enter into membership in the corresponding retirement system for that position notwithstanding any provision of RCW 41.04.270. A retiree who elects to enter into plan membership shall have his or her benefits suspended as provided in subsection (1) of this section. A retiree who does not elect to enter into plan membership shall continue to receive his or her benefits without interruption. [2005 c 372 § 2; (2005 c 372 § 1 expired July 1, 2006); 2004 c 242 § 54; 1998 c 341 § 604; 1990 c 274 § 12; 1977 ex.s. c 294 § 11.]

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.26.510 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) Except as provided in subsection (4) of this section, if a member who is killed in the course of employment or a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse, domestic partner, or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.26.430, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.26.460 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.26.430; if a surviving spouse or domestic partner who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse or domestic partner, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse or domestic partner eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse or domestic partner and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(ii) If the member dies on or after July 25, 1993, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse, domestic partner, or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) The retirement allowance of a member:

(a) Who is killed in the course of employment, as determined by the director of the department of labor and industries,

(b) Who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, or

(c) Who has left the employ of an employer due to service in the national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States department of health and human services and dies while performing service in response to a disaster, major emergency, special event, federal exercise, or official training on or after March 22, 2014,

is not subject to an actuarial reduction for early retirement as provided in RCW 41.26.430 or an actuarial reduction to reflect a joint and one hundred percent survivor option under RCW 41.26.460. The member's retirement allowance is computed under RCW 41.26.420, except that the member shall be entitled to a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(5) The retirement allowance paid to the spouse or domestic partner and dependent children of a member who is killed in the course of employment, as set forth in RCW 41.05.011(5), shall include reimbursement for any payments of premium rates to the Washington state health care authority pursuant to RCW 41.05.080.

(6) In addition to the benefits provided in subsection (4) of this section, if the surviving spouse or domestic partner of a member who is killed in the course of employment is not eligible to receive industrial insurance payments pursuant to RCW 51.32.050 due to remarriage, the surviving spouse or domestic partner shall receive an amount equal to the benefit they would receive pursuant to RCW 51.32.050 but for the remarriage. This subsection applies to surviving spouses and domestic partners whose benefits pursuant to RCW 51.32.050 were suspended or terminated due to remarriage prior to July 24, 2015. The monthly payments to any surviving spouse or domestic partner who received a lump sum payment pursuant to RCW 51.32.050 shall be actuarially reduced to reflect the amount of the lump sum payment. [2016 c 115 § 1; 2015 c 78 § 1; 2010 c 261 § 1. Prior: 2009 c 523 § 7; 2009 c 226 § 2; 2006 c 345 § 1; 2004 c 5 § 1; 2000 c 247 § 1001;

prior: 1995 c 245 § 1; 1995 c 144 § 19; 1993 c 236 § 3; 1991 c 365 § 31; 1990 c 249 § 14; 1977 ex.s. c 294 § 12.]

Application—2010 c 261 § 1: "Section 1 of this act applies prospectively to the benefits of all members killed in the course of employment since October 1, 1977." [2010 c 261 § 8.]

Contractual right not granted—2006 c 345: "The legislature reserves the right to amend or repeal this act in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time." [2006 c 345 § 3.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.26.520 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service, death or disability while providing emergency management services. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (7) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) A law enforcement member may be authorized by an employer to work part time and to go on a part-time leave of absence. During a part-time leave of absence a member is prohibited from any other employment with their employer. A member is eligible to receive credit for any portion of service credit not earned during a month of part-time leave of absence if the member makes the employer, member, and state contributions, plus interest, as determined by the department for the period of the authorized leave within five years of resumption of full-time service or prior to retirement whichever comes sooner. Any service credit purchased for a part-time leave of absence is included in the two-year maximum provided in subsection (3) of this section.

(5) If a member fails to meet the time limitations of subsection (3) or (4) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be

done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(6) For the purpose of subsection (3) or (4) of this section the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.45.060, 41.45.061, and 41.45.067. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

(7) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.060, 41.45.061, and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse, domestic partner, or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system

service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(f) The surviving spouse, domestic partner, or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States, federal emergency management agency, or national disaster medical system of the United States department of health and human services and died while performing service

in response to a disaster, major emergency, special event, federal exercise, or official training on or after March 22, 2014, may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in such service. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children provides to the director proof of the member's death while in such service.

(g) A member who leaves the employ of an employer to enter the uniformed services of the United States, federal emergency management agency, or national disaster medical system of the United States department of health and human services and becomes totally incapacitated for continued employment by an employer while providing such service is entitled to retirement system service credit under this subsection up to the date of separation from such service if the member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while performing such service.

(8) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence. [2016 c 115 § 2. Prior: 2009 c 523 § 8; 2009 c 205 § 8; 2005 c 64 § 9; 2002 c 28 § 1; 2000 c 247 § 1105; 1996 c 61 § 1; 1994 c 197 § 10; 1993 c 95 § 4; 1992 c 119 § 1; 1989 c 88 § 2; 1977 ex.s. c 294 § 13.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.26.530 Vested membership. (1) A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.26.430 if such member maintains the member's accumulated contributions intact.

(2) The retirement allowance payable under the provisions of RCW 41.26.430 to a member who separates after having completed at least twenty years of service, and remains a member during the period of his or her absence from service by maintaining his or her accumulated contributions intact, shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date the retirement allowance commences as provided in RCW 41.26.490. [1993 c 517 § 5; 1977 ex.s. c 294 § 14.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

41.26.540 Refund of contributions on termination.

(1)(a) A member who has completed less than ten years of service, who ceases to be an employee of an employer except by service or disability retirement, may request a refund of the member's accumulated contributions.

(b) A member who has completed ten or more years of service, who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to res-

tortations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(2) The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.26.410 through 41.26.550. [1995 c 245 § 2; 1993 c 517 § 6; 1982 1st ex.s. c 52 § 5; 1977 ex.s. c 294 § 15.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

41.26.547 Emergency medical technicians—Job relocation—Retirement options. (Expires July 1, 2023.) (1) A member of plan 2 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department, or a member of the public employees' retirement system who is eligible for membership in plan 2 under *RCW 41.26.030(4)(h), has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have all future service earned in the law enforcement officers' and firefighters' retirement system plan 2, becoming a dual member under the provisions of chapter 41.54 RCW; or

(c) Make an election no later than June 30, 2013, filed in writing with the department of retirement systems, to transfer service credit previously earned as an emergency medical technician for a city, town, county, or district in the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and firefighters' retirement system plan 2 as defined in RCW 41.26.030. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system under this section shall be transferred no earlier than five years after the effective date the member elects to transfer except under subsection (3) of this section, and only after the member earns five years of service credit as a firefighter following the effective date the member elects to transfer except under subsection (3) of this section.

(2) A member of plan 1 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees'

retirement system, and have all future service earned in the law enforcement officers' and firefighters' retirement system plan 1.

(3)(a) A member who elects to transfer service credit under subsection (1)(c) of this section shall make the payments required by this subsection prior to having service credit earned as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2 transferred to the law enforcement officers' and firefighters' retirement system plan 2. However, in no event shall service credit be transferred earlier than five years after the effective date the member elects to transfer, or prior to the member earning five years of service credit as a firefighter following the effective date the member elects to transfer, except under (e) of this subsection.

(b) A member who elects to transfer service credit under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 1 or plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than five years from the effective date of the election made under subsection (1)(c) of this section and must be made prior to retirement, except under (e) of this subsection.

(c) For a period of service transferred by a member eligible for membership in plan 2 under *RCW 41.26.030(4)(h), the employer shall pay an amount sufficient to ensure that the contribution level to the law enforcement officers' and firefighters' retirement system will not increase due to this transfer. This payment must be made within five years of the completion of the employee payment in (b) of this subsection.

(d) No earlier than five years after the effective date the member elects to transfer service credit under this section and upon completion of the payment required in (b) of this subsection except under (e) of this subsection, the department shall transfer from the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and an equal amount of employer contributions; and (ii) all applicable months of service, as defined in *RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an emergency services provider for a city, town, county, or district as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(e) If a member who elected to transfer pursuant to this section dies or retires for disability prior to five years from their election date, the member's benefit is calculated as follows:

(i) All of the applicable service credit, accumulated contributions, and interest is transferred to the law enforcement officers' and firefighters' retirement system plan 2 and used in the calculation of a benefit.

(ii) If a member's obligation under (b) of this subsection has not been paid in full at the time of death or disability retirement, the member, or in the case of death the surviving spouse or eligible minor children, have the following options:

(A) Pay the bill in full;

(B) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under (b) of this subsection; or

(C) Continue to make payment against the obligation under (b) of this subsection, provided that payment in full is made no later than five years from the member's original election date.

(f) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service transfers related to their time served as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2. [2007 c 304 § 1; 2005 c 459 § 2; 2003 c 293 § 1.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (4)(h) and (14)(b) to subsections (16)(h) and (28)(b) respectively.

Expiration date—2014 c 145; 2007 c 304: "Sections 1 and 3 of this act expire July 1, 2023." [2014 c 145 § 1; 2007 c 304 § 4.]

Additional notes found at www.leg.wa.gov

41.26.550 Reentry. (1) A member, who had left service and withdrawn the member's funds pursuant to RCW 41.26.540, shall receive service credit for such prior service if the member restores all withdrawn funds together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 11; 1993 c 517 § 7; 1977 ex.s. c 294 § 16.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

"PLAN 2 GOVERNANCE"

41.26.700 Overview—Intent. The law enforcement officers' and firefighters' retirement system plan 2 is currently subject to policymaking by the legislature's joint committee on pension policy with ratification by the members of the legislature and is administered by the department of retirement systems.

Members of the plan have no direct input into the management of their retirement program. Forty-six other states currently have member representation in their pension management. Chapter 2, Laws of 2003 is intended to give management of the retirement program to the people whose lives are directly affected by it and who provide loyal and valiant service to ensure the health, safety, and welfare of the citizens of the state of Washington. [2003 c 2 § 1 (Initiative Measure No. 790, approved November 5, 2002).]

(2016 Ed.)

41.26.705 Intent—2003 c 2. It is the intent of chapter 2, Laws of 2003 to:

(1) Establish a board of trustees responsible for the adoption of actuarial standards to be applied to the plan;

(2) Provide for additional benefits for firefighters and law enforcement officers subject to the cost limitations provided for in chapter 2, Laws of 2003;

(3) Exercise fiduciary responsibility in the oversight of those pension management functions assigned to the board;

(4) Provide effective monitoring of the plan by providing an annual report to the legislature, to the members and beneficiaries of the plan, and to the public;

(5) Establish contribution rates for employees, employers, and the state of Washington that will guaranty viability of the plan, subject to the limitations provided for in chapter 2, Laws of 2003;

(6) Provide for an annual budget and to pay costs from the trust, as part of the normal cost of the plan; and

(7) Enable the board of trustees to retain professional and technical advisors as necessary for the fulfillment of their statutory responsibilities. [2003 c 2 § 2 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.710 Definitions. The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Member" or "beneficiary" means:

(a) Current and future law enforcement officers and firefighters who are contributing to the plan;

(b) Retired employees or their named beneficiaries who receive benefits from the plan; and

(c) Separated vested members of the plan who are not currently receiving benefits.

(2) "Plan" means the law enforcement officers' and firefighters' retirement system plan 2.

(3) "Actuary" means the actuary employed by the board of trustees.

(4) "State actuary" means the actuary employed by the department.

(5) "Board" means the board of trustees.

(6) "Board member" means a member of the board of trustees.

(7) "Department" means the department of retirement systems.

(8) "Minimum benefits" means those benefits provided for in chapter 41.26 RCW as of July 1, 2003.

(9) "Employer" means the same as under *RCW 41.26.030(2)(b).

(10) "Enrolled actuary" means an actuary who is enrolled under the employee retirement income security act of 1974 (Subtitle C of Title III) and who is a member of the society of actuaries or the American academy of actuaries.

(11) "Increased benefit" means a benefit in addition to the minimum benefits.

(12) "Trust" means the assets of the plan.

(13) "Benefits" means the age or service or combination thereof required for retirement, the level of service and disability retirement benefits, survivorship benefits, payment options including a deferred retirement option plan, average final compensation, postretirement cost-of-living adjustments, including health care and the elements of compensa-

tion. Benefits shall not include the classifications of employment eligible to participate in the plan.

(14) "Actuarially sound" means the plan is sufficiently funded to meet its projected liabilities and to defray the reasonable expenses of its operation based upon commonly accepted, sound actuarial principles. [2003 c 2 § 3 (Initiative Measure No. 790, approved November 5, 2002).]

*Reviser's note: RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2)(b) to subsection (14)(b).

41.26.715 Board of trustees—Created—Selection of trustees—Terms of office—Vacancies. (1) An eleven member board of trustees is hereby created.

(a) Before January 1, 2007, three of the board members shall be active law enforcement officers who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, two board members shall be active law enforcement officers who are participants in the plan and one board member shall be either an active or a retired law enforcement officer who is a participant of the plan. The law enforcement officer board members shall be appointed by the governor from a list provided by a recognized statewide council whose membership consists exclusively of guilds, associations, and unions representing state and local government police officers, deputies, and sheriffs and excludes federal law enforcement officers.

(b) Before January 1, 2007, three of the board members shall be active firefighters who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, two board members shall be active firefighters who are participants in the plan and one board member shall be either an active or a retired firefighter who is a participant of the plan. The firefighter board members shall be appointed by the governor from a list provided by a recognized statewide council, affiliated with an international association representing the interests of firefighters.

(c) Three of the board members shall be representatives of employers and shall be appointed by the governor.

(d) One board member shall be a member of the house of representatives who is appointed by the governor based on the recommendation of the speaker of the house of representatives.

(e) One board member shall be a member of the senate who is appointed by the governor based on the recommendation of the majority leader of the senate.

(f) After January 1, 2008, at least one board member must be a retired participant of the law enforcement officers' and firefighters' retirement system plan 2. This member may be appointed under (a) through (e) of this subsection.

(2) The initial law enforcement officer and firefighter board members shall serve terms of six, four, and two years, respectively. Thereafter, law enforcement officer and firefighter board members serve terms of six years. The initial employer representative board members shall serve terms of four, five, and six years, respectively. Thereafter, employer representative board members serve terms of four years. The initial legislative board members shall serve terms of five years and six months. Thereafter, legislative board members serve terms of two years, which begin on January 1st of odd-numbered years. Board members may be reappointed to suc-

ceeding terms without limitation. Board members shall serve until their successors are appointed and seated.

(3) In the event of a vacancy on the board, the vacancy shall be filled in the same manner as prescribed for an initial appointment. [2007 c 303 § 1; 2003 c 2 § 4 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.7151 Board of trustees—Political party representation. The legislative board members appointed under RCW 41.26.715 must include one member from the two largest political parties. The speaker of the house of representatives shall request a recommendation from the minority leader of the house of representatives if a member from the opposite party must be recommended for appointment. The majority leader of the senate shall request a recommendation from the minority leader of the senate if a member from the opposite party must be recommended for appointment. [2007 c 303 § 2.]

41.26.717 Additional duties and powers of board. The law enforcement officers' and firefighters' plan 2 retirement board established in section 4, chapter 2, Laws of 2003 has the following duties and powers in addition to any other duties or powers authorized or required by law. The board:

(1) Shall employ staff as necessary to implement the purposes of chapter 2, Laws of 2003. Staff must be state employees under Title 41 RCW;

(2) Shall adopt an annual budget as provided in section 5, chapter 2, Laws of 2003. Expenses of the board are paid from the expense fund created in RCW 41.26.732;

(3) May make, execute, and deliver contracts, conveyances, and other instruments necessary to exercise and discharge its powers and duties;

(4) May contract for all or part of the services necessary for the management and operation of the board with other state or nonstate entities authorized to do business in the state; and

(5) May contract with actuaries, auditors, and other consultants as necessary to carry out its responsibilities. [2003 c 92 § 1.]

41.26.720 Board of trustees—Powers—Meeting procedures—Quorum—Judicial review—Budget. (1) The board of trustees have the following powers and duties and shall:

(a) Adopt actuarial tables, assumptions, and cost methodologies in consultation with an enrolled actuary retained by the board. The state actuary shall provide assistance when the board requests. The actuary retained by the board shall utilize the aggregate actuarial cost method, or other recognized actuarial cost method based on a level percentage of payroll, as that term is employed by the American academy of actuaries. The actuary retained by the board shall adjust the actuarial cost method to recognize the actuarial present value of future revenue that will be included in the calculation of the market value of assets pursuant to RCW 41.26.805(2), using the methods and assumptions employed by the state actuary in RCW 41.26.805(9). In determining the reasonableness of actuarial valuations, assumptions, and cost methodologies, the actuary retained by the board shall provide a copy of all such calculations to the state actuary. If the two actuaries

concur on the calculations, contributions shall be made as set forth in the report of the board's actuary. If the two actuaries cannot agree, they shall appoint a third, independent, enrolled actuary who shall review the calculations of the actuary retained by the board and the state actuary. Thereafter, contributions shall be based on the methodology most closely following that of the third actuary;

(b)(i) Provide for the design and implementation of increased benefits for members and beneficiaries of the plan, subject to the contribution limitations under RCW 41.26.725. An increased benefit may not be approved by the board until an actuarial cost of the benefit has been determined by the actuary and contribution rates adjusted as may be required to maintain the plan on a sound actuarial basis. Increased benefits as approved by the board shall be presented to the legislature on January 1st of each year. The increased benefits as approved by the board shall become effective within ninety days unless a bill is enacted in the next ensuing session of the legislature, by majority vote of each house of the legislature, repealing the action of the board;

(ii) As an alternative to the procedure in (b)(i) of this subsection, recommend to the legislature changes in the benefits for members and beneficiaries, without regard to the cost limitations in RCW 41.26.725(3). Benefits adopted in this manner shall have the same contractual protections as the minimum benefits in the plan. The recommendations of the board shall be presented to the legislature on January 1st of each year. These measures shall take precedence over all other measures in the legislature, except appropriations bills, and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session;

(c) Retain professional and technical advisors necessary for the accomplishment of its duties. The cost of these services may be withdrawn from the trust;

(d) Consult with the department for the purpose of improving benefit administration and member services;

(e) Provide an annual report to the governor and the legislature setting forth the actuarial funding status of the plan and making recommendations for improvements in those aspects of retirement administration directed by the legislature or administered by the department;

(f) Establish uniform administrative rules and operating policies in the manner prescribed by law;

(g) Engage administrative staff and acquire office space independent of, or in conjunction with, the department. The department shall provide funding from its budget for these purposes;

(h) Publish on an annual basis a schedule of increased benefits together with a summary of the minimum benefits as established by the legislature which shall constitute the official plan document; and

(i) Be the fiduciary of the plan and discharge the board's duties solely in the interest of the members and beneficiaries of the plan.

(2) Meetings of the board of trustees shall be conducted as follows:

(a) All board meetings are open to the public, preceded by timely public notice;

(b) All actions of the board shall be taken in open public session, except for those matters which may be considered in executive session as provided by law;

(c) The board shall retain minutes of each meeting setting forth the names of those board members present and absent, and their voting record on any voted issue; and

(d) The board may establish, with the assistance of the appropriate office of state government, an internet web site providing for interactive communication with state government, members and beneficiaries of the plan, and the public.

(3) A quorum of the board is six board members. All board actions require six concurring votes.

(4) The decisions of the board shall be made in good faith and are final, binding, and conclusive on all parties. The decisions of the board shall be subject to judicial review as provided by law.

(5) A law enforcement officers' and firefighters' retirement system plan 2 expense fund is established for the purpose of defraying the expenses of the board. The board shall cause an annual budget to be prepared consistent with the requirements of chapter 43.88 RCW and shall draw the funding for the budget from the investment income of the trust. Board members shall be reimbursed for travel and education expenses as provided in RCW 43.03.050 and 43.03.060. The board shall make an annual report to the governor, legislature, and state auditor setting forth a summary of the costs and expenditures of the plan for the preceding year. The board shall also retain the services of an independent, certified public accountant who shall annually audit the expenses of the fund and whose report shall be included in the board's annual report. [2008 c 99 § 5; 2003 c 2 § 5 (Initiative Measure No. 790, approved November 5, 2002).]

Findings—Purpose—2008 c 99: See note following RCW 41.26.800.

41.26.725 Board of trustees—Contributions—Minimum and increased benefits. (1) The board of trustees shall establish contributions as set forth in this section. The cost of the minimum benefits as defined in this plan shall be funded on the following ratio:

Employee contributions	50%
Employer contributions	30%
State contributions	20%

(2) The minimum benefits shall constitute a contractual obligation of the state and the contributing employers and may not be reduced below the levels in effect on July 1, 2003. The state and the contributing employers shall maintain the minimum benefits on a sound actuarial basis in accordance with the actuarial standards adopted by the board.

(3) Increased benefits created as provided for in RCW 41.26.720 are granted on a basis not to exceed the contributions provided for in this section. In addition to the contributions necessary to maintain the minimum benefits, for any increased benefits provided for by the board, the employee contribution shall not exceed fifty percent of the actuarial cost of the benefit. In no instance shall the employee cost exceed ten percent of covered payroll without the consent of a majority of the affected employees. Employer contributions shall not exceed thirty percent of the cost, but in no instance shall the employer contribution exceed six percent of covered payroll. State contributions shall not exceed twenty percent

of the cost, but in no instance shall the state contribution exceed four percent of covered payroll. Employer contributions may not be increased above the maximum under this section without the consent of the governing body of the employer. State contributions may not be increased above the maximum provided for in this section without the consent of the legislature. In the event that the cost of maintaining the increased benefits on a sound actuarial basis exceeds the aggregate contributions provided for in this section, the board shall submit to the affected members of the plan the option of paying the increased costs or of having the increased benefits reduced to a level sufficient to be maintained by the aggregate contributions. The reduction of benefits in accordance with this section shall not be deemed a violation of the contractual rights of the members, provided that no reduction may result in benefits being lower than the level of the minimum benefits.

(4) The board shall manage the trust in a manner that maintains reasonable contributions and administrative costs. Providing additional benefits to members and beneficiaries is the board's priority. [2003 c 93 § 1; 2003 c 2 § 6 (Initiative Measure No. 790, approved November 5, 2002).]

Additional notes found at www.leg.wa.gov

41.26.730 Joint committee on pension policy—Pension funding council. The joint committee on pension policy established in *RCW 44.44.050, and the pension funding council created in RCW 41.45.100, shall have no applicability or authority over matters relating to this plan. [2003 c 2 § 7 (Initiative Measure No. 790, approved November 5, 2002).]

*Reviser's note: RCW 44.44.050 was repealed by 2003 c 295 § 15.

41.26.732 Plan 2 expense fund—Board oversight and administration—State investment board. (1) A law enforcement officers' and firefighters' retirement system plan 2 expense fund is created within the law enforcement officers' and firefighters' retirement system plan 2 fund.

(2) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the expense fund. The state investment board is authorized to adopt investment policies for the money in the expense fund. All investment and operating costs associated with the investment of money shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the law enforcement officers' and firefighters' retirement system plan 2 fund.

(3) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.

(4) When appropriate for investment purposes, the state investment board may commingle money in the expense fund with other funds.

(5) The authority to establish all policies relating to the expense fund, other than the investment policies as set forth in subsections (2) through (4) of this section, resides with the law enforcement officers' and firefighters' plan 2 retirement board. With the exception of investments by, and expenses of, the state investment board set forth in subsection (2) of this section, disbursements from this expense fund may be

made only on the authorization of the law enforcement officers' and firefighters' plan 2 retirement board, and money in the expense fund may be spent only for the purposes of defraying the expenses of the law enforcement officers' and firefighters' plan 2 retirement board as provided in section 5, chapter 2, Laws of 2003.

(6) The state investment board shall routinely consult and communicate with the law enforcement officers' and firefighters' plan 2 retirement board on the investment policy, earnings of the trust, and related needs of the expense fund.

(7) The law enforcement officers' and firefighters' plan 2 retirement board shall administer the expense fund in a manner reasonably designed to be actuarially sound. The assets of the expense fund must be sufficient to defray the obligations of the account including the costs of administration. Money used for administrative expenses is subject to the allotment of all expenditures pursuant to chapter 43.88 RCW. However, an appropriation is not required for expenditures. Administrative expenses include, but are not limited to, the salaries and expenses of law enforcement officers' and firefighters' plan 2 retirement board personnel including lease payments, travel, and goods and services necessary for operation of the board, audits, and other general costs of conducting the business of the board.

(8) The state investment board shall allocate from the law enforcement officers' and firefighters' retirement system plan 2 fund to the expense fund the amount necessary to cover the expenses of the law enforcement officers' and firefighters' plan 2 retirement board. [2003 c 92 § 6.]

41.26.735 Asset management. Assets of the plan shall be managed by the state investment board as provided by law. [2003 c 2 § 8 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.740 Reimbursement for expenses. All expenses of the department and the office of the state actuary related to the implementation of chapter 2, Laws of 2003 shall be reimbursed from the law enforcement officers' and firefighters' retirement system expense fund under RCW 39.34.130. [2003 c 92 § 7.]

41.26.800 Local public safety enhancement account—Creation—Distribution—Uses. The local public safety enhancement account is created in the state treasury. Moneys in the account may be spent only after appropriation. All receipts from RCW 41.26.802 must be deposited into the account. Expenditures from the account may be used as follows:

(1) Following appropriation, fifty percent of the money in the account shall be transferred to the law enforcement officers' and firefighters' retirement system benefits improvement account established in RCW 41.26.805.

(2) Following appropriation, the balance shall be distributed by the state treasurer to all jurisdictions with law enforcement officers' and firefighters' plan 2 members. Each year, the department of retirement systems will determine each jurisdiction's proportionate share of funds based on the number of plan 2 members each jurisdiction has on June 1st of the prior year divided by the total number of plan 2 members in the system. The department of retirement systems

shall provide the distribution allocation to the state treasurer. Distributions by the state treasurer shall be made annually each January 1st with one-half of the appropriation being distributed in the first year of the appropriation and any remainder the following year. If an appropriation is made for a single fiscal year, the entire appropriation shall be distributed the following January 1st. Jurisdictions that contract with other eligible jurisdictions for law enforcement services or fire protection services must agree on the distribution of funds between the contracting parties and must inform the department of retirement systems as to how the distribution is to be made. Distributions will continue to be made under the terms of the agreement until the department of retirement systems is notified by the eligible jurisdiction of any agreement revisions. If there is no agreement within six months of the distribution date, the moneys lapse to the state treasury. Moneys distributed from the balance of the public safety enhancement account may be used for the following purposes: (a) Criminal justice, including those where an ancillary benefit to the civil justice occurs, and includes domestic violence programs; (b) information and assistance to parents and families dealing with at-risk or runaway youth; or (c) public safety. Money distributed from the account shall not supplant existing funds used for these purposes. For purposes of this subsection, "existing funds" means the actual operating expenditures for the calendar year prior to the first distribution from the account. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, change in contract provisions beyond the control of the jurisdiction receiving the services, and major capital expenditures. [2008 c 99 § 2.]

Findings—Purpose—2008 c 99: "The legislature finds that local governments need additional revenues to provide public safety resources in order to protect the citizens of Washington from fire and crime. The legislature finds that the current benefit formula and contributions for the law enforcement officers' and firefighters' plan 2 are inadequate to modify that formula in recognition of the shorter working careers for firefighters and police officers. The legislature recognizes that although some officers and firefighters are able to work comfortably beyond twenty-five years, the combat nature of fire suppression and law enforcement generally require earlier retirement ages. In recognition of the physical demands of the professions and the inherent risks faced by law enforcement officers and firefighters, eligibility for retirement in the law enforcement officers' and firefighters' plan 2 system has been set at age fifty-three. However, the benefit formula is designed for careers of thirty-five to forty years, making retirement at age fifty-three an unrealistic option for many.

Therefore, the legislature declares that it is the purpose of this act to provide local government public safety employers and the law enforcement officers' and firefighters' plan 2 pension plan with additional shared revenues when general state revenues exceed by more than five percent the previous fiscal biennium's revenue." [2008 c 99 § 1.]

41.26.802 Local public safety enhancement account—Transfers into account. (1) By September 30, 2011, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation by the legislature, the state treasurer shall transfer five million dollars to the local public safety enhancement account.

(2) By September 30, 2017, and by September 30 of each odd-numbered year thereafter, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation

by the legislature, the state treasurer shall transfer the lesser of one-third of the increase, or fifty million dollars, to the local public safety enhancement account. [2015 3rd sp.s. c 4 § 950; 2013 2nd sp.s. c 4 § 969; 2008 c 99 § 4.]

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—Purpose—2008 c 99: See note following RCW 41.26.800.

41.26.805 Local law enforcement officers' and firefighters' retirement system benefits improvement account—Creation—Use—Administration—Investments. (1) The local law enforcement officers' and firefighters' retirement system benefits improvement account (benefits account) is created within the law enforcement officers' and firefighters' retirement system plan 2 fund. All receipts from RCW 41.26.800(1) must be deposited into the account.

(2) The funds in the benefits account shall not be included by the actuary retained by the board in the calculation of the market value of assets of the law enforcement officers' and firefighters' retirement system plan 2 fund until the board directs the actuary retained by the board in writing to do so for purposes of financing benefits enacted by the legislature. The board shall, in consultation with the state investment board and within ninety days of the transfer of funds into the benefits account, provide the actuary retained by the board, in writing, the market value of the amount directed from the benefits account for inclusion in the calculation of the market value of assets of the law enforcement officers' and firefighters' retirement system plan 2 fund. The market value of the amount directed from the benefits account shall be an amount determined by the state actuary to sufficiently offset the unfunded actuarial accrued liabilities of benefit improvements financed from this account. The market value of the amount directed from the benefits account shall be determined as of the date of the direction from the board to include this amount for purposes of financing benefits enacted by the legislature.

(3) The law enforcement officers' and firefighters' plan 2 retirement board shall administer the fund in an actuarially sound manner.

(4) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the benefits account. The state investment board is authorized to adopt investment policies for the money in the benefits account. All investment and operating costs associated with the investment of money within the benefits account shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the benefits account.

(5) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.

(6) When appropriate for investment purposes, the state investment board may commingle money in the fund with other funds.

(7) The authority to establish all policies relating to the benefits account, other than the investment policies set forth

in this section, resides with the law enforcement officers' and firefighters' plan 2 retirement board. Other than investments by and expenses of the state investment board, disbursements from this fund may be made only on the authorization of the law enforcement officers' and firefighters' plan 2 retirement board for purposes of funding the member, employer, and state cost of financing benefits enacted by the legislature.

(8) The state investment board shall routinely consult with and communicate with the law enforcement officers' and firefighters' plan 2 retirement board on the investment policy, earnings of the trust, and related needs of the benefits account.

(9) Funds in the benefits account cannot be used to finance future benefit improvements if the state actuary determines that the actuarial present value of fully projected benefits for current and future members for all benefits being financed from this account exceeds the actuarial present value of the revenue provided under RCW 41.26.802 and the accrued earnings of the benefits account. When making the determination under this subsection, the state actuary shall select assumptions and methods to reduce the risk that the actual revenue received is less than the assumed revenue. [2008 c 99 § 3.]

Findings—Purpose—2008 c 99: See note following RCW 41.26.800.

41.26.904 Effective date—2003 c 2 (Initiative Measure No. 790). Except for section 11 of this act, the remainder of this act takes effect July 1, 2003. [2003 c 2 § 13 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.906 Effective date—2003 c 92. 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 [April 23, 2003]. [2003 c 92 § 12.]

41.26.921 Effective date—1977 ex.s. c 294. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1977. [1977 ex.s. c 294 § 27.]

41.26.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 93.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.28 RCW

RETIREMENT OF PERSONNEL IN CERTAIN FIRST-CLASS CITIES

Sections

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41.28.930	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Portability of public retirement benefits: Chapter 41.54 RCW.

Statewide city employees' retirement system: Chapter 41.44 RCW.

41.28.005 Establishment of retirement and pension systems authorized. Any city attaining the status of a first-class city after July 1, 1939, is empowered by this chapter to establish retirement and pension systems for superannuated or totally and permanently disabled officers and employees of cities of the first class. [1939 c 207 § 1; RRS § 9592-101. Formerly RCW 41.28.020, part.]

41.28.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Accumulated additional contributions" shall mean the sum of all the additional contributions, deducted from the compensation of a member, standing to the credit of his or her individual account, together with regular interest thereon.

(2) "Accumulated contributions" shall mean accumulated normal contributions plus accumulated additional contributions.

(3) "Accumulated normal contribution" shall mean the sum of all normal contributions, deducted from the compensation of a member, standing to the credit of his or her individual account, together with regular interest thereon.

(4) "Additional contributions" shall mean the contributions provided for in RCW 41.28.040(4).

(5) "Annuity" shall mean payments derived from contributions made by a member as provided in RCW 41.28.130 and 41.28.150.

(6) "Beneficiary" shall mean any person in receipt of a pension, annuity, retirement allowance, disability allowance, or any other benefit provided in this chapter.

(7) "Board" shall mean "board of administration" as provided in RCW 41.28.080.

(8) "City" shall mean any city of the first class as described in RCW 41.28.005.

(9) "City service" shall mean service rendered to city for compensation, and for the purpose of this chapter, a member shall be considered as being in city service only while he or she is receiving compensation from the city for such service.

(10) "Compensation" shall mean the compensation payable in cash, plus the monetary value, as determined by the board of administration, of any allowance in lieu thereof.

(11) "Compensation earnable" by a member shall mean the average compensation as determined by the board of administration upon the basis of the average period of employment of members in the same group or class of employment and at the same rate of pay.

(12) "Continuous service" shall mean uninterrupted employment by that city, except that discontinuance of city service of a member caused by layoff, leave of absence, suspension, or dismissal, followed by reentrance into city service within one year, shall not count as a break in the continuity of service: PROVIDED, That for the purpose of establishing membership in the retirement system continuous service shall mean six months' service in any one year.

(13) "Creditable service" shall mean such service as is evidenced by the record of normal contributions received from the employee plus prior service if credit for same is still intact or not lost through withdrawal of accumulated normal contributions as provided in RCW 41.28.110.

(14) "Employee" shall mean any regularly appointed officer or regularly appointed employee of a first-class city as described in RCW 41.28.005, whose compensation in such employment is paid wholly by that city.

(15) "Final compensation" means the annual average of the greatest compensation earnable by a member during any consecutive five-year period of service for which service credit is allowed.

(16) "Fiscal year" shall mean any year commencing with January 1st, and ending with December 31st, next following.

(17) "Member" shall mean any person included in the membership of the retirement system as provided in RCW 41.28.030.

(18) "Normal contributions" shall mean contributions at the rate provided for in RCW 41.28.040(1).

(19) "Pension" shall mean payments derived from contributions made by the city as provided for in RCW 41.28.130 and 41.28.150.

(20) "Prior service" shall mean the service of a member for compensation rendered to the city prior to July 1, 1939, and shall also include military or naval service of a member to the extent specified in RCW 41.28.050.

(21) "Regular interest," unless changed by the board of administration as provided in RCW 41.28.060, shall mean interest at four percent per annum, compounded annually.

(22) "Retirement allowance" shall mean the pension plus the annuity.

(23) "Retirement fund" shall mean "employees' retirement fund" as created and established in RCW 41.28.070.

(24) "Retirement system" shall mean "employees' retirement system," provided for in RCW 41.28.020. [2012 c 117 § 43; 1967 c 185 § 1; 1963 c 91 § 1; 1939 c 207 § 2; RRS § 9592-102.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

41.28.020 Retirement system created—Adoption by cities. A retirement system is hereby created and established in each city of the first class in each county with a population of one hundred twenty-five thousand or more to be known as the "employees' retirement system". This chapter shall become effective as to any such city when by ordinance of the city duly enacted its terms are expressly accepted and made applicable thereto. This section shall not be construed as preventing performance before July 1, 1939, of any preliminary work which any city council, city commission or board of administration shall deem necessary. [1991 c 363 § 118; 1939 c 207 § 3; RRS § 9592-103. FORMER PART OF SECTION: 1939 c 207 § 1; RRS § 9592-101 now codified as RCW 41.28.005.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

41.28.030 Employees within or excluded from system. (1) With the exception of those employees who are excluded from membership as herein provided, all employees shall become members of the retirement system as follows:

(a) Every employee in city service as defined in this chapter, on July 1, 1939, shall become a member of the retirement system on that date.

(b) Every employee who enters or reenters city service after July 1, 1939, shall become a member of the retirement system upon the completion of six months of continuous service.

(2) The following shall be specifically exempted from the provisions of this chapter:

(a) Members of the police departments who are entitled to the benefits of the police relief and pension fund as established by state law.

(b) Members of the fire departments who are entitled to the benefits of the firefighters' relief and pension fund as established by state law.

(3) It shall be the duty of the head of each office or department to give immediate notice in writing to the board of administration of the change in status of any member of his or her office or department, resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death. The head of each office or department shall furnish such other information concerning any member as the board may require.

(4) Each member shall be subject to all the provisions of this chapter and to all the rules and regulations adopted by the board of administration. Should the service of any member, in any period of ten consecutive years, amount to less than five years, or should he or she withdraw more than one quarter of his or her accumulated contributions, or should he or

she die or be retired, he or she shall thereupon cease to be a member. [2012 c 117 § 44; 1939 c 207 § 4; RRS § 9592-104.]

41.28.040 Rates of contribution—Deduction and payment into fund. (1) The normal rate of contribution of members shall be those adopted by the board of administration, subject to the approval of the city council or city commission, and for the first five-year period such rates shall be based on sex and on age of entry into the retirement system, which age shall be the age at the birthday nearest the time of entry into the system. The rates so adopted shall remain in full force and effect until revised or changed by the board of administration in the manner provided in RCW 41.28.060. The normal rates of contribution shall be so fixed as to provide an annuity which, together with the pension provided by the city, shall give as nearly as may be a retirement allowance at the age of sixty-two years of one and one-third percent of the final compensation multiplied by the number of years of service of the retiring employee. The normal rate established for age sixty-one shall be the rate for any member who has attained a greater age before entry into the retirement system. The normal rate of contribution for age twenty shall be the rate for any member who enters the retirement system at an earlier age.

(2) Subject to the provision of this chapter, the board of administration shall adopt rules and regulations governing the making of deductions from the compensation of employees and shall certify to the head of each office or department the normal rate of contribution for each member provided for in subdivision (1) of this section. The head of the department shall apply such rate of contribution, and shall certify to the city comptroller on each and every payroll the amount to be contributed and shall furnish immediately to the board a copy of each and every payroll; and each of said amounts shall be deducted by the city comptroller and shall be paid into the retirement fund, hereinafter provided for, and shall be credited by the board together with regular interest to an individual account of the member for whom the contribution was made.

Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contribution shall be a full and complete discharge of all claims and demands whatsoever for the service rendered by such person during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter.

(3) At the end of each payroll period, the board shall determine the aggregate amount of the normal contributions for such period, and shall certify such aggregate to the city comptroller, who shall thereupon transfer to the retirement fund, hereinafter provided for, from the money appropriated for that purpose in the budget for the fiscal year, an amount equal to the aggregate normal contributions for the period received from members.

(4) Any member may elect to contribute at rates in excess of those provided for in subdivision (1) of this section, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the city any additional financial obligation. The board of administra-

tion, upon application, shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contribution. [2012 c 117 § 45; 1967 c 185 § 2; 1939 c 207 § 5; RRS § 9592-105.]

41.28.050 Allowance of service credit. (1) Subject to the following and all other provisions of this chapter, including such rules and regulations as the board shall adopt in pursuance thereof, the board, subject to the approval of the city council or city commission, shall determine and may modify allowance for service.

Time during which a member is absent on leave without pay shall not be allowed in computing service: PROVIDED, HOWEVER, That any member shall be given credit for any period served by him or her in the national guard, or in the United States army, navy, or marine corps, upon the call of the president, if at the time of such service such member was a regular employee under leave of absence. Certificate of honorable discharge from and/or documentary evidence of such service shall be submitted to the board in order to obtain credit for such service.

Each member shall file with the board such information affecting his or her status as a member of the retirement system as the board may require.

(2) The board shall grant credit for prior service to each member entering the retirement system on July 1, 1939, and to each member entering after that date, if such entry is within one year after rendering service prior to July 1, 1939: PROVIDED, HOWEVER, That the board may grant credit for prior service to those entering the retirement system after July 1, 1939, where the employee, because of sickness or other disability, has been on leave of absence, regularly granted, since discontinuance of city service, regardless of the length of such leave. No prior service credit shall be used as a basis for retirement or other benefit unless the membership continues until retirement on a retirement allowance or until the granting of other benefits. [2012 c 117 § 46; 1939 c 207 § 6; RRS § 9592-106.]

41.28.060 Board of administration to administer system—Powers and duties—Actuarial investigations and valuations—Reports, records, and accounts. The administration of the retirement system is hereby vested in the board of administration created in RCW 41.28.080. The board shall exercise the powers and duties conferred upon it by said section, and in addition thereto:

(1) The board shall keep in convenient form such data as shall be necessary for the actuarial valuation of the retirement fund created by this chapter. At the end of the five-year period beginning with the year 1939, and at the end of every five-year period thereafter, the board shall cause to be made an actuarial investigation into the mortality, service and compensation experience of the members, and beneficiaries as defined by this chapter; and shall further cause to be made an actuarial valuation of the assets and liabilities of the retirement fund, and upon the basis of such investigation and valuation and subject to the approval of the city council or city commission, shall:

- (a) Make any necessary changes in the rate of interest;
- (b) Adopt for the retirement system such mortality, service and other tables as shall be necessary;

(c) Revise or change the rates of contribution by members on the basis of such mortality, service and other tables.

(2) The board shall promptly transmit to the city council or city commission a report covering the actuarial investigation and actuarial valuation provided for in subdivision (1) of this section.

(3) In addition to other records and accounts, the board shall keep such detailed reports and accounts as shall be necessary to show the financial condition of the retirement fund at all times.

(4) The board shall annually transmit to the city council or city commission a report showing the financial condition of the fund established by this chapter. [1939 c 207 § 7; RRS § 9592-107.]

41.28.070 Employees' retirement fund created—Composition. A fund is hereby created and established in all cities of the first class as under this chapter provided to be known as the "employees' retirement fund" and shall consist of all the moneys paid into it in accordance with the provisions of this chapter, whether such moneys shall take the form of cash, securities, or other assets. [1939 c 207 § 8; RRS § 9592-108.]

41.28.080 Board of administration—Members—Duties—Fiscal affairs. (1) There is hereby created and established a board of administration in each city coming under this chapter, which shall, under the provisions of this chapter and the direction of the city council or city commission, administer the retirement system and the retirement fund created by this chapter. Under and pursuant to the direction of the city council or city commission, the board shall provide for the proper investment of the moneys in the said retirement fund.

(2) The board of administration shall consist of seven members, as follows: Three members appointed by the regular appointing authority of the city, and three employees who are eligible to membership in the retirement system, to be elected by the employees. The above six members shall appoint the seventh member.

(3) The investment of all or any part of the retirement fund shall be subject to chapter 35.39 RCW.

(4) Subject to such provisions as may be prescribed by law for the deposit of municipal funds in banks, cash belonging to the retirement fund may be deposited in any licensed national bank or in any bank, banks or corporations authorized or licensed to do a banking business and organized under the laws of the state of Washington.

(5) The city treasurer shall be the custodian of the retirement fund. All payments from said fund shall be made by the city treasurer but only upon warrant duly executed by the city comptroller.

(6) Except as herein provided, no member and no employee of the board of administration shall have any interest, direct or indirect, in the making of any investments from the retirement fund, or in the gains or profits accruing therefrom. And no member or employee of said board, directly or indirectly, for himself or herself or as an agent or partner of others, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any

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member or employee of said board become an endorser or surety or become in any manner an obligor for moneys invested by the board. [2012 c 117 § 47; 1983 c 3 § 93; 1969 ex.s. c 211 § 2; 1939 c 207 § 9; RRS § 9592-109.]

41.28.085 Legislative intent—Investments. In order that the intent of the legislature may be made clear with respect to investments, but without restricting the necessary flexibility that must exist for successful investing of the retirement and pension funds, the legislature makes this declaration of its desire that the investment authority shall give primary consideration to dealing with brokerage firms which maintain offices in the state of Washington so that the investment programs may make a meaningful contribution to the economy of the state. It is further the desire of the legislature that the retirement and pension funds shall be used as much as reasonably possible to benefit and expand the business and economic climate within the state of Washington so long as such use would be consistent with sound investment policy. [1969 ex.s. c 211 § 3.]

41.28.090 Contributions by city. (1) There shall be paid into the retirement fund by contributions of the city, the amounts necessary to pay all pensions and all other benefits allowable under this chapter to members on account of prior service, and minimum allowances provided for in RCW 41.28.130. Until the amount accumulated in the retirement fund becomes at least as large as the present value of all amounts thereafter payable from said fund the amount annually due to the said fund under this section shall be the amount payable from said fund in the ensuing fiscal year on account of prior service and minimum allowances. [1939 c 207 § 10; RRS § 9592-110.]

41.28.100 City obligated to contribute. The payments of the city due the retirement fund as provided for in this chapter are hereby made obligations of the city as defined in this chapter. The board shall annually, on or before the tenth day of July each year, prepare and submit to the city council or city commission an estimate of the amounts necessary to meet such obligations, and the city council or city commission shall provide for the raising of such amounts as are necessary to make such payments. [1939 c 207 § 11; RRS § 9592-111.]

41.28.110 Payments on discontinuance of service—Reemployment—Redeposit. (1) Should the service of a member be discontinued, except by death or retirement, he or she shall be paid not later than six months after the day of discontinuance such part of his or her accumulated contributions as he or she shall demand: PROVIDED, HOWEVER, That a member may appeal to the board and by unanimous vote, the board may grant a request for immediate withdrawal of contributions. If in the opinion of the board said member is permanently separated from service by reason of such discontinuance he or she shall be paid forthwith all of his or her accumulated contributions with interest: AND PROVIDED ALSO, That the board may, in its discretion, withhold for not more than one year after a member last rendered service all or part of his or her accumulated normal contributions if after a previous discontinuance of service he or she withdrew all or

part of his or her accumulated normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in this section: PROVIDED FURTHER, That the city shall receive credit for the full amount deposited by the city in the retirement fund for such member's benefit plus interest. Any member may redeposit in the retirement fund an amount equal to that which he or she previously withdrew therefrom at the last termination of his or her membership, such redeposit to be paid into the retirement fund in accordance with rules established by the board. If a member upon reentering the retirement system after a termination of his or her membership shall not make such a redeposit as hereinabove provided, the rate of his or her contributions for future years shall be the normal rate provided for in RCW 41.28.040(1) at his or her age of reentrance; otherwise his or her rate of contribution for future years shall be the same as his or her rate prior to the termination of his or her membership. In the event such redeposit is made by a member, an amount equal to the accumulated normal contributions so redeposited shall again be held for the benefit of said member, and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted or liabilities that have been assumed on account of prior service of members, and the city shall reinstate the prior service credit for such member. [2012 c 117 § 48; 1939 c 207 § 12; RRS § 9592-112.]

41.28.120 Retirement for service. Retirement of member for service shall be made by the board of administration as follows:

(1) Each member in the city service on June 8, 1967, who, on or before such effective date, has attained the age of sixty-five years or over, shall be forthwith retired on the first day of the calendar month next succeeding the month in which the employee shall have attained the age of sixty-five: PROVIDED, That none of such members shall be subject to compulsory retirement for a period of five years following said effective date, but during such period any member having attained the age of sixty-five may voluntarily retire after attaining such age. Members attaining the age of sixty-five after June 8, 1967 shall be retired on the first day of the calendar month next succeeding the month in which the member shall have attained the age of sixty-five, but none of such members shall be subject to compulsory retirement until five years after said effective date: PROVIDED, FURTHER, That any member attaining the age of seventy years during said five year period shall be forthwith retired on the first day of the calendar month next succeeding the month in which the employee shall have attained the age of seventy years, except as otherwise provided in this chapter. The board shall extend the time of retirement for any member hired prior to June 8, 1967 so as to enable said member to qualify for retirement benefits under this chapter, but in no event should such extension extend beyond the age of seventy years.

(2) Any member in the city service may retire by filing with the board a written application, stating when he or she desires to be retired, such application to be made at least thirty days prior to date of retirement: PROVIDED, HOWEVER, That said member, at the time specified for his or her retirement, shall have completed ten years of city service as defined in this chapter, and shall have attained the age of

fifty-seven years, or shall have completed thirty years of city service as defined in this chapter. Permanent discontinuance of city service after age of fifty-seven shall entitle the member to his or her retirement allowance: PROVIDED, That such employee has had at least ten years of city service to his or her credit: AND PROVIDED FURTHER, That permanent discontinuance of city service after the completion of thirty years of city service shall entitle the member to his or her retirement allowance. [2012 c 117 § 49; 1967 c 185 § 3; 1939 c 207 § 13; RRS § 9592-113.]

41.28.130 Service retirement allowances. (1) A member, upon retirement from service, shall receive a retirement allowance subject to the provisions of paragraph (2) of this section, which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(b) A pension purchased by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member.

(c) For any member having credit for prior service an additional pension, purchased by the contributions of the city equal to one and one-third percent of the final compensation, multiplied by the number of years of prior service credited to said member, except that if a member shall retire before attaining the age of sixty-two years, the additional pension shall be reduced to an amount which shall be equal to a lesser percentage of final compensation, multiplied by the number of years of prior service credited to said member, which lesser percentage shall be applied to the respective ages of retirement in accordance with the following tabulation:

Retirement age	Percentage
62	1.333
61	1.242
60	1.158
59	1.081
58	1.010
57	0.945
56	0.885
55	0.829
54	0.778
53	0.731
52	0.687
51	0.646
50	0.608

(2) If the retirement allowance of the member as provided in this section, exclusive of any annuity purchased by his or her accumulated additional contributions, is in excess of two-thirds of his or her final salary, the pension of the member, purchased by the contributions of the city, shall be reduced to such an amount as shall make the member's retirement allowance, exclusive of any annuity purchased by his or her accumulated additional contributions, equal to two-thirds of his or her final salary, and the actuarial equivalent of such reduction shall remain in the retirement fund to the credit of the city: PROVIDED, That the retired member will be granted a cost of living increase, in addition to the allowance provided in this section, of one percent commencing January

1, 1968 and an additional one percent on the first day of each even-numbered year thereafter if the U.S. Bureau of Labor Statistics' Cost of Living Index has increased one percent or more since the last cost of living increase in the member's retirement allowance; such increases shall apply only to retirement allowances approved on or after January 1, 1967.

(3) Any member, who enters the retirement system on July 1, 1939, or who enters after that date and who is given the credit for prior service, and who is retired by reason of attaining the age of seventy years, shall receive such additional pension on account of prior service, purchased by the contributions of the city, as will make his or her total retirement allowance not less than four hundred twenty dollars per year.

(4) Any member who, at the time of his or her retirement, has at least ten years of creditable service, as defined in this chapter, and who has attained the age of sixty-five years or over, shall receive such additional pension, purchased by the contributions of the city, as will make his or her total retirement allowance not less than nine hundred sixty dollars per year. [2012 c 117 § 50; 1969 c 31 § 1; 1967 c 185 § 4; 1961 c 260 § 1; 1939 c 207 § 14; RRS § 9592-114.]

Additional notes found at www.leg.wa.gov

41.28.140 Retirement for disability. Any member while in city service may be retired by the board of administration for permanent and total disability, either ordinary or accidental, upon examination, as follows:

(1) Any member who has not attained the age of sixty-five years and who has at least ten years of city service as defined in this chapter, to his or her credit: PROVIDED, That the required ten years of city service shall have been credited to the member over a period of not to exceed fifteen years immediately preceding retirement, within three months after the discontinuance of city service, or while physically or mentally incapacitated for the performance of duty, if such incapacity has been continuous from discontinuance of city service, shall be examined by a physician or surgeon, appointed by the board of administration upon the application of the head of the office or department in which said member is employed, or upon application of said member, or a person acting in his or her behalf, stating that said member is permanently and totally incapacitated, either physically or mentally, for the performance of duty and ought to be retired. If such medical examination shows, to the satisfaction of the board, that the said member is permanently and totally incapacitated either physically or mentally for the performance of duty and ought to be retired, the board shall retire the said member for disability forthwith.

(2) The board shall secure such medical services and advice as it may deem necessary to carry out the purpose of this section and of RCW 41.28.160, and shall pay for such medical services and advice such compensation as the board shall deem reasonable. [2012 c 117 § 51; 1939 c 207 § 15; RRS § 9592-115.]

41.28.150 Disability retirement allowances—Grounds for denial. (1) Upon retirement for disability, as hereinabove provided: PROVIDED, The disability is not due to intemperance, willful misconduct or violation of law, of

which the board shall be the judge, a member shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(b) A pension purchased by the contributions of the city, which, together with his or her annuity provided by his or her accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his or her additional contributions equal to (i) one and one-fourth percent of his or her final compensation multiplied by the number of years of service which would be creditable to him or her were his or her services to continue until attainment by him or her of age sixty-two. The minimum disability retirement allowance shall be nine hundred sixty dollars per year.

(2) If disability is due to intemperance, willful misconduct or violation of law on the part of the member, the board of administration in its discretion may pay to said member in one lump sum, his or her accumulated contributions, in lieu of a retirement allowance, and such payment shall constitute full satisfaction of all obligations of the city to such member, and upon receipt of such payment he or she shall cease to be a member of the retirement system.

(3) Upon the death of a member while in receipt of a disability retirement allowance, his or her accumulated contributions, as they were at the date of his or her retirement, less any annuity payments made to him or her, shall be paid to his or her estate, or to such persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the board. [2012 c 117 § 52; 1963 c 91 § 2; 1961 c 260 § 2; 1939 c 207 § 16; RRS § 9592-116.]

41.28.160 Medical examination of disability beneficiaries—Reentry. (1) The board of administration may at its pleasure require any disability beneficiary under age sixty-two years to undergo medical examination to be made by a physician or surgeon appointed by the board, at a place to be designated by the board. Upon the basis of such examination the board shall determine whether such disability beneficiary is still totally and permanently incapacitated either mentally or physically for service in the office or department of the city where he or she was employed or in any other city service for which he or she is qualified. If the board of administration shall determine that said beneficiary is not so incapacitated, his or her retirement allowance shall be canceled and he or she shall be reinstated forthwith in the city service.

(2) Should a disability beneficiary reenter the city service and be eligible for membership in the retirement system in accordance with RCW 41.28.030(1), his or her retirement allowance shall be canceled and he or she shall immediately become a member of the retirement system, his or her rate of contribution for future years being that established for his or her age at the time of reentry. His or her individual account shall be credited with his or her accumulated contributions less the annuity payments made to him or her. An amount equal to the accumulated normal contributions so credited to him or her shall again be held for the benefit of said member and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted and on account of prior service of mem-

bers. Such member shall receive credit for prior service in the same manner as if he or she had never been retired for disability.

(3) Should any disability beneficiary under age sixty-two years refuse to submit to medical examination, his or her pension may be discontinued until his or her withdrawal of such refusal, and should refusal continue for one year, his or her retirement allowance may be canceled. Should said disability beneficiary, prior to attaining age sixty-two years, engage in a gainful occupation not in city service, or should he or she reenter the city service and be ineligible for membership in the retirement system in accordance with RCW 41.28.030(2), the board of administration shall reduce the amount of his or her retirement allowance to an amount, which when added to the compensation earned by him or her in such occupation shall not exceed the amount of the final compensation on the basis of which his or her retirement allowance was determined. Should the earning capacity of such beneficiary be further altered, the board may further alter his or her retirement allowance to an amount which shall not exceed the amount upon which he or she was originally retired, but which, subject to such limitation shall equal, when added to the compensation earned by him or her, the amount of his or her final compensation on the basis of which his or her retirement allowance was determined. When said disability beneficiary reaches the age of sixty-two years, his or her retirement allowance shall be made equal to the amount upon which he or she was originally retired, and shall not again be modified for any cause except as provided in RCW 41.28.220.

(4) Should the retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into the city service he or she shall be paid his or her accumulated contributions, less annuity payments made to him or her. [2012 c 117 § 53; 1939 c 207 § 17; RRS § 9592-117.]

41.28.170 Optional allowances. A member may elect to receive, in lieu of the retirement allowance provided for in RCW 41.28.130, its actuarial equivalent in the form of a lesser retirement allowance, payable in accordance with the terms and conditions of one of the options set forth below in this section. Election of any option must be made by written application filed with the board of administration at least thirty days in advance of retirement as provided in RCW 41.28.120, and shall not be effective unless approved by the board prior to retirement of the member.

Option A. The lesser retirement allowance shall be payable to the member throughout his or her life: PROVIDED, That if he or she die before he or she receive in annuity payments referred to in RCW 41.28.130(1)(a), a total amount equal to the amount of his or her accumulated contributions as it was at the date of his or her retirement, the balance of such accumulated contributions shall be paid in one sum to his or her estate or to such person having an insurable interest in his or her life as he or she shall nominate by written designation duly executed and filed with the board.

Option B. The lesser retirement allowance shall be payable to a member throughout his or her life: PROVIDED, That if he or she die before he or she receive in annuity payments referred to in RCW 41.28.130(1)(a), a total amount equal to the amount of his or her accumulated contributions

as it was at the date of his or her retirement, the said annuity payments resulting from his or her accumulated contributions shall be continued and paid to his or her estate or such person, having an insurable interest in his or her life, as he or she shall nominate by written designation duly executed and filed with the board until the total amount of annuity payments shall equal the amount of his or her accumulated contributions as it was at the date of his or her retirement.

Option C. The member shall elect a "guaranteed period" of any number of years. If he or she dies before the lesser retirement allowance has been paid to him or her for the number of years elected by him or her as the "guaranteed period", the lesser retirement allowance shall be continued to the end of the "guaranteed period", and during such continuation shall be paid to his or her estate or to such person having an insurable interest in his or her life as he or she shall nominate by written designation duly executed and filed with the board.

Option D. The lesser retirement allowance shall be payable to the member throughout life, and after the death of the member, one-half of the lesser retirement allowance shall be continued throughout the life of and paid to the wife or husband of the member.

Option E. The lesser retirement allowance shall be payable to the member throughout life, and after death of the member it shall be continued throughout the life of and paid to the wife or husband of the member. [2012 c 117 § 54; 1967 c 185 § 5; 1963 c 91 § 3; 1939 c 207 § 18; RRS § 9592-118.]

41.28.180 Payments on death of unretired members.

Upon the death of any person who has not been retired, pursuant to the provisions of this chapter, there shall be paid to his or her estate, or to such persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the board, his or her accumulated contributions less any payments therefrom already made to him or her, if any. [2012 c 117 § 55; 1939 c 207 § 19; RRS § 9592-119.]

41.28.190 Payments to be made monthly. A pension annuity or a retirement allowance granted under the provisions of this chapter, unless otherwise specified herein, shall be payable in monthly installments, and each installment shall cover for the current calendar month. [1939 c 207 § 20; RRS § 9592-120.]

41.28.200 Exemption from process—Rights not assignable. The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, attachment, or any other process whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as in this chapter specifically provided. [2012 c 159 § 22; 1939 c 207 § 21; RRS § 9592-121.]

41.28.205 Benefits payable in accordance with court decree or order of dissolution or legal separation. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [1979 ex.s. c 205 § 9.]

41.28.207 Payments to spouse or ex spouse pursuant to court order. (1) If the board of administration makes payments to a spouse or ex spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to a court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the board of administration or the retirement system for the board of administration to show that the payments were made pursuant to a court decree.

(2) All payments made to a nonmember spouse or ex spouse pursuant to RCW 41.28.205 shall cease upon the death of such a nonmember spouse or ex spouse. Upon such a death, the board of administration shall pay to the member his or her full monthly entitlement of benefits.

(3) The provisions of RCW 41.28.205 and this section shall apply to all court decrees of dissolution or legal separation and court-approved property settlement agreements, regardless of when entered, but shall apply only to those persons who have actually retired or who have requested withdrawal of any or all of their accumulated contributions: PROVIDED, That the board of administration shall not be responsible for making court-ordered divisions of withdrawals unless the order is filed with the board at least thirty days before the withdrawal payment date. [1987 c 326 § 20.]

Mandatory assignment of retirement benefits to spouse or ex spouse: RCW 41.50.500 through 41.50.660.

Additional notes found at www.leg.wa.gov

41.28.210 Estimates of service, compensation, or age. If it shall be impracticable for the board of administration to determine from the records the length of service, the compensation, or the age of any member, the said board may estimate for the purpose of this chapter, such length of service, compensation or age. [1939 c 207 § 22; RRS § 9592-122.]

41.28.220 Suspension of allowances during other public aid. The payment of any retirement allowance to a member who has been retired from service shall be suspended during the time that the beneficiary is in receipt of other pension or of other compensation for state or public service paid from direct or indirect state or municipal taxes or revenues of publicly owned utilities, except as to the amount by which such retirement allowance may exceed such compensation for the same period. [1939 c 207 § 23; RRS § 9592-123.]

41.28.230 Administrative expense. The city council or city commission shall appropriate annually from the retirement fund the amount it deems necessary for the purpose of paying the expenses of administering the retirement system. The board of administration shall annually submit to the city

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council or city commission its estimate of the amount necessary to pay such expenses. The preliminary cost of establishment of said retirement system, such as clerical help and actuarial survey costs, etc., shall be paid by the department or departments affected. [1939 c 207 § 24; RRS § 9592-124.]

41.28.240 Existing systems preserved. Nothing in this chapter shall repeal, supersede, alter, amend or be regarded as a substitute for any existing retirement or pension system, duly established by city ordinance. [1939 c 207 § 28; RRS § 9592-128.]

41.28.910 Repeal. All laws and parts of laws in conflict herewith be and the same are hereby repealed. [1939 c 207 § 26.]

41.28.920 Effective date—1939 c 207. The retirement system shall become effective on July 1, 1939, as provided in RCW 41.28.020. [1939 c 207 § 27.]

41.28.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 94.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.31A RCW

EXTRAORDINARY INVESTMENT GAINS—PLAN 3

Sections

- 41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted (*as amended by 2007 c 491*).
- 41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted (*as amended by 2007 c 492*).
- 41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted.

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted (*as amended by 2007 c 491*). (1) On January 1, 2004, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons, hired prior to July 1, 2007, shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan 3, the Washington school employees' retirement system plan 3, or the public employees' retirement system plan 3 who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member

account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875, 41.35.680, or 41.40.820; or

(c) Any person who is a retiree pursuant to *RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(d) Any teacher who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(f) Any public employee who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795; or

(g) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(h) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(i) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(j) Any public employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system combined plan 2 and 3 fund, the Washington school employees' retirement system combined plan 2 and 3 fund, and the public employees' retirement system combined plan 2 and 3 fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2 during the twelve-month period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765, 41.35.420, or 41.40.630; and

(D) Any person with five or more years of service in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [2007 c 491 § 1; 2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

*Reviser's note: RCW 41.34.020 was amended by 2010 1st sp.s. c 7 § 31, changing subsection (8) to subsection (7).

Effective date—2007 c 491 §§ 1, 3, and 7: See note following RCW 41.32.835.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted (as amended by 2007 c 492). (1) On January 1, 2004, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan 3, the Washington school employees' retirement system plan 3, or the public employees' retirement system plan 3 who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875, 41.35.680, or 41.40.820; or

(c) Any person who is a retiree pursuant to *RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age (~~fifty-four~~) forty-four; or

(d) Any teacher who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(f) Any public employee who is a retiree pursuant to *RCW 41.34.020(8) and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795; or

(g) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age (~~fifty-four~~) forty-four; or

(h) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(i) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(j) Any public employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system combined plan 2 and 3 fund, the Washington school employees' retirement system combined plan 2 and 3 fund, and the public employees' retirement system combined plan 2 and 3 fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2,

or the public employees' retirement system plan 2 during the twelve-month period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765, 41.35.420, or 41.40.630; and

(D) Any person with five or more years of service in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [2007 c 492 § 10; 2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

Reviser's note: *(1) RCW 41.34.020 was amended by 2010 1st sp.s.c 7 § 31, changing subsection (8) to subsection (7).

(2) RCW 41.31A.020 was also repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Contingency—2007 c 492 § 10: "Section 10 of this act is null and void, if legislation is enacted during 2007 repealing RCW 41.31A.020." [2007 c 492 § 13.]

Additional notes found at www.leg.wa.gov

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted. [2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

Reviser's note: RCW 41.31A.020 was also repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

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TEACHERS' RETIREMENT

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- 41.32.875 Retirement eligibility.
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Prior acts relating to teachers' retirement: (1) 1943 c 116; 1941 c 97; 1939 c 86, 40; 1937 c 221 (repealed by 1947 c 80 § 70).

(2) 1931 c 115; 1923 c 187; 1919 c 150; 1917 c 163 (repealed by 1937 c 221 § 14).

Employee salary or compensation—Limitations respecting: RCW 28A.400.220.

Portability of public retirement benefits: Chapter 41.54 RCW.

Teachers in state correctional facilities as members of teachers' retirement fund: RCW 72.01.200.

Additional notes found at www.leg.wa.gov

"PROVISIONS APPLICABLE TO PLAN 1, PLAN 2, AND PLAN 3"

41.32.005 Provisions applicable to "plan 1," "plan 2," and "plan 3." RCW 41.32.010 through 41.32.067 shall apply to members of plan 1, plan 2, and plan 3. [1995 c 239 § 101; 1992 c 72 § 4; 1991 c 35 § 30; 1990 c 274 § 16. Prior: 1989 c 273 § 15; 1989 c 272 § 4; 1977 ex.s. c 293 § 19.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—1989 c 272: "The legislature recognizes that inflation erodes the purchasing power of retirement benefits. Although the benefit provided to state retirees from social security is fully protected, the benefits provided by the public employees' retirement system, plan 1, and the teachers' retire-

ment system, plan 1 provide an automatic cost-of-living adjustment only for persons who receive the minimum benefit.

The purpose of this act is to add provisions to the teachers' retirement system and the public employees' retirement system which will help mitigate the impact of inflation on retirees of those systems. These additional provisions are intended to reflect and implement the following policies:

(1) The minimum benefit is increased in order to provide a more adequate basic standard of living to persons who retired long ago under lower salaries and less generous retirement benefit formulas; and

(2) Retirees whose benefits have lost forty percent of their purchasing power are made eligible for automatic adjustments which are provided in a manner that is consistent with the retirement age and benefit provisions of plan 2 of the teachers' retirement system and the public employees' retirement system." [1989 c 272 § 1.]

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.010 Definitions. 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) "Adjustment ratio" means the value of index A divided by index B.

(4) "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.

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

(6) "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).

(7)(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.

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

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

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

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

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

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

(14)(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 earned 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.

(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:

(i) 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, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

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

(15)(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.

(16) "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.

(17) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid. Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an employer. The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an employer, but is based solely on the relationship between a government contractor's employee and an employer under this chapter.

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

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

(20) "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.

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

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

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

(24) "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.

(25) "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.

(26) "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.

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

(28) "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.

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

(30) "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.

(31) "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.

(32) "Plan 2" means the teachers' 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, and prior to July 1, 1996.

(33) "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.

(34) "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.

(35) "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.

(36) "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.

(37) "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.

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

(39) "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.

(40)(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.

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

(42) "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.

(43)(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.

(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.

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

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

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

(47) "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.

(48) "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.

(49) "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. [2012 c 236 § 3; 2011 1st sp.s. c 5 § 2. Prior: 2010 2nd sp.s. c 1 § 904; 2010 1st sp.s. c 32 § 7; prior: 2008 c 204 § 1; 2008 c 175 § 1; prior: 2007 c 398 § 3; 2007 c 50 § 1; prior: 2005 c 131 § 8; 2005 c 23 § 1; 2003 c 31 § 1; 1997 c 254 § 3; 1996 c 39 § 1; prior: 1995 c 345 § 9; 1995 c 239 § 102; prior: 1994 c 298 § 3; 1994 c 247 § 2; 1994 c 197 § 12; 1993 c 95 § 7; prior: 1992 c 212 § 1; 1992 c 3 § 3; prior: 1991 c 343 § 3; 1991 c 35 § 31; 1990 c 274 § 2; 1987 c 265 § 1; 1985 c 13 § 6; prior: 1984 c 256 § 1; 1984 c 5 § 1; 1983 c 5 § 1; 1982 1st ex.s. c 52 § 6; 1981 c 256 § 5; 1979 ex.s. c 249 § 5; 1977 ex.s. c 293 § 18; 1975 1st ex.s. c 275 § 149; 1974 ex.s. c 199 § 1; 1969 ex.s. c 176 § 95; 1967 c 50 § 11; 1965 ex.s. c 81 § 1; 1963 ex.s. c 14 § 1; 1955 c 274 § 1; 1947 c 80 § 1; Rem. Supp. 1947 § 4995-20; prior: 1941 c 97 § 1; 1939 c 86 § 1; 1937 c 221 § 1; 1931 c 115 § 1; 1923 c 187 § 1; 1917 c 163 § 1; Rem. Supp. 1941 § 4995-1.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Findings—2007 c 398: See note following RCW 28A.405.415.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1994 c 298: See note following RCW 41.40.010.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 274: "(1) The current system for calculating service credit for school district employees is difficult and costly to administer. By changing from the current hours per month calculation to an hours per year calculation, the accumulation of service credit by school district employees will be easier to understand and to administer.

(2) The current system for granting service credit for substitute teachers is difficult and costly to administer. By notifying substitute teachers of their eligibility for service credit and allowing the substitute teacher to apply for service credit, the accumulation of service credit by substitute teachers will be easier to understand and to administer.

(3) Currently, temporary employees in eligible positions in the public employees' retirement system are exempted from membership in the system for up to six months. If the position lasts for longer than six months the employee is made a member retroactively. This conditional exemption causes tracking problems for the department of retirement systems and places a heavy financial burden for back contributions on a temporary employee who crosses the six-month barrier. Under the provisions of this act all persons, other than retirees, who are hired in an eligible position will

become members immediately, thereby alleviating the problems described in this section.

(4) The legislature finds that retirees from the plan 2 systems of the law enforcement officers' and firefighters' retirement system, the teachers' retirement system, and the public employees' retirement system, may not work for a nonfederal public employer without suffering a suspension of their retirement benefits. This fails to recognize the current and projected demographics indicating the decreasing workforce and that the expertise possessed by retired workers can provide a substantial benefit to the state. At the same time, the legislature recognizes that a person who is working full time should have his or her pension delayed until he or she enters full or partial retirement. By allowing plan 2 retirees to work in ineligible positions, the competing concerns listed above are both properly addressed." [1990 c 274 § 1.]

Intent—Reservation—1990 c 274 §§ 2, 4: "(1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are intended by the legislature to effect administrative, rather than substantive, changes to the affected retirement plan. The legislature therefore reserves the right to revoke or amend the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his or her service credit calculated under the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

(2) The department's retroactive application of the changes made in RCW 41.32.010(27)(b) to all service rendered between October 1, 1977, and August 31, 1990, is consistent with the legislative intent of the 1990 changes to RCW 41.32.010(27)(b)." [1994 c 177 § 10; 1990 c 274 § 18.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Reviser's note: (1) "Subsection (3) of section 4 of this 1974 amendatory act" is codified as RCW 41.32.498(3).

(2) Sections 1 and 2 of 1974 ex.s. c 199 consist of amendments to RCW 41.32.010 and 41.32.260. For amendatory language, a portion of which was vetoed, see the 1973-1974 session laws.

(3) "this 1974 amendatory act" [1974 ex.s. c 199] is codified in RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498, and 41.32.4945. The effective date of 1974 ex.s. c 199 is May 6, 1974.

Additional notes found at www.leg.wa.gov

41.32.012 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 95. Formerly RCW 41.32.950.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

41.32.013 Substitute teachers—Application for service credit—Procedures. Substitute teachers may apply to the department to receive service credit or credit for earnable compensation or both after the end of the last day of instruction of the school year during which the service was performed.

(1) The application must:

(a) Include a list of the employers the substitute teacher has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(2) If the department accepts the substitute teacher's application for service credit, the substitute teacher may obtain service credit by paying the required contribution to the retirement system. The employer must pay the required employer contribution upon notice from the department that the substitute teacher has made contributions under this section.

(3) The department shall charge interest prospectively on employee contributions that are submitted under this section more than six months after the end of the school year, as defined in *RCW 28A.150.040, for which the substitute teacher is seeking service credit. The interest rate charged to the employee shall take into account interest lost on employer contributions delayed for more than six months after the end of the school year.

(4) Each employer shall quarterly notify each substitute teacher it has employed during the school year of the number of hours worked by, and the compensation paid to, the substitute teacher.

(5) The department shall adopt rules implementing this section.

(6) If a substitute teacher as defined in **RCW 41.32.010(36)(b)(ii) applies to the department under this section for credit for earnable compensation earned from an employer the substitute teacher must make contributions for all periods of service for that employer. [1992 c 212 § 16; 1991 c 343 § 4; 1990 c 274 § 5.]

Reviser's note: *(1) RCW 28A.150.040 was repealed by 2009 c 548 § 710, effective September 1, 2011.

** (2) RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (36)(b)(ii) to subsection (48)(b)(ii).

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

41.32.020 Name of system. The name of the retirement system provided for in this chapter shall be the "Washington State Teachers' Retirement System" and by this name all of its business shall be transacted and all of its funds invested and all of its cash, securities and other property held. [1947 c 80 § 2; Rem. Supp. 1947 § 4995-21. Prior: 1937 c 221 § 2; Rem. Supp. 1941 § 4995-2.]

41.32.025 Department's power to determine eligibility. The department is empowered within the limits of this chapter and, with regard to restoration of service credit under RCW 41.50.165(2), to decide on all questions of eligibility covering membership, service credit, and benefits. [1994 c 197 § 13; 1991 c 35 § 35; 1955 c 274 § 3; 1947 c 80 § 16; Rem. Supp. 1947 § 4995-35. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.160.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.032 Membership in system—Service credit of educational staff associates. (1) Any teacher, as defined

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under RCW 41.32.010, who is first employed by a public school on or after June 7, 1984, shall become a member of the retirement system if otherwise eligible.

(2) Any person who before June 7, 1984, has established service credit under chapter 41.40 RCW while employed in an educational staff associate position and who is employed in such a position on or after June 7, 1984, has the following options:

(a) To remain a member of the public employees' retirement system notwithstanding the provisions of RCW 41.32.240 or 41.32.780; or

(b) To irrevocably elect to join the retirement system under this chapter and to receive service credit for previous periods of employment in any position included under RCW 41.32.010. This service credit and corresponding employee contribution shall be computed as though the person had then been a member of the retirement system under this chapter. All employee contributions credited to a member under chapter 41.40 RCW for service now to be credited to the retirement system under this chapter shall be transferred to the system and the member shall not receive any credit nor enjoy any rights under chapter 41.40 RCW for those periods of service. The member shall pay any difference between the employee contributions made under chapter 41.40 RCW and transferred under this subsection and what would have been required under this chapter, including interest as set by the director. The member shall be given until July 1, 1989, to make the irrevocable election permitted under this section. The election shall be made by submitting written notification as required by the department requesting credit under this section and by remitting any necessary proof of service or payments within the time set by the department.

Any person, not employed as an educational staff associate on June 7, 1984, may, before June 30 of the fifth school year after that person's return to employment as a teacher, request and establish membership and credit under this subsection. [1995 c 239 § 103; 1992 c 212 § 17; 1991 c 35 § 39; 1984 c 256 § 2. Formerly RCW 41.32.242.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1991 c 35: See note following RCW 41.26.005.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.033 Membership in system—Charter school employers and employees. This section designates charter schools established under chapter 28A.710 RCW as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code. [2016 c 241 § 133. Prior: 2013 c 2 § 303 (Initiative Measure No. 1240, approved November 6, 2012).]

Application of chapter 241, Laws of 2016—Effective date—2016 c 241: See RCW 28A.710.900 and 28A.710.901.

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.32.035 Employer contribution rates—Computation and payment. The amount paid by each employer shall be computed by applying the rates established under chapter 41.45 RCW to the total earnable compensation of the employer's members as shown on the current payrolls of the employer. The employer's contribution shall be paid at the end of each month in the amount due for that month, except as provided in RCW 41.32.013. [1990 c 274 § 8; 1989 c 273 § 18; 1984 c 236 § 3. Formerly RCW 41.32.403.]

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.32.042 Validity of deductions—Interest. The deductions from salaries of members of the retirement system for their contributions to the system are not considered diminution of pay and every member is conclusively presumed to consent thereto as a condition of employment. All contributions to the member reserve shall be credited to the individual for whose account the deductions from salary were made. Regular interest shall be credited to each member's account at least annually. [1992 c 212 § 9; 1982 1st ex.s. c 52 § 13; 1947 c 80 § 46; Rem. Supp. 1947 § 4995-65. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part. Formerly RCW 41.32.460.]

Additional notes found at www.leg.wa.gov

41.32.044 Retired teacher may reenter system—Benefit limitations. A retired teacher upon returning to service in the public schools of Washington may elect to again become a member of the retirement system: PROVIDED, That if such a retired teacher elects to be restored to membership he or she must establish two full years of service credit before he or she will be eligible to retire under the provision of a formula other than the one in effect at the time of his or her previous retirement: PROVIDED FURTHER, That where any such right to again retire is exercised to become effective before a member has established two full years of service credit he or she may elect to retire only under the provisions of the formula in effect at the time of his or her previous retirement: AND PROVIDED FURTHER, That this section shall not apply to any individual who has returned to service and is presently in service on *the effective date of this 1973 amendatory act. [2012 c 117 § 56; 1973 2nd ex.s. c 32 § 5; 1947 c 80 § 58; Rem. Supp. 1947 § 4995-77. Formerly RCW 41.32.580.]

*Reviser's note: "the effective date of this 1973 amendatory act," because of the emergency clause footnoted to RCW 41.32.310, is September 27, 1973, the date of approval by the governor.

Additional notes found at www.leg.wa.gov

41.32.052 Exemption from taxation and judicial process—Exceptions—Nonassignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt from any state, county, municipal or other local tax, and shall not

be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever whether the same be in actual possession of the person or be deposited or loaned.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 20. Prior: 1991 c 365 § 21; 1991 c 35 § 63; 1989 c 360 § 25; 1987 c 326 § 23; 1982 c 135 § 1; 1981 c 294 § 13; 1979 ex.s. c 205 § 5; 1971 c 63 § 1; 1961 c 132 § 5; 1947 c 80 § 59; Rem. Supp. 1947 § 4995-78; prior: 1937 c 22 § 9; 1917 c 163 § 19. Formerly RCW 41.32.590.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.053 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligi-

bility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 3; 2003 c 402 § 2.]

41.32.054 Disability retirement—Criminal conduct.

A member shall not receive a disability retirement benefit under RCW 41.32.540, 41.32.550, 41.32.790, or 41.32.880 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1997 c 103 § 2.]

Additional notes found at www.leg.wa.gov

41.32.055 Falsification—Penalty. (1) Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system, except under subsection (2) of this section, in any attempt to defraud such system as a result of such act, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement systems related to a member's separation from service and qualification for a retirement allowance under RCW 41.32.480 in any attempt to defraud that system as a result of such an act, is guilty of a gross misdemeanor. [2007 c 50 § 2; 2003 c 53 § 218; 1947 c 80 § 67; Rem. Supp. 1947 § 4995-86. Prior: 1937 c 221 § 10. Formerly RCW 41.32.670.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

41.32.062 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1983 c 283 § 3. Formerly RCW 41.32.850.]

41.32.063 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 2.]

41.32.064 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 2.]

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41.32.0641 Disabled in the line of duty—Continuation of service credit—Conditions. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 2.]

41.32.065 Election to use out-of-state service credit to calculate time at which the member may retire. A member who has not purchased service credit under the provisions of RCW 41.32.813 or 41.32.868 may elect under this section to apply service credit earned in an out-of-state retirement system that covers teachers in public schools solely for the purpose of determining the time at which the member may retire. The benefit shall be actuarially reduced to recognize the difference between the age a member would have first been able to retire based on service in the state of Washington and the member's retirement age. [2006 c 257 § 3; 1991 c 278 § 1.]

Effective date—2006 c 257: See note following RCW 41.32.813.

41.32.066 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.32.480, 41.32.765, or 41.32.875 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers

comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 2.]

Effective date—2006 c 214: See note following RCW 41.40.034.

41.32.067 Purchase of additional benefits—Conditions. A member may purchase additional benefits subject to the following:

(1) The member shall pay all reasonable administrative and clerical costs; and

(2) The member shall make a member reserve contribution to be actuarially converted to a monthly benefit at the time of retirement. [1992 c 212 § 13; 1991 c 278 § 2.]

"PROVISIONS APPLICABLE TO PLAN 2 AND PLAN 3"

41.32.068 Postretirement employment options. (Expires July 1, 2021.) In addition to the postretirement employment options available in RCW 41.32.802 or 41.32.862, and only until August 1, 2020, a teacher in plan 2 or plan 3 who has retired under the alternate early retirement provisions of RCW 41.32.765(3)(b) or 41.32.875(3)(b) may be employed with an employer for up to eight hundred sixty-seven hours per calendar year without suspension of his or her benefit, provided that: (1) The retired teacher reenters employment more than one calendar month after his or her accrual date and after June 9, 2016; (2) [the retired teacher] is employed exclusively as either a substitute teacher as defined in RCW 41.32.010(48)(a) in an instructional capacity, as opposed to other capacities identified in RCW 41.32.010(49); and (3) the employing school district compensates the district's substitute teachers at a rate that is at least eighty-five percent of the full daily amount allocated by the state to the district for substitute teacher compensation. [2016 c 233 § 7.]

Expiration date—2016 c 233 § 7: "Section 7 of this act expires July 1, 2021." [2016 c 233 § 19.]

"PLAN 1"

41.32.215 Provisions applicable to plan 1. RCW 41.32.240 through *41.32.575 shall apply only to members of plan 1. [1992 c 72 § 5; 1991 c 35 § 103.]

***Reviser's note:** RCW 41.32.575 was repealed by 1995 c 345 § 11.

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.240 Membership in system. (1) All teachers employed full time in the public schools shall be members of the system except alien teachers who have been granted a temporary permit to teach as exchange teachers.

(2) A minimum of ninety days or the equivalent of ninety days of employment during a fiscal year shall be required to

establish membership. A teacher shall be considered as employed full time if serving regularly for four-fifths or more of a school day or if assigned to duties which are the equivalent of four-fifths or more of a full time assignment. A teacher who is employed for less than full time service may become a member by filing an application with the retirement system, submitting satisfactory proof of teaching service and making the necessary payment before June 30 of the school year immediately following the one during which the service was rendered.

(3) After June 30th of the school year immediately following the one during which the less than full-time service was rendered, the necessary payment may be made under RCW 41.50.165(2). [1994 c 197 § 14; 1991 c 35 § 38; 1979 ex.s. c 45 § 3; 1965 ex.s. c 81 § 3; 1963 ex.s. c 14 § 4; 1961 c 132 § 1; 1955 c 274 § 7; 1947 c 80 § 24; Rem. Supp. 1947 § 4995-43. Prior: 1941 c 97 § 3, part; 1939 c 86 § 2, part; 1937 c 221 § 4, part; 1931 c 115 § 3, part; 1923 c 187 § 10, part; Rem. Supp. 1941 § 4995-4, part.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Eligibility for retirement allowance: RCW 41.32.470.

Additional notes found at www.leg.wa.gov

41.32.260 Credit for military service or as state legislator. Any member whose public school service is interrupted by active service to the United States as a member of its uniformed services, or to the state of Washington, as a member of the legislature, may upon becoming reemployed in the public schools, receive credit for that service upon presenting satisfactory proof, and contributing to the member reserve, either in a lump sum or installments, amounts determined by the director. Except that no military service credit in excess of five years shall be established or reestablished after July 1, 1961, unless the service was actually rendered during time of war. This section shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(1) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services;

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(c) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(2) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is enti-

tled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(b) The member provides to the director proof of honorable discharge from the uniformed services; and

(c) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first. [2005 c 64 § 6; 1992 c 212 § 8; 1991 c 35 § 40; 1974 ex.s. c 199 § 2; 1973 1st ex.s. c 189 § 1; 1971 ex.s. c 271 § 1; 1967 c 50 § 2; 1961 c 132 § 2; 1955 c 274 § 8; 1947 c 80 § 26; Rem. Supp. 1947 § 4995-45. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 1, part; Rem. Supp. 1941 § 4995-5, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

Additional notes found at www.leg.wa.gov

41.32.263 State legislators and state officials eligible for retirement benefits. A member of the retirement system who is a member of the state legislature or a state official eligible for the combined pension and annuity provided by RCW 41.32.497, or 41.32.498, as now or hereafter amended shall have deductions taken from his or her salary in the amount of seven and one-half percent of earnable compensation and that service credit shall be established with the retirement system while such deductions are reported to the retirement system, unless he or she has by reason of his or her employment become a contributing member of another public retirement system in the state of Washington. Such elected official who has retired or otherwise terminated his or her public school service may then elect to terminate his or her membership in the retirement system and receive retirement benefits while continuing to serve as an elected official. A member of the retirement system who had previous service as an elected or appointed official, for which he or she did not contribute to the retirement system, may receive credit for such legislative service unless he or she has received credit for that service in another state retirement system, upon making contributions in such amounts as shall be determined by the board of trustees. [1991 c 35 § 41.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.267 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.32.240 through *41.32.575.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority

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rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 5.]

*Reviser's note: RCW 41.32.575 was repealed by 1995 c 345 § 11.

Additional notes found at www.leg.wa.gov

41.32.270 Teaching service, how credited. Service rendered for four-fifths or more of the official school year of the school district or institution in which a teacher is employed shall be credited as a year's service regardless of the length of the school term, but in no case shall more than one year of service be creditable for service rendered in one fiscal year. Service rendered for less than four-fifths of the official school year shall be credited for that portion of the school year for which it was rendered: PROVIDED, That no service of less than twenty days in any school year shall be creditable. [1947 c 80 § 27; Rem. Supp. 1947 § 4995-46. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 5, part; Rem. Supp. 1941 § 4995-5, part.]

41.32.300 Limitation on credit for out-of-state service. (1) Henceforth a total of not more than four years of service outside of the state shall be credited to a member who establishes or reestablishes credit for out-of-state public school employment in this state subsequent to July 1, 1961. Foreign public school teaching service shall be creditable as out-of-state service.

(2) No out-of-state service credit shall be established or reestablished subsequent to July 1, 1964, except that a member who has been granted official leave of absence by his or her employer may, upon return to public school service in this state, establish out-of-state membership service credit, within the limitations of this section and conditioned upon satisfactory proof and upon contributions to the member reserve, for public school service rendered in another state or in another country.

(3) No member who establishes out-of-state service credit after July 1, 1947, shall at retirement for pension payment purposes be allowed credit for out-of-state service in excess of the number of years credit which he or she shall have earned in the public schools of the state of Washington. [1992 c 212 § 14; 1991 c 35 § 42; 1963 ex.s. c 14 § 5; 1961 c 132 § 7; 1955 c 274 § 11; 1947 c 80 § 30; Rem. Supp. 1947 § 4995-49.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.310 Time limit for claiming service credit—Payments. (1) Any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments on or before June 30 of the fifth school year of membership. Payments covering all types of membership service credit must be made in a lump sum when due, or in annual installments. The first annual installment of at least twenty percent of the amount due must be paid before the above deadline date, and the final payment must be made by June 30th of the fourth school year following that in which the first installment was made. The amount of payment and the interest thereon, whether lump sum or installments, shall

be made by a method and in an amount established by the department.

(2) A member who had the opportunity under chapter 41.32 RCW prior to July 1, 1969, to establish credit for active United States military service or credit for professional preparation and failed to do so shall be permitted to establish additional credit within the provisions of RCW 41.32.260 and 41.32.330. A member who was not permitted to establish credit pursuant to section 2, chapter 32, Laws of 1973 2nd ex. sess., for Washington teaching service previously rendered, must present proof and make the necessary payment to establish such credit as membership service credit. Payment for such credit must be made in a lump sum on or before June 30, 1974. Any member desiring to establish credit under the provisions of this subsection must present proof and make the necessary payment before June 30, 1974; or, if not employed on the effective date of this amendment, before June 30th of the fifth school year upon returning to public school employment in this state.

(3) After June 30th of the fifth school year of membership, any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments under RCW 41.50.165(2) but prior to retirement. [1994 c 197 § 15; 1992 c 72 § 6. Prior: 1991 c 35 § 43; 1974 ex.s. c 193 § 1; 1973 2nd ex.s. c 32 § 2; 1969 ex.s. c 150 § 9; 1965 ex.s. c 81 § 8; 1955 c 274 § 12; 1947 c 80 § 31; Rem. Supp. 1947 § 4995-50.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.330 Credit for professional preparation subsequent to becoming teacher. The department may allow credit for professional preparation to a member for attendance at institutions of higher learning, or for a scholarship or grant under an established foundation, subsequent to becoming a public school teacher; but not more than two years of such credit may be granted to any member. [1991 c 35 § 44; 1969 ex.s. c 150 § 10; 1955 c 274 § 14; 1947 c 80 § 33; Rem. Supp. 1947 § 4995-52.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.340 Creditable service, what to consist of. Creditable service of a member at retirement shall consist of the membership service rendered for which credit has been allowed, and also, if a prior service certificate is in full force and effect, the amount of the service certified on the prior service certificate. No pension payments shall be made for service credits established or reestablished after July 1, 1955, if such credits entitle the member to retirement benefits from any other public state or local retirement system or fund. No pension payments shall be made for service credits established or reestablished after July 1, 1961, if such credits entitle the member to retirement benefits from a public federal retirement system or fund for services rendered under a civilian program: PROVIDED, That no pension payments shall be made for service credits established or reestablished after July 1, 1969, if credit for the same service is retained for benefits under any other retirement system or fund. [1991 c 35 §

45; 1969 ex.s. c 150 § 11; 1961 c 132 § 3; 1955 c 274 § 15; 1947 c 80 § 34; Rem. Supp. 1947 § 4995-53. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 5, part; Rem. Supp. 1941 § 4995-5, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.345 "Earnable compensation" defined for certain part-time employees—Adoption of rules. (1) Subject to the limitations contained in this section, for the purposes of *RCW 41.32.010(10)(a)(ii), earnable compensation means the compensation the member would have received in the same position if employed on a regular full-time basis for the same contract period.

(2) In order to ensure that the benefit provided by this section is not used to unfairly inflate a member's retirement allowance, the department shall adopt rules having the force of law to govern the application of this section.

(3)(a) In adopting rules which apply to a member employed by a school district, the department may consult the district's salary schedule and related workload provisions, if any, adopted pursuant to RCW 28A.405.200. The rules may require that, in order to be eligible for this benefit, a member's position must either be included on the district's schedule, or the position must have duties, responsibilities, and method of pay which are similar to those found on the district's schedule.

(b) In adopting rules which apply to a member employed by a community college district, the department may consult the district's salary schedule and workload provisions contained in an agreement negotiated pursuant to chapter 28B.52 RCW, or similar documents. The rules may require that, in order to be eligible for this benefit, a member's position must either be included on the district's agreement, or the position must have duties, responsibilities, and method of pay which are similar to those found on the district's agreement. The maximum full-time workweek used in calculating the benefit for community college employees paid on an hourly rate shall in no case exceed fifteen credit hours, twenty classroom contact hours, or thirty-five assigned hours.

(4) If the legislature amends or revokes the benefit provided by this section, no affected employee who thereafter retires is entitled to receive the benefit as a matter of contractual right. [1992 c 212 § 18; 1990 c 33 § 570; 1987 c 265 § 2. Formerly RCW 41.32.011.]

***Reviser's note:** RCW 41.32.010 was amended by 1994 c 298 § 3, changing subsection (10)(a)(ii) to subsection (10)(a)(iii). RCW 41.32.010 was subsequently amended by 2003 c 31 § 1, changing subsection (10)(a)(iii) to subsection (10)(a)(iv). RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (10)(a)(iv) to subsection (14)(a)(iv).

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

41.32.350 Purchase of additional annuity. A member may make an additional lump sum payment at date of retirement, not to exceed the member's accumulated contributions, to purchase additional annuity. A contribution of six percent of earnable compensation is required from each member, except as provided under RCW 41.32.013. [1991 c 35 § 46; 1990 c 274 § 7; 1973 1st ex.s. c 189 § 6; 1963 ex.s. c 14 § 7; 1955 c 274 § 16; 1947 c 80 § 35; Rem. Supp. 1947 § 4995-54.

Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; 1931 c 115 § 4, part; 1923 c 115 § 11, part; 1917 c 163 § 10, part; Rem. Supp. 1941 § 4995-6, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

Additional notes found at www.leg.wa.gov

41.32.380 Source of pension reserve—Contributions.

There shall be placed in the pension reserve all appropriations made by the legislature for the purpose of paying pensions and survivors' benefits and of establishing and maintaining an actuarial reserve and all gifts and bequests to the pension reserve, and contributions of persons entering the retirement system who have established prior service credit. Members establishing prior service credit shall contribute to the pension reserve as follows:

For the first ten years of prior service fifteen dollars per year;

For the second ten years of prior service thirty dollars per year;

For the third ten years of prior service forty-five dollars per year. [1992 c 212 § 10; 1982 1st ex.s. c 52 § 8; 1947 c 80 § 38; Rem. Supp. 1947 § 4995-57.]

Additional notes found at www.leg.wa.gov

41.32.390 Contributions for prior service credits. At least twenty percent of the total amount due for prior service credit must be paid before an application for credit may be presented to the department for approval. The balance is not due until date of retirement and may be paid at that time without additional charge. Any unpaid installments at the time the member is retired for service or disability shall constitute a first, paramount, and prior lien against his or her retirement allowance. [1991 c 35 § 49; 1955 c 274 § 18; 1947 c 80 § 39; Rem. Supp. 1947 § 4995-58. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.470 Eligibility for retirement allowance. A member who is not a dual member under RCW 41.54.010 must have established or reestablished with the retirement system at least five years of credit for public school service in this state to be entitled to a retirement allowance. [1994 c 298 § 4; 1965 ex.s. c 81 § 4; 1963 ex.s. c 14 § 15; 1947 c 80 § 47; Rem. Supp. 1947 § 4995-66. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 7, part; 1923 c 187 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—1994 c 298: See note following RCW 41.40.010.

Additional notes found at www.leg.wa.gov

41.32.480 Qualifications for retirement. (1) Any member who separates from service after having completed thirty years of creditable service may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided

in RCW 41.32.497. Effective July 1, 1967, anyone then receiving a retirement allowance or a survivor retirement allowance under this chapter, based on thirty-five years of creditable service, and who has established more than thirty-five years of service credit with the retirement system, shall thereafter receive a retirement allowance based on the total years of service credit established.

(2) Any member who has attained age sixty years, but who has completed less than thirty years of creditable service, upon separation from service, may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497.

(3) Any member who has attained age fifty-five years and who has completed not less than twenty-five years of creditable service, upon separation from service, may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497. An individual who has retired pursuant to this subsection, on or after July 1, 1969, shall not suffer an actuarial reduction in his or her retirement allowance, except as the allowance may be actuarially reduced pursuant to the options contained in RCW 41.32.530. The chapter 193, Laws of 1974 ex. sess. amendment to this section shall be retroactive to July 1, 1969. [1997 c 254 § 4; 1991 c 35 § 53; 1974 ex.s. c 193 § 2; 1972 ex.s. c 147 § 1; 1970 ex.s. c 35 § 2; 1969 ex.s. c 150 § 14; 1967 c 151 § 1; 1955 c 274 § 21; 1947 c 80 § 48; Rem. Supp. 1947 § 4995-67. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 7, part; 1923 c 187 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.483 Annual increase amount—Legislature's rights reserved—No additional increases after June 30, 2011. (1) Beginning July 1, 2009, the annual increase amount as defined in RCW 41.32.010(4) shall be increased by an amount equal to \$0.40 per month per year of service minus the 2008 gain-sharing increase amount under *RCW 41.31.010 as it exists on July 22, 2007. This adjustment shall not decrease the annual increase amount, and is not to exceed \$0.20 per month per year of service. The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has the contractual right to receive this adjustment to the annual increase amount not granted prior to that time.

(2) The adjustment to the annual increase amount as set forth in section 5, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. If the repeal of **chapter 41.31 RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then this adjustment to the annual increase amount

shall not be included in future annual increase amounts paid on or after the date of such reinstatement.

(3) No additional annual increase under this section shall be provided after June 30, 2011. [2011 c 362 § 2; 2007 c 491 § 5.]

Reviser's note: *(1) RCW 41.31.010 was repealed by 2007 c 491 § 13, effective January 2, 2008.

***(2) Chapter 41.31 RCW was repealed by 2007 c 491 § 13, effective January 2, 2008.

Finding—Intent—2011 c 362: "Chapter 561, Laws of 2009 made necessary changes to the funding plan for the fiscal integrity of the teachers' retirement system, plan 1 and the public employees' retirement system, plan 1, and provides a basis for improvements in the financial soundness of the pension plans. The legislature now finds that changing economic conditions have also made necessary the amendatory provisions contained in this act. Due to the current extraordinary economic recession and due to the financial demands of other core responsibilities of government, it is not feasible for public employers of this state to fund the annual increase amount and continue to ensure the fiscal integrity of these pension funds. The legislature further clarifies and affirms that the intent of the legislature in section 5, chapter 345, Laws of 1995 and this act is to not create any contractual rights to the annual increase amount on the part of the public employees' retirement system, plan 1 and the teachers' retirement system, plan 1 members or retirees. Having reserved the right to amend or repeal these provisions in RCW 41.32.489(6) and 41.40.197(5), the legislature is now exercising that right through this act." [2011 c 362 § 1.]

Effective date—2011 c 362: "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 June 30, 2011." [2011 c 362 § 10.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.32.485 Minimum retirement allowance—Cost-of-living adjustment—Post-retirement adjustment—Computation. (1) Notwithstanding any provision of law to the contrary, effective July 1, 1989, as a cost-of-living adjustment, no beneficiary receiving a retirement allowance pursuant to this chapter shall receive, as the pension portion of that retirement allowance, less than fourteen dollars and eighty-two cents per month for each year of service creditable to the person whose service is the basis of the pension. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by fourteen dollars and eighty-two cents. Where the pension payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum pension provided in this section shall be adjusted in a manner consistent with that adjustment.

(2) Notwithstanding any provision of law to the contrary, effective July 1, 1979, the retirement allowance of each beneficiary who either is receiving benefits pursuant to RCW 41.32.520 or 41.32.550 as of December 31, 1978, or commenced receiving a monthly retirement allowance under this chapter as of a date no later than July 1, 1974, shall be permanently increased by a post-retirement adjustment. This adjustment shall be in lieu of any adjustments provided under *RCW 41.32.499(6) as of July 1, 1979, or July 1, 1980, for the affected beneficiaries. Such adjustment shall be calculated as follows:

(a) Retirement allowances to which this subsection and subsection (1) of this section are both applicable shall be determined by first applying subsection (1) and then applying this subsection. The department shall determine the total years of creditable service and the total dollar benefit base accrued as of December 31, 1978, except that this determina-

tion shall take into account only those beneficiaries to whom this subsection applies;

(b) The department shall multiply the total benefits determined in (a) of this subsection by six percent and divide the dollar value thus determined by the total service determined in (a) of this subsection. The resultant figure shall then be a post-retirement increase factor which shall be applied as specified in (c) of this subsection;

(c) Each beneficiary to whom this subsection applies shall receive an increase which is the product of the factor determined in (b) of this subsection multiplied by the years of creditable service.

(3) The provisions of subsections (1) and (2) of this section shall not be applicable to those receiving benefits pursuant to RCW 41.32.540 or 41.32.760 through 41.32.825. [1989 c 272 § 5; 1987 c 455 § 1; 1986 c 306 § 2; 1979 ex.s. c 96 § 2.]

***Reviser's note:** RCW 41.32.499 was repealed by 1995 c 345 § 11.

Purpose—1989 c 272: See note following RCW 41.32.005.

Additional notes found at www.leg.wa.gov

41.32.4851 Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995. (1) No one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) If the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(5) Beginning July 1, 2011, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with either (a) at least twenty years of service and who has been retired at least twenty-five years, or (b) at least twenty-five years of service and who has been retired at least twenty years, shall be one thousand five hundred dollars per month. On July 1, 2011, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent. [2011 c 362 § 4; 2006 c 244 § 1; 2004 c 85 § 1; 1995 c 345 § 3.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2006 c 244: "This act takes effect July 1, 2006." [2006 c 244 § 3.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.32.4872 Permanent increase for specified beneficiaries age seventy or over. (1) The amount of the July 1, 1993, increase to the retirement allowance of beneficiaries under this chapter as a result of the temporary adjustment

authorized by section 2, chapter 519, Laws of 1993, shall be made a permanent adjustment on July 1, 1995.

(2) Beneficiaries receiving a benefit under RCW 41.32.485 who are at least age seventy-nine shall receive on July 1, 1995, a permanent adjustment of one dollar and eighteen cents per month per year of service.

(3) Beneficiaries under this chapter who are not subject to subsection (1) of this section and not receiving a benefit under RCW 41.32.485 shall receive the following permanent adjustment to their retirement allowance on July 1, 1995:

(a) Those who are age seventy, thirty-nine cents per month per year of service;

(b) Those who are age seventy-one, seventy-nine cents per month per year of service; and

(c) Those who are at least age seventy-two, one dollar and eighteen cents per month per year of service. [1995 c 345 § 4.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.32.489 Retirement allowance—Annual increases restricted after July 1, 2010—Eligibility. (1) Beginning July 1, 1995, and annually thereafter through July 1, 2010, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(a) After July 1, 2010, those currently receiving benefits under this section will receive no additional annual increase amounts above the amount in effect on July 1, 2010, except for those who qualify under subsections (2)(b) and (3)(a) of this section. This subsection shall not reduce retirement allowances below the amounts in effect on June 30, 2011.

(b) After July 1, 2010, no annual increase amounts may be provided to any beneficiaries who are not already receiving benefits under this section, except for those who qualify under subsections (2)(b) and (3)(a) of this section.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year by July 1st in the calendar year in which the annual increase is given and has attained at least age sixty-six by December 31st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.32.4851.

(3) The following persons shall also be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary receiving the minimum benefit on June 30, 1995, under RCW 41.32.485; or

(b) A recipient of a survivor benefit on June 30, 1995, which has been increased by *RCW 41.32.575.

(4) If otherwise eligible, those receiving an annual adjustment under RCW 41.32.530(1)(d) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(5) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not

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granted prior to that time. [2011 c 362 § 3; 2007 c 89 § 2; 1995 c 345 § 2.]

*Reviser's note: RCW 41.32.575 was repealed by 1995 c 345 § 11.

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2007 c 89: See note following RCW 41.40.197.

Intent—1995 c 345: "The intent of this act is to:

(1) Simplify the calculation of postretirement adjustments so that they can be more easily communicated to plan 1 active and retired members;

(2) Provide postretirement adjustments based on years of service rather than size of benefit;

(3) Provide postretirement adjustments at an earlier age;

(4) Provide postretirement adjustments to a larger segment of plan 1 retirees; and

(5) Simplify administration by reducing the number of plan 1 postretirement adjustments to one." [1995 c 345 § 1.]

Additional notes found at www.leg.wa.gov

41.32.4931 Additional special pension for former members not receiving social security. (1) The benefits provided under subsection (2) of this section shall be available only to former members who have reached age sixty-five or are disabled for further public school service and are not receiving federal old age, survivors or disability benefit payments (social security) and are not able to qualify for such benefits.

(2) Effective July 1, 1987, former members who receive the minimum retirement allowance provided by RCW 41.32.485(1) and who meet the requirements of subsection (1) of this section shall receive an additional special pension of ten dollars per month per year of service credit. [1987 c 455 § 6; 1973 2nd ex.s. c 32 § 3; 1967 c 151 § 6.]

Additional notes found at www.leg.wa.gov

41.32.4945 Limitation as to earnable compensation of member as member of the legislature. Notwithstanding any other provision of RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498 and this section, when the salary of any member as a member of the legislature is increased beyond the amount provided for in Initiative Measure No. 282 then earnable compensation for the purposes of this chapter shall be based solely on the sum of (1) the compensation actually received from the salary for the job from which such leave of absence may have been taken and (2) such member's salary as a legislator during the two highest compensated consecutive years. [1991 c 35 § 54; 1974 ex.s. c 199 § 6.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.497 Retirement allowance for members entering system before April 25, 1973—Election. Any person who became a member on or before April 25, 1973 and who qualifies for a retirement allowance shall, at time of retirement, make an irrevocable election to receive either the retirement allowance by RCW 41.32.498 as now or hereafter amended or to receive a retirement allowance pursuant to this section consisting of: (1) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement, (2) A basic service pension of one hundred dollars per annum, and (3) A service pension which shall be equal to one one-hundredth of his or her average earnable compensation for his or her two highest compen-

sated consecutive years of service times the total years of creditable service established with the retirement system: PROVIDED, That no beneficiary now receiving benefits or who receives benefits in the future, except those beneficiaries receiving reduced benefits pursuant to RCW 41.32.520(1)(a) or 41.32.530, shall receive a pension of less than six dollars and fifty cents per month for each year of creditable service established with the retirement system. Pension benefits payable under the provisions of this section shall be prorated on a monthly basis and paid at the end of each month. [2012 c 117 § 57; 1990 c 249 § 12; 1974 ex.s. c 199 § 3; 1973 1st ex.s. c 189 § 2; 1970 ex.s. c 35 § 3; 1969 ex.s. c 150 § 15; 1963 ex.s. c 14 § 16.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.498 Retirement allowance for members entering system after April 25, 1973, or in lieu of allowance under RCW 41.32.497. Any person who becomes a member subsequent to April 25, 1973 or who has made the election, provided by RCW 41.32.497, to receive the benefit provided by this section, shall receive a retirement allowance consisting of:

(1) An annuity which shall be the actuarial equivalent of his or her additional contributions on full salary as provided by chapter 274, Laws of 1955 and his or her lump sum payment in excess of the required contribution rate made at date of retirement, pursuant to RCW 41.32.350, if any; and

(2) A combined pension and annuity service retirement allowance which shall be equal to two percent of his or her average earnable compensation for his or her two highest compensated consecutive years of service times the total years of creditable service established with the retirement system, to a maximum of sixty percent of such average earnable compensation: PROVIDED, That any member may irrevocably elect, at time of retirement, to withdraw all or a part of his or her accumulated contributions, other than any amount paid under RCW 41.50.165(2), and to receive, in lieu of the full retirement allowance provided by this subsection, a reduction in the standard two percent allowance, of the actuarially determined amount of monthly annuity which would have been purchased by said contributions: PROVIDED FURTHER, That no member may withdraw an amount of accumulated contributions which would lower his or her retirement allowance below the minimum allowance provided by RCW 41.32.497 as now or hereafter amended: AND PROVIDED FURTHER, That said reduced amount may be reduced even further pursuant to the options provided in RCW 41.32.530;

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the retirement allowance payable for service of a member who was state superintendent of public instruction on January 1, 1973 shall be equal to three percent of the average earnable compensation of his two highest consecutive years of service for each year of such service. [1994 c 197 § 16; 1991 c 35 § 55; 1990 c 249 § 4; 1988 c 116 § 1; 1987 c 143 § 1; 1974 ex.s. c 199 § 4; 1973 1st ex.s. c 189 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Reviser's note: The reference to "subsection (3) of section 3" appears to be erroneous. Section 13 of the original bill (House Bill No. 419) referred to equivalent language in subsection (3) of section 12 and the last proviso in section 4, amending RCW 41.32.497. The language referred to in section 4 remains in section 2 of the final bill which amends RCW 41.32.497, but was deleted by senate committee amendment from section 3 (formerly section 12 of the original bill) of the engrossed substitute bill, codified herein as RCW 41.32.498.

Additional notes found at www.leg.wa.gov

41.32.4986 Members with thirty years of service—Irrevocable election. A member may make the irrevocable election under this section no later than six months after attaining thirty years of service. The election shall become effective at the beginning of the calendar month following department receipt of employee notification.

(1) The sum of member contributions made for periods of service after the effective date of the election plus seven and one-half percent interest shall be paid to the member at retirement without a reduction in the member's monthly retirement benefit as determined under RCW 41.32.498.

(2) Upon retirement, the member's benefit shall be calculated using only the earnable compensation credited prior to the effective date of the member's election. Calculation of the member's average earnable compensation shall include eligible cash outs of annual leave based on the member's salary and leave accumulations at the time of retirement, except that the amount of a member's average earnable compensation cannot be higher than if the member had not taken advantage of the election offered under this section.

(3) Members who have already earned thirty years of service credit prior to July 25, 1999, may participate in the election by notifying the department in writing of their intention by December 31, 1999.

The department shall continue to collect employer contributions as required in RCW 41.45.060. [1999 c 362 § 1.]

41.32.4991 Permanent retirement allowance adjustment. The dollar amount of the temporary postretirement allowance adjustment granted by section 1, chapter 519, Laws of 1993 shall be provided as a permanent retirement allowance adjustment as of July 1, 1995. [1994 c 247 § 1.]

Additional notes found at www.leg.wa.gov

41.32.500 Termination of membership. Membership in the retirement system is terminated when a member retires for service or disability, dies, or withdraws his or her accumulated contributions.

The prior service certificate becomes void when a member dies or withdraws the accumulated contributions, and any prior administrative interpretation of the board of trustees, consistent with this section, is hereby ratified, affirmed and approved. [1995 c 134 § 13. Prior: 1994 c 197 § 17; 1994 c 177 § 5; 1991 c 35 § 57; 1986 c 317 § 2; 1983 c 233 § 1; 1974 ex.s. c 193 § 3; 1969 ex.s. c 150 § 16; 1967 c 50 § 6; 1965 ex.s. c 81 § 5; 1955 c 274 § 23; 1947 c 80 § 50; Rem. Supp. 1947 § 4995-69.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Intent—1991 c 35: See note following RCW 41.26.005.

Legislative findings—Intent—Severability—1986 c 317: See notes following RCW 41.40.150.

Additional notes found at www.leg.wa.gov

41.32.510 Payment on withdrawal—Reentry. (1) Should a member cease to be employed by an employer and request upon a form provided by the department a refund of the member's accumulated contributions with interest, this amount shall be paid to the individual less any withdrawal fee which may be assessed by the director which shall be deposited in the department of retirement systems expense fund.

(2) A member who files a request for a refund and subsequently enters into employment with an employer prior to the refund being made shall not be eligible for a refund. For purposes of this section, a written or oral employment agreement shall be considered entering into employment. [1994 c 197 § 18; 1994 c 177 § 6; 1982 1st ex.s. c 52 § 15; 1969 ex.s. c 150 § 17; 1963 ex.s. c 14 § 17; 1955 c 274 § 24; 1947 c 80 § 51; Rem. Supp. 1947 § 4995-70. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part.]

Reviser's note: This section was amended by 1994 c 177 § 6 and by 1994 c 197 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Additional notes found at www.leg.wa.gov

41.32.520 Payment on death before retirement or within sixty days following application for disability retirement—Military service. (1) Except as specified in subsection (3) of this section, upon receipt of proper proofs of death of any member before retirement or before the first installment of his or her retirement allowance shall become due his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits payable upon his or her death shall be paid to his or her estate or to such persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If a member fails to file a new beneficiary designation subsequent to marriage, divorce, or reestablishment of membership following termination by withdrawal, lapsation, or retirement, payment of his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits upon death before retirement shall be made to the surviving spouse, if any; otherwise, to his or her estate. If a member had established ten or more years of Washington membership service credit or was eligible for retirement, the beneficiary or the surviving spouse if otherwise eligible may elect, in lieu of a cash refund of the member's accumulated contributions, the following survivor benefit plan actuarially reduced, except under subsection (4) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670:

(a) A widow or widower, without a child or children under eighteen years of age, may elect a monthly payment of fifty dollars to become effective at age fifty, provided the member had fifteen or more years of Washington membership service credit. A benefit paid under this subsection (1)(a) shall terminate at the marriage of the beneficiary.

(b) The beneficiary, if a surviving spouse or a dependent (as that term is used in computing the dependent exemption for federal internal revenue purposes) may elect to receive a joint and one hundred percent retirement allowance under RCW 41.32.530.

(i) In the case of a dependent child the allowance shall continue until attainment of majority or so long as the department judges that the circumstances which created his or her dependent status continue to exist. In any case, if at the time dependent status ceases, an amount equal to the amount of accumulated contributions of the deceased member has not been paid to the beneficiary, the remainder shall then be paid in a lump sum to the beneficiary.

(ii) If at the time of death, the member was not then qualified for a service retirement allowance, the benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(2) If no qualified beneficiary survives a member, at his or her death his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to his or her estate, or his or her dependents may qualify for survivor benefits under benefit plan (1)(b) in lieu of a cash refund of the members accumulated contributions in the following order: Widow or widower, guardian of a dependent child or children under age eighteen, or dependent parent or parents.

(3) If a member dies within sixty days following application for disability retirement under RCW 41.32.550, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.32.550, according to the option chosen under RCW 41.32.530 in the disability application.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.32.480. [2009 c 226 § 5; 2003 c 155 § 1; 1997 c 73 § 1; 1995 c 144 § 9; 1993 c 16 § 1; 1992 c 212 § 7. Prior: 1991 c 365 § 29; 1991 c 35 § 58; 1990 c 249 § 15; 1974 ex.s. c 193 § 5; 1973 2nd ex.s. c 32 § 4; 1973 1st ex.s. c 154 § 76; 1967 c 50 § 7; 1965 ex.s. c 81 § 6; 1957 c 183 § 3; 1955 c 274 § 25; 1947 c 80 § 52; Rem. Supp. 1947 § 4995-71; prior: 1941 c 97 § 6; 1939 c 86 § 6; 1937 c 221 § 7; 1923 c 187 § 22; 1917 c 163 § 21; Rem. Supp. 1941 § 4995-7.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.522 Death benefits. (1) The department shall pay a death benefit of six hundred dollars to a member's estate or to the persons, trust, or organization the member nominates by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520 upon receipt of proper proof of death of the member if he or she:

(a) Was employed on a full time basis during the fiscal year in which his or her death occurs;

(b) Was under contract for full time employment in a Washington public school;

(c) Submits an application for a retirement allowance to be approved by the department immediately following termination of his or her full-time Washington public school service and who dies before the first installment of his or her retirement allowance becomes due;

(d) Is receiving or is entitled to receive temporary disability payments; or

(e) Upon becoming eligible for a disability retirement allowance submits an application for an allowance to be approved by the department immediately following the date of his or her eligibility for a disability retirement allowance and dies before the first installment of such allowance becomes due.

(2) In order to receive a death benefit under this section a deceased member:

(a) Must have established at least one year of credit with the retirement system for full time Washington membership service;

(b) Who was not employed full time in Washington public school service during the fiscal year immediately preceding the year of his or her death must have been employed full time in Washington public school service for at least fifty consecutive days during the fiscal year of his or her death. [1995 c 144 § 10; 1992 c 212 § 4; 1991 c 35 § 59; 1974 ex.s. c 193 § 4; 1969 ex.s. c 150 § 18; 1967 c 50 § 8; 1963 ex.s. c 14 § 20.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.523 Death benefits—Members not qualified for benefits under RCW 41.32.522 and retired former members. Upon receipt of proper proof of death of a member who does not qualify for the death benefit of six hundred dollars under RCW 41.32.522, or a former member who was retired for age, service, or disability, a death benefit of four hundred dollars shall be paid to the member's estate or to the persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520: PROVIDED, That the member or the retired former member had established not less than ten years of credit with the retirement system for full time Washington membership service. [1995 c 144 § 11; 1992 c 212 § 5; 1991 c 35 § 60; 1974 ex.s. c 193 § 6; 1969 ex.s. c 150 § 19; 1967 c 50 § 9; 1965 ex.s. c 81 § 7; 1963 ex.s. c 14 § 21.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.530 Options available—Retirement allowance adjustment—Court-approved property settlement. (1) Upon an application for retirement for service under RCW 41.32.480 or retirement for disability under RCW 41.32.550, approved by the department, every member shall receive the maximum retirement allowance available to him or her throughout life unless prior to the time the first installment thereof becomes due he or she has elected, by executing the proper application therefor, to receive the actuarial equivalent of his or her retirement allowance in reduced payments throughout his or her life with the following options:

(a) Standard allowance. If he or she dies before he or she has received the present value of his or her accumulated contributions at the time of his or her retirement in annuity payments, the unpaid balance shall be paid to his or her estate or to such person, trust, or organization as he or she shall have nominated by written designation executed and filed with the department.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) Such other benefits shall be paid to a member receiving a retirement allowance under RCW 41.32.497 as the member may designate for himself, herself, or others equal to the actuarial value of his or her retirement annuity at the time of his retirement: PROVIDED, That the board of trustees shall limit withdrawals of accumulated contributions to such sums as will not reduce the member's retirement allowance below one hundred and twenty dollars per month.

(d) A member whose retirement allowance is calculated under RCW 41.32.498 may also elect to receive a retirement allowance based on options available under this subsection that includes the benefit provided under RCW 41.32.770. This retirement allowance option shall also be calculated so as to be actuarially equivalent to the maximum retirement allowance and to the options available under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.470 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.480(2) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The separate single life benefits of the member and the nonmember ex spouse are not (i) subject to the minimum benefit provisions of RCW 41.32.4851, or (ii) the minimum benefit annual increase amount eligibility provisions of RCW 41.32.489 (2)(b) and (3)(a).

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 8; 2000 c 186 § 2; 1998 c 340 § 6; 1996 c 175 § 4; 1995 c 144 § 12; 1990 c 249 § 5; 1955 c 274 § 26; 1947 c 80 § 53; Rem. Supp. 1947 § 4995-72. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; Rem. Supp. 1941 § 4995-8, part.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.540 Disability allowance—Temporary. Upon application of a member in service or of his or her employer or of his or her legal guardian or of the legal representative of a deceased member who was eligible to apply for a temporary disability allowance based on the final illness a member shall be granted a temporary disability allowance by the department if the medical director, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty. Any member receiving a temporary disability allowance on July 1, 1964 or who qualifies for a temporary disability allowance effective on or after July 1, 1964 shall receive a temporary disability allowance of one hundred eighty dollars per month for a period not to exceed two years, but no payments shall be made for a disability period of less than sixty days: PROVIDED, That a member who is not employed full time in Washington public school service for consecutive fiscal years shall have been employed for at least fifty consecutive days during the fiscal year in which he or she returns to full time

Washington public school service before he or she may qualify for temporary disability benefits: PROVIDED FURTHER, That no temporary disability benefits shall be paid on the basis of an application received more than four calendar years after a member became eligible to apply for such benefits. [1992 c 212 § 3; 1991 c 35 § 61; 1974 ex.s. c 193 § 7; 1963 ex.s. c 14 § 18; 1959 c 37 § 1; 1955 c 274 § 27; 1947 c 80 § 54; Rem. Supp. 1947 § 4995-73. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.550 Options and allowances on report that disability will be permanent—Reexamination. (1) Should the director determine from the report of the medical director that a member employed under an annual contract with an employer has become permanently disabled for the performance of his or her duties or at any time while a member is receiving temporary disability benefits that a member's disability will be permanent, a member shall have the option of then receiving (a) all of the accumulated contributions in a lump sum payment and canceling his or her membership, or (b) of accepting a retirement allowance based on service or age, if eligible under RCW 41.32.480, or (c) if the member had five or more years of Washington membership service credit established with the retirement system, a retirement allowance because of disability.

(2) Any member applying for a retirement allowance who is eligible for benefits on the basis of service or age shall receive a retirement allowance based on the provision of law governing retirement for service or age. If the member qualifies to receive a retirement allowance because of disability he or she shall be paid the maximum annuity which shall be the actuarial equivalent of the accumulated contributions at his or her age of retirement and a pension equal to the service pension to which he or she would be entitled under RCW 41.32.497. If the member dies before he or she has received in annuity payments the present value of the accumulated contributions at the time of retirement, the unpaid balance shall be paid to the estate or to the persons, trust, or organization nominated by written designation executed and filed with the department.

(3) A member retired for disability may be required at any time to submit to reexamination. If medical findings reveal that the individual is no longer disabled for the performance of public school service, the retirement allowance granted because of disability may be terminated by action of the director or upon written request of the member. In case of termination, the individual shall be restored to full membership in the retirement system. [1995 c 144 § 13; 1991 sp.s. c 11 § 6. Prior: 1991 c 365 § 33; 1991 c 35 § 62; 1970 ex.s. c 35 § 4; 1969 ex.s. c 150 § 20; 1967 c 50 § 10; 1963 ex.s. c 14 § 19; 1961 c 132 § 4; 1959 c 37 § 2; 1955 c 274 § 28; 1947 c 80 § 55; Rem. Supp. 1947 § 4995-74; prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 8; 1923 c 187 § 18; 1917 c 163 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Purpose—Effective dates—1991 sp.s. c 11: See notes following RCW 41.26.090.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.32.555 Persons with annual half-time contracts—Eligibility for benefits under RCW 41.32.550. Persons who were under an annual half-time contract with an employer anytime during the period of September 1, 1986, through August 31, 1987, shall be eligible for benefits provided by RCW 41.32.550, as amended by chapter 365, Laws of 1991, effective beginning the month following when they left service due to their disability if during that period they were medically determined to be permanently disabled for the performance of their duty.

A member who qualifies for benefits under this section who has not begun receiving benefits prior to June 11, 1992, shall be permitted to select a survivor option pursuant to RCW 41.32.530. [1992 c 212 § 19; 1991 c 365 § 34.]

Additional notes found at www.leg.wa.gov

41.32.570 Postretirement employment—Reduction or suspension of pension payments. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any monthly benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state at least one calendar month after his or her accrual date shall cease to receive pension payments while engaged in such service, after the retiree has rendered service for more than eight hundred sixty-seven hours in a school year.

(3) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five hundred twenty-five hours per year without a reduction of his or her pension. [2011 1st sp.s. c 47 § 10; 2007 c 50 § 3; 2003 c 295 § 6. Prior: 2001 2nd sp.s. c 10 § 3; (2001 c 317 § 1 repealed by 2003 c 412 § 3); 1999 c 387 § 1; 1997 c 254 § 5; 1995 c 264 § 1; 1994 c 69 § 2; 1989 c 273 § 29; 1986 c 237 § 1; 1967 c 151 § 5; 1959 c 37 § 3; 1955 c 274 § 30; 1947 c 80 § 57; Rem. Supp. 1947 § 4995-76.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—1994 c 69: "The legislature finds that there is a shortage of certificated substitute teachers in many regions of the state, and that this shortage will likely increase in the coming years. The legislature further finds that one method of reducing this shortage of substitute teachers is to encourage retired teachers to serve as substitutes by increasing the number of

days they can work without affecting their retirement payments." [1994 c 69 § 1.]

Contract rights of retirees hired for postretirement employment: RCW 28A.405.900.

Additional notes found at www.leg.wa.gov

41.32.581 End of participation in judicial retirement account plan—Newly elected or appointed judges. Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge, who is a member of plan 1, shall not participate in the judicial retirement account plan under chapter 2.14 RCW in lieu of prospective contribution and benefit provisions under chapter 189, Laws of 2006. [2006 c 189 § 3.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.32.584 Additional benefit for justices or judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for up to seventy percent of that portion of the member's prior judicial service that would ensure that the member has no more than a seventy-five percent of average final compensation benefit accrued by age sixty-four. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus interest as determined by the director. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred

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funds for tax-free rollover treatment or other treatment under federal income tax law. [2007 c 123 § 5; 2006 c 189 § 7.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.32.587 Justices or judges retirement allowance—In lieu of RCW 41.32.498. (1) In lieu of the retirement allowance provided under RCW 41.32.498, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under RCW 41.32.584(1), shall be equal to three and one-half percent of average final compensation for each year of service earned after the date of the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.32.498, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges newly elected or appointed after January 1, 2007, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 11.]

Effective date—2006 c 189: See note following RCW 2.14.115.

"PLAN 2"

41.32.755 Provisions applicable to plan 2. RCW 41.32.760 through 41.32.825 shall apply only to plan 2 members. [1992 c 72 § 7; 1977 ex.s. c 293 § 2.]

Additional notes found at www.leg.wa.gov

41.32.760 Computation of the retirement allowance. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each year of service. [1977 ex.s. c 293 § 3.]

Additional notes found at www.leg.wa.gov

41.32.762 Lump sum retirement allowance—Reentry—Conditions for reinstatement of service. (1) On or after June 10, 1982, the director may pay a beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.32.760 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit

initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.32.760 or an earned disability allowance under RCW 41.32.790 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 19; 1982 c 144 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.32.765 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years of service who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years of service who has attained at least age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.32.802(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.32.800(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 2, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and

the attainment of age sixty-five. [2012 1st sp.s. c 7 § 1; 2007 c 491 § 2; 2000 c 247 § 902; 1991 c 343 § 5; 1977 ex.s. c 293 § 4.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until September 1, 2008—2007 c 491: "The new benefits provided pursuant to sections 2(3)(b), 4(3)(b), 6(3)(b), and 8(3)(b), chapter 491, Laws of 2007 are not provided to employees as a matter of contractual right prior to September 1, 2008, and will not become a contractual right thereafter if the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2008." [2007 c 491 § 15.]

Severability—2007 c 491: "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." [2007 c 491 § 18.]

Conflict with federal requirements—2007 c 491: "If any part of this act is found to be in conflict with a final determination by the federal internal revenue service that is a prescribed condition to favorable tax treatment of one or more of the retirement plans, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the individual members directly affected. This finding does not affect the operation of the remainder of this act in its application to the members concerned. The legislature reserves the right to amend or repeal this act in the future as may be required to comply with a final federal determination that amendment or repeal is necessary to maintain the favorable tax treatment of a plan." [2007 c 491 § 14.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Additional notes found at www.leg.wa.gov

41.32.768 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

- (a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and
- (b) That the director concurs in the recommendation of the medical adviser.

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

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 5.]

Additional notes found at www.leg.wa.gov

41.32.770 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

- (1) The original dollar amount of the retirement allowance;
- (2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";
- (3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

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- (4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

- (a) Produce a retirement allowance which is lower than the original retirement allowance;
 - (b) Exceed three percent in the initial annual adjustment;
- or
- (c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's 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. [1977 ex.s. c 293 § 5.]

Additional notes found at www.leg.wa.gov

41.32.780 Teachers required to be members. All teachers who become employed by an employer in an eligible position on or after October 1, 1977, shall be members of the retirement system and shall be governed by the provisions of RCW 41.32.755 through 41.32.825. [1991 c 35 § 67; 1990 c 274 § 15; 1979 ex.s. c 45 § 5; 1977 ex.s. c 293 § 7.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.32.785 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.32.765 or retirement for disability under RCW 41.32.790, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not

limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this

subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.815 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.765(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 9; 2000 c 186 § 4; 1998 c 340 § 7; 1996 c 175 § 5; 1995 c 144 § 14; 1990 c 249 § 6; 1977 ex.s. c 293 § 8.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.790 Earned disability allowance—Eligibility—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.32.755 through 41.32.825. The member shall receive a monthly disability allowance computed as provided for in RCW 41.32.760 and shall have the allowance actuarially

reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions. [1995 c 144 § 15; 1991 c 35 § 68; 1990 c 249 § 20; 1989 c 191 § 2; 1977 ex.s. c 293 § 9.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.795 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.32.765, 41.32.790, or 41.32.805 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.32.765 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.32.765, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.32.790 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.32.805 shall accrue from the first day of the calendar month immediately following the member's death. [1977 ex.s. c 293 § 10.]

Additional notes found at www.leg.wa.gov

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41.32.800 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement. (1) Except as provided in RCW 41.32.802, no retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.37.010, or 41.35.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400.

If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section. [2011 1st sp.s. c 47 § 11; 2004 c 242 § 55; 1998 c 341 § 605; 1997 c 254 § 6; 1990 c 274 § 13; 1977 ex.s. c 293 § 11.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.32.802 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible. [2011 1st sp.s. c 47 § 12; 2004 c 242 § 61; 2001 2nd sp.s. c 10 § 8; 1997 c 254 § 8.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Additional notes found at www.leg.wa.gov

41.32.805 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of such member's death shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.32.765, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.32.785 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.765; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pur-

suant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.32.765. The member's retirement allowance is computed under RCW 41.32.760. [2009 c 226 § 6; 2003 c 155 § 2; 2000 c 247 § 1002; 1995 c 144 § 16; 1993 c 236 § 4; 1991 c 365 § 30; 1990 c 249 § 16; 1977 ex.s. c 293 § 12.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.32.810 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) If a member fails to meet the time limitations of subsection (3) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(5) For the purpose of subsection (3) of this section, the contribution shall not include the contribution for the

unfunded supplemental present value as required by *RCW 41.32.775. The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(6) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under *RCW 41.32.775 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under *RCW 41.32.775 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 6; 2005 c 64 § 7; 1996 c 61 § 2; 1994 c 197 § 20; 1993 c 95 § 6; 1992 c 119 § 2; 1977 ex.s. c 293 § 13.]

***Reviser's note:** RCW 41.32.775 was repealed by 1995 c 239 § 326, effective July 1, 1996.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.32.812 Service credit for half-time employment from October 1, 1977, through December 31, 1986. The department of retirement systems shall credit at least one-half service credit month for each month of each school year, as defined by *RCW 28A.150.040, from October 1, 1977, through December 31, 1986, to a member of the teachers' retirement system plan 2 who was employed by an employer, as defined by RCW 41.32.010, under a contract for half-time employment as determined by the department for such school year and from whose compensation contributions were paid by the employee or picked up by the employer. Any withdrawn contributions shall be restored under **RCW 41.32.500(1) or 41.50.165 prior to crediting any service. [1994 c 197 § 21; 1992 c 212 § 20; 1991 c 343 § 12.]

Reviser's note: *(1) RCW 28A.150.040 was repealed by 2009 c 548 § 710, effective September 1, 2011.

** (2) RCW 41.32.500(1) was renumbered by 1994 c 197 § 17 and deleted in large part by 1994 c 177 § 5.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

41.32.813 One-time purchase of service credit—Conditions—Payment—Rules. (1) An active member who has completed a minimum of two years of creditable service in the teachers' retirement system may, upon written application to the department, make a one-time purchase of up to seven years of service credit for public education experience outside the Washington state retirement system, subject to the following limitations:

(a) The public education experience being claimed must have been performed as a teacher in a public school in another state or with the federal government;

(b) The public education experience being claimed must have been covered by a retirement or pension plan provided by a state or political subdivision of a state, or by the federal government; and

(c) The member is not currently receiving a benefit or currently eligible to receive an unreduced retirement benefit from a retirement or pension plan of a state or political subdivision of a state or the federal government that includes the service credit to be purchased.

(2) The service credit purchased shall be membership service, and may be used to qualify the member for retirement.

(3) The member shall pay the actuarial value of the resulting increase in the member's benefit calculated in a manner consistent with the department's method for calculating payments for reestablishing service credit under RCW 41.50.165.

(4) The member may pay all or part of the cost of the service credit to be purchased with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free roll-

over treatment or other treatment under federal income tax law.

(5) The employer also may pay all or a portion of the member's cost of the service credit purchased under this section. [2008 c 101 § 1; 2006 c 257 § 1.]

Effective date—2006 c 257: "This act takes effect January 1, 2007." [2006 c 257 § 4.]

41.32.815 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.32.765 if such member maintains the member's accumulated contributions intact. [1977 ex.s. c 293 § 14.]

Additional notes found at www.leg.wa.gov

41.32.817 Transfer to plan 3—Irrevocable option. (1) Every plan 2 member employed by an employer in an eligible position may make an irrevocable option to transfer to plan 3.

(2) Any plan 2 member who is a substitute teacher may make an irrevocable option to transfer to plan 3 at the time the member purchases substitute service credit pursuant to RCW 41.32.013, pursuant to time lines and procedures established by the department.

(3) Any plan 2 member, other than a substitute teacher, who wishes to transfer to plan 3 after December 31, 1997, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) All service credit in plan 2 shall be transferred to the defined benefit portion of plan 3.

(5) The accumulated contributions in plan 2 less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(2), except that interest earned on all such contributions shall be transferred to the member's account.

(6) The legislature reserves the right to discontinue the right to transfer under this section.

(7) Anyone previously retired from plan 2 is prohibited from transferring to plan 3. [1996 c 39 § 2; 1995 c 239 § 303.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.818 Public employees' retirement system members who previously declined membership in the teachers' retirement system—Transfer to plan 3—Irrevocable option. Any member of the public employees' retirement system plan 2 who is employed in an eligible position as an educational staff associate and who elected pursuant to RCW 41.32.032(2)(a) to remain a member of the public employees' retirement system under chapter 41.40 RCW may make an

irrevocable option before January 1, 1998, to transfer to plan 3 pursuant to RCW 41.32.817, PROVIDED THAT:

(1) Only service credit for previous periods of employment in a position covered by RCW 41.32.010 is transferred to plan 3;

(2) Equivalent accumulated employee and employer contributions attributable to service covered by subsection (1) of this section are transferred to plan 3;

(3) Employer contributions transferred under this section shall be paid into the teachers' retirement system combined plan 2 and 3 fund. [1996 c 39 § 3; 1995 c 239 § 304.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.820 Refund of contributions on termination. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate membership and all benefits under the provisions of RCW 41.32.755 through 41.32.825. [1988 c 117 § 1; 1982 1st ex.s. c 52 § 17; 1977 ex.s. c 293 § 15.]

Additional notes found at www.leg.wa.gov

41.32.825 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall, upon reestablishment of membership under RCW 41.32.240, receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department. The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 22; 1988 c 117 § 2; 1977 ex.s. c 293 § 16.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

"PLAN 3"

41.32.831 Provisions applicable to plan 3—Plan 3 elements. (1) RCW 41.32.831 through 41.32.895 shall apply only to plan 3 members.

(2) Plan 3 shall consist of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(2016 Ed.)

(3) Unless otherwise specified, all references to "plan 3" in this subchapter refer to the defined benefit portion of plan 3. [1996 c 39 § 10; 1995 c 239 § 104.]

Intent—Purpose—1995 c 239: "The legislature recognizes that teachers, principals, and district administrators need the ability to make transitions to other public or private sector careers, and that the retirement system should not be a barrier to exercise of employee choice. The legislature also recognizes that teachers, principals, and district administrators need a secure and viable retirement benefit, not only for their own financial protection, but also that public funds are spent prudently for their intended purpose.

It is the legislative intent to create a new public retirement system that balances flexibility with stability, provides both increased employee control of investments and responsible protection of the public's investment in employee benefits, and encourages the pursuit of public sector careers without preventing employees from transitioning into other public or private sector employment.

Therefore, the purpose of chapter 239, Laws of 1995 is to continue to provide teachers, principals, and district administrators with a guaranteed pension at retirement age based on years of public service with an element of inflation protection. It is further the purpose of chapter 239, Laws of 1995 to create a parallel retirement plan where employees have options regarding the investment of their retirement contributions and have the opportunity, along with the accompanying risk, to receive a full rate of return on their investments and where employees who leave public employment prior to retirement receive a fair and reasonable value from the retirement system." [1995 c 239 § 1.]

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.835 Choice of membership in plan 2 or plan 3.

(1) All teachers who first become employed by an employer in an eligible position on or after July 1, 2007, shall have a period of ninety days to make an irrevocable choice to become a member of plan 2 or plan 3. At the end of ninety days, if the member has not made a choice to become a member of plan 2, he or she becomes a member of plan 3.

(2) For administrative efficiency, until a member elects to become a member of plan 3, or becomes a member of plan 3 by default under subsection (1) of this section, the member shall be reported to the department in plan 2, with member and employer contributions. Upon becoming a member of plan 3 by election or by default, all service credit shall be transferred to the member's plan 3 defined benefit, and all employee accumulated contributions shall be transferred to the member's plan 3 defined contribution account.

(3) The plan choice provision as set forth in section 3, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to plan choice under this section is noncontractual, and the legislature reserves the right to amend or repeal this section. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, all teachers who first become employed by an employer in an eligible position on or after July 1, 2007, may choose either plan 2 or plan 3 under this section. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then all teachers who first become employed by an employer in an eligible position on or after the date of such reinstatement shall be members of plan 3. [2007 c 491 § 3; 1995 c 239 § 105.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 491 §§ 1, 3, and 7: "Sections 1, 3, and 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2007." [2007 c 491 § 19.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.836 Higher education faculty—Option to transfer to plan 3—Limitation on supplemental benefits under RCW 28B.10.400. (1) All faculty members who are first employed by an institution of higher education in a position eligible for participation in old age annuities or retirement income plans under chapter 28B.10 RCW on or after July 1, 2011, have a period of thirty days to make an irrevocable choice to:

(a) Become a member of the teachers' retirement system plan 3 under this chapter; or

(b) Participate in the annuities or retirement income plan provided by the institution.

(2) At the end of thirty days, if the member has not made a choice to become a member of the teachers' retirement system, he or she becomes a participant in the institution's plan under RCW 28B.10.400, but does not become eligible for any supplemental benefit under RCW 28B.10.400(1)(c). [2011 1st sp.s. c 47 § 9.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

41.32.837 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.32.840 by notifying the department in writing of their intention. [2003 c 349 § 1.]

Additional notes found at www.leg.wa.gov

41.32.840 Computation of the retirement allowance.

(1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.32.875 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences. [1996 c 39 § 4; 1995 c 239 § 106.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.8401 Additional payment. (1) Anyone who requests to transfer under RCW 41.32.817 before January 1, 1998, and establishes service credit for January 1998, shall have their member account increased by forty percent of:

(a) Plan 2 accumulated contributions as of January 1, 1996, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 1996, which are completely restored before January 1, 1998.

(2) A further additional payment of twenty-five percent, for a total of sixty-five percent, shall be paid subject to the conditions contained in subsection (1) of this section on July 1, 1998.

(3) Substitute teachers shall receive the additional payment provided in subsection (1) of this section if they:

(a) Establish service credit for January 1998; and

(b) Establish any service credit from July 1996 through December 1997; and

(c) Elect to transfer on or before March 1, 1999.

(4) If a member who requests to transfer dies before January 1, 1998, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(5) The legislature reserves the right to modify or discontinue the right to an incentive payment under this section for any plan 2 members who have not previously transferred to plan 3. [1998 c 341 § 701; 1997 c 10 § 1; 1996 c 39 § 8.]

Additional notes found at www.leg.wa.gov

41.32.845 Postretirement cost-of-living allowance.

Retirement allowances paid under the defined benefit portion of plan 3 shall have a postretirement cost-of-living allowance calculated and paid as provided in RCW 41.32.770. [1995 c 239 § 107.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.851 Options for payment of retirement allowances—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.32.875 or retirement for disability under RCW 41.32.880, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. Upon the death of the retired member, all benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to such person or persons as the retiree shall have nominated by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's

spouse do not give written consent to an option under this section, the department shall pay a joint and fifty-percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.875(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.875(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the

life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed pursuant to *chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 10; 2000 c 186 § 5; 1995 c 239 § 108.]

**Reviser's note:* Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.855 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.32.875, 41.32.880, or 41.32.895 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.32.875 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [1996 c 39 § 5; 1995 c 239 § 109.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.860 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement. (1) Except under RCW 41.32.862, no retiree shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010, or as a law enforcement officer or

firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused the suspension of benefits. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department. [2011 1st sp.s. c 47 § 13; 2005 c 327 § 2; 2001 2nd sp.s. c 10 § 9; 1997 c 254 § 7; 1995 c 239 § 110.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.862 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible. [2011 1st sp.s. c 47 § 14; 2004 c 242 § 62; 2001 2nd sp.s. c 10 § 10; 1997 c 254 § 9.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Additional notes found at www.leg.wa.gov

41.32.865 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under chapter 239, Laws of 1995 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

The contributions required shall be based on the compensation the member would have earned if not on leave, or

if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement

system service credit under this subsection. [2009 c 205 § 7; 2005 c 64 § 8; 1996 c 61 § 3; 1995 c 239 § 111.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.867 Purchased service credit—Allocation. (1) Contributions on behalf of the employer paid by the employee to purchase plan 3 service credit shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(2). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan 3 service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan 3 membership service will be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service. [1996 c 39 § 11.]

Additional notes found at www.leg.wa.gov

41.32.868 One-time purchase of service credit—Conditions—Payment—Rules. (1) An active member who has completed a minimum of two years of creditable service in the teachers' retirement system may, upon written application to the department, make a one-time purchase of up to seven years of service credit for public education experience outside the Washington state retirement system, subject to the following limitations:

(a) The public education experience being claimed must have been performed as a teacher in a public school in another state or with the federal government;

(b) The public education experience being claimed must have been covered by a retirement or pension plan provided by a state or political subdivision of a state, or by the federal government; and

(c) The member is not currently receiving a benefit or currently eligible to receive an unreduced retirement benefit from a retirement or pension plan of a state or political subdivision of a state or the federal government that includes the service credit to be purchased.

(2) The service credit purchased shall be membership service, and may be used to qualify the member for retirement.

(3) The member shall pay the actuarial value of the resulting increase in the member's benefit calculated in a manner consistent with the department's method for calculating payments for reestablishing service credit under RCW 41.50.165.

(4) The member may pay all or part of the cost of the service credit to be purchased with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The

rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(5) The employer also may pay all or a portion of the member's cost of the service credit purchased under this section. [2008 c 101 § 2; 2006 c 257 § 2.]

Effective date—2006 c 257: See note following RCW 41.32.813.

41.32.870 Lump sum payments—Reentry. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased by three percent compounded annually on January 1. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section shall be deemed to be retired from this system. [1995 c 239 § 112.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.875 Retirement eligibility. (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or
 (b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or
 (c) Completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817;
 shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a

member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.32.862(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.32.860(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 4, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 2; 2007 c 491 § 4; 2006 c 33 § 1; 2000 c 247 § 903; 1996 c 39 § 6; 1995 c 239 § 113.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831. *Benefits not contractual right until date specified: RCW 41.34.100.*

Additional notes found at www.leg.wa.gov

41.32.878 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

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

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

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

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 2.]

Additional notes found at www.leg.wa.gov

41.32.880 Earned disability allowance—Eligibility—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department shall be eligible to receive an allowance under the provisions of plan 3. The member shall receive a monthly disability allowance computed as provided for in RCW 41.32.840 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these

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medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in RCW 41.32.851. [1995 c 239 § 114.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831. *Benefits not contractual right until date specified: RCW 41.34.100.*

Additional notes found at www.leg.wa.gov

41.32.892 Restored, purchased service credit under plan 2—Transfer to plan 3. (1) Any member who elects to transfer to plan 3 and has eligible unrestored withdrawn contributions in plan 2, may restore such contributions under the provisions of RCW 41.32.825(1) with interest as determined by the department. The restored plan 2 service credit will be automatically transferred to plan 3. Restoration payments will be transferred to the member account in plan 3. If the member fails to meet the time limitations of RCW 41.32.825(1), they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan 2 service credit will be automatically transferred to plan 3. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan 3 may purchase plan 2 service credit under RCW 41.32.810(3). Purchased plan 2 service credit will be automatically transferred to plan 3. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(2). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.32.810(3), they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan 2 service credit will be automatically transferred to plan 3. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account. [1996 c 39 § 9.]

Additional notes found at www.leg.wa.gov

41.32.895 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.32.851 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.875.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be cal-

culated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.32.875. The member's retirement allowance is computed under RCW 41.32.840. [2009 c 226 § 7; 2003 c 155 § 3; 2000 c 247 § 1003; 1996 c 39 § 7; 1995 c 239 § 117.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

Chapter 41.33 RCW

TEACHERS' RETIREMENT—FEDERAL SOCIAL SECURITY

Sections

- 41.33.010 Plan for covering members under OASI approved.
- 41.33.020 Terms and provisions of plan.
- 41.33.030 Effective date for coverage of members.

41.33.010 Plan for covering members under OASI approved. The plan for covering the members of the teachers' retirement system under the old age and survivor insurance provisions of Title II of the federal social security act as amended, required by RCW 41.48.050 as amended by section 5, chapter 4, Laws of the Extraordinary Session of 1955, approved by the board of trustees of the teachers' retirement system on October 8, 1956, and by the governor of the state of Washington on November 19, 1956, is hereby approved. [1957 c 183 § 1.]

41.33.020 Terms and provisions of plan. The terms and provisions of the plan are as follows:

(1) Each political subdivision of the state employing members of the teachers' retirement system and the members of the teachers' retirement system, after the approval of this plan by the legislature, and by the eligible employees through a referendum as provided in RCW 41.48.030 (3) and (4), shall be deemed to have accepted and agreed to be bound by the following terms and conditions in consideration of extension of the existing agreement between the secretary of health, education, and welfare and the governor to make the protection of the federal old age and survivors insurance program available and applicable to such employees.

(2) As used in this plan the terms quoted below shall have the meanings assigned thereto in this section.

"Political subdivision" means any political subdivision, or instrumentality of one or more subdivisions, or proprietary enterprise acquired, purchased or originated by one or more such subdivisions after December, 1950, which employs members of the teachers' retirement system. The state, its agencies, instrumentalities, and institutions of higher learning shall be grouped and considered as a single political subdivision.

"Employee" means any person who is a member of the teachers' retirement system and is employed by a political subdivision.

"Wages" shall have the meaning given in *RCW 41.48.020(1) and section 209 of the social security act (42 U.S.C.A. Sec. 409).

"State" where not otherwise clearly indicated by the context, means the commissioner of employment security or other officer designated by the governor to administer the plan at the state level for all participating political subdivisions.

(3) The terms and conditions of this plan are intended and shall be construed to be in conformity with the requirements of the federal social security act as amended and with the requirements of chapter 41.48 RCW, and particularly RCW 41.48.050, as amended by chapter 4, Laws of 1955 extraordinary session.

(4) The rights and benefits accruing to employees from membership in the teachers' retirement system shall in no way be altered or impaired by this plan or by the additional and supplementary OASI coverage which such employees may receive hereunder, other than the elimination of (1), (2) and (3) of section 52, chapter 80, Laws of 1947 and RCW 41.32.520 as each are amended, with the exception of that part of (1) which permits a widow or widower without a child or children under age eighteen to receive a monthly payment of fifty dollars at age fifty, provided that the member had fifteen or more years of Washington membership service credit at date of death.

(5) There shall be no additional cost to or involvement of the state or a political subdivision with respect to OASI coverage of members of the teachers' retirement system until this plan has been approved by the legislature.

(6) Each employee to whom OASI coverage is made applicable under this plan pursuant to an extension or modification under RCW 41.48.030 of the existing agreement between the secretary of health, education, and welfare and the governor shall be required to pay into the OASI contribution account established by RCW 41.48.060 during the period of such coverage contributions with respect to his or her wages in an amount equal to the employee tax imposed by the federal insurance contributions act (section 3101, Internal Revenue Code of 1954), in consideration of the employee's retention in service by the political subdivision. The subdivision shall withhold such contributions from the wages paid to the employee; and shall remit the contributions so withheld in each calendar quarter to the state for deposit in the contribution account not later than the twentieth calendar day of the month following that quarter.

(7) Each political subdivision shall pay into the contribution account with respect to the wages of its employees during the period of their OASI coverage pursuant to this plan contributions in an amount equal to the employer tax imposed by the federal insurance contributions act (section 3111, Internal Revenue Code of 1954), from the fund of the subdivision from which such employees' wages are paid. The subdivision shall remit such contributions to the state for deposit in the contribution account on a quarterly basis, not later than the twentieth calendar day of the month following each calendar quarter.

(8) If any political subdivision other than that comprising the state, its agencies, instrumentalities, and institutions of higher learning fails to remit as provided herein employer contributions or employee contributions, or any part of either, such delinquent contributions may be recovered with interest at the rate of six percent per annum by action in a court of competent jurisdiction against the political subdivision; or such delinquent contributions may at the request of the governor be deducted from any moneys payable to such subdivision by the state.

(9) Each political subdivision shall be charged with a share of the cost of administration of this plan by the state, to be computed as that proportion of the overall cost of administration which its total annual contributions bear to the total annual contributions paid by all subdivisions on behalf of employees covered by the plan. The state shall compute the share of cost allocable to each subdivision and bill the subdivision therefor at the end of each fiscal year. The subdivision shall within ninety days thereafter remit its share of the cost to the state for deposit in the general fund of the state.

(10) Each political subdivision shall submit to the state, through the employment security department, P.O. Box 367, Olympia, Washington, or such other officer or agency as the governor may subsequently designate, on forms furnished by the state, not later than the twentieth calendar day of the month following the end of each calendar quarter, the following information:

A. The social security account number of each employee;

B. The name of each employee;

C. The amount of wages subject to contributions as required hereunder paid to each employee during the quarter;

D. The total amount of wages subject to contributions paid to all employees during the quarter;

E. The total amount of employee contributions withheld and remitted for the quarter; and

F. The total amount of employer contributions paid by the subdivision for the quarter.

(11) Each political subdivision shall furnish in the same manner as provided in subsection (10) of this section, upon reasonable notice, such other and further reports or information as the governor may from time to time require. Each subdivision shall comply with such requirements as the secretary of health, education, and welfare or the governor may from time to time establish with respect to any or all of the reports or information which are or may be provided for under subsection (10) of this section or this subsection in order to assure the correctness and verification thereof.

(12) The governing body of each political subdivision shall designate an officer of the subdivision to administer such accounting, reporting, and other functions as will be required for the effective operation of this plan within the subdivision, as provided herein. The commissioner of employment security or such other officer as the governor may designate, shall perform or supervise those functions with respect to employees of the subdivision comprising the state, its agencies, instrumentalities, and institutions of higher learning; and shall serve as the representative of the participating political subdivisions in the administration of this plan with the secretary of health, education, and welfare.

(2016 Ed.)

(13) The legislature shall designate the first day of any month beginning with January, 1956, as the effective date of OASI coverage for such employees, except that after January 1, 1958, the effective date may not be prior to the first day of the current year.

The employer's contribution for any retroactive coverage shall be transferred by the board of trustees from the teachers' retirement pension reserve to the official designated by the governor to administer the plan at the state level.

Each employee's contributions for any retroactive coverage shall be transferred by the board of trustees from his or her accumulated contributions in the teachers' retirement fund, to the official designated above. Each employee, if he or she so desires, may, within one year from the date of transfer, reimburse his or her accumulated contributions for the amount so transferred.

(14) The governor may terminate the operation of this plan in its entirety with respect to any political subdivision, in his or her discretion, if he or she finds that the subdivision has failed to comply substantially with any requirement or provision of this plan. The plan shall not be so terminated until reasonable notice and opportunity for hearing thereon have been given to the subdivision under such conditions, consistent with the provisions of the social security act, as shall have been established in regulations by the governor. [2012 c 117 § 58; 1992 c 212 § 12; 1973 1st ex.s. c 154 § 77; 1957 c 183 § 2.]

**Reviser's note:* RCW 41.48.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (6).

Additional notes found at www.leg.wa.gov

41.33.030 Effective date for coverage of members. The effective date of OASI coverage for members of the teachers' retirement system shall be January 1, 1956: PROVIDED, That should the agreement between the governor and the secretary of health, education and welfare be executed subsequent to December 31, 1957, the effective date of coverage shall be that specified in the agreement. [1957 c 183 § 5.]

Chapter 41.34 RCW

PLAN 3 RETIREMENT SYSTEM CONTRIBUTIONS

Sections

41.34.010	Purpose.
41.34.020	Definitions.
41.34.030	Application of chapter—Plan 3 elements.
41.34.040	Contributions—Rate structures—Annual option.
41.34.050	Legislature may contribute to members' accounts.
41.34.060	Members' accounts—Investment—Election.
41.34.070	Distribution options.
41.34.080	Benefits exempt from taxation, garnishment, other processes of law—Exceptions.
41.34.090	Administration of chapter—Construction—Severability.
41.34.100	Benefits not contractual right until date specified.
41.34.110	Reentry.
41.34.120	Money, property, income held in trust.
41.34.130	Self-directed investment—Default investment options—Duties of state investment board and department—Expenses—Recordkeeping.
41.34.140	Liability for loss or deficiencies—Limitations.
41.34.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

41.34.010 Purpose. The purpose of chapter 239, Laws of 1995 is to:

(1) Provide a fair and reasonable value from the retirement system for those who leave public employment before retirement;

(2) Increase flexibility for such employees to make transitions into other public or private sector employment;

(3) Increase employee options for addressing retirement needs, personal financial planning, and career transitions; and

(4) Continue the legislature's established policy of having employees contribute toward their retirement benefits. [1995 c 239 § 201.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.020 Definitions. As used in this chapter, the following terms have the meanings indicated:

(1) "Actuary" means the state actuary or the office of the state actuary.

(2) "Department" means the department of retirement systems.

(3)(a) "Compensation" for teachers for purposes of this chapter is the same as "earnable compensation" for plan 3 in chapter 41.32 RCW except that the compensation may be reported when paid, rather than when earned.

(b) "Compensation" for classified employees for purposes of this chapter is the same as "compensation earnable" for plan 3 in RCW 41.35.010, except that the compensation may be reported when paid, rather than when earned.

(c) "Compensation" for public employees for purposes of this chapter is the same as "compensation earnable" for plan 3 in RCW 41.40.010, except that the compensation may be reported when paid, rather than when earned.

(4)(a) "Employer" for teachers for purposes of this chapter means the same as "employer" for plan 3 in chapter 41.32 RCW.

(b) "Employer" for classified employees for purposes of this chapter means the same as "employer" for plan 3 in RCW 41.35.010.

(c) "Employer" for public employees for purposes of this chapter means the same as "employer" for plan 3 in RCW 41.40.010.

(5) "Member" means any employee included in the membership of a retirement system as provided for in chapter 41.32 RCW of plan 3, chapter 41.35 RCW of plan 3, or chapter 41.40 RCW of plan 3.

(6) "Member account" or "member's account" means the sum of the contributions and earnings on behalf of the member.

(7) "Retiree" means any member in receipt of an allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(8) "Teacher" means a member of the teachers' retirement system plan 3 as defined in *RCW 41.32.010(29).

(9) "Classified employee" means a member of the school employees' retirement system plan 3 as defined in RCW 41.35.010.

(10) "Public employee" means a member of the public employees' retirement system plan 3 as defined in RCW 41.40.010. [2010 1st sp.s. c 7 § 31; 2000 c 247 § 401; 1998 c 341 § 301; 1996 c 39 § 13; 1995 c 239 § 202.]

*Reviser's note: RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (29) to subsection (49).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.030 Application of chapter—Plan 3 elements.

(1) This chapter applies only to members of plan 3 retirement systems created under chapters 41.32, 41.35, and 41.40 RCW.

(2) Plan 3 consists of two separate elements:

(a) A defined benefit portion covered under:

(i) Sections 101 through 117, chapter 239, Laws of 1995;

or

(ii) Sections 1 through 25 and 201 through 213, chapter 341, Laws of 1998; or

(iii) Sections 101 through 316, chapter 247, Laws of 2000; and

(b) A defined contribution portion covered under this chapter. Unless specified otherwise, all references to "plan 3" in this chapter refer to the defined contribution portion of plan 3. [2000 c 247 § 402; 1998 c 341 § 302; 1995 c 239 § 203.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.040 Contributions—Rate structures—Annual option. (1) A member shall contribute from his or her compensation according to one of the following rate structures in addition to the mandatory minimum five percent:

Option A	Contribution Rate
All Ages	0.0% fixed
Option B	
Up to Age 35	0.0%
Age 35 to 44	1.0%
Age 45 and above	2.5%
Option C	
Up to Age 35	1.0%
Age 35 to 44	2.5%
Age 45 and above	3.5%
Option D	
All Ages	2.0%
Option E	
All Ages	5.0%
Option F	
All Ages	10.0%

(2) The department shall have the right to offer contribution rate options in addition to those listed in subsection (1) of this section, provided that no significant additional administrative costs are created. All options offered by the department shall conform to the requirements stated in subsections (3) and (5) of this section.

(3)(a) For members of the teachers' retirement system entering plan 3 under RCW 41.32.835 or members of the school employees' retirement system entering plan 3 under RCW 41.35.610, within ninety days of becoming a member he or she has an option to choose one of the above contribu-

tion rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A.

(b) For members of the public employees' retirement system entering plan 3 under RCW 41.40.785, within the ninety days described in RCW 41.40.785 an employee who irrevocably chooses plan 3 shall select one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A.

(c) For members of the teachers' retirement system transferring to plan 3 under RCW 41.32.817, members of the school employees' retirement system transferring to plan 3 under RCW 41.35.510, or members of the public employees' retirement system transferring to plan 3 under RCW 41.40.795, upon election to plan 3 he or she must choose one of the above contribution rate structures.

(d) Within ninety days of the date that an employee changes employers, he or she has an option to choose one of the above contribution rate structures. If the member does not select an option within this ninety-day period, he or she shall be assigned option A.

(4) Each year, through January of 2015, members of plan 3 of the teachers' retirement system may change their contribution rate option by notifying their employer in writing during the month of January. After January of 2015, a member of plan 3 of the teachers' retirement system may only change their contribution rate option under subsection (3)(d) of this section. The termination of this annual contribution rate change option in January 2015 is required to meet the plan qualification requirements in section 401(a) of the internal revenue code. Consistent with plan qualification requirements in the internal revenue code, this annual contribution rate change has never been available to plan 3 members of the public employees' retirement system and the school employees' retirement system.

(5) Contributions shall begin the first day of the pay cycle in which the rate option is made, or the first day of the pay cycle in which the end of the ninety-day period occurs. [2014 c 95 § 1; 2010 1st sp.s. c 7 § 32; 2003 c 156 § 1; 2000 c 247 § 403; 1996 c 39 § 14; 1995 c 239 § 204.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.050 Legislature may contribute to members' accounts. The legislature may authorize contributions to the members' accounts for a biennium through budget appropriation. [1995 c 239 § 205.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.060 Members' accounts—Investment—Election. (1) Members may select investments as provided in subsections (2) and (4) of this section. If a member of the public employees' retirement system entering plan 3 under RCW 41.40.785, a member of the teachers' retirement system entering plan 3 under RCW 41.32.835, or a member of the school employees' retirement system entering plan 3 under RCW 41.35.610 does not select investments, the member's

account shall be invested in the default investment option of the retirement strategy fund that is closest to the retirement target date of the member. Retirement strategy fund means one of several diversified asset allocation portfolios managed by investment advisors under contract to the state investment board. The asset mix of the portfolios adjusts over time depending on a target retirement date.

(2) Members may elect to have their account invested by the state investment board. In order to reduce transaction costs and address liquidity issues, based upon recommendations of the state investment board, the department may require members to provide up to ninety days' notice prior to moving funds from the state investment board portfolio to self-directed investment options provided under subsection (4) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan 3, investment shall be in the same portfolio as that of the teachers' retirement system combined plan 2 and 3 fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.35 RCW of plan 3, investment shall be in the same portfolio as that of the school employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(4).

(c) For members of the retirement system as provided for in chapter 41.40 RCW of plan 3, investment shall be in the same portfolio as that of the public employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(3).

(3) The state investment board shall declare monthly unit values for the portfolios or funds, or portions thereof, utilized under subsection (2)(a), (b), and (c) of this section. The declared values shall be an approximation of portfolio or fund values, based on internal procedures of the state investment board. Such declared unit values and internal procedures shall be in the sole discretion of the state investment board. The state investment board may delegate any of the powers and duties under this subsection, including discretion, pursuant to RCW 43.33A.030. Member accounts shall be credited by the department with a rate of return based on changes to such unit values.

(4) Members may elect to self-direct their investments as set forth in RCW 41.34.130 and 43.33A.190. [2011 c 80 § 2; 2001 c 180 § 2; 2000 c 247 § 404; 1999 c 265 § 1; 1998 c 341 § 303; 1996 c 39 § 15; 1995 c 239 § 206.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.070 Distribution options. (1) If the member retires, becomes disabled, or otherwise terminates employment, the balance in the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the department.

(2) If the member dies while in service, the balance of the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the department. The distribution is as follows:

(a) The distribution shall be made to such person or persons as the member shall have nominated by written designation duly executed and filed with the department;

(b) If there be no such designated person or persons still living at the time of the member's death, the balance of the member's account in the retirement system, less any amount identified as owing to an obligee upon withdrawal of such account balance pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation;

(c) If there is no surviving spouse, then to such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(d) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(3) If a member has a terminal illness and terminates from employment, the member may choose to have the balance in the member's account distributed as a lump sum payment based on the most recent valuation in order to expedite the distribution. The department shall make this payment within ten working days after receipt of notice of termination of employment, documentation verifying the terminal illness, and an application for payment.

(4) The distribution under subsections (1), (2), or (3) of this section shall be less any amount identified as owing to an obligee upon withdrawal pursuant to a court order filed under RCW 41.50.670. [2010 1st sp.s. c 7 § 33; 2005 c 327 § 3; 1998 c 117 § 1; 1995 c 239 § 207.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.
Additional notes found at www.leg.wa.gov

41.34.080 Benefits exempt from taxation, garnishment, other processes of law—Exceptions. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the various funds created by chapter 239, Laws of 1995; chapter 341, Laws of 1998; and chapter 247, Laws of 2000 and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association

or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 23; 2000 c 247 § 405; 1998 c 341 § 304; 1995 c 239 § 208.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.
Additional notes found at www.leg.wa.gov

41.34.090 Administration of chapter—Construction—Severability. (1) The retirement plan created by this chapter shall be administered so as to comply with the federal Internal Revenue Code, Title 26 U.S.C., and specifically with plan qualification requirements imposed on governmental plans by section 401(a) of the Internal Revenue Code.

(2) Any section or provision of this chapter which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy requirements imposed by section 401(a) of the Internal Revenue Code.

(3) If any section or provision of this chapter is found to be in conflict with the plan qualification requirements for governmental plans in section 401(a) of the Internal Revenue Code, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict, and such finding shall not affect the operation of the remainder of this chapter. [1995 c 239 § 209.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.
Additional notes found at www.leg.wa.gov

41.34.100 Benefits not contractual right until date specified. (1) The benefits provided pursuant to chapter 239, Laws of 1995 are not provided to employees as a matter of contractual right prior to July 1, 1996. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 1996.

(2) The benefits provided pursuant to chapter 341, Laws of 1998 are not provided to employees as a matter of contractual right prior to September 1, 2000. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2000.

(3) The benefits provided pursuant to chapter 247, Laws of 2000 are not provided to employees as a matter of contractual right prior to March 1, 2002. The legislature retains the right to alter or abolish these benefits at any time prior to March 1, 2002. [2000 c 247 § 406; 1998 c 341 § 305; 1995 c 239 § 325.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.
Additional notes found at www.leg.wa.gov

41.34.110 Reentry. A member who separates from service and then reestablishes membership may restore contributions to the member account. [1996 c 39 § 12.]

Additional notes found at www.leg.wa.gov

41.34.120 Money, property, income held in trust. All moneys in members' accounts, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the members and their beneficiaries. [1998 c 341 § 306.]

Additional notes found at www.leg.wa.gov

41.34.130 Self-directed investment—Default investment options—Duties of state investment board and department—Expenses—Recordkeeping. (1) The state investment board has the full authority to invest all self-directed investment moneys in accordance with RCW 43.84.150 and 43.33A.140, the default investment options set forth in RCW 41.34.060(1), and cumulative investment directions received pursuant to RCW 41.34.060 and this section. In carrying out this authority the state investment board, after consultation with the department regarding any recommendations made pursuant to RCW 41.50.088(1)(b), shall provide a set of options for members to choose from for self-directed investment.

(2) All investment and operating costs of the state investment board associated with making self-directed investments or the default investment options set forth in RCW 41.34.060(1) shall be paid by members and recovered under procedures agreed to by the department and the state investment board pursuant to the principles set forth in RCW 43.33A.160 and 43.84.160. All other expenses caused by self-directed investment shall be paid by the member in accordance with rules established by the department under RCW 41.50.088. With the exception of these expenses, all earnings from self-directed investments shall accrue to the member's account.

(3)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of each individual member's account. The department shall account for and report on the investment of defined contribution assets or may enter into an agreement with the state investment board for such accounting and reporting under this chapter.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and

shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks. [2011 c 80 § 1; 2010 1st sp.s. c 7 § 34; 2001 c 181 § 3; 1998 c 341 § 307.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

41.34.140 Liability for loss or deficiencies—Limitations. (1) A state board or commission, agency, or any officer, employee, or member thereof is not liable for any loss or deficiency resulting from member defined contribution investments selected, made, or required pursuant to RCW 41.34.060 (1), (2), or (4).

(2) Neither the department, nor director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from a member investment in the default option pursuant to RCW 41.34.060(1) or reasonable efforts to implement investment directions pursuant to RCW 41.34.060 (1), (2), or (4).

(3) The state investment board, or any officer, employee, or member thereof is not liable with respect to any declared monthly unit valuations or crediting of rates of return, or any other exercise of powers or duties, including discretion, under RCW 41.34.060(3).

(4) The department, or any officer or employee thereof, is not liable for crediting rates of return which are consistent with the state investment board's declaration of monthly unit valuations pursuant to RCW 41.34.060(3). [2011 c 80 § 3; 2010 1st sp.s. c 7 § 35; 1999 c 265 § 2; 1998 c 341 § 308.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

41.34.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 96.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.35 RCW
WASHINGTON SCHOOL EMPLOYEES'
RETIREMENT SYSTEM

Sections

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41.35.700	Restored, purchased service credit under plan 2—Transfer to plan 3.
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Additional notes found at www.leg.wa.gov

PROVISIONS APPLICABLE TO PLAN 2 AND PLAN 3

41.35.005 Intent. The legislature recognizes that teachers and school district employees share the same educational work environment and academic calendar.

It is the intent of the legislature to achieve similar retirement benefits for all educational employees by transferring the membership of classified school employees in the public employees' retirement system plan 2 to the Washington school employees' retirement system plan 2. The transfer of membership to the Washington school employees' retirement system plan 2 is not intended to cause a diminution or expansion of benefits for affected members. It is enacted solely to provide public employees working under the same conditions with the same options for retirement planning.

As members of the Washington school employees' retirement system plan 2, classified employees will have the same opportunity to transfer to the Washington school employees' retirement system plan 3 as their certificated coworkers. The ability to transfer to the Washington school employees' retirement system plan 3 offers members a new public retirement system that balances flexibility with stability; provides increased employee control of investments and responsible protection of the public's investment in employee benefits; and encourages the pursuit of public sector careers without creating barriers to other public or private sector employment. [1998 c 341 § 1.]

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

(1) "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.

(2) "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.

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

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

(5)(a) "Average final compensation" for plan 2 and plan 3 members 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 41.40.710(2).

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

include any compensation forgone by a member during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary reductions.

(6) "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.

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

(8)(a) "Compensation earnable" 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 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 plan 2 and plan 3 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 this (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 41.40.038;

(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.

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

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

(11) "Eligible position" means any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. 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.

(12) "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.

(13) "Employer," for plan 2 and plan 3 members, means a school district or an educational service district. Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an employer. The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an employer, but is based solely on the relationship between a government contractor's employee and an employer under this chapter.

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

(15) "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.

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

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

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

(19) "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.

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

(21) "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.

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

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

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

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

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

(27) "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.

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

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

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

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

(32) "Service" for plan 2 and plan 3 members means periods of employment by a member in an eligible position or positions 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 except as provided in RCW 41.35.180. 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.

(c) For purposes of plan 2 and 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:

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

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

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

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

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

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

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

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

(36) "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.

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

(38) "Substitute employee" means a classified employee who is employed by an employer exclusively as a substitute for an absent employee. [2012 c 236 § 4. Prior: 2011 1st sp.s. c 5 § 3; 2003 c 157 § 1; 2001 c 180 § 3; 1998 c 341 § 2.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

41.35.015 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 97.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

41.35.020 System created—Administration. A retirement system is hereby created for the employees of school districts or educational service districts. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules necessary therefor are hereby vested in the department. All such rules shall be governed by the provisions of chapter 34.05 RCW. This retirement system shall be known as the Washington school employees' retirement system. [1998 c 341 § 3.]

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

(1) Persons in ineligible positions;

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

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

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

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

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

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

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

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

(9) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the non-credited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application; and

(10) Employees who are removed from membership under RCW 41.35.683 or 41.35.423. [2005 c 131 § 9; 2003 c 157 § 2; 1998 c 341 § 4.]

Additional notes found at www.leg.wa.gov

41.35.033 Membership—Service credit—Substitute employees—Rules. (1) A substitute employee who works five or more months of seventy or more hours for which earnable compensation is paid in a school year may apply to the department to establish membership after the end of the school year during which the work was performed. The application must:

(a) Include a list of the employers the substitute employee has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(2) Substitute employees who are members may apply to the department to receive service after the end of the last day of instruction of the school year during which the service was performed. The application must:

(a) Include a list of the employers the substitute employee has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(3) If the department accepts the substitute employee's application for service credit, the substitute employee may obtain service credit by paying the required contribution to the retirement system. The employer must pay the required employer contribution upon notice from the department that the substitute employee has made contributions under this section.

(4) The department shall charge interest prospectively on employee contributions that are submitted under this section more than six months after the end of the school year, as defined in *RCW 28A.150.040, for which the substitute employee is seeking service credit. The interest rate charged to the employee shall take into account interest lost on

employer contributions delayed for more than six months after the end of the school year.

(5) Each employer shall quarterly notify each substitute employee it has employed during the school year of the number of hours worked by, and the compensation paid to, the substitute employee.

(6) If a substitute employee, as defined in RCW 41.35.010(38), applies to the department under this section for credit for earnable compensation earned from an employer, the substitute employee must make contributions for all periods of service for that employer.

(7) The department shall adopt rules implementing this section. [2003 c 157 § 3.]

***Reviser's note:** RCW 28A.150.040 was repealed by 2009 c 548 § 710, effective September 1, 2011.

41.35.035 Membership in system—Charter school employers and employees. This section designates charter schools established under chapter 28A.710 RCW as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code. [2016 c 241 § 134. Prior: 2013 c 2 § 304 (Initiative Measure No. 1240, approved November 6, 2012).]

Application of chapter 241, Laws of 2016—Effective date—2016 c 241: See RCW 28A.710.900 and 28A.710.901.

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.35.040 Nonelective position held for at least nine months—Deemed to be eligible position, when. Any person who has been employed in a nonelective position for at least nine months and who has made member contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment. [1998 c 341 § 5.]

41.35.060 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforce-

ment officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.35.030, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.35.420 or 41.35.680. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated. [2011 1st sp.s. c 47 § 15; 2004 c 242 § 64; 2001 2nd sp.s. c 10 § 11; 1998 c 341 § 7.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

41.35.070 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 3; 1998 c 341 § 8.]

41.35.080 Members agree to deductions. The deductions from the compensation of members, provided for in RCW 41.35.430, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment, less the deductions, shall be a full and complete discharge and acquittance of all claims and

demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter. [1998 c 341 § 9.]

41.35.090 Employer's contribution—Computation—Billing. (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning September 1, 1990, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the employer. Each employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill such employer for such employer's contribution together with such charges as the director deems appropriate in accordance with RCW 41.50.120. Such billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to such employer for payment of current biennial payrolls. [1998 c 341 § 10.]

41.35.100 Exemption from taxation and judicial process—Exceptions—Assignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits

assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 24; 1998 c 341 § 11.]

41.35.110 Disability retirement—Criminal conduct. A member shall not receive a disability retirement benefit under RCW 41.35.440 or 41.35.690 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1998 c 341 § 12.]

41.35.115 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 4; 2003 c 402 § 3.]

41.35.120 False statements—Penalty. Any person who knowingly makes any false statements, or falsifies or permits to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such act, is guilty of a gross misdemeanor. [1998 c 341 § 13.]

41.35.130 Transfer of service credit from statewide city employees' retirement system. (1) Any person who was a member of the statewide city employees' retirement system governed by chapter 41.44 RCW and who was never reemployed by an employer as defined in RCW 41.40.010 and who is employed by an employer as defined in RCW 41.35.010, may, in a writing filed with the director, elect to:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service which was previously credited under chapter 41.44 RCW but which was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190. The service may be reestablished and transferred only upon payment by the member to the employees' savings fund of this retirement system of the amount withdrawn plus interest thereon from the date of withdrawal until the date of payment at a rate determined by the director. No

additional payments are required for service credit described in this subsection if already established under this chapter; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW, upon payment in full by the member of the total employer's contribution to the benefit account fund of this retirement system that would have been made under this chapter when the initial service was rendered. The payment shall be based on the first month's compensation earnable as a member of the statewide city employees' retirement system and as defined in *RCW 41.44.030(13). However, a person who has established service credit under **RCW 41.40.010(13) (c) or (d) shall not establish additional credit under this subsection nor may anyone who establishes credit under this subsection establish any additional credit under **RCW 41.40.010(13) (c) or (d). No additional payments are required for service credit described in this subsection if already established under this chapter.

(2) The written election must be filed and the payments must be completed in full within one year after employment by an employer.

(3) Upon receipt of the written election and payments required by subsection (1) of this section from any retiree described in subsection (1) of this section, the department shall recompute the retiree's allowance in accordance with this section and shall pay any additional benefit resulting from such recomputation retroactively to the date of retirement from the system governed by this chapter.

(4) Any person who was a member of the statewide city employees' retirement system under chapter 41.44 RCW and also became a member of the public employees' retirement system established under chapter 41.40 RCW or the Washington school employees' retirement system established under this chapter, and did not make the election under RCW 41.40.058 or subsection (1) of this section because he or she was not a member of the public employees' retirement system prior to July 27, 1987, or did not meet the time limitations of RCW 41.40.058 or subsection (2) of this section, may elect to do any of the following:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service that was previously credited under chapter 41.44 RCW but was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW.

To make the election or elections, the person must pay the amount required under RCW 41.50.165(2) prior to retirement from this retirement system. [1998 c 341 § 14.]

Reviser's note: *(1) RCW 41.44.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (13) to subsection (10).

** (2) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (13) to subsection (23).

41.35.140 Hearing prior to appeal required—Notice. Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must,

before he or she appeals to the courts, file with the director by mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1998 c 341 § 15.]

41.35.150 Hearing prior to appeal required—Conduct of hearing. Following its receipt of a notice for hearing in accordance with RCW 41.35.140, a hearing shall be held by the director or a duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be conducted and governed in all respects by the provisions of chapter 34.05 RCW. [1998 c 341 § 16.]

41.35.160 Judicial review in accordance with administrative procedure act. Judicial review of any final decision and order by the director is governed by the provisions of chapter 34.05 RCW. [1998 c 341 § 17.]

41.35.170 Appeal—No bond required. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits. [1998 c 341 § 18.]

41.35.180 Service credit—Computation. (1) Except for any period prior to the member's employment in an eligible position, a plan 2 or plan 3 member who is employed by a school district or districts or an educational service district:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) Who earns earnable compensation in an eligible position during the period from September through August, except under (a) of this subsection, shall receive service credit according to one of the following methods, whichever provides the most service credit to the member:

(i) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period;

(ii) A member employed in an eligible position for at least five months of a six-month period between September through August of the following year who earns earnable compensation for six hundred thirty or more hours within the

six-month period will receive a maximum of six service credit months for the school year, recorded as one service credit month for each month of the six-month period;

(iii) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(A) One service credit month for each month in which compensation is earned for ninety or more hours;

(B) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(C) One-quarter service credit month for each month in which compensation is earned for less than seventy hours.

(2) The department shall adopt rules implementing this section. [2008 c 204 § 2; 1998 c 341 § 19.]

41.35.1801 Prior service—One-half service credit.

(1) By no later than December 31, 2010, the department shall recalculate service credit for periods of qualifying prior service by an eligible member, as provided for in this section.

(2) An eligible member is a member who is active in the retirement system and who earns service credit after June 10, 2010, and before September 1, 2010.

(3) A qualifying period of prior service is a school year prior to January 1, 1987, in which the member:

(a) Was employed in an eligible position by a school district or districts, educational service district, the state school for the deaf, the state school for the blind, an institution of higher education, or a community college;

(b) Earned earnable compensation for at least six hundred thirty hours as determined by the department;

(c) Received less than six months of service credit; and

(d) Has not withdrawn service credit for the school year or has restored any withdrawn service credit for the school year.

(4) The department shall recalculate service credit for qualifying periods of prior service for an eligible member as follows:

(a) The member shall receive one-half service credit month for each month of the period from September through August of the following year if he or she earned earnable compensation during that period for at least six hundred thirty hours as determined by the department, and was employed nine months of that period; and

(b) A member's service credit shall not be reduced under this section for a qualifying period of prior service. [2010 c 103 § 1.]

41.35.183 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.35.420 or 41.35.680 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to

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ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 3.]

Effective date—2006 c 214: See note following RCW 41.40.034.

41.35.190 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1998 c 341 § 20.]

41.35.200 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1998 c 341 § 21.]

41.35.210 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's 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. [1998 c 341 § 22.]

41.35.220 Options for payment of retirement allowances—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.35.420 or 41.35.680 or retirement for disability under RCW 41.35.440 or 41.35.690, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life.

(i) For members of plan 2, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(ii) For members of plan 3, upon the death of the retired member, the member's benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allow-

ance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member of plan 2 who meets the length of service requirements of RCW 41.35.420, or a member of plan 3 who meets the length of service requirements of RCW 41.35.680(1), and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 41.35.420(1) for members of plan 2, or RCW 41.35.680(1) for members of plan 3, and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed pursuant to *chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 11; 2000 c 186 § 6; 1998 c 341 § 23.]

*Reviser's note: Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

41.35.230 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Exceptions—Reinstatement. (1) Except as provided in RCW 41.35.060, no retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.35.010, 41.40.010, 41.37.010, or 41.32.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2011 1st sp.s. c 47 § 16; 2004 c 242 § 56; 1998 c 341 § 24.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

41.35.399 Provisions applicable to plan 2 and plan 3. RCW 41.35.005 through 41.35.230 apply to members of plan 2 and plan 3. [1998 c 341 § 25.]

PLAN 2

41.35.400 Computation of retirement allowance. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service. [1998 c 341 § 101.]

41.35.410 Lump sum retirement allowance—Reentry—Reinstatement of service. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.35.400 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular ben-

efit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of RCW 41.40.625 or subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to rereading, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.35.400 or an earned disability allowance under RCW 41.35.440 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1998 c 341 § 102.]

41.35.420 Retirement eligibility. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.35.060(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.35.230(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 6, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and

the attainment of age sixty-five. [2012 1st sp.s. c 7 § 3; 2007 c 491 § 6; 2000 c 247 § 905; 1998 c 341 § 103.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Additional notes found at www.leg.wa.gov

41.35.423 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

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

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

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

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 6.]

Additional notes found at www.leg.wa.gov

41.35.430 Employer and member contribution rates. The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan 2 fund from the total employer contributions collected under RCW 41.35.090.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except as herein provided. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

Members contributions required by this section shall be deducted from the members compensation earnable each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [1998 c 341 § 104.]

41.35.440 Earned disability allowance—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.35.400 through 41.35.599. The member shall receive a monthly disability allowance computed as provided for in RCW 41.35.400 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative. [1998 c 341 § 105.]

41.35.450 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.35.420, 41.35.440, or 41.35.460 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.35.420 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.35.420, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.35.440 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.35.460 shall accrue from the first day of the calendar month immediately following the member's death. [1998 c 341 § 106.]

41.35.460 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court

order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.35.420, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.35.220 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.420; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike, calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in

RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.35.420. The member's retirement allowance is computed under RCW 41.35.400. [2009 c 226 § 8; 2003 c 155 § 4; 1998 c 341 § 107.]

Additional notes found at www.leg.wa.gov

41.35.470 Leaves of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.35.400 through 41.35.599.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan 2 employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.35.430 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.430 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 4; 2005 c 64 § 4; 1998 c 341 § 108.]

41.35.480 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.35.420 if such member maintains the member's accumulated contributions intact. [1998 c 341 § 109.]

41.35.490 Refund of contributions. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.35.400 through 41.35.599. [1998 c 341 § 110.]

41.35.500 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for such prior service if the member restores all withdrawn accumulated contributions

together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1998 c 341 § 111.]

41.35.510 Transfer to plan 3—Irrevocable option.

(1) Every plan 2 member employed by an employer in an eligible position has the option to make an irrevocable transfer to plan 3.

(2) All service credit in plan 2 shall be transferred to the defined benefit portion of plan 3.

(3) Any plan 2 member who wishes to transfer to plan 3 after February 28, 2001, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) The accumulated contributions in plan 2, less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(4), except that interest earned on all such contributions shall be transferred to the member's account.

(5) The legislature reserves the right to discontinue the right to transfer under this section.

(6) Anyone previously retired from plan 2 is prohibited from transferring to plan 3. [2002 c 26 § 7; 1998 c 341 § 114.]

41.35.599 Provisions applicable to plan 2. RCW 41.35.400 through 41.35.510 apply only to plan 2 members. [1998 c 341 § 112.]

PLAN 3

41.35.600 Provisions applicable to plan 3—Plan 3 elements. (1) RCW 41.35.600 through 41.35.720 apply only to plan 3 members.

(2) Plan 3 consists of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(3) Unless otherwise specified, all references to "plan 3" in this subchapter refer to the defined benefit portion of plan 3. [1998 c 341 § 201.]

41.35.610 Choice of membership in plan 2 or plan 3.

(1) All classified employees who first become employed by an employer in an eligible position on or after July 1, 2007, shall have a period of ninety days to make an irrevocable choice to become a member of plan 2 or plan 3. At the end of ninety days, if the member has not made a choice to become a member of plan 2, he or she becomes a member of plan 3.

(2) For administrative efficiency, until a member elects to become a member of plan 3, or becomes a member of plan 3 by default under subsection (1) of this section, the member shall be reported to the department in plan 2, with member and employer contributions. Upon becoming a member of plan 3 by election or by default, all service credit shall be transferred to the member's plan 3 defined benefit, and all employee accumulated contributions shall be transferred to the member's plan 3 defined contribution account.

(3) The plan choice provision as set forth in section 7, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to plan choice under this section is noncontractual, and the legislature reserves the right to amend or repeal this section. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, all classified employees who first become employed by an employer in an eligible position on or after July 1, 2007, may choose either plan 2 or plan 3 under this section. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then all classified employees who first become employed by an employer in an eligible position on or after the date of such reinstatement shall be members of plan 3. [2007 c 491 § 7; 1998 c 341 § 202.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 491 §§ 1, 3, and 7: See note following RCW 41.32.835.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.35.612 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.35.620 by notifying the department in writing of their intention. [2003 c 349 § 2.]

Additional notes found at www.leg.wa.gov

41.35.620 Computation of retirement allowance. (1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.35.680 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences. [1998 c 341 § 203.]

41.35.630 Additional payment. (1) Anyone who requests to transfer under RCW 41.35.510 before March 1, 2001, and establishes service credit for January 2001, shall

have their member account increased by one hundred thirty percent of:

(a) The member's public employees' retirement system plan 2 accumulated contributions as of January 1, 2000, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 2000, which are completely restored before March 1, 2001.

(2) If a member who requests to transfer dies before January 1, 2001, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(3) The legislature reserves the right to modify or discontinue the right to an additional payment under this section for any plan 2 members who have not previously transferred to plan 3. [2000 c 230 § 1; 1998 c 341 § 204.]

Additional notes found at www.leg.wa.gov

41.35.640 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.35.680, 41.35.690, or 41.35.710 is eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.35.680 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [2003 c 294 § 5; 1998 c 341 § 205.]

41.35.650 Leaves of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years

service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.720 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 5; 2005 c 64 § 5; 1998 c 341 § 206.]

41.35.660 Purchased service credit—Allocation. (1) Contributions on behalf of the employer paid by the employee to purchase plan 3 service credit shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan 3 service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under

RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan 3 membership service will be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service. [1998 c 341 § 207.]

41.35.670 Lump sum payments—Reentry. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased annually as determined by the director. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section is deemed to be retired from this system. [1998 c 341 § 208.]

41.35.680 Retirement eligibility. (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

- (a) Completed ten service credit years; or
- (b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or
- (c) Completed five service credit years by September 1, 2000, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.35.510; shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.35.060(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.35.230(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 8, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of *chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of *chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after

May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 4; 2007 c 491 § 8; 2006 c 33 § 2; 2000 c 247 § 906; 1998 c 341 § 209.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Additional notes found at www.leg.wa.gov

41.35.683 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

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

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

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

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 3.]

Additional notes found at www.leg.wa.gov

41.35.690 Earned disability allowance—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department shall be eligible to receive an allowance under the provisions of plan 3. The member shall receive a monthly disability allowance computed as provided for in RCW 41.35.620 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in RCW 41.35.220. [1998 c 341 § 210.]

(2016 Ed.)

41.35.700 Restored, purchased service credit under plan 2—Transfer to plan 3. (1) Any member who elects to transfer to plan 3 and has eligible unrestored withdrawn contributions in plan 2, may restore such contributions under the provisions of RCW 41.35.500 with interest as determined by the department. The restored plan 2 service credit will be automatically transferred to plan 3. Restoration payments will be transferred to the member account in plan 3. If the member fails to meet the time limitations of RCW 41.35.500, they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan 2 service credit will be automatically transferred to plan 3. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan 3 may purchase plan 2 service credit under RCW 41.35.500. Purchased plan 2 service credit will be automatically transferred to plan 3. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.35.500, they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan 2 service credit will be automatically transferred to plan 3. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account. [2002 c 26 § 6; 1998 c 341 § 211.]

41.35.710 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.35.620 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.680.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.35.680. The member's retirement allowance is computed under RCW 41.35.620. [2009 c 226 § 9; 2003 c 155 § 5; 1998 c 341 § 212.]

Additional notes found at www.leg.wa.gov

41.35.720 Employer contribution rates. The required contribution rates to the retirement system for employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan 2 fund from the total employer contributions collected under RCW 41.35.090.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

The employer's contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [1998 c 341 § 213.]

41.35.900 Benefits not contractual right until September 1, 2000. The benefits provided pursuant to chapter 341, Laws of 1998 are not provided to employees as a matter of contractual right prior to September 1, 2000. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2000. [1998 c 341 § 713.]

Additional notes found at www.leg.wa.gov

41.35.901 Effective date—1998 c 341. Except for sections 303, 306 through 309, 404, 505, 507, 515, 701, 707, and 710 through 713 of this act, this act takes effect September 1, 2000. [1998 c 341 § 714.]

Chapter 41.37 RCW

WASHINGTON PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM

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41.37.270	Vested membership.
41.37.280	Refund of contributions.
41.37.290	Reentry.
41.37.900	Benefits not contractual right until July 1, 2006.
41.37.901	Effective date—2004 c 242.
41.37.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

41.37.005 Intent. It is the intent of the legislature to establish a separate public safety employees' retirement system for certain public employees whose jobs contain a high degree of physical risk to their own personal safety and who provide public protection of lives and property, but who are not eligible for membership in the law enforcement officers' and firefighters' retirement system. [2006 c 309 § 1; 2004 c 242 § 1.]

Effective date—2006 c 309: "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 [March 29, 2006]." [2006 c 309 § 6.]

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

(1) "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.

(2) "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.

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

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

(5)(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:

(i) 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, temporary reduction in pay implemented prior to December 11, 2010, or temporary lay-

offs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

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

(6) "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.

(7)(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 non-money 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.

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

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

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

(11) "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.

(12) "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; any city corrections department not covered under chapter 41.28 RCW; and any public corrections entity created under RCW 39.34.030 by counties, cities not covered under chapter 41.28 RCW, or both. Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an employer. The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an employer, but is based solely on the relationship between a government contractor's employee and an employer under this chapter.

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

(14) "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.

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

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

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

(18) "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.

(19) "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.

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

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

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

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

(24) "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.

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

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

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

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

(29) "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.

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

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

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

(33) "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.

(34) "State treasurer" means the treasurer of the state of Washington. [2012 c 236 § 5. Prior: 2011 1st sp.s. c 5 § 4; 2011 c 68 § 1; prior: 2010 2nd sp.s. c 1 § 905; 2010 1st sp.s.

c 32 § 8; prior: 2007 c 492 § 11; 2007 c 294 § 1; 2006 c 309 § 2; 2005 c 327 § 4; 2004 c 242 § 2.]

*Reviser's note: The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Retroactive application—2011 c 68: "This act applies retroactively to any public corrections entity existing on or after January 1, 2011." [2011 c 68 § 2.]

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2006 c 309: See note following RCW 41.37.005.

Additional notes found at www.leg.wa.gov

41.37.015 System created—Administration. A retirement system is hereby created for public safety employees of 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 liquor control board, county corrections departments, and city corrections departments not covered under chapter 41.28 RCW. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules necessary therefor are hereby vested in the department. All rules shall be governed by chapter 34.05 RCW. This retirement system shall be known as the Washington public safety employees' retirement system. [2004 c 242 § 3.]

*Reviser's note: The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

41.37.020 Membership. Membership in the retirement system shall consist of all regularly compensated public safety employees who are members as defined in *RCW 41.37.010(5), with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor to statewide elective offices: PROVIDED, That such persons shall have the option of continuing membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions sub-

mitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

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

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

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

(6) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position. [2005 c 327 § 5; 2004 c 242 § 4.]

*Reviser's note: RCW 41.37.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (5) to subsection (19).

Additional notes found at www.leg.wa.gov

41.37.030 Nonelective position—Eligible position, when. Any person who has been employed in a nonelective position for at least nine months and who has made member contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment. [2004 c 242 § 6.]

41.37.050 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement of membership. (1)(a) If a retiree enters employment in an eligible position with an employer as defined in this chapter sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This

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reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) If a retiree enters employment in an eligible position with an employer as defined in chapter 41.32, 41.35, or 41.40 RCW sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(c) The benefit reduction provided in (a) and (b) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours per calendar year in an eligible position as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under this chapter, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with this chapter. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy. [2011 1st sp.s. c 47 § 17; 2005 c 327 § 6; 2004 c 242 § 8.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

41.37.060 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 4; 2004 c 242 § 9.]

41.37.070 Members agree to deductions. The deductions from the compensation of members, provided for in RCW 41.37.220, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment, less the deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter. [2004 c 242 § 10.]

41.37.080 Employer's contribution—Computation—Billing. (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning July 1, 2006, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the employer. Each employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill that employer for the employer's contribution together with the charges the director deems appropriate in accordance with RCW 41.50.120. This billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to the employer for payment of current biennial payrolls. [2004 c 242 § 11.]

41.37.090 Exemption from taxation and judicial process—Exemptions—Assignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy

or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more retired employees have authorized the deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [2012 c 159 § 25; 2004 c 242 § 12.]

41.37.100 Disability retirement—Criminal conduct. A member shall not receive a disability retirement benefit under RCW 41.37.230 if the disability is the result of criminal conduct by the member committed after July 1, 2006. [2004 c 242 § 13.]

41.37.110 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or the person or persons, trust, or organization the member has nominated by written designation duly executed and filed with the department. If the designated person or persons are not still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 5; 2004 c 242 § 14.]

41.37.120 False statements—Penalty. Any person who knowingly makes any false statements, or falsifies or

permits to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such an act, is guilty of a gross misdemeanor. [2004 c 242 § 15.]

41.37.130 Hearing prior to appeal required—Notice.

Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must, before he or she appeals to the courts, file with the director by mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [2004 c 242 § 16.]

41.37.135 Hearing prior to appeal required—Conduct of hearing. Following its receipt of a notice for hearing in accordance with RCW 41.37.130, a hearing shall be held by the director or an authorized representative, in the county of the residence of the claimant at a time and place designated by the director. This hearing shall be conducted and governed in all respects by chapter 34.05 RCW. [2004 c 242 § 17.]

41.37.140 Judicial review of final decision. Judicial review of any final decision and order by the director is governed by chapter 34.05 RCW. [2004 c 242 § 18.]

41.37.145 Appeal—No bond required. A bond of any kind shall not be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits. [2004 c 242 § 19.]

41.37.150 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [2004 c 242 § 20.]

41.37.155 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [2004 c 242 § 21.]

41.37.160 Postretirement cost-of-living. Beginning July 1, 2006, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

- (1) The original dollar amount of the retirement allowance;
- (2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";
- (3) The index for the calendar year prior to the date of determination, to be known as "index B"; and
- (4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

- (a) Produce a retirement allowance which is lower than the original retirement allowance;
 - (b) Exceed three percent in the initial annual adjustment;
- or
- (c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's 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. [2004 c 242 § 22.]

41.37.170 Options for payment of retirement allowances—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.37.210 or retirement for disability under RCW 41.37.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout the member's life. If the retiree dies before the total of the retirement allowance paid to the retiree equals the amount of the retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization the retiree nominated by written designation duly executed and filed with the department; or if there is no designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there is neither a designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, the portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent sur-

vivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) The department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) The department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.37.210 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.37.210(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate

benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2004 c 242 § 23.]

41.37.180 Suspension of retirement allowance upon reemployment—Exceptions—Reinstatement. (1) Except as provided in RCW 41.37.050, a retiree shall not be eligible to receive the retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.37.010, or RCW 41.35.010, 41.40.010, or 41.32.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.37.020(2)(b) is not subject to this section if the retiree's only employment is as an elective official.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2004 c 242 § 24.]

41.37.190 Computation of retirement allowance. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service. [2004 c 242 § 25.]

41.37.200 Lump sum retirement allowance—Reentry—Reinstatement of service. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.37.190 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with

interest as computed by the director, within two years of returning to service or prior to rereading, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.37.210 or an earned disability allowance under RCW 41.37.230 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [2004 c 242 § 26.]

41.37.210 Retirement eligibility. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to RCW 41.37.190.

(2) **UNREDUCED RETIREMENT.** Any member who has completed at least ten service credit years in the public safety employees' retirement system and has attained age sixty shall be eligible to retire and to receive a retirement allowance computed according to RCW 41.37.190.

(3) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-three shall be eligible to retire and to receive a retirement allowance computed according to RCW 41.37.190, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty. [2004 c 242 § 27.]

41.37.220 Employer and member contribution rates. The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan 2 fund from the total employer contributions collected under RCW 41.37.080.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except under this section. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and the increase shall be announced at least thirty days prior to the effective date of the change.

A member's contributions required by this section shall be deducted from the member's compensation earnable each payroll period. The member's contribution and the employer's contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [2004 c 242 § 28.]

41.37.230 Disability allowance—Actuarial reduction—Disposition upon death of recipient. (1)(a) A member of the retirement system with at least ten years of service in the public safety employees' retirement system who becomes totally incapacitated for continued employment as an employee by an employer, as determined by the department, shall be eligible to receive an allowance under RCW 41.37.190 through 41.37.290. The member shall receive a monthly disability allowance computed as provided for in RCW 41.37.190 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty.

(b) A member of the retirement system with less than ten years of service who becomes totally incapacitated for continued employment by an employer, as determined by the department, shall be eligible to receive an allowance under RCW 41.37.190 through 41.37.290. The member shall receive a monthly disability allowance computed as provided for in RCW 41.37.190 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

(2) Any member who receives an allowance under this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(3) If the recipient of a monthly allowance under this section dies before the total of the allowance payments equal the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization the recipient has nominated by written designation duly executed and filed with the director. If there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative. [2004 c 242 § 29.]

41.37.240 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under RCW 41.37.210, 41.37.230, or 41.37.250 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under RCW 41.37.210 shall accrue from the first day of the calendar

month immediately following the member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for an allowance pursuant to RCW 41.37.210, shall accrue from the first day of the calendar month immediately following the qualification.

(3) Disability allowances paid to disabled members under RCW 41.37.230 shall accrue from the first day of the calendar month immediately following the member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under RCW 41.37.250 shall accrue from the first day of the calendar month immediately following the member's death. [2004 c 242 § 30.]

41.37.250 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to that member's credit in the retirement system at the time of the member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or the person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the member's accumulated contributions standing to the member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact that spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.37.210, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.37.170 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.37.210; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then the child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until the child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, the member's child or children under the age of majority shall receive an allowance, share and share alike, calculated under this section making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to reduction under RCW 41.37.210. The member's retirement allowance is computed under RCW 41.37.190. [2009 c 226 § 10; 2005 c 327 § 7; 2004 c 242 § 31.]

Additional notes found at www.leg.wa.gov

41.37.260 Leaves of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under RCW 41.37.190 through 41.37.290.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. This credit may be obtained only if:

(a) The member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.37.220 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.37.220 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 3; 2005 c 64 § 11; 2004 c 242 § 32.]

Additional notes found at www.leg.wa.gov

41.37.265 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.37.210 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 4.]

Effective date—2006 c 214: See note following RCW 41.40.034.

41.37.270 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of the member's absence from service for the exclusive purpose only of receiving a retirement allowance under RCW 41.37.210 if the member maintains the member's accumulated contributions intact. [2004 c 242 § 33.]

41.37.280 Refund of contributions. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.37.190 through 41.37.290. [2004 c 242 § 34.]

41.37.290 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department.

The restoration of funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the

amount required under RCW 41.50.165(2) is paid. [2004 c 242 § 35.]

41.37.900 Benefits not contractual right until July 1, 2006. The benefits provided pursuant to chapter 242, Laws of 2004 are not provided to employees as a matter of contractual right prior to July 1, 2006. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 2006. [2004 c 242 § 66.]

41.37.901 Effective date—2004 c 242. This act takes effect July 1, 2006. [2004 c 242 § 65.]

41.37.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 98.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.40 RCW WASHINGTON PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Sections

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41.40.1985	Permanent retirement allowance adjustment.	41.40.811	Purchased service credit—Allocation.
41.40.1986	Permanent increase for specified beneficiaries age seventy or over.	41.40.815	Lump sum payments—Reentry.
41.40.200	Retirement for disability in line of duty—Applicability to certain judges.	41.40.820	Retirement eligibility.
41.40.210	Duty disability retirement allowance for disability after age sixty.	41.40.823	Member with terminal illness—Removal from system.
41.40.220	Allowance on retirement for duty disability—Before sixty.	41.40.825	Disability allowance—Death of recipient.
41.40.230	Nonduty disability—Applicability to certain judges.	41.40.830	Restored, purchased service credit under plan 2—Transfer to plan 3.
41.40.235	Nonduty disability retirement allowance—Amount—Maximum—Death benefit.	41.40.835	Death benefits.
		41.40.840	Postretirement cost-of-living.
		41.40.845	Options for payment of retirement allowances—Court-approved property settlement.
		41.40.850	Suspension of retirement allowance upon reemployment—Exception—Reinstatement.

- 41.40.870 Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges.
- 41.40.873 Additional benefit for district or municipal court judges—One-time irrevocable election.
- 41.40.877 Justices or judges retirement allowance—In lieu of RCW 41.40.790.
- 41.40.880 District or municipal court judges retirement allowance—In lieu of RCW 41.40.790.
- 41.40.920 Effective date—1977 ex.s. c 295.
- 41.40.930 Benefits not contractual right until March 1, 2002.
- 41.40.931 Effective dates—2000 c 247.
- 41.40.932 Subchapter headings not law—2000 c 247.

Portability of public retirement benefits: Chapter 41.54 RCW.

Transfer of membership to judges' retirement system: RCW 2.12.100.

Additional notes found at www.leg.wa.gov

"PROVISIONS APPLICABLE TO PLAN 1, PLAN 2, AND PLAN 3"

41.40.005 Provisions applicable to "plan 1," "plan 2," and "plan 3." RCW 41.40.010 through *41.40.112 shall apply to members of plan 1, plan 2, and plan 3. [2000 c 247 § 101; 1992 c 72 § 8; 1991 c 35 § 69; 1989 c 273 § 20; 1989 c 272 § 7; 1979 ex.s. c 249 § 6; 1977 ex.s. c 295 § 21.]

***Reviser's note:** RCW 41.40.112 was decodified August 1993.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—1989 c 272: See note following RCW 41.32.005.

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

(1) "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.

(2) "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.

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

(4) "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.

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

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

(b) "Average final compensation" for plan 2 and plan 3 members, 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 41.40.710(2) or (c) of this subsection.

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

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

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

(7)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension 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.

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

(i) "Compensation earnable" 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 wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, 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 is paid by the employee and the employer's contribution is paid by the employer or employee;

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

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

(E) 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

(F) 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.

(ii) "Compensation earnable" 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) "Compensation earnable" 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 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.

"Compensation earnable" for plan 2 and plan 3 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 in a position 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 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 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 41.40.038;

(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.

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

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

(11) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is

earned by the occupant thereof. 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;

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

(12) "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.

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

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

(c) Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an "employer." The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an "employer," but is based solely on the relationship between a government contractor's employee and an "employer" under this chapter.

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

(15) "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.

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

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

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

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

(20) "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.

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

(22) "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.

(23) "Membership service" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) "Plan 2" means the public employees' 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, and are not included in plan 3.

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

(a) First become a member on or after:

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

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

(b) Transferred to plan 3 under RCW 41.40.795.

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

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

(32) "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.

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

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

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

(36) "Separation from service" 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 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inqui-

ries 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 subsection.

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

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

(ii) An individual shall receive no more than a total of twelve service credit months of service during any 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 seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 1 "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 twenty-two days equals one-quarter service credit month;

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

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

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions 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 except as provided in RCW 41.40.088. 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.

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

(ii) 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.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. 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.

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

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

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

(41) "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.

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

(43) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience. [2012 c 236 § 6; 2011 1st sp.s. c 5 § 5. Prior: 2010 2nd sp.s. c 1 § 906; 2009 c 430 § 1; 2007 c 50 § 4; 2004 c 242 § 53; 2003 c 412 § 4; 2000 c 247 § 102; 1998 c 341 § 601; prior: 1997 c 254 § 10; 1997 c 88 § 6; prior: 1995 c 345 § 10; 1995 c 286 § 1; 1995 c 244 § 3; prior: 1994 c 298 § 2; 1994 c 247 § 5; 1994 c 197 § 23; 1994 c 177 § 8; 1993 c 95 § 8; prior: 1991 c 343 § 6; 1991 c 35 § 70; 1990 c 274 § 3; prior: 1989 c 309 § 1; 1989 c 289 § 1; 1985 c 13 § 7; 1983 c 69 § 1; 1981 c 256 § 6; 1979 ex.s. c 249 § 7; 1977 ex.s. c 295 § 16; 1973 1st ex.s. c 190 § 2; 1972 ex.s. c 151 § 1; 1971 ex.s.

c 271 § 2; 1969 c 128 § 1; 1965 c 155 § 1; 1963 c 225 § 1; 1963 c 174 § 1; 1961 c 291 § 1; 1957 c 231 § 1; 1955 c 277 § 1; 1953 c 200 § 1; 1951 c 50 § 1; 1949 c 240 § 1; 1947 c 274 § 1; Rem. Supp. 1949 § 11072-1.]

Purpose—Application—2012 c 236: See note following RCW 41.26.030.

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—1994 c 298: "(1) This act provides cross-references to existing statutes that affect calculation of pensions under the retirement systems authorized by chapters 41.40 and 41.32 RCW to the relevant definition sections of those chapters. Except as provided in subsection (2) of this section, this act is technical in nature and neither enhances nor diminishes existing pension rights. Except for the amendment to RCW 41.40.010(5), it is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of benefits authorized in chapters 41.40 and 41.32 RCW.

(2) The amendments to RCW 41.40.010 (5) and (29) contained in section 2, chapter 298, Laws of 1994, and to RCW 41.32.010(31) contained in section 3, chapter 298, Laws of 1994, clarify the status of certain persons as either members or retirees. RCW 41.04.275 and section 7, chapter 298, Laws of 1994, create the pension funding account in the state treasury and direct the transfer of moneys deposited in the budget stabilization account by the 1993-95 operating appropriations act, section 919, chapter 24, Laws of 1993 sp. sess., for the continuing costs of state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess. to the pension funding account." [1994 c 298 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.40.015 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 99.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

[Title 41 RCW—page 250]

41.40.020 System created—Administration. A state employees' retirement system is hereby created for the employees of the state of Washington and its political subdivisions. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules and regulations necessary therefor are hereby vested in the department. All such rules and regulations shall be governed by the provisions of chapter 34.05 RCW, as now or hereafter amended. The retirement system herein provided for shall be known as the Washington Public Employees' Retirement System. [1991 c 35 § 71; 1969 c 128 § 2; 1967 c 127 § 1; 1949 c 240 § 2; 1947 c 274 § 2; Rem. Supp. 1949 § 11072-2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

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

(1) Persons in ineligible positions;

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

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

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives

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more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

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

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

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

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension provisions of the volunteer firefighters' [and reserve officers'] relief and pension [principal] fund under chapter 41.24 RCW;

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

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

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

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

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

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

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

(10) Persons appointed after April 1, 1963, by the *liquor control board as contract liquor store managers;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organization which qualifies as

an employer within this chapter shall have the option of applying for membership;

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

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(13) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

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

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

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the non-credited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1999, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(19) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(20) Beginning on July 22, 2001, persons employed exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under chapter 35.82 RCW, (a) if the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan;

(21) Employees who are removed from membership under RCW 41.40.823 or 41.40.633; and

(22) Persons employed as the state director of fire protection under RCW 43.43.938 who were previously members of the law enforcement officers' and firefighters' retirement system plan 2 under chapter 41.26 RCW may continue as a member of the law enforcement officers' and firefighters'

retirement system in lieu of becoming a member of this system. [2010 c 80 § 1. Prior: 2005 c 151 § 12; 2005 c 131 § 7; 2001 c 37 § 1; prior: 1999 c 286 § 2; 1999 c 244 § 1; 1997 c 254 § 11; prior: 1994 c 298 § 8; 1994 c 197 § 24; 1993 c 319 § 1; prior: 1990 c 274 § 10; 1990 c 192 § 4; 1988 c 109 § 25; 1987 c 379 § 1; 1986 c 317 § 5; 1984 c 184 § 13; 1984 c 121 § 1; 1982 1st ex.s. c 52 § 19; 1975 c 33 § 6; 1974 ex.s. c 195 § 2; 1973 1st ex.s. c 190 § 5; 1971 ex.s. c 271 § 4; 1969 c 128 § 5; 1967 c 127 § 3; 1965 c 155 § 2; 1963 c 225 § 2; 1963 c 210 § 1; 1957 c 231 § 2; 1955 c 277 § 2; 1953 c 200 § 5; 1951 c 50 § 2; 1949 c 240 § 7; 1947 c 274 § 13; Rem. Supp. 1949 § 11072-13. Formerly RCW 41.40.120.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

Effective date—2010 c 80: "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 [March 17, 2010]." [2010 c 80 § 2.]

Intent—1999 c 286: "It is the intent of the legislature that retirement benefits represent a valuable element of the total compensation and benefits employees receive for their service. The value of these benefits is contained in the retirement income and cost-of-living adjustments provided to employees who remain in public service until retirement. For the majority of public employees, this requires membership in the public employees' retirement system.

The legislature recognizes, however, that certain occupations display a pattern of interstate mobility which requires retirement benefits which are highly portable. Incumbents in these occupations gain little value from membership in the public employees' retirement system. In order to remove any barrier to employing qualified personnel in positions with high mobility, membership in the retirement system should be optional in those occupations." [1999 c 286 § 1.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—1994 c 298: See note following RCW 41.40.010.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Legislative findings—Intent—Severability—1986 c 317: See notes following RCW 41.40.150.

Pension benefits or annuity benefits for certain classifications of school district employees: RCW 28A.400.260.

Additional notes found at www.leg.wa.gov

41.40.025 Membership in system—Charter school employers and employees. This section designates charter schools established under chapter 28A.710 RCW as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code. [2016 c 241 § 135. Prior: 2013 c 2 § 305 (Initiative Measure No. 1240, approved November 6, 2012).]

Application of chapter 241, Laws of 2016—Effective date—2016 c 241: See RCW 28A.710.900 and 28A.710.901.

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.40.028 Nonelective position employees employed for at least nine months—Deemed in eligible position, when. Any person who has been employed in a nonelective

position for at least nine months and who has made member contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment. [1980 c 112 § 2. Formerly RCW 41.40.123.]

41.40.034 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 41.40.180, 41.40.630, or 41.40.820 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 1.]

Effective date—2006 c 214: "This act takes effect July 1, 2006." [2006 c 214 § 8.]

41.40.035 Service credit prohibited for certain members of committees, boards, and commissions and for certain appointive and elective officials. (1) No person appointed to membership on any committee, board, or commission on or after July 1, 1976, who is compensated for service on such committee, board, or commission for fewer than ten days or seventy hours in any month, whichever amount is less, shall receive service credit for such service for that month: PROVIDED, That on and after October 1, 1977, appointive and elective officials who receive monthly compensation earnable from an employer in an amount equal to or less than ninety times the state minimum hourly wage shall not receive any service credit for such employment.

(2) This section does not apply to any person serving on a committee, board, or commission on June 30, 1976, who continued such service until subsequently appointed by the governor to a different committee, board, or commission. [1987 c 146 § 1; 1977 ex.s. c 295 § 17; 1975-'76 2nd ex.s. c 34 § 4. Formerly RCW 41.40.165.]

Additional notes found at www.leg.wa.gov

41.40.037 Service by retirees—Break in employment requirement—Reduction of retirement allowance upon reemployment—Reestablishment of membership. (1)(a)

(2016 Ed.)

If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree from plan 1, plan 2, or plan 3 who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.40.023(12), he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five months in a calendar year without a reduction of his or her pension. [2015 c 75 § 1; 2011 1st sp.s. c 47 § 19; 2007 c 50 § 5; 2005 c 319 § 103; 2004 c 242 § 63. Prior: 2003 c 412 § 5; 2003 c 295 § 7; 2001 2nd sp.s. c 10 § 4; (2001 2nd sp.s. c 10 § 12 repealed by 2002 c 26 § 9); 1997 c 254 § 14.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Additional notes found at www.leg.wa.gov

41.40.038 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty on or after March 27, 1984, and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Nothing in this section shall abridge service credit rights granted in RCW 41.40.220(2) and 41.40.320.

(8) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2005 c 363 § 1; 1987 c 118 § 1; 1986 c 176 § 2. Formerly RCW 41.40.223.]

41.40.042 Members agree to deductions. The deductions from the compensation of members, provided for in RCW 41.40.330, 41.45.060, 41.45.061, or 41.45.067, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment less the deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter. [2000 c 247 § 103; 1991 c 35 § 89; 1977 ex.s. c 295 § 18; 1947 c 274 § 35; Rem. Supp. 1947 § 11072-35. Formerly RCW 41.40.340.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.048 Employer's contribution—Computation—Billing. (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning September 1, 1990, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the said employer. In addition, the director shall determine and collect the additional employer contribution rate necessary to fund the benefits granted officials holding office pursuant to Articles II and III of the Constitution of the state of Washington and RCW 48.02.010. Each said employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations. Effective January 1, 1987, however, no contributions are required for any calendar month in which the member is not granted service credit.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill such employer for such employer's contribution together with such charges as the director deems appropriate in accordance with RCW 41.50.120. Such billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to such employer for payment of current biennial payrolls. [1989 c 273 § 23; 1986 c 268 § 5; 1985 c 138 § 1; 1982 1st ex.s. c 52 § 22; 1979 c 151 § 63; 1977 ex.s. c 295 § 20; 1963 c 126 § 1; 1961 c 291 § 12; 1949 c 240 § 26; 1947 c 274 § 38; Rem. Supp. 1947 § 11072-38. Formerly RCW 41.40.370.]

Additional notes found at www.leg.wa.gov

41.40.052 Exemption from taxation and judicial process—Exceptions—Assignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2)(a) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(b) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions from that allowance for charitable purposes on the same terms as employees and public officers under RCW 41.04.035 and 41.04.036.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court

order expressly authorized by federal law. [2012 c 159 § 26; 1999 c 83 § 1. Prior: 1991 c 365 § 22; 1991 c 35 § 92; 1989 c 360 § 27; 1988 c 107 § 20; 1987 c 326 § 24; 1982 c 135 § 2; 1981 c 294 § 14; 1979 ex.s. c 205 § 6; 1974 ex.s. c 195 § 4; 1967 c 127 § 6; 1947 c 274 § 39; Rem. Supp. 1947 § 11072-39. Formerly RCW 41.40.380.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.054 Disability retirement—Criminal conduct.

A member shall not receive a disability retirement benefit under RCW 41.40.200, 41.40.220, 41.40.230, 41.40.235, 41.40.250, 41.40.670, or 41.40.825 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [2000 c 247 § 104; 1997 c 103 § 3.]

Additional notes found at www.leg.wa.gov

41.40.055 Penalty for false statements. Any person who shall knowingly make any false statements, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such act, shall be guilty of a gross misdemeanor. [1947 c 274 § 41; Rem. Supp. 1947 § 11072-41. Formerly RCW 41.40.400.]

41.40.056 Establishment of service credit—Former employees—Employers admitted before July 23, 1995.

Except as qualified by RCW 41.40.023, for employers that were admitted into the retirement system before July 23, 1995, membership service may be established for the employer's former employees who are active members of the system if the member or member's former employer pays an amount equal to the employer and member contributions which would have been paid to the retirement system on account of such service to the retirement system. Payment shall be made prior to the retirement of such member.

Payments submitted by the member under this section shall be placed in the member's individual account in the members' savings fund and be treated as any other contribution made by the member, with the exception that the contributions submitted by the member in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall be excluded from the calculation of the member's annuity in the event the member selects a benefit with an annuity option. [1995 c 286 § 2.]

41.40.057 Establishment of service credit—Current and former employees—Employers admitted after July 23, 1995.

(1) This section applies to the establishment of membership service with employers admitted to the retirement system after July 23, 1995.

(2) For current employees, membership service may be established for periods of employment with an employer prior to the employer's admission into the retirement system by making the payments required by this section.

The employer must select one of the options in this subsection and apply it uniformly, except as provided in subsection (3) of this section. The required payment shall include the total member and employer contributions that would have been required from the date of each current member's hire.

(a) Option A: The employer makes all the required payments within fifteen years from the date of the employer's admission.

(b) Option B: The employer makes a portion of the required payments and the member pays the balance. The employer shall not be required to make its payments until the member has made his or her payments. Each member shall have the option to purchase the membership service.

(c) Option C: The member makes all of the required payments. Each member shall have the option to purchase the membership service.

All payments under options B and C of this subsection must be completed within five years from the date of the employer's admission, or prior to the retirement of the member, whichever occurs sooner. A member may not receive membership service credit under option B or C of this subsection until all required payments have been made.

(3) An employer shall not be required to purchase membership service under option A or B for periods of employment for which the employer made contributions to a qualified retirement plan as defined by 26 U.S.C. Sec. 401(a), if the contributions plus interest accrued cannot be transferred to the retirement system. If the employer does not purchase the membership credit under this subsection, the member may purchase the membership service under subsection (2)(c) of this section.

(4) A former employee who is an active member of the system and is not covered by subsection (2) of this section may establish membership service by making the required payments under subsection (2)(c) of this section prior to the retirement of the member.

(5) All payments made by the member under this section shall be placed in the member's individual account in the members' savings fund or the member's account for those members entering plan 3. [2000 c 247 § 105; 1995 c 286 § 3.]

41.40.058 Transfer of service credit from statewide city employees' retirement system.

(1) Any person who was a member of the statewide city employees' retirement system governed by chapter 41.44 RCW and who also became a member of this retirement system on or before July 26, 1987, may, in a writing filed with the director, elect to:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service which was previously credited under chapter 41.44 RCW but which was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190. The service may be reestablished and transferred only upon payment by the member to the employees' savings fund of this retirement system of the amount withdrawn plus interest thereon from the date of withdrawal until the date of payment at a rate determined by the director. No additional payments are required for service credit described in this subsection if already established under this chapter; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW, upon payment in full by the member of the total employer's contribution to the benefit account fund of this retirement system that would have

been made under this chapter when the initial service was rendered. The payment shall be based on the first month's compensation earnable as a member of the statewide city employees' retirement system and as defined in *RCW 41.44.030(13). However, a person who has established service credit under **RCW 41.40.010(13) (c) or (d) shall not establish additional credit under this subsection nor may anyone who establishes credit under this subsection establish any additional credit under **RCW 41.40.010(13) (c) or (d). No additional payments are required for service credit described in this subsection if already established under this chapter.

(2)(a) In the case of a member of this retirement system who is employed by an employer on July 26, 1987, the written election required by subsection (1) of this section must be filed and the payments required by subsection (1)(b) and (c) of this section must be completed in full within one year after July 26, 1987.

(b) In the case of a former member of this retirement system who is not employed by an employer on July 26, 1987, the written election must be filed and the payments must be completed in full within one year after reemployment by an employer.

(c) In the case of a retiree receiving a retirement allowance from this retirement system on July 26, 1987, or any person having vested rights as described in RCW 41.40.150 (4), the written election may be filed and the payments may be completed at any time.

(3) Upon receipt of the written election and payments required by subsection (1) of this section from any retiree described in subsection (2) of this section, the department shall recompute the retiree's allowance in accordance with this section and shall pay any additional benefit resulting from such recomputation retroactively to the date of retirement from the system governed by this chapter.

(4) Any person who was a member of the statewide city employees' retirement system under chapter 41.44 RCW and also became a member of this retirement system, and did not make the election under subsection (1) of this section because he or she was not a member of this retirement system prior to July 27, 1987, or did not meet the time limitations of subsection (2) (a) or (b) of this section, may elect to do any of the following:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service that was previously credited under chapter 41.44 RCW but was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW.

To make the election or elections, the person must pay the amount required under RCW 41.50.165(2) prior to retirement from this retirement system. [1994 c 197 § 25; 1987 c 417 § 1; 1984 c 184 § 9. Formerly RCW 41.40.403.]

Reviser's note: *(1) RCW 41.44.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (13) to subsection (10).

** (2) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (13) to subsection (23).

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.40.059 Credit for service in Seattle's police relief and pension fund system. Any active member of this retirement system who has previously established ten or more years' service credit in the city of Seattle's police relief and pension fund system, who withdrew his or her contributions from Seattle's police relief and pension fund system prior to July 1, 1961, and who has never been a member of the law enforcement officers' and firefighters' pension system created in chapter 41.26 RCW, may receive credit in this retirement system for such service, subject to the terms and conditions specified in RCW 41.40.061. [1992 c 157 § 3.]

41.40.061 Credit for service in Seattle's police relief and pension fund system—Terms and conditions. (1) A member who fulfills the requirements of RCW 41.40.059 may file a written declaration no later than September 30, 1992, with the department and the Seattle police relief and pension fund system indicating the member's desire to make an irrevocable transfer of credit from the Seattle system to this retirement system. The member shall restore his or her contributions, with interest since the date of withdrawal as determined by the director, no later than December 31, 1992.

(2) Upon receipt of the written declaration, the Seattle police relief and pension fund system shall send the department a report of the member's service credit. It shall also transfer to the department the portion of such member's contributions that was retained in the Seattle police relief and pension fund pursuant to RCW 41.20.150, plus a sum equal to such member's total contributions to the Seattle police relief and pension fund, which shall be treated as matching contributions by the employer, plus the compound interest that would have been generated by such sums, as determined by the Seattle city treasurer. The Seattle police relief and pension fund system shall send the service credit report and transfer the funds within ninety days of receiving the member's written declaration. [1992 c 157 § 4.]

41.40.062 Optional entry of system by political subdivisions or associations of political subdivisions—Procedure—School districts declared employers and eligible employees members of system—Exception. (1) The members and appointive and elective officials of any political subdivision or association of political subdivisions of the state may become members of the retirement system by the approval of the local legislative authority.

(2) On and after September 1, 1965, every school district of the state of Washington shall be an employer under this chapter. Every member of each school district who is eligible for membership under RCW 41.40.023 shall be a member of the retirement system and participate on the same basis as a person who first becomes a member through the admission of any employer into the retirement system on and after April 1, 1949, except that after August 31, 2000, school districts will no longer be employers for the public employees' retirement system plan 2 or plan 3. [2000 c 247 § 106; 1998 c 341 § 602; 1995 c 286 § 4; 1991 c 35 § 93; 1971 ex.s. c 271 § 12; 1969 c 128 § 13; 1965 c 84 § 1; 1963 c 174 § 16; 1961 c 291 § 13;

1953 c 200 § 19; 1951 c 50 § 13; 1949 c 240 § 27; 1947 c 274 § 43; Rem. Supp. 1949 § 11072-42. Formerly RCW 41.40.410.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.068 Hearing prior to appeal—Required—

Notice. Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must before he or she appeals to the courts, file with the director by mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1991 c 35 § 94; 1969 c 128 § 14; 1963 c 174 § 17; 1953 c 200 § 22. Formerly RCW 41.40.412.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.073 Hearing prior to appeal—Conduct of

hearing. Following its receipt of a notice for hearing in accordance with RCW 41.40.068, a hearing shall be held by the director or a duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be conducted and governed in all respects by the provisions of chapter 34.05 RCW. [1989 c 175 § 87; 1969 c 128 § 15; 1953 c 200 § 23. Formerly RCW 41.40.414.]

Additional notes found at www.leg.wa.gov

41.40.078 Judicial review in accordance with administrative procedure act. Judicial review of any final decision and order by the director is governed by the provisions of chapter 34.05 RCW. [1989 c 175 § 88; 1969 c 128 § 16; 1963 c 174 § 18; 1953 c 200 § 20; 1951 c 50 § 14. Formerly RCW 41.40.420.]

Additional notes found at www.leg.wa.gov

41.40.082 Appeal—No bond required. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits. [1991 c 35 § 95; 1971 c 81 § 105; 1951 c 50 § 16. Formerly RCW 41.40.440.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.088 Education employment—Service credit—

Computation. (1) A plan 1 member who is employed by a school district or districts, an educational service district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for six hundred thirty hours or more during that period, and is employed during nine months of that period, except that a member may not receive credit for any period prior to the member's employment in an eligible position;

(b) If a member in an eligible position does not meet the requirements of (a) of this subsection, the member is entitled to a service credit month for each month of the period he or she earns earnable compensation for seventy or more hours; and the member is entitled to a one-quarter service credit month for those calendar months during which he or she earned compensation for less than seventy hours.

(2) Except for any period prior to the member's employment in an eligible position, a plan 2 or plan 3 member who is employed by a school district or districts, an educational service district, the state school for the blind, the Washington state center for childhood deafness and hearing loss, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period;

(c) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(i) One service credit month for each month in which compensation is earned for ninety or more hours;

(ii) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(iii) One-quarter service credit month for each month in which compensation is earned for less than seventy hours;

(d) After August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2 or plan 3.

(3) The department shall adopt rules implementing this section. [2009 c 381 § 32; 2000 c 247 § 107; 1998 c 341 § 603. Prior: 1991 c 343 § 9; 1991 c 35 § 96; 1990 c 274 § 4; 1989 c 289 § 2; 1987 c 136 § 1; 1983 c 69 § 2; 1973 c 23 § 1. Formerly RCW 41.40.450.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Intent—Reservation—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.40.092 Transfer of cadet service credit to Washington state patrol retirement system. (1) Active members of the Washington state patrol retirement system who have previously established service credit in the public employees' retirement system, plan 1 or plan 2 while employed by the state patrol as a cadet as defined in *RCW 43.43.120(6)(b) may have such service credit transferred to the state patrol retirement system subject to the terms and conditions specified in chapter 43.43 RCW, including reestablishment of such service for the sole purpose of transfer. Service reestablishment shall be subject to the interest requirements of RCW 41.40.150(2).

(2) Service credit established for employment other than that specified in subsection (1) of this section is not eligible for transfer. [2000 c 247 § 108; 1983 c 81 § 3. Formerly RCW 41.40.530.]

**Reviser's note:* RCW 43.43.120 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (6)(b) to subsection (5)(b).

Additional notes found at www.leg.wa.gov

41.40.0931 Death benefit—Course of employment as a police officer—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit for members who had the opportunity to transfer to the law enforcement officers' and firefighters' retirement system pursuant to chapter 502, Laws of 1993, but elected to remain in the public employees' retirement system, shall be paid to the member's estate, or such person or persons, trust, or organization as the member has nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) Subject to subsection (3) of this section, the benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment as a general authority police officer; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(3) The benefit under this section shall not be paid in the event the member was in the act of committing a felony when the fatal injuries were suffered. [2007 c 487 § 6; 1998 c 157 § 1.]

Additional notes found at www.leg.wa.gov

41.40.0932 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by

written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 7; 2003 c 402 § 1.]

41.40.095 Transfer of membership from judicial retirement system. (1) Any member of the Washington judicial retirement system who wishes to transfer such membership to the retirement system provided for in this chapter shall file a written request with the director as required by RCW 2.10.040 on or before December 31, 1989, or within one year after reentering service as a judge.

Upon receipt of such request, the director shall transfer from the judicial retirement system to this retirement system: (a) An amount equal to the employee and employer contributions the judge would have made if the judge's service under chapter 2.10 RCW had originally been earned under this chapter, which employee contributions shall be credited to the member's account established under this chapter; and (b) a record of service credited to the member. The judge's accumulated contributions that exceed the amount credited to the judge's account under this subsection shall be deposited in the judge's retirement account created pursuant to chapter 2.14 RCW.

(2) The member shall be given year-for-year credit for years of service, as determined under *RCW 2.10.030(8), earned under the judicial retirement system. Service credit granted under the judicial retirement system pursuant to RCW 2.10.220 shall not be transferred under this section. The director instead shall reverse the transfer of contributions and service credit previously made under RCW 2.10.220 and shall credit the member for such periods of service and contributions under this chapter as though no transfer had ever occurred.

(3) All employee contributions transferred pursuant to this section shall be treated the same as other employee contributions made under this chapter. [1988 c 109 § 5. Formerly RCW 41.40.540.]

**Reviser's note:* RCW 2.10.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (8) to subsection (11).

Additional notes found at www.leg.wa.gov

41.40.096 Law enforcement officers—Dual membership—Plan 1 exception. (1) An employee who was a member of the public employees' retirement system plan 2 or plan 3 on or before January 1, 2003, and on July 27, 2003, is employed by the department of fish and wildlife as a law enforcement officer as defined in RCW 41.26.030, shall become a member of the law enforcement officers' and firefighters' retirement system plan 2. All officers will be dual members as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be trans-

ferred to the law enforcement officers' and firefighters' retirement system plan 2.

(2) An employee who was a member of the public employees' retirement system plan 1 on or before January 1, 2003, and on or after July 27, 2003, is employed by the department of fish and wildlife as a law enforcement officer as defined in RCW 41.26.030, shall remain a member of the public employees' retirement system plan 1. [2003 c 388 § 1.]

41.40.098 Transfer of former service from judicial retirement system. A former member of the Washington judicial retirement system who: (1) Is not serving as a judge on July 1, 1988; (2) has not retired under the applicable provisions of chapter 2.10 RCW; and (3) subsequently reacquires membership in the public employees' retirement system may, by written request filed with the director of retirement systems, transfer to the public employees' retirement system all periods of time served as a judge, as defined in *RCW 2.10.030(2). Upon such membership transfer being made, the department of retirement systems shall transfer the employer contributions and the employee's contributions and service from the judicial retirement system to the public employees' retirement system. The service shall be transferred and credited to the member as though the service was originally earned as a member of the public employees' retirement system. [1988 c 109 § 6. Formerly RCW 41.40.542.]

*Reviser's note: RCW 2.10.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2) to subsection (5).

Additional notes found at www.leg.wa.gov

41.40.102 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1983 c 283 § 4. Formerly RCW 41.40.800.]

41.40.103 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 3.]

41.40.104 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 3.]

(2016 Ed.)

41.40.1041 Prior service for plan 2 or 3 members—One-half service credit. (1) By no later than December 31, 2010, the department shall recalculate service credit for periods of qualifying prior service by an eligible member, as provided for in this section.

(2) An eligible member is a member of plan 2 or 3 who is active in the retirement system and who earns service credit after June 10, 2010, and before September 1, 2010.

(3) A qualifying period of prior service is a school year prior to January 1, 1987, in which the member:

(a) Was employed in an eligible position by a school district or districts, educational service district, the state school for the deaf, the state school for the blind, an institution of higher education, or a community college;

(b) Earned earnable compensation for at least six hundred thirty hours as determined by the department;

(c) Received less than six months of service credit; and

(d) Has not withdrawn service credit for the school year or has restored any withdrawn service credit for the school year.

(4) The department shall recalculate service credit for qualifying periods of prior service for an eligible member as follows:

(a) The member shall receive one-half service credit month for each month of the period from September through August of the following year if he or she earned earnable compensation during that period for at least six hundred thirty hours as determined by the department, and was employed nine months of that period; and

(b) A member's service credit shall not be reduced under this section for a qualifying period of prior service. [2010 c 103 § 2.]

41.40.105 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under *chapter 67.40 RCW. [1984 c 210 § 6. Formerly RCW 41.40.810.]

*Reviser's note: A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Additional notes found at www.leg.wa.gov

41.40.108 Higher education classified employees—Membership in the public employees' retirement system.

(1) All classified employees employed by Washington State University on and after April 24, 1973, and otherwise eligible shall become members of the Washington public employees' retirement system to the exclusion of any other retirement benefit system at the institution unless otherwise provided by law.

(2) All classified employees employed by the University of Washington or each of the regional universities or The Evergreen State College on and after May 6, 1974, and otherwise eligible shall become members of the Washington public employees' retirement system at the institution unless otherwise provided by law: PROVIDED, That persons who, immediately prior to the date of their hiring as classified employees, have for at least two consecutive years held membership in a retirement plan underwritten by the private

insurer of the retirement plan of their respective educational institution may irrevocably elect to continue their membership in the retirement plan notwithstanding the provisions of this chapter, if the election is made within thirty days from the date of their hiring as classified employees. If these persons elect to become members of the public employees' retirement system, contributions by them and their employers shall be required from their first day of employment. [1991 c 35 § 107.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.109 Retirement system employer—Termination of status. (1) Employers that are organized pursuant to chapter 36.100, 36.102, or 81.112 RCW, who have become retirement system employers since 1993, and who have previously excluded some of their employees from retirement system membership pursuant to the limitation in RCW 41.40.023(4), shall have the option until December 31, 1999, to terminate their status as a retirement system employer with regard to persons employed after the date of their election.

(2) If a government unit terminates its status as an employer pursuant to this section its employees as of the date of the election who are members shall be eligible to continue their membership in the retirement system, if otherwise eligible under this chapter, for the duration of their continuous employment with that employer.

(3) If a government unit subject to this section does not elect to terminate its status as a retirement system employer it may either: (a) Continue to exclude from membership those employees who were excluded pursuant to the limitation in RCW 41.40.023(4) prior to July 25, 1999; or [(b)] include such employees in the retirement system, if otherwise eligible under this chapter, for service rendered on or after July 25, 1999, and after the employer's election. [1999 c 244 § 2.]

41.40.111 Retirement system employer—Unit of government. (1) When a unit of government has become a retirement system employer, all of its employees must be included in the plan membership, if otherwise eligible under this chapter, unless the employee is exempted from membership or qualifies for optional membership pursuant to RCW 41.40.023 or other provision of this chapter.

(2) A unit of government which has become a retirement system employer may not withdraw from the retirement system. [1999 c 244 § 3.]

41.40.113 Public safety employees' retirement system—Election—Membership. (1) An employee who was a member of the public employees' retirement system plan 2 or plan 3 before July 1, 2006, and on July 1, 2006, is employed by an employer as defined in *RCW 41.37.010(4) and is an employee in a job class included in *RCW 41.37.010(5), has the following options during the election period:

(a) Remain a member of the public employees' retirement system; or

(b) Become a member of the public safety employees' retirement system plan 2. All members will be dual members as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be transferred to the public safety employees' retirement system plan 2.

(2) The "election period" is the period between July 1, 2006, and September 30, 2006.

(3) During the election period, employees remain members of the public employees' retirement system plan 2 or plan 3 until they elect to join the public safety employees' retirement system. Members who elect to join the public safety employees' retirement system as described in subsection (1) of this section will have their membership begin prospectively from the date of their election.

(4) If after September 30, 2006, the member has not made an election to join the public safety employees' retirement system he or she will remain in the public employees' retirement system plan 2 or plan 3.

(5) An employee who was a member of the public employees' retirement system plan 1 on or before July 1, 2006, and on or after July 1, 2006, is employed by an employer as defined in *RCW 41.37.010(4) as an employee in a job class included in *RCW 41.37.010(5), shall remain a member of the public employees' retirement system plan 1.

(6) All new employees hired on or after July 1, 2006, who become employed by an employer as defined in *RCW 41.37.010(4) as an employee in a job class included in *RCW 41.37.010(5) will become members of the public safety employees' retirement system.

(7) An employee of the department of natural resources who was a member of the public employees' retirement system plan 2 or plan 3 before July 1, 2007, and on July 1, 2007, is performing the duties as defined in *RCW 41.37.010(5), has the following options during the election period defined in subsection (8) of this section:

(a) Remain in the public employees' retirement system; or

(b) Become a member of the public safety employees' retirement system plan 2 and be a dual member as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be transferred to the public safety employees' retirement system.

(8) The "election period" is the period between July 1, 2007, and September 30, 2007.

(9) During the election period, department of natural resources employees remain members of the public employees' retirement system plan 2 or plan 3 until they elect to join the public safety employees' retirement system. Members who elect to join the public safety employees' retirement system as described in subsection (7) of this section will have their membership begin prospectively from the date of their election.

(10) If after September 30, 2007, an employee has not made an election to join the public safety employees' retirement system, he or she will remain in the public employees' retirement system plan 2 or plan 3. [2007 c 294 § 2; 2004 c 242 § 5.]

***Reviser's note:** RCW 41.37.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (4) and (5) to subsections (12) and (19), respectively.

Additional notes found at www.leg.wa.gov

41.40.124 Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or

plan 2 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election in lieu of future employee and employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by an additional one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a seventy-five percent of average final compensation benefit. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional one and one-half percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 1 or plan 2 who are not currently employed as a supreme court justice, court of appeals judge, or superior court judge, and who have past service as a supreme court justice, court of appeals judge, or superior court judge; and

(b) Inactive vested members of plan 1 or plan 2 who have separated, have not yet retired, and who have past service as a supreme court justice, court of appeals judge, or superior court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from

another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2008 c 300 § 1; 2007 c 123 § 1; 2006 c 189 § 5.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.127 Additional benefit for district or municipal court judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a seventy-five percent of average final compensation benefit. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional one and one-half percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 1 or plan 2 who are not currently employed as a district court judge or municipal court judge, and who have past service as a district court judge or municipal court judge; and

(b) Inactive vested members of plan 1 or plan 2 who have separated, have not yet retired, and who have past service as a district court judge or municipal court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments,

rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2008 c 300 § 2; 2007 c 123 § 2; 2006 c 189 § 6.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.129 Emergency medical services employee of a consortium of local governments—Credit for service prior to July 27, 2003. (1) An employee providing emergency medical services for a consortium of local governments, where some of those local governments qualified as public employees' retirement system employers at the time the service was rendered, may make an election to establish credit for service performed prior to July 27, 2003, as a full-time emergency medical technician serving the consortium to the public employees' retirement system. This option is only available to employees who:

(a) Performed services for a consortium of local governments fully contained within the boundaries of a county whose population on June 9, 2016, exceeds seven hundred thousand residents but is less than eight hundred thousand residents; and

(b) File a written election to establish service credit under this section with the department of retirement systems no later than June 30, 2026.

(2)(a) The department of retirement systems shall treat the consortium member with the largest current population among consortium members who qualified as a public employees' retirement system employer at the time the service was rendered as the employer for purposes of this section. This employer classification:

(i) Is solely for the purpose of streamlining reporting service and compensation credit and paying contributions for periods of service covered by this section; and

(ii) Does not mean that the consortium member is the employee's employer for any other purpose.

(b) All contributions required for past periods of service established under this section shall be paid by the employees electing to establish service credit under this section.

(i) Employee contributions shall be calculated by the department equal to the contributions that would have been paid by the employee had the employee been a member of [the] public employees' retirement system.

(ii) Employer contributions shall be calculated by the department equal to the contributions that would have been paid by the employer had the employee been reported in [the] public employees' retirement system.

(iii) All contributions must be submitted by the employee within five years of electing to establish service credit under this section.

(3) If a member who elected to establish service credit under this section dies or retires for disability prior to payment of contributions under subsection (2)(b) of this section, the member, or in the case of death the surviving spouse or eligible minor children, may:

(a) Pay the bill in full;

(b) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under subsection (2)(b) of this section; or

(c) Continue to make payment against the obligation under subsection (2)(b) of this section, provided that payment in full is made no later than five years from the member's original election date. [2016 c 236 § 2.]

"PLAN 1"

41.40.145 Provisions applicable to plan 1. RCW 41.40.150 through 41.40.363 shall apply only to members of plan 1. [1992 c 72 § 9; 1991 c 35 § 105.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.150 Termination of membership—Restoration of service credit. Should any member die, or should the individual separate or be separated from service without leave of absence before attaining age sixty years, or should the individual become a beneficiary, except a beneficiary of an optional retirement allowance as provided by RCW 41.40.188, the individual shall thereupon cease to be a member except:

(1) As provided in RCW 41.40.170.

(2) An employee not previously retired who reenters service shall upon completion of six months of continuous service and upon the restoration, in one lump sum or in annual installments, of all withdrawn contributions: (a) With interest as computed by the director, which restoration must be completed within a total period of five years of membership service following the member's first resumption of employment or (b) paying the amount required under RCW 41.50.165(2), be returned to the status, either as an original member or new member which the member held at time of separation.

(3)(a) Except as provided in (b) of this subsection, a member who separates or has separated after having completed at least five years of service shall remain a member during the period of absence from service for the exclusive purpose of receiving a retirement allowance to begin at attainment of age sixty-five, however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits as of age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

(b) A member who:

(i) Separates from service under this subsection on or after January 1, 2002; and

(ii) Attains the age of fifty with at least twenty years of service prior to separation; and

(iii) Is not retired as of June 13, 2002, shall remain a member during the period of absence from service for the exclusive purpose of receiving a retirement allowance to begin at attainment of age sixty.

If such a member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the indi-

vidual shall thereupon cease to be a member and this section shall not apply.

(4) The recipient of a retirement allowance elected to office or appointed to office directly by the governor, and who shall apply for and be accepted in membership as provided in RCW 41.40.023(3) shall be considered to have terminated his or her retirement status and shall become a member of the retirement system with the status of membership the member held as of the date of retirement. Retirement benefits shall be suspended from the date of return to membership until the date when the member again retires and the member shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180: PROVIDED, That where any such right to retire is exercised to become effective before the member has rendered six uninterrupted months of service the type of retirement allowance the member had at the time of the member's previous retirement shall be reinstated, but no additional service credit shall be allowed: AND PROVIDED FURTHER, That if such a recipient of a retirement allowance does not elect to apply for reentry into membership as provided in RCW 41.40.023(3), the member shall be considered to remain in a retirement status and the individual's retirement benefits shall continue without interruption.

(5) Any member who leaves the employment of an employer and enters the employ of a public agency or agencies of the state of Washington, other than those within the jurisdiction of this retirement system, and who establishes membership in a retirement system or a pension fund operated by such agency or agencies and who shall continue membership therein until attaining age sixty, shall remain a member for the exclusive purpose of receiving a retirement allowance without the limitation found in RCW 41.40.180(1) to begin on attainment of age sixty-five; however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits commencing at age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply. [2002 c 62 § 1; 1997 c 254 § 12; 1994 c 197 § 26; 1992 195 § 1; 1990 c 249 § 17. Prior: 1987 c 384 § 1; 1987 c 88 § 1; 1986 c 317 § 3; 1983 c 233 § 2; 1982 1st ex.s. c 52 § 20; 1979 ex.s. c 249 § 10; 1974 ex.s. c 195 § 3; 1973 1st ex.s. c 190 § 6; 1969 c 128 § 6; 1967 c 127 § 4; 1965 c 155 § 3; 1963 c 174 § 8; 1955 c 277 § 3; 1953 c 200 § 7; 1951 c 50 § 3; 1949 c 240 § 10; 1947 c 274 § 16; Rem. Supp. 1949 § 11072-16.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative findings—Intent—1986 c 317: "The legislature finds that in the past public employees and teachers who had terminated employment, withdrawn their retirement contributions, and subsequently returned to public employment or teaching either did not receive proper notification of the procedure to reinstate their withdrawn contributions or they did not fully understand the limitation on such reinstatement. In 1973, the legislature rec-

ognized this fact and provided an extraordinary reinstatement period for such employees. Further in 1983, the legislature established clear notification procedures for the proper notification of the reinstatement policy for all such returning employees. Therefore, it is the intent of this 1986 act to provide one last opportunity for reinstatement of withdrawn contributions to those who may have not been properly informed or misunderstood the reinstatement procedure." [1986 c 317 § 1.]

Additional notes found at www.leg.wa.gov

41.40.160 Creditable service. (1) Subject to the provisions of RCW 41.40.150, at retirement the total service credited to a member shall consist of all membership service and, if he or she is an original member, all of the certified prior service.

(2) Employees of a public utility or other private enterprise all or any portion of which has been heretofore or may be hereafter acquired by a public agency as a matter of public convenience and necessity, where it is in the public interest to retain the trained personnel of such enterprise, all service to that enterprise shall, upon the acquiring public agency becoming an employer as defined in *RCW 41.40.010(4) be credited on the same basis as if rendered to the said employer: PROVIDED, That this shall apply only to those employees who were in the service of the enterprise at or prior to the time of acquisition by the public agency and who remain in the service of the acquiring agency until they attain membership in the state employees' retirement system; and to those employees who were in the service of the enterprise at the time of acquisition by the public agency and subsequently attain membership through employment with any participating agency: PROVIDED FURTHER, In the event that the acquiring agency is an employer at the time of the acquisition, employer's contributions in connection with members achieving service credit hereunder shall be made on the same basis as set forth in RCW **41.40.045 and 41.40.048 for an employer admitted after April 1, 1949, and before July 23, 1995, and on the same basis as set forth in RCW 41.40.057 for an employer admitted after July 23, 1995. [1995 c 286 § 5; 1991 c 35 § 77; 1989 c 273 § 27; 1965 c 155 § 4; 1963 c 174 § 9; 1953 c 200 § 8; 1951 c 50 § 4; 1949 c 240 § 11; 1947 c 274 § 17; Rem. Supp. 1949 § 11072-17.]

Reviser's note: *(1) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (13).

** (2) RCW 41.40.045 was repealed by 1995 c 286 § 6.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.163 Purchase of service credit—Service at Washington State University. Notwithstanding any provision to the contrary, employees of Washington State University who first established membership in the public employees' retirement system plan 1 under *RCW 41.40.500 through 41.40.507, as existing on July 28, 1991, and **RCW 41.40.508, as existing on June 7, 1990, may purchase, as set forth under RCW 41.50.165, plan 1 service credit for the period of service at Washington State University prior to his or her contributory membership in the Washington State University retirement system. [1998 c 17 § 4.]

Reviser's note: *(1) RCW 41.40.500 through 41.40.507 were decodified pursuant to 1991 c 35 § 4.

** (2) RCW 41.40.508 was repealed by 1990 c 249 § 22.

41.40.170 Credit for military service. (1) A member who has served or shall serve on active federal service in the

military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter the armed service: PROVIDED, That in no instance, described in this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005.

(4)(a) A member, after completing twenty-five years of creditable service, who would have otherwise become eligible for a retirement benefit as defined under this chapter while serving honorably in the armed forces as referenced in RCW 41.04.005, shall, upon application to the department, be eligible to receive credit for this service without returning to covered employment.

(b) Service credit granted under (a) of this subsection applies only to veterans as defined in RCW 41.40.005.

(5) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services; and

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death.

(6) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services; and

(b) The member provides to the director proof of honorable discharge from the uniformed services. [2005 c 247 § 2; 2005 c 64 § 1; 2002 c 27 § 2; 1991 c 35 § 78; 1981 c 294 §

12; 1973 1st ex.s. c 190 § 14; 1972 ex.s. c 151 § 3; 1969 c 128 § 7; 1967 c 127 § 8; 1963 c 174 § 10; 1953 c 200 § 9; 1949 c 240 § 12; 1947 c 274 § 18; Rem. Supp. 1949 § 11072-18.]

Reviser's note: This section was amended by 2005 c 64 § 1 and by 2005 c 247 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.175 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.40.145 through 41.40.363.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 1.]

Additional notes found at www.leg.wa.gov

41.40.180 Retirement—Length of service. (1) Any member with five years of creditable service who has attained age sixty and any original member who has attained age sixty may retire on written application to the director, setting forth at what time the member desires to be retired: PROVIDED, That in the national interest, during time of war engaged in by the United States, the director may extend beyond age sixty, subject to the provisions of subsection (2) of this section, the age at which any member may be eligible to retire.

(2) Any member who has completed thirty years of service may retire on written application to the director setting forth at what time the member desires to be retired, subject to war measures.

(3) Any member who has completed twenty-five years of service and attained age fifty-five may retire on written application to the director setting forth at what time the member desires to be retired, subject to war measures.

(4) Any individual who is eligible to retire pursuant to subsections (1) through (3) of this section shall be allowed to retire while on any authorized leave of absence not in excess of one hundred and twenty days. [1982 1st ex.s. c 52 § 21; 1973 1st ex.s. c 190 § 7; 1972 ex.s. c 151 § 4; 1971 ex.s. c 271 § 7; 1967 c 127 § 5; 1963 c 174 § 11; 1955 c 277 § 4; 1953 c 200 § 10; 1951 c 81 § 1; 1949 c 240 § 13; 1947 c 274 § 19; Rem. Supp. 1949 § 11072-19.]

Additional notes found at www.leg.wa.gov

41.40.183 Annual increase amount—Legislature's rights reserved—No additional increases after June 30,

2011. (1) Beginning July 1, 2009, the annual increase amount as defined in RCW 41.40.010(4) shall be increased by an amount equal to \$0.40 per month per year of service minus the 2008 gain-sharing increase amount under *RCW 41.31.010 as it exists on July 22, 2007. This adjustment shall not decrease the annual increase amount, and is not to exceed \$0.20 per month per year of service. The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has the contractual right to receive this adjustment to the annual increase amount not granted prior to that time.

(2) The adjustment to the annual increase amount as set forth in section 11, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. If the repeal of **chapter 41.31 RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then this adjustment to the annual increase amount shall not be included in future annual increase amounts paid on or after the date of such reinstatement.

(3) No additional increase under this section shall be provided after June 30, 2011. [2011 c 362 § 5; 2007 c 491 § 11.]

Reviser's note: *(1) RCW 41.31.010 was repealed by 2007 c 491 § 13, effective January 2, 2008.

***(2) Chapter 41.31 RCW was repealed by 2007 c 491 § 13, effective January 2, 2008.

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.40.185 Retirement allowances—Members retiring after February 25, 1972. Upon retirement from service, as provided for in RCW 41.40.180 or 41.40.210, a member shall be eligible for a service retirement allowance computed on the basis of the law in effect at the time of retirement, together with such post-retirement pension increases as may from time to time be expressly authorized by the legislature. The service retirement allowance payable to members retiring on and after February 25, 1972 shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her additional contributions made pursuant to RCW 41.40.330(2).

(2) A membership service pension, subject to the provisions of subsection (4) of this section, which shall be equal to two percent of his or her average final compensation for each service credit year or fraction of a service credit year of membership service.

(3) A prior service pension which shall be equal to one-seventieth of his or her average final compensation for each year or fraction of a year of prior service not to exceed thirty years credited to his or her service accounts. In no event, except as provided in *this 1972 amendatory act, shall any member receive a retirement allowance pursuant to subsections (2) and (3) of this section of more than sixty percent of his or her average final compensation: PROVIDED, That no member shall receive a pension under this section of less than nine hundred dollars per annum if such member has twelve or more years of service credit, or less than one thousand and two hundred dollars per annum if such member has sixteen or more years of service credit, or less than one thousand five

hundred and sixty dollars per annum if such member has twenty or more years of service credit.

(4) Notwithstanding the provisions of subsections (1) through (3) of this section, the retirement allowance payable for service where a member was elected or appointed pursuant to Articles II or III of the Constitution of the state of Washington or RCW 48.02.010 and the implementing statutes shall be a combined pension and annuity. Said retirement allowance shall be equal to three percent of the average final compensation for each year of such service. Any member covered by this subsection who upon retirement has served ten or more years shall receive a retirement allowance of at least one thousand two hundred dollars per annum; such member who has served fifteen or more years shall receive a retirement allowance of at least one thousand eight hundred dollars per annum; and such member who has served twenty or more years shall receive a retirement allowance of at least two thousand four hundred dollars per annum: PROVIDED, That the initial retirement allowance of a member retiring only under the provisions of this subsection shall not exceed the average final compensation upon which the retirement allowance is based. The minimum benefits provided in this subsection shall apply to all retired members or to the surviving spouse of deceased members who were elected to the office of state senator or state representative. [1991 c 343 § 7; 1990 c 249 § 7; 1987 c 143 § 2; 1973 1st ex.s. c 190 § 8; 1972 ex.s. c 151 § 5.]

***Reviser's note:** For codification of "this 1972 amendatory act" [1972 ex.s. c 151], see Codification Tables.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.188 Retirement allowance—Options—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.40.180 or retirement for disability under RCW 41.40.210 or 41.40.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and

paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) A member may elect to include the benefit provided under RCW 41.40.640 along with the retirement options available under this section. This retirement allowance option shall be calculated so as to be actuarially equivalent to the options offered under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of

the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.180(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.180(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The separate single life benefits of the member and the nonmember ex spouse are not (i) subject to the minimum benefit provisions of RCW 41.40.1984, or (ii) the minimum benefit annual increase amount eligibility provisions of *RCW 41.40.197 (2)(b) and (3)(a).

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2002 c 158 § 12; 2000 c 186 § 7; 1998 c 340 § 8; 1996 c 175 § 6; 1995 c 144 § 1; 1990 c 249 § 9.]

*Reviser's note: RCW 41.40.197 was amended by 2005 c 327 § 8, deleting subsection (3)(a).

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.189 Retirement allowance—Adjustment eligibility. (1) A retiree who receives state-funded long-term care services on or after June 1, 1998, is not eligible for the increase provided by section 8, chapter 340, Laws of 1998, if the increase would make the retiree ineligible for state-funded long-term care services. For the purposes of this section "state-funded long-term care services" means a state-funded adult family home, adult residential care, assisted living, enhanced adult residential care, in-home care, or nursing home service, as defined in RCW 74.39A.009, for which the retiree is required to contribute all income other than a specified amount reserved for the retiree's personal maintenance needs. Retirees who are subject to this section shall notify the department in writing. The department has no affirmative duty to identify retirees who are subject to this subsection.

(2) This section applies to all payments under section 8, chapter 340, Laws of 1998, made on or after May 17, 1999, regardless of the date of retirement. [1999 c 362 § 3.]

Additional notes found at www.leg.wa.gov

41.40.190 Retirement allowance—In lieu of allowance provided in RCW 41.40.185. In lieu of the retirement allowance provided in RCW 41.40.185, an individual employed on or before April 25, 1973 may, after complying with RCW 41.40.180 or 41.40.210, make an irrevocable election to receive the retirement allowance provided by this section which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement; and

(2) A basic service pension of one hundred dollars per annum; and

(3) A membership service pension, subject to the provisions of subdivision (4) of this section, which shall be equal to one one-hundredth of his or her average final compensation for each year or fraction of a year of membership service credited to his or her service account; and

(4) A prior service pension which shall be equal to one-seventieth of his or her average final compensation for each year or fraction of a year of prior service not to exceed thirty years credited to his or her service accounts. In no event shall any original member upon retirement at age seventy with ten or more years of service credit receive less than nine hundred dollars per annum as a retirement allowance, nor shall any member upon retirement at any age receive a retirement allowance of less than nine hundred dollars per annum if such member has twelve or more years of service credit, or less than one thousand and two hundred dollars per annum if such member has sixteen or more years of service credit, or less than one thousand five hundred and sixty dollars per annum if such member has twenty or more years of service credit. In the event that the retirement allowance as to such member provided by subdivisions (1), (2), (3), and (4) hereof shall amount to less than the aforesaid minimum retirement allowance, the basic service pension of the member shall be increased from one hundred dollars to a sum sufficient to

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make a retirement allowance of the applicable minimum amount.

(5) Notwithstanding the provisions of subsections (1) through (4) of this section, the retirement allowance payable for service where a member was elected or appointed pursuant to Articles II or III of the Constitution of the state of Washington or RCW 48.02.010 and the implementing statutes shall be a combined pension and annuity. Said retirement allowance shall be equal to three percent of the average final compensation for each year of such service. Any member covered by this subsection who upon retirement has served ten or more years shall receive a retirement allowance of at least one thousand two hundred dollars per annum; such member who has served fifteen or more years shall receive a retirement allowance of at least one thousand eight hundred dollars per annum; and such member who has served twenty or more years shall receive a retirement allowance of at least two thousand four hundred dollars per annum: PROVIDED, That the initial retirement allowance of a member retiring only under the provisions of this subsection shall not exceed the average final compensation upon which the retirement allowance is based. The minimum benefits provided in this subsection shall apply to all retired members or to the surviving spouse of deceased members who were elected under the provisions of Article II of the Washington state Constitution.

(6) Unless payment shall be made under RCW 41.40.270, a joint and one hundred percent survivor benefit under RCW 41.40.188 shall automatically be given effect as if selected for the benefit of the surviving spouse upon the death in service, or while on authorized leave of absence for a period not to exceed one hundred and twenty days from the date of payroll separation, of any member who is qualified for a service retirement allowance or has completed ten years of service at the time of death, except that if the member is not then qualified for a service retirement allowance, such option II benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance. [1990 c 249 § 8; 1987 c 143 § 3; 1973 1st ex.s. c 190 § 9; 1972 ex.s. c 151 § 6; 1971 ex.s. c 271 § 5; 1969 c 128 § 8; 1967 c 127 § 7; 1961 c 291 § 6; 1953 c 200 § 11; 1951 c 50 § 5; 1949 c 240 § 14; 1947 c 274 § 20; Rem. Supp. 1949 § 11072-20.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.191 Retirement allowance—Members with thirty years of service—Irrevocable election. A member may make the irrevocable election under this section no later than six months after attaining thirty years of service. The election shall become effective at the beginning of the calendar month following department receipt of employee notification.

(1) The sum of member contributions made for periods of service after the effective date of the election plus seven and one-half percent interest shall be paid to the member at retirement without a reduction in the member's monthly retirement benefit as determined under RCW 41.40.185.

(2) Upon retirement, the member's benefit shall be calculated using only the compensation earnable credited prior to the effective date of the member's election. Calculation of the

member's average final compensation shall include eligible cash outs of sick and annual leave based on the member's salary and leave accumulations at the time of retirement, except that the amount of a member's average final compensation cannot be higher than if the member had not taken advantage of the election offered under this section.

(3) Members who have already earned thirty years of service credit prior to July 25, 1999, may participate in the election by notifying the department in writing of their intention by December 31, 1999.

The department shall continue to collect employer contributions as required in RCW 41.45.060. [1999 c 362 § 2.]

41.40.193 Dates upon which retirement allowances accrue. Retirement allowances paid to members eligible to retire under the provisions of RCW 41.40.180, 41.40.200, 41.40.210, 41.40.220, 41.40.230, and 41.40.250 shall accrue from the first day of the calendar month immediately following the calendar month during which the member is separated from service. Retirement allowance paid to members eligible to retire under any other provisions of *this 1972 amendatory act shall accrue from the first day of a calendar month but in no event earlier than the first day of the calendar month immediately following the calendar month during which the member is separated from service. [1983 c 3 § 94; 1973 1st ex.s. c 190 § 10; 1972 ex.s. c 151 § 7.]

*Reviser's note: For codification of "this 1972 amendatory act" [1972 ex.s. c 151], see Codification Tables.

Additional notes found at www.leg.wa.gov

41.40.197 Retirement allowance—Annual increases restricted after July 1, 2010—Eligibility. (1) Beginning July 1, 1995, and annually thereafter through July 1, 2010, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(a) After July 1, 2010, those currently receiving benefits under this section will receive no additional annual increase amounts above the amount in effect on July 1, 2010, except for those who qualify under subsection (2)(b) of this section. This subsection shall not reduce retirement allowances below the amounts in effect on June 30, 2011.

(b) After July 1, 2010, no annual increase amounts may be provided to any beneficiaries who are not already receiving benefits under this section, except for those who qualify under subsection (2)(b) of this section.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year by July 1st in the calendar year in which the annual increase is given and has attained at least age sixty-six by December 31st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.40.1984.

(3) If otherwise eligible, those receiving an annual adjustment under RCW 41.40.188(1)(c) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(4) Those receiving a benefit under RCW 41.40.220(1), or a survivor of a disabled member under RCW 41.44.170(5) shall be eligible for the benefit provided by this section.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [2011 c 362 § 6; 2007 c 89 § 1; 2005 c 327 § 8; 1995 c 345 § 5.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2007 c 89: "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 July 1, 2007." [2007 c 89 § 3.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1971 Definition—"Beneficiary." For the purposes of RCW 41.40.197, 41.40.1984, and 41.40.1986, "beneficiary" means a beneficiary under RCW 41.40.010 or 41.44.030, or both RCW 41.40.010 and 41.44.030. [1995 c 345 § 6.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1984 Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995. (1) Except as provided in subsections (4) and (5) of this section, no one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) Where the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a benefit under RCW 41.40.220(1) or under RCW 41.44.170 (3) and (5) shall not be eligible for the benefit provided by this section.

(5) For persons who served as elected officials and whose accumulated employee contributions and credited interest was less than seven hundred fifty dollars at the time of retirement, the minimum benefit under subsection (1) of this section shall be ten dollars per month per each year of creditable service.

(6) Beginning July 1, 2011, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with either (a) at least twenty years of service and who has been retired at least twenty-five years, or (b) at least twenty-five years of service and who has been retired at least twenty years, shall be one thousand five hundred dollars per month. On July 1, 2011, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent. [2011 c 362 § 7; 2006 c 244 § 2; 2004 c 85 § 2; 1995 c 345 § 7.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2006 c 244: See note following RCW 41.32.4851.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1985 Permanent retirement allowance adjustment. The dollar amount of the temporary postretirement allowance adjustment granted by section 1, chapter 519, Laws of 1993 shall be provided as a permanent retirement allowance adjustment as of July 1, 1995. [1994 c 247 § 4.]

Additional notes found at www.leg.wa.gov

41.40.1986 Permanent increase for specified beneficiaries age seventy or over. (1) The amount of the July 1, 1993, increase to the retirement allowance of beneficiaries under this chapter as a result of the temporary adjustment authorized by section 3, chapter 519, Laws of 1993, shall be made a permanent adjustment on July 1, 1995.

(2) Beneficiaries receiving a benefit under *RCW 41.40.198 who are at least age seventy-nine shall receive on July 1, 1995, a permanent adjustment of one dollar and eighteen cents per month per year of service.

(3) Beneficiaries under this chapter who are not subject to subsection (1) of this section and are not receiving a benefit under *RCW 41.40.198 shall receive the following permanent adjustment to their retirement allowance on July 1, 1995:

(a) Those who are age seventy, thirty-nine cents per month per year of service;

(b) Those who are age seventy-one, seventy-nine cents per month per year of service; and

(c) Those who are at least age seventy-two, one dollar and eighteen cents per month per year of service. [1995 c 345 § 8.]

*Reviser's note: RCW 41.40.198 was repealed by 1995 c 345 § 11.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.200 Retirement for disability in line of duty—Applicability to certain judges. (1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who becomes totally incapacitated for duty as the natural and proximate result of an accident occurring in the actual performance of duty or who becomes totally incapacitated for duty and qualifies to receive benefits under Title 51 RCW as a result of an occupational disease, as now or hereafter defined in RCW 51.08.140, while in the service of an employer, without willful negligence on his or her part, shall be retired subject to the following conditions:

(a) That the medical adviser, after a medical examination of such member made by or under the direction of the medical adviser, shall certify in writing that the member is mentally or physically totally incapacitated for the further performance of his or her duty and that such member should be retired;

(b) That the director concurs in the recommendation of the medical adviser;

(c) That no application shall be valid or a claim thereunder enforceable unless, in the case of an accident, the claim is filed within two years after the date upon which the injury occurred or, in the case of an occupational disease, the claim

is filed within two years after the member separated from service with the employer; and

(d) That the coverage provided for occupational disease under this section may be restricted in the future by the legislature for all current and future members.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the director, shall be considered a retirement under subsection (1) of this section. [1991 c 35 § 80; 1986 c 207 § 1; 1982 c 18 § 3; 1955 c 277 § 5; 1951 c 50 § 6; 1949 c 240 § 15; 1947 c 274 § 21; Rem. Supp. 1949 § 11072-21.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.210 Duty disability retirement allowance for disability after age sixty. Upon retirement for disability, as provided in RCW 41.40.200, a member who has attained age sixty, regardless of his or her creditable service shall receive a service retirement allowance. [2012 c 117 § 59; 1972 ex.s. c 151 § 8; 1947 c 274 § 22; Rem. Supp. 1947 § 11072-22.]

41.40.220 Allowance on retirement for duty disability—Before sixty. Upon retirement for disability, as provided in RCW 41.40.200, a member who has not attained age sixty shall receive the following benefits, subject to the provisions of RCW 41.40.310 and 41.40.320:

(1) A disability retirement pension of two-thirds of his or her average final compensation to his or her attainment of age sixty, subject to the provisions of RCW 41.40.310. The disability retirement pension provided by the employer shall not exceed forty-two hundred dollars per annum, and

(2) Upon attainment of age sixty, the disabled member shall receive a service retirement allowance as provided in RCW 41.40.210. The department shall grant the disabled member membership service for the period of time prior to age sixty he or she was out of such service due to disability.

(3) During the period a disabled member is receiving a disability pension, as provided for in subsection (1) of this section, his or her contributions to the employees' savings fund shall be suspended and his or her balance in the employees' savings fund, standing to his or her credit as of the date his or her disability pension is to begin, shall remain in the employees' savings fund. If the disabled member should die before attaining age sixty, while a disability beneficiary, upon receipt by the department of proper proof of death, the member's accumulated contributions standing to his or her credit in the employees' savings fund, shall be paid to the member's estate, or such person or persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the accumulated contributions standing to the member's credit in the employees' savings fund shall be paid to his or her surviving spouse, or if there is no surviving spouse, then to the member's legal representative. [1995 c 144 § 2; 1991 c 35 § 81; 1972 ex.s. c 151 § 9; 1971 ex.s. c 271 § 8; 1961 c 291 § 7; 1953 c 200 § 12; 1949 c 240 § 16; 1947 c 274 § 23; Rem. Supp. 1949 § 11072-23.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.230 Nonduty disability—Applicability to certain judges. (1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who has been an employee at least five years, and who becomes totally and permanently incapacitated for duty as the result of causes occurring not in the performance of his or her duty, may be retired by the department, subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired; and

(b) That the department concurs in the recommendation of the medical adviser.

(2) The retirement for disability of a judge, who is a member of the retirement system and who has been an employee at least five years, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the department, shall be considered a retirement under subsection (1) of this section. [1991 c 35 § 82; 1982 c 18 § 4; 1969 c 128 § 9; 1951 c 50 § 7; 1949 c 240 § 17; 1947 c 274 § 24; Rem. Supp. 1949 § 11072-24.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.235 Nonduty disability retirement allowance—Amount—Maximum—Death benefit. (1) Upon retirement, a member shall receive a nonduty disability retirement allowance equal to two percent of average final compensation for each service credit year of service: PROVIDED, That this allowance shall be reduced by two percent of itself for each year or fraction thereof that his or her age is less than fifty-five years: PROVIDED FURTHER, That in no case may the allowance provided by this section exceed sixty percent of average final compensation.

(2) If the recipient of a retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse or, if there is neither a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative. [1995 c 144 § 3. Prior: 1991 c 343 § 8; 1991 c 35 § 83; 1986 c 176 § 4; 1972 ex.s. c 151 § 10.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.250 Allowance on retirement for nonduty disability—Election. An individual who was a member on February 25, 1972, may upon qualifying pursuant to RCW 41.40.230, make an irrevocable election to receive the nonduty disability retirement allowance provided in subsections (1) and (2) of this section subject to the provisions of RCW

41.40.310 and 41.40.320. Upon attaining or becoming disabled after age sixty the member shall receive a service retirement allowance as provided for in RCW 41.40.190 except that the annuity portion thereof shall consist of a continuation of the cash refund annuity previously provided to him or her. The disability retirement allowance prior to age sixty shall consist of:

(1) A cash refund annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of his or her retirement; and

(2) A pension, in addition to the annuity, equal to one one-hundredth of the member's average final compensation for each year of service. If the recipient of a retirement allowance under this section dies before the total of the annuity portions of the retirement allowance paid to him or her equals the amount of his or her accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department, or if there is no designated person or persons, still living at the time of his or her death, then to his or her surviving spouse, or if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representatives. [1995 c 144 § 4; 1991 c 35 § 84; 1972 ex.s. c 151 § 11; 1969 c 128 § 10; 1961 c 291 § 8; 1953 c 200 § 13; 1947 c 274 § 26; Rem. Supp. 1947 § 11072-26.]

Intent—1991 c 35: See note following RCW 41.26.005.

Nonduty disability retirement allowance—1972 act: See RCW 41.40.235.

Additional notes found at www.leg.wa.gov

41.40.260 Withdrawal from system—Refund of contributions—Waiver of allowance, when. Subject to the provisions of RCW 41.40.280, should a member cease to be an employee, he or she may request upon a form provided by the department a refund of all or part of the funds standing to his or her credit in the employees' savings fund and this amount shall be paid to him or her. Withdrawal of all or part of the funds, other than additional contributions under RCW 41.40.330(2) by a member who is eligible for a service retirement allowance in RCW 41.40.180 or a disability retirement allowance in RCW 41.40.200, 41.40.210, 41.40.220, 41.40.230, or 41.40.250 shall constitute a waiver of any service or disability retirement allowance. [1991 c 35 § 85; 1983 c 3 § 95; 1971 ex.s. c 271 § 9; 1963 c 174 § 12; 1949 c 240 § 18; 1947 c 274 § 27; Rem. Supp. 1949 § 11072-27.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.262 Elected officials—Restoration of withdrawn contributions. Any active member or separated member who was not eligible to restore contributions under section 3, chapter 317, Laws of 1986, solely because he or she was an elected official, other than an elected official under Articles II or III of the Constitution of the state of Washington, shall be permitted to restore withdrawn contributions for periods of nonelected service no later than June 30, 1994, with interest as determined by the director. [1993 c 506 § 2.]

41.40.270 Death before retirement or within sixty days following application for disability retirement—Military service—Payment of contributions to nominee, surviving spouse, or legal representative—Waiver of payment, effect—Benefits. (1) Except as specified in subsection (4) of this section, should a member die before the date of retirement the amount of the accumulated contributions standing to the member's credit in the employees' savings fund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of death:

(a) Shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there be no such designated person or persons still living at the time of the member's death, or if a member fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, such accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the surviving spouse as if in fact such spouse had been nominated by written designation as aforesaid, or if there be no such surviving spouse, then to the member's legal representatives.

(2) Upon the death of any member who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death, the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 41.40.188, calculated under the retirement allowance described in RCW 41.40.185 or 41.40.190, whichever is greater, actuarially reduced, except under subsection (5) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 shall automatically be given effect as if selected for the benefit of the designated beneficiary. If the member is not then qualified for a service retirement allowance, such benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(3) Subsection (1) of this section, unless elected, shall not apply to any member who has applied for service retirement in RCW 41.40.180, as now or hereafter amended, and thereafter dies between the date of separation from service and the member's effective retirement date, where the member has selected a survivorship option under RCW 41.40.188. In those cases the beneficiary named in the member's final application for service retirement may elect to receive either a cash refund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, or monthly payments according to the option selected by the member.

(4) If a member dies within sixty days following application for disability retirement under RCW 41.40.230, the ben-

eficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.40.235, according to the option chosen under RCW 41.40.188 in the disability application.

(5) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.40.185. [2009 c 226 § 11; 2009 c 111 § 1; 2003 c 155 § 6; 1997 c 73 § 2; 1996 c 227 § 2; 1995 c 144 § 5; 1991 c 365 § 27; 1990 c 249 § 11; 1979 ex.s. c 249 § 11; 1972 ex.s. c 151 § 12; 1969 c 128 § 11; 1965 c 155 § 5; 1963 c 174 § 13; 1961 c 291 § 9; 1953 c 201 § 1; 1953 c 200 § 14; 1951 c 141 § 1; 1949 c 240 § 19; 1947 c 274 § 28; Rem. Supp. 1949 § 11072-28.]

Reviser's note: This section was amended by 2009 c 111 § 1 and by 2009 c 226 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.280 Department may withhold refunds of contributions. The department may, in its discretion, withhold payment of all or part of a member's contributions for not more than six months after a member has ceased to be an employee. A member who files a request for a refund and subsequently enters into employment with an employer prior to the refund being made shall not be eligible for a refund. For purposes of this section, a written or oral employment agreement shall be considered entering into employment. [1994 c 177 § 7; 1991 c 35 § 86; 1973 2nd ex.s. c 14 § 2; 1947 c 274 § 29; Rem. Supp. 1947 § 11072-29.]

Findings—1994 c 177: See note following RCW 41.50.125.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.300 Benefits offset by workers' compensation or similar benefits. Any amounts which may be paid or payable under the provisions of any workers' compensation, or pension, or similar law on account of any disability shall be offset against and payable in lieu of any benefits payable from funds provided by the employer under the provisions of this chapter on account of the same disability. [1987 c 185 § 14; 1949 c 240 § 21; 1947 c 274 § 31; Rem. Supp. 1949 § 11072-31.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

41.40.310 Periodical examination of disability beneficiaries—Benefits upon resumption of gainful employment. Once each year during the first five years following the retirement of a member on a disability pension or retirement allowance, and at least once in every three year period thereafter the department may, and upon the member's application shall, require any disability beneficiary, who has not

attained age sixty years, to undergo a medical examination; such examination to be made by or under the direction of the medical adviser at the place of residence of the beneficiary, or other place mutually agreed upon. Should any disability beneficiary, who has not attained age sixty years, refuse to submit to a medical examination in any period, his or her disability pension or retirement allowance may be discontinued until his or her withdrawal of the refusal, and should the refusal continue for one year, all his or her rights in and to his or her disability pension, or retirement allowance, may be revoked by the department. If upon a medical examination of a disability beneficiary, the medical adviser reports and his or her report is concurred in by the department, that the disability beneficiary is no longer totally incapacitated for duty as the result of the injury or illness for which the disability was granted, or that he or she is engaged in a gainful occupation, his or her disability pension or retirement allowance shall cease.

If the disability beneficiary resumes a gainful occupation and his or her compensation is less than his or her compensation earnable at the date of disability, the department shall continue the disability benefits in an amount which when added to his or her compensation does not exceed his or her compensation earnable at the date of separation, but the disability benefit shall in no event exceed the disability benefit originally awarded. The compensation earnable at the date of separation shall be adjusted July 1 of each year by the ratio of the average consumer price index (Seattle, Washington area) for urban consumers, compiled by the United States department of labor, bureau of labor statistics, for the calendar year prior to the adjustment to the average consumer price index for the calendar year in which separation from service occurred but in no event shall the adjustment result in an amount lower than the original compensation earnable at the date of separation. [1991 c 35 § 87; 1984 c 184 § 14; 1965 c 155 § 7; 1963 c 174 § 14; 1955 c 277 § 7; 1951 c 50 § 9; 1949 c 240 § 22; 1947 c 274 § 32; Rem. Supp. 1949 § 11072-32.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.320 Disability beneficiary—Restoration to service. A disability beneficiary who has been or shall be reinstated to active service shall from the date of restoration again become a member of the retirement system; and shall contribute to the retirement system in the same manner as prior to the disability retirement. Any prior service and membership service, on the basis of which retirement allowances were computed at the time of retirement, shall be restored to full force and effect, and, except in the case of retirement for non-duty disability as provided in RCW 41.40.230, he or she shall be given membership service for the period of time out of service due to the disability. [1991 c 35 § 88; 1953 c 200 § 16; 1951 c 50 § 10; 1949 c 240 § 23; 1947 c 274 § 33; Rem. Supp. 1949 § 11072-33.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.330 Contributions. (1) Each employee who is a member of the retirement system shall contribute six percent of his or her total compensation earnable. Effective January 1, 1987, however, no contributions are required for any calendar month in which the member is not granted service

credit. The officer responsible for making up the payroll shall deduct from the compensation of each member, on each and every payroll of such member for each and every payroll period subsequent to the date on which he or she became a member of the retirement system the contribution as provided by this section.

(2) Any member may, pursuant to regulations formulated from time to time by the department, provide for himself or herself, by means of an increased rate of contribution to his or her account in the employees' savings fund, an increased prospective retirement allowance pursuant to RCW 41.40.190 and 41.40.185.

(3) The officer responsible for making up the payroll shall deduct from the compensation of each member covered by the provisions of RCW 41.40.190(5) and 41.40.185(4) on each and every payroll of such member for each and every payroll period subsequent to the date on which he or she thereafter becomes a member of the retirement system, an amount equal to seven and one-half percent of such member's compensation earnable. [1990 c 8 § 4; 1986 c 268 § 3; 1973 1st ex.s. c 190 § 12; 1972 ex.s. c 151 § 13; 1971 ex.s. c 271 § 10; 1969 c 128 § 12; 1953 c 200 § 17; 1951 c 50 § 11; 1949 c 240 § 24; 1947 c 274 § 34; Rem. Supp. 1949 § 11072-34.]

Findings—1990 c 8: See note following RCW 41.50.065.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

Additional notes found at www.leg.wa.gov

41.40.363 Employer's contributions—Labor guild, association or organization. Any labor guild, association, or organization qualifying as an employer under this chapter and which is required to make contributions for an elective official qualifying for membership under RCW 41.40.023(11) shall make contributions as any other employer within this chapter: PROVIDED, That the department shall cause an actuarial computation to be made of all prior service liability for which contributions are required from the employer to be computed on an actual dollar basis, and if the department determines that the contributions being made therefor under this chapter are insufficient to defray any cost to the state, the department shall require additional contributions from the employer in amounts and at times as will defray all costs to the state, the additional contributions to be completed within ten years from the date the elective official is accepted by the department. [1991 c 35 § 91; 1963 c 225 § 3.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.404 Justices or judges retirement allowance—In lieu of RCW 41.40.185. (1) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for a member who elects to participate under RCW 41.40.124(1), shall be equal to three and one-half percent of average final compensation for each year of service earned after the date of the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges newly elected or appointed after January 1, 2007, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 10.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.408 District or municipal court judges retirement allowances—In lieu of RCW 41.40.185. (1) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a district court judge or municipal court judge, for those judges who elected to participate under RCW 41.40.127(1), shall be equal to three and one-half percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a district court judge, or municipal court judge, for those judges newly elected or appointed after January 1, 2007, and who are not eligible for membership under chapter 41.28 RCW, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 12.]

Effective date—2006 c 189: See note following RCW 2.14.115.

"PLAN 2"

41.40.610 Provisions applicable to plan 2. RCW 41.40.620 through 41.40.750 shall apply only to plan 2 members. [2000 c 247 § 201; 1991 c 35 § 97; 1977 ex.s. c 295 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.620 Computation of the retirement allowance. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service. [1991 c 343 § 10; 1977 ex.s. c 295 § 3.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Additional notes found at www.leg.wa.gov

41.40.625 Lump sum retirement allowance—Reentry—Conditions for reinstatement of service. (1) On or after June 10, 1982, the director may pay a member eligible to receive a retirement allowance or the member's benefi-

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ciary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.40.620 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.40.620 or an earned disability allowance under RCW 41.40.670 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 27; 1991 c 35 § 98; 1982 c 144 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.630 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after July 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of *RCW 41.40.037(2)(d) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.40.690(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 9, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of **chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of **chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first

installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 5; 2007 c 491 § 9; 2000 c 247 § 901; 1991 c 343 § 11; 1977 ex.s. c 295 § 4.]

Reviser's note: *(1) RCW 41.40.037 was amended by 2011 1st sp.s. c 47 § 19, deleting subsection (2)(d).

***(2) Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until July 1, 2008—2007 c 491: "The new benefits provided pursuant to sections 9(3)(b) and 10(3)(b), chapter 491, Laws of 2007 are not provided to employees as a matter of contractual right prior to July 1, 2008, and will not become a contractual right thereafter if the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 2008." [2007 c 491 § 16.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Additional notes found at www.leg.wa.gov

41.40.633 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

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

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

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

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 4.]

Additional notes found at www.leg.wa.gov

41.40.640 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's 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. [1977 ex.s. c 295 § 5.]

Additional notes found at www.leg.wa.gov

41.40.660 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.40.630 or retirement for disability under RCW 41.40.670, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this

section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.720 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.630(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2003 c 294 § 6; 2002 c 158 § 13; 2000 c 186 § 8; 1998 c 340 § 9; 1996 c 175 § 7; 1995 c 144 § 6; 1990 c 249 § 10; 1977 ex.s. c 295 § 7.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.670 Earned disability allowance—Applicability to certain judges—Disposition upon death of recipient.

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.40.610 through 41.40.740. The member shall receive a monthly disability allowance computed as provided for in RCW 41.40.620 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these

medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the department, shall be considered a retirement under subsection (1) of this section.

(3)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions. [1995 c 144 § 7; 1991 c 35 § 99; 1990 c 249 § 21; 1989 c 191 § 3; 1982 c 18 § 5; 1977 ex.s. c 295 § 8.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.680 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.40.630, 41.40.670, or 41.40.700 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.40.630 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.40.630, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.40.670 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.40.700 shall accrue from the first day of the calendar month immediately following the member's death. [1977 ex.s. c 295 § 9.]

Additional notes found at www.leg.wa.gov

41.40.690 Suspension of retirement allowance upon reemployment—Exceptions—Reinstatement. (1) Except as provided in RCW 41.40.037, no retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.37.010, or 41.35.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official of a city or town.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2004 c 242 § 57; 1998 c 341 § 606; 1997 c 254 § 13; 1990 c 274 § 11; 1988 c 109 § 11; 1987 c 379 § 2; 1977 ex.s. c 295 § 10.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.40.700 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive one of the following:

(a) A retirement allowance computed as provided for in RCW 41.40.630, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.40.660 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW

41.40.630; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death;

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(c) For a member who leaves the employ of an employer to enter the uniformed services of the United States and who dies after January 1, 2007, while honorably serving in the uniformed services of the United States in Operation Enduring Freedom or Persian Gulf, Operation Iraqi Freedom, an amount equal to two hundred percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.40.630. The member's retirement allowance is computed under RCW 41.40.620. [2009 c 226 § 12; 2007 c 487 § 8; 2003 c 155 § 7; 2000 c 247 § 1004; 1995 c 144 § 8; 1993 c 236 § 5; 1991 c 365 § 28; 1990 c 249 § 18; 1977 ex.s. c 295 § 11.]

Findings—1990 c 249: See note following RCW 2.10.146.

Additional notes found at www.leg.wa.gov

41.40.710 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan 2 employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.061 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service in a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his

or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060, 41.45.061, and 41.45.067 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or eligible child or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 1; 2005 c 64 § 2; 2000 c 247 § 1106; 1996 c 61 § 4; 1994 c 197 § 28; 1993 c 95 § 2; 1992 c 119 § 3; 1991 c 35 § 100; 1977 ex.s. c 295 § 12.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.40.720 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.40.630 if such member maintains the member's accumulated contributions intact. [1977 ex.s. c 295 § 13.]

Additional notes found at www.leg.wa.gov

41.40.730 Refund of contributions. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.40.610 through 41.40.740. [1982 1st ex.s. c 52 § 23; 1977 ex.s. c 295 § 14.]

Additional notes found at www.leg.wa.gov

41.40.740 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 29; 1977 ex.s. c 295 § 15.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.40.748 Commercial vehicle enforcement officers—Limited optional transfer to Washington state patrol retirement system. (1) Active members of the Washington state patrol retirement system who have previously established service credit in the public employees' retirement system plan 2 while employed in the state patrol as a commercial vehicle enforcement officer, and who became a commissioned officer after July 1, 2000, and prior to June 30, 2001, have the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Transfer service credit earned under the retirement system as a commercial vehicle enforcement officer to the Washington state patrol retirement system by making an irrevocable choice filed in writing with the department of retirement systems within one year of the department's announcement of the ability to make such a transfer.

(2)(a) Any commissioned officer choosing to transfer under this section shall have transferred from the retirement system to the Washington state patrol retirement system:

(i) All the employee's applicable accumulated contributions plus interest, and an equal amount of employer contributions attributed to such employee; and

(ii) All applicable months of service as a commercial vehicle enforcement officer credited to the employee under this chapter as though that service was rendered as a member of the Washington state patrol retirement system.

(b) For the applicable period of service, the employee shall pay:

(i) The difference between the contributions the employee paid to the retirement system, and the contributions which would have been paid by the employee had the employee been a member of the Washington state patrol retirement system, plus interest as determined by the director. This payment shall be made no later than December 31, 2010, or the date of retirement, whichever comes first;

(ii) The difference between the employer contributions paid to the public employees' retirement system, and the employer contributions which would have been payable to the Washington state patrol retirement system; and

(iii) An amount sufficient to ensure that the funding status of the Washington state patrol retirement system will not change due to this transfer.

(c) If the payment required by this subsection is not paid in full by the deadline, the transferred service credit shall not be used to determine eligibility for benefits nor to calculate benefits under the Washington state patrol retirement system. In such case, the employee's accumulated contributions plus interest transferred under this subsection, and any payments

made under this subsection, shall be refunded to the employee. The employer shall be entitled to a credit for the employer contributions transferred under this subsection.

(d) An individual who transfers service credit and contributions under this subsection is permanently excluded from the public employees' retirement system for all service as a commercial vehicle enforcement officer. [2003 c 294 § 7; 2002 c 269 § 1.]

41.40.749 Certain commissioned officers—Limited optional transfer to Washington state patrol retirement system. (1) Active members of the Washington state patrol retirement system who have previously established service credit in the public employees' retirement system plan 2 while employed in the state patrol as either (a) a commercial vehicle enforcement officer who then became a commissioned officer on or before July 16, 2000, or (b) a communications officer who then became a commissioned officer, have the following options:

(i) Remain a member of the public employees' retirement system; or

(ii) Transfer service credit earned under the retirement system as a communications officer or commercial vehicle enforcement officer to the Washington state patrol retirement system by making an irrevocable choice filed in writing with the department of retirement systems within one year of the department's announcement of the ability to make such a transfer.

(2)(a) Any commissioned officer choosing to transfer under this section shall have transferred from the retirement system to the Washington state patrol retirement system:

(i) All the employee's applicable accumulated contributions plus interest, and an equal amount of employer contributions attributed to that employee; and

(ii) All applicable months of service as a communications officer or commercial vehicle enforcement officer credited to the employee under this chapter as though that service was rendered as a member of the Washington state patrol retirement system.

(b) For the applicable period of service, the employee shall pay:

(i) The difference between the contributions the employee paid to the retirement system and the contributions that would have been paid by the employee had the employee been a member of the Washington state patrol retirement system, plus interest as determined by the director. This payment shall be made no later than December 31, 2019, or the date of retirement, whichever comes first;

(ii) The difference between the employer contributions paid to the public employees' retirement system, and the employer contributions that would have been payable to the Washington state patrol retirement system; and

(iii) An amount sufficient to ensure that the funding status of the Washington state patrol retirement system will not change due to this transfer.

(c) If the payment required by this subsection is not paid in full by the deadline, the transferred service credit shall not be used to determine eligibility for benefits nor to calculate benefits under the Washington state patrol retirement system. In such a case, the employee's accumulated contributions plus interest transferred under this subsection, and any pay-

ments made under this subsection, shall be refunded to the employee. The employer shall be entitled to a credit for the employer contributions transferred under this subsection.

(d) An individual who transfers service credit and contributions under this subsection is permanently excluded from the public employees' retirement system for all service as a communications officer or commercial vehicle enforcement officer. [2012 c 72 § 1.]

41.40.750 Transfer of membership and service credit—Restoration of contributions and service credit.

(1) Effective September 1, 2000, the membership of all plan 2 members currently employed in eligible positions in a school district or educational service district and all plan 2 service credit for such members, is transferred to the Washington school employees' retirement system plan 2. Plan 2 members who have withdrawn their member contributions for prior plan 2 service may restore contributions and service credit to the Washington school employees' retirement system plan 2 as provided under RCW 41.40.740.

(2)(a) The membership and previous service credit of a plan 2 member not employed in an eligible position on September 1, 2000, will be transferred to the Washington school employees' retirement system plan 2 when he or she becomes employed in an eligible position prior to August 1, 2009. Plan 2 members not employed in an eligible position on September 1, 2000, who have withdrawn their member contributions for prior plan 2 service may restore contributions and service credit to the Washington school employees' retirement system plan 2 as provided under RCW 41.40.740, if they first establish eligibility in the Washington school employees' retirement system plan 2 prior to August 1, 2009.

(b) The membership and previous service credit of a plan 2 member last employed by a school district or educational service district and retired prior to September 1, 2000, will be transferred to the Washington school employees' retirement system plan 2 if the member opts to reestablish membership prior to August 1, 2009.

(3) Members who restore contributions and service credit under subsection (1) or (2) of this section shall have their contributions and service credit transferred to the Washington school employees' retirement system.

(4) From September 1, 2009, through November 30, 2009, upon written request to the department, active and inactive members transferred under subsection (2) of this section who did not establish membership and earn service credit for employment with a school district or educational service district prior to the transfer, and who have not transferred to plan 3 of the Washington school employees' retirement system or plan 3 of the public employees' retirement system, may restore their transferred membership and previous service credit to plan 2. All previously transferred contributions and interest, and additional interest as determined by the department, shall be returned to plan 2. An additional amount shall be transferred from the Washington school employees' retirement system sufficient to offset the liabilities returned to plan 2 under this subsection, as determined by the state actuary. [2009 c 209 § 1; 2001 2nd sp.s. c 10 § 13; 1998 c 341 § 113.]

Additional notes found at www.leg.wa.gov

41.40.760 End of participation in judicial retirement account plan—Newly elected or appointed judges or justices. (1) Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge shall not participate in the judicial retirement account plan under chapter 2.14 RCW and shall be subject to the benefit and contribution provisions under chapter 189, Laws of 2006.

(2) Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge, who has not previously established membership in this system, shall become a member of plan 2 and shall be subject to the benefit and contribution provisions under chapter 189, Laws of 2006. [2006 c 189 § 2.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.763 End of participation in chapter 41.28 RCW—Newly elected or appointed judges. (1) Beginning January 1, 2007, any newly elected or appointed district court judge or municipal court judge, who is not eligible for membership under chapter 41.28 RCW, shall be subject to the benefit and contribution provisions under chapter 189, Laws of 2006.

(2) Beginning January 1, 2007, any newly elected or appointed district court judge, or municipal court judge, who has not previously established membership in this system, and who is not eligible for membership under chapter 41.28 RCW, shall become a member of plan 2 and shall be subject to the benefit and contribution provisions under chapter 189, Laws of 2006. [2006 c 189 § 4.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.767 Justices or judges retirement allowance—In lieu of RCW 41.40.620. (1) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under RCW 41.40.124(1), shall be equal to three and one-half percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges newly elected or appointed after January 1, 2007, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 13.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.770 District or municipal court judges retirement allowance—In lieu of RCW 41.40.620. (1) In lieu of the retirement allowance provided under RCW 41.40.620,

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the retirement allowance payable for service as a district court judge or municipal court judge for those judges who elected to participate under RCW 41.40.127(1) shall be equal to three and one-half percent of the average final compensation for each year of such service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a district court judge, or municipal court judge, for those judges newly elected or appointed after January 1, 2007, and who are not eligible for membership under chapter 41.28 RCW, shall be equal to three and one-half percent of average final compensation for each year of service after January 1, 2007. The total retirement benefits accrued under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to January 1, 2007, shall not exceed seventy-five percent of average final compensation. [2006 c 189 § 14.]

Effective date—2006 c 189: See note following RCW 2.14.115.

"PLAN 3"

41.40.780 Provisions applicable to plan 3—Plan 3 elements. (1) RCW 41.40.780 through 41.40.850 and 41.40.930 apply only to plan 3 members.

(2) Plan 3 consists of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(3) Unless otherwise specified, all references to "plan 3" in this subchapter refer to the defined benefit portion of plan 3. [2000 c 247 § 301.]

41.40.785 Membership in plan 2 or plan 3—Irrevocable choice—Default to plan 3. (1) All employees who first become employed by an employer in an eligible position on or after March 1, 2002, for state agencies or institutes of higher education, or September 1, 2002, for other employers, shall have a period of ninety days to make an irrevocable choice to become a member of plan 2 or plan 3. At the end of ninety days, if the member has not made a choice to become a member of plan 2, he or she becomes a member of plan 3.

(2) For administrative efficiency, until a member elects to become a member of plan 3, or becomes a member of plan 3 by default pursuant to subsection (1) of this section, the member shall be reported to the department in plan 2, with member and employer contributions. Upon becoming a member of plan 3 by election or by default, all service credit shall be transferred to the member's plan 3 defined benefit, and all employee accumulated contributions shall be transferred to the member's plan 3 defined contribution account. [2000 c 247 § 302.]

41.40.787 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.40.790

by notifying the department in writing of their intention. [2003 c 349 § 3.]

Additional notes found at www.leg.wa.gov

41.40.790 Computation of retirement allowance. (1)

A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.40.820 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences. [2000 c 247 § 303.]

41.40.795 Transfer period and basis—Additional transfer payment. (1) As used in this section, unless the context clearly requires otherwise:

(a) "Transfer period" means the time during which a member of one of the groups of plan 2 members identified in subsection (2) of this section may choose to irrevocably transfer from plan 2 to plan 3.

(b) "Transfer basis" means the accumulated contributions present in a member's savings fund on March 1, 2002, less fifty percent of any contributions made pursuant to RCW 41.50.165(2), which is the basis for calculation of the plan 2 to plan 3 additional transfer payment.

(c) "Additional transfer payment date" means June 1, 2003, the date of the additional transfer payment made according to subsection (6) of this section.

(2) Every plan 2 member employed by an employer in an eligible position has the option during their transfer period to make an irrevocable transfer to plan 3 according to the following schedule:

(a) For those members employed by state agencies and institutes of higher education the transfer period means the period between March 1, 2002, and September 1, 2002.

(b) For those members employed by other organizations the transfer period means the period between September 1, 2002, and June 1, 2003.

(c) For those members employed by more than one employer within the retirement system, and whose transfer period is different between one employer and another, the member's transfer period is the last period that is available from any of that member's employers within the retirement system.

(3) All service credit in plan 2 shall be transferred to the defined benefit portion of plan 3.

(4)(a) Anyone who first became a state or higher education member of plan 2 before March 1, 2002, or a local government member of plan 2 before September 1, 2002, who wishes to transfer to plan 3 after their transfer period may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(b) Anyone who chose to become a state or higher education member of plan 2 on or after March 1, 2002, or a local government member of plan 2 on or after September 1, 2002, is prohibited from transferring to plan 3 under (a) of this subsection.

(5) The accumulated contributions in plan 2, less fifty percent of any contributions made pursuant to RCW

41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(3), except that interest earned on all such contributions shall be transferred to the member's account.

(6) Those members employed by state agencies and institutions of higher education who request to transfer under this section during their transfer period and establish service credit for June 2002, and those members employed by other organizations and who establish service credit for either June 2002 or February 2003, shall have their member account:

(a) If a member's transfer period is that described in subsection (2)(a) of this section, increased by one hundred ten percent of the transfer basis;

(b) If a member's transfer period is that described in subsection (2)(b) of this section, increased by one hundred eleven percent of the transfer basis; and

(c) Deposited into the member's individual account on the additional transfer payment date.

(7) If a member who requests to transfer dies before June 1, 2003, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(8) Anyone previously retired from plan 2 is prohibited from transferring to plan 3.

(9) The legislature reserves the right to discontinue the right to transfer under this section and to modify and to discontinue the right to an additional payment under this section for any plan 2 members who have not previously transferred to plan 3. [2002 c 159 § 1; 2000 c 247 § 304.]

41.40.798 Higher education employees—Option to transfer to plan 3—Limitation on supplemental benefits under RCW 28B.10.400. (1) All employees who are not qualified under RCW 41.32.836 and who are first employed by an institution of higher education in a position eligible for participation in old age annuities or retirement income plans under RCW 28B.10.400 on or after July 1, 2011, have a period of thirty days to make an irrevocable choice to:

(a) Become a member of the public employees' retirement system plan 3 under this chapter; or

(b) Participate in the annuities or retirement income plan provided by the institution.

(2) At the end of thirty days, if the member has not made a choice to become a member of the public employees' retirement system, he or she becomes a participant in the institution's plan under RCW 28B.10.400, but does not become eligible for any supplemental benefit under RCW 28B.10.400(1)(c). [2011 1st sp.s. c 47 § 18.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

41.40.801 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.40.820, 41.40.825, or 41.40.835 is eligible to commence

receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.40.820 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [2003 c 294 § 8; 2000 c 247 § 305.]

41.40.805 Leaves of absence—Military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. This subsection shall be administered in a manner consistent with the require-

ments of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 and 41.45.067 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is enti-

tled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 2; 2005 c 64 § 3; 2000 c 247 § 306.]

41.40.811 Purchased service credit—Allocation. (1) Contributions on behalf of the employer paid by the employee to purchase plan 3 service credit shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(3). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan 3 service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan 3 membership service may be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service. [2000 c 247 § 307.]

41.40.815 Lump sum payments—Reentry. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased annually as determined by the director. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the nor-

mal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section is deemed to be retired from this system. [2000 c 247 § 308.]

41.40.820 Retirement eligibility. (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or

(c) Completed five service credit years by the transfer payment date specified in RCW 41.40.795, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.40.795;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after July 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of *RCW 41.40.037(2)(d) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.40.850(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 10, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of **chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of **chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [2012 1st sp.s. c 7 § 6; 2007 c 491 § 10; 2006 c 33 § 3; 2000 c 247 § 309.]

Reviser's note: *(1) RCW 41.40.037 was amended by 2011 1st sp.s. c 47 § 19, deleting subsection (2)(d).

** (2) Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Benefits not contractual right until July 1, 2008—2007 c 491: See note following RCW 41.40.630.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.40.823 Member with terminal illness—Removal from system. (1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(2016 Ed.)

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

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

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

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal. [2005 c 131 § 1.]

Additional notes found at www.leg.wa.gov

41.40.825 Disability allowance—Death of recipient.

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department shall be eligible to receive an allowance under the provisions of plan 3. The member shall receive a monthly disability allowance computed as provided for in RCW 41.40.790 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in RCW 41.40.845. [2000 c 247 § 310.]

41.40.830 Restored, purchased service credit under plan 2—Transfer to plan 3.

(1) Any member who elects to transfer to plan 3 and has eligible unrestored withdrawn contributions in plan 2, may restore such contributions under the provisions of RCW 41.40.740 with interest as determined by the department. The restored plan 2 service credit will be automatically transferred to plan 3. Restoration payments will be transferred to the member account in plan 3. If the member fails to meet the time limitations of RCW 41.40.740, they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan 2 service credit will be automatically transferred to plan 3. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan 3 may purchase plan 2 service credit under RCW 41.40.740. Purchased plan 2 service credit will be automatically transferred to plan 3. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan 3 and shall not be refundable when paid to the fund described in RCW 41.50.075(3). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.40.740, they may subsequently restore such contributions under the

provisions of RCW 41.50.165(2). Purchased plan 2 service credit will be automatically transferred to plan 3. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account. [2000 c 247 § 311.]

41.40.835 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.40.790 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.820.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.40.820. The member's retirement allowance is computed under RCW 41.40.790. [2009 c 226 § 13; 2003 c 155 § 8; 2000 c 247 § 312.]

Additional notes found at www.leg.wa.gov

41.40.840 Postretirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

- (1) The original dollar amount of the retirement allowance;
- (2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";
- (3) The index for the calendar year prior to the date of determination, to be known as "index B"; and
- (4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

- (a) Produce a retirement allowance which is lower than the original retirement allowance;
 - (b) Exceed three percent in the initial annual adjustment;
- or
- (c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's 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. [2000 c 247 § 313.]

41.40.845 Options for payment of retirement allowances—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.40.820 or retirement for disability under RCW 41.40.825, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. Upon the death of the member, the member's benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

- (i) The department shall honor the designation as if made by the member under subsection (1) of this section; and
- (ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2002, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted under this section and satisfies the conditions of (a)(i) of this subsection

shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.820(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.820(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed under *chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2003 c 294 § 9; 2002 c 158 § 14; 2000 c 247 § 314.]

***Reviser's note:** Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

41.40.850 Suspension of retirement allowance upon reemployment—Exception—Reinstatement. (1) Except as provided in RCW 41.40.037, no retiree under the provisions of plan 3 shall be eligible to receive such retiree's

monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official of a city or town.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2005 c 327 § 9; 2000 c 247 § 315.]

41.40.870 Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges. (1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election in lieu of future employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a thirty-seven and one-half percent of average final compensation benefit. The member shall pay two and one-half percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional six-tenths percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 3 who are not currently employed as a supreme court justice, court of appeals judge, or superior court judge, and who have past service as a supreme court justice, court of appeals judge, or superior court judge; and

(b) Inactive vested members of plan 3 who have separated, have not yet retired, and who have past service as a supreme court justice, court of appeals judge, or superior court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(5) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account. [2008 c 300 § 3; 2007 c 123 § 3; 2006 c 189 § 8.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.873 Additional benefit for district or municipal court judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a thirty-seven and one-half percent of average final compensation benefit. The member shall pay two and one-half percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional six-tenths percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 3 who are not currently employed as a district court judge or municipal court judge, and who have past service as a district court judge or municipal court judge; and

(b) Inactive vested members of plan 3 who have separated, have not yet retired, and who have past service as a district court judge or municipal court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(5) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account. [2008 c 300 § 4; 2007 c 123 § 4; 2006 c 189 § 9.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.877 Justices or judges retirement allowance—In lieu of RCW 41.40.790. In lieu of the retirement allowance provided under RCW 41.40.790, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under RCW 41.40.870(1), shall be equal to one and six-tenths percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed thirty-seven and one-half percent of average final compensation. [2006 c 189 § 15.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.880 District or municipal court judges retirement allowance—In lieu of RCW 41.40.790. In lieu of the retirement allowance provided under RCW 41.40.790, the retirement allowance payable for service as a district court judge or municipal court judge, for those judges who elected to participate under RCW 41.40.873(1), shall be equal to one

and six-tenths percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under chapter 189, Laws of 2006 in combination with benefits accrued during periods served prior to the election shall not exceed thirty-seven and one-half percent of average final compensation. [2006 c 189 § 16.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.920 Effective date—1977 ex.s. c 295. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1977. [1977 ex.s. c 295 § 25.]

41.40.930 Benefits not contractual right until March 1, 2002. The benefits provided pursuant to chapter 247, Laws of 2000 are not provided to employees as a matter of contractual right prior to March 1, 2002. The legislature retains the right to alter or abolish these benefits at any time prior to March 1, 2002. [2000 c 247 § 316.]

41.40.931 Effective dates—2000 c 247. (1) Except for sections 408 and 901 through 906 of this act, this act takes effect March 1, 2002.

(2) Section 408 of this act takes effect January 1, 2004.

(3) Sections 901 through 906 of this act take effect September 1, 2000. [2000 c 247 § 1201.]

41.40.932 Subchapter headings not law—2000 c 247. Subchapter headings in this act are not any part of the law. [2000 c 247 § 1202.]

Chapter 41.41 RCW

STATE EMPLOYEES' RETIREMENT—FEDERAL SOCIAL SECURITY

Sections

41.41.010	Plan for covering members under OASI approved.
41.41.020	Terms and provisions of plan.
41.41.030	Effective date for coverage of members.

41.41.010 Plan for covering members under OASI approved. The plan for covering the state employee members of the state employees' retirement system under the old age and survivorship provisions of Title II of the federal social security act as amended, required by RCW 41.48.050 as amended by section 5, chapter 4, Laws of the extraordinary session of 1955, approved by the state employees' retirement board of the state employees' retirement system on the 1st day of August, 1955, and approved by the governor of the state of Washington on the 16th day of August, 1955, is hereby approved. [1957 c 222 § 1.]

41.41.020 Terms and provisions of plan. The terms and provisions of the plan are as follows:

(1) Each political subdivision of the state employing members of the state employees' retirement system, and such employees, after approval of this plan by its governing body as provided in RCW 41.48.030(4)(f) and after approval by its eligible employees through referendum as provided in RCW

41.48.030 (3) and (4), and the state itself as such a subdivision, and its employees, after approval of this plan by the legislature as provided in RCW 41.48.050(d) and RCW 41.48.030(4)(f) and after approval by its eligible employees through referendum as provided in RCW 41.48.030 (3) and (4), shall be deemed to have accepted and agreed to be bound by the following terms and conditions in consideration of extension of the existing agreement between the secretary of health, education and welfare and the governor to make the protection of the federal old age and survivors insurance program available and applicable to such employees.

(2) As used in this plan the terms quoted below shall have the meanings assigned thereto in this subsection.

"Political subdivision" means any political subdivision, or instrumentality of one or more such subdivisions, or proprietary enterprise acquired, purchased, or originated by one or more such subdivisions after December, 1950, which employs members of the state employees' retirement system. The state, its agencies, instrumentalities, and institutions of higher learning shall be grouped and considered as a single political subdivision.

"Employee" means any person who is a member of the state employees' retirement system and is employed by a political subdivision, except persons serving in police officer's or firefighters' positions and officials compensated on a fee basis.

"Wages" shall have the meaning given in *RCW 41.48.020(1) and section 209 of the social security act (42 U.S.C.A. Sec. 409); and refers to the first four thousand two hundred dollars paid to any employee in any calendar year.

"State," where not otherwise clearly indicated by the context, means the commissioner of employment security or other officer designated by the governor to administer the plan at the state level for all participating political subdivisions.

(3) The terms and conditions of this plan are intended and shall be construed to be in conformity with the requirements of the federal social security act as amended and with the requirements of chapter 41.48 RCW, and particularly RCW 41.48.050, as amended by chapter 4, Laws of the extraordinary session of 1955.

(4) The rights and benefits accruing to employees from membership in the state employees' retirement system shall in no way be altered or impaired by this plan or by the additional and supplementary OASI coverage which such employees may receive hereunder. Nothing herein shall be construed to alter in any way the obligations of any political subdivision or its employees to the retirement system.

(5) There shall be no additional cost to or involvement of the state with respect to OASI coverage for state employee members of the state employees' retirement system until this plan has been approved by the legislature.

(6) OASI coverage shall be applicable to all services performed by its employees for a political subdivision which has approved this plan.

(7) Each employee to whom OASI coverage is made applicable under this plan pursuant to an extension or modification under RCW 41.48.030 of the existing agreement between the secretary of health, education, and welfare and the governor shall be required to pay into the OASI contribution account established by RCW 41.48.060 during the

period of such coverage contributions with respect to his or her wages in an amount equal to the employee tax imposed by the federal insurance contributions act (section 3101, Internal Revenue Code of 1954), in consideration of the employee's retention in service by the political subdivision. The subdivision shall withhold such contributions from the wages paid to the employee; and shall remit the contributions so withheld in each calendar quarter to the state for deposit in the contribution account not later than the twentieth calendar day of the month following that quarter.

(8) Each political subdivision shall pay into the contribution account with respect to the wages of its employees during the period of their OASI coverage pursuant to this plan contributions in an amount equal to the employer tax imposed by the federal insurance contributions act (section 3111, Internal Revenue Code of 1954), from the fund of the subdivision from which such employees' wages are paid. The subdivision shall remit such contributions to the state for deposit in the contribution account on a quarterly basis, not later than the twentieth calendar day of the month following each calendar quarter.

(9) If any political subdivision other than that comprising the state, its agencies, instrumentalities, and institutions of higher learning fails to remit as provided herein employer contributions or employee contributions, or any part of either, such delinquent contributions may be recovered with interest at the rate of six percent per annum by action in a court of competent jurisdiction against the political subdivision; or such delinquent contributions may at the request of the governor be deducted from any moneys payable to such subdivision by the state.

(10) Each political subdivision shall be charged with a share of the cost of administration of this plan by the state, to be computed as that proportion of the overall cost of administration which its total annual contributions bear to the total annual contributions paid by all subdivisions on behalf of employees covered by the plan. The state shall compute the share of cost allocable to each subdivision and bill the subdivision therefor at the end of each fiscal year. The subdivision shall within ninety days thereafter remit its share of the cost to the state for deposit in the general fund of the state.

(11) Each political subdivision shall submit to the state, through the employment security department, P.O. Box 367, Olympia, Washington, or such other officer or agency as the governor may subsequently designate, on forms furnished by the state, not later than the twentieth calendar day of the month following the end of each calendar quarter, the following information:

- A. The social security account number of each employee;
- B. The name of each employee;
- C. The amount of wages subject to contributions as required hereunder paid to each employee during the quarter;
- D. The total amount of wages subject to contributions paid to all employees during the quarter;
- E. The total amount of employee contributions withheld and remitted for the quarter; and
- F. The total amount of employer contributions paid by the subdivision for the quarter.

(12) Each political subdivision shall furnish in the same manner as provided in subsection (11) [of this section], upon

reasonable notice, such other and further reports or information as the governor may from time to time require. Each subdivision shall comply with such requirements as the secretary of health, education, and welfare or the governor may from time to time establish with respect to any or all of the reports or information which are or may be provided for under subsection (11) [of this section] or this subsection in order to assure the correctness and verification thereof.

(13) The governing body of each political subdivision shall designate an officer of the subdivision to administer such accounting, reporting, and other functions as will be required for the effective operation of this plan within the subdivision, as provided herein. The commissioner of employment security, or such other officer as the governor may designate, shall perform or supervise those functions with respect to employees of the subdivision comprising the state, its agencies, instrumentalities, and institutions of higher learning; and shall serve as the representative of the participating political subdivisions in the administration of this plan with the secretary of health, education, and welfare.

(14) OASI coverage may be made applicable as provided herein to employees of any political subdivision regardless of the approval or disapproval of this plan by any other subdivision.

(15) Each political subdivision, with the approval of a majority of its employees as indicated by vote thereon in conjunction with the referendum to be held pursuant to RCW 41.48.030 (3) and (4), may designate the first day of any month beginning with January of 1955 as the effective date of OASI coverage for such employees; except that after January 1, 1958, a subdivision may not so designate an effective date prior to the first day of the current calendar year.

(16) The governor may terminate the operation of this plan in its entirety with respect to any political subdivision, in his or her discretion, if he or she finds that the subdivision has failed to comply substantially with any requirement or provision of this plan. The plan shall not be so terminated until reasonable notice and opportunity for hearing thereon have been given to the subdivision under such conditions, consistent with the provisions of the social security act, as shall have been established in regulations by the governor. [2012 c 117 § 60; 1957 c 222 § 2.]

*Reviser's note: RCW 41.48.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (6).

41.41.030 Effective date for coverage of members.

The effective date of OASI coverage for state employee members of the state employees' retirement system shall be the 1st day of July, 1957; provided the terms and conditions set forth in RCW 41.48.030(3) have been fulfilled. [1957 c 222 § 3.]

Chapter 41.44 RCW

STATEWIDE CITY EMPLOYEES' RETIREMENT

Sections

41.44.010	Title of chapter.
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41.44.030	Terms defined.
41.44.040	System created—Operative date.
41.44.050	Election to participate.
41.44.060	Persons excluded.

41.44.070	Board of trustees.
41.44.080	Powers and duties of board—Compensation—Liability.
41.44.090	Contributions by cities—Withdrawal from system.
41.44.100	Retirement fund—Deposit—Investment—Cost.
41.44.105	Supplemental benefits fund.
41.44.110	Membership.
41.44.120	Prior service credit.
41.44.130	Contributions by employees.
41.44.140	Retirement for service.
41.44.150	Allowance on retirement for service.
41.44.160	Retirement for disability.
41.44.170	Allowance on retirement for disability.
41.44.180	Examination of disability beneficiary—Reentry.
41.44.190	Withdrawal from system—Reentry—Payment on death of member.
41.44.200	Withdrawal—Procedure as to city's contribution.
41.44.210	Benefit on death in line of duty.
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41.44.260	Merger of existing or new systems into statewide system—Contract.
41.44.270	Agreements between board and cities which accept social security act benefits.
41.44.300	System abolished—Date—Transfer of assets, liabilities, and responsibilities.
41.44.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Portability of public retirement benefits: Chapter 41.54 RCW.

41.44.010 Title of chapter. This chapter shall be known and may be cited as the "Statewide City Employees' Retirement System Law". [1947 c 71 § 1; Rem. Supp. 1947 § 9592-130.]

Additional notes found at www.leg.wa.gov

41.44.020 Purpose of chapter. The purpose of this chapter is to provide for an actuarially sound system for the payment of annuities and other benefits to officers and employees and to beneficiaries of officers and employees of cities and towns thereby enabling such employees to provide for themselves and their dependents in case of old age, disability and death, and effecting economy and efficiency in the public service by furnishing an orderly means whereby such employees who have become aged or otherwise incapacitated may, without hardship or prejudice, be retired from active service. [1947 c 71 § 2; Rem. Supp. 1947 § 9592-131.]

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

(1) "Accumulated additional contributions" means the sum of all "additional contributions" made by a member standing to the credit of the individual account, together with regular interest thereon.

(2) "Accumulated normal contributions" means the sum of all normal contributions, deducted from the compensation of a member, standing to the credit of his or her individual account, together with regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(4) "Additional contributions" means contributions made pursuant to subsection (6) of RCW 41.44.130.

(5) "Annuity" means payments derived from contributions made by a member as provided herein.

(6) "Beneficiary" means any person in receipt of a pension, annuity, retirement allowance, disability allowance, or any other benefit herein.

(7) "Board" means the "board of trustees" provided for herein.

(8) "City" or "cities" includes town or towns.

(9) "Compensation" means the compensation payable in cash, plus the monetary value, as determined by the board of trustees, of any allowance in lieu thereof (but for the purposes of this chapter such "compensation" shall not exceed three hundred dollars per month, except as to those employees of any member city the legislative body of which shall not later than July 1, 1953, have irrevocably elected by resolution or ordinance to increase the limitation herein contained, effective as to all of its employees, from three hundred dollars to four hundred dollars, commencing on said date, or which shall so elect prior to January 1st of any succeeding year, effective as of January 1st of any such succeeding year, and as to such employees shall, commencing on the specified date, not exceed four hundred dollars or an amount equal to such increased limitation established by such ordinance or resolution per month): PROVIDED HOWEVER, That the foregoing limitation shall not apply to uniformed personnel.

(10) "Compensation earnable" means the full rate of compensation that would be payable to an employee if he or she worked the full normal working time (but for the purposes of this chapter, such "compensation earnable" shall not exceed three hundred dollars per month, except as to those employees of any member city the legislative body of which shall not later than July 1, 1953, have irrevocably elected by resolution or ordinance to increase the limitation herein contained, effective as to all of its employees, from three hundred dollars to four hundred dollars, commencing on said date, or which shall so elect prior to January 1st of any succeeding year, effective as of January 1st of any such succeeding year, and as to such employees shall, commencing on the specified date, not exceed four hundred dollars or an amount equal to such increased limitation established by such ordinance or resolution per month): PROVIDED, HOWEVER, That the foregoing limitation shall not apply to uniformed personnel: PROVIDED FURTHER, That after January 1, 1968 this term shall mean the full rate of compensation payable to an employee if he or she worked the full normal working time.

(11) "Creditable service" means such service as is evidenced by the record of normal contributions, plus prior service as evidenced by prior service certificate.

(12) "Current service" means service after the employee has become a member of the system.

(13) "Effective date" when used with regard to employees means the date on which any individual or group of employees became members of any retirement system and when used with regard to any city or town shall mean the date on which it became a participant.

(14) "Employee" means any appointive officer or employee and shall include elective officials to the extent specified herein.

(15) "Excess interest income" means that interest income earned and received from investments in excess of the interest income on investments required to meet actuarial funding requirements.

(16) "Final compensation" means the highest average annual compensation earnable in any five consecutive years of actual service rendered during the ten years immediately preceding retirement, or where the employee has less than

five consecutive years of actual service, the earnable compensation for the last five years preceding his or her retirement.

(17) "Fiscal year" means any year commencing with January 1st and ending with December 31st next following.

(18) "Matching contribution" means the contribution of the city deposited in an amount equal to the normal contributions of the employee.

(19) "Member" means any person included in the membership of the retirement system as provided herein.

(20) "Miscellaneous personnel" means officers and employees other than those in the uniformed police or fire service: PROVIDED, Those members of the fire department who are ineligible to the benefits of a firefighters' pension system established by or pursuant to any other state law, are also included in the miscellaneous personnel.

(21) "Normal contributions" means the contributions at the rate provided for in RCW 41.44.130, excluding those referred to in subsection (6).

(22) "Part time employees" means those employees who, although regularly and continuously employed, do not regularly perform their duties the full number of hours required of other regular employees, including but not confined to such employees as police judges, city attorneys, and other officers and employees who are also engaged in outside employment or occupations.

(23) "Pension" means payments derived from contributions made by the city as provided herein.

(24) "Persons having an insurable interest in his or her life" means and includes only such persons who, because of relationship from ties of blood or marriage, have reason to expect some benefit from the continuation of the life of the member.

(25) "Prior service" means the service of a member for compensation rendered a city prior to the effective date and shall include service in the armed forces of the United States to the extent specified herein and service specified in RCW 41.44.120(5).

(26) "Regular interest" means interest compounded annually at such rate as shall have been adopted by the board of trustees in accordance with the provisions of this chapter.

(27) "Released matching contributions" means such "matching contributions" as are no longer held for the benefit of the employee.

(28) "Retirement allowance" means the pension plus annuity.

(29) "Retirement fund" means "statewide city employees retirement fund" provided for herein.

(30) "Retirement system" means the statewide city employees retirement system provided for herein.

(31) "Service" means service rendered to a city for compensation; and for the purpose of this chapter a member shall be considered as being in service only while he or she is receiving compensation from the city for such service or is on leave granted for service in the armed forces of the United States as contemplated in RCW 41.44.120.

(32) "Uniformed personnel" means any employee who is a police officer in service or who is subject to call to active service or duty as such. [2012 c 117 § 61; 1967 ex.s. c 28 § 6; 1961 c 227 § 1; 1959 c 70 § 1; 1953 c 228 § 1; 1951 c 275 § 2; 1947 c 71 § 3; Rem. Supp. 1947 § 9592-132.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—1967 ex.s. c 28: "It is the purpose of this act to provide amendments to existing legislation relating to the statewide city employees retirement system to provide for an increase of investment earnings to be used for costs in purchasing, safekeeping, servicing and handling of securities, to amend the mandatory retirement age of uniformed personnel from attained age fifty-five to the minimum age for social security benefits, to change the time required for vested rights from ten years to five years in accordance with the recommendation of the federal committee on intergovernmental relations and to help meet competition with private industry by providing additional fringe benefits or an incentive program for city employees to attract and retain competent employees in public service." [1967 ex.s. c 28 § 1.]

Additional notes found at www.leg.wa.gov

41.44.040 System created—Operative date. A retirement system is hereby authorized for employees of cities, same to become operative after the requisite city or cities or combination thereof, have signified their intention to participate in the retirement system and the board has been appointed and qualified as herein provided. The board may begin to function, establish an office, employ an actuary and such other personnel as necessary and undertake the work of establishing the retirement system but it shall not be required to undertake such work unless necessary moneys are made available through negotiated loans or advances from cities or otherwise.

Whenever cities have notified the governor of election to join the retirement system to an extent which would place three hundred or more employees under the system, the governor shall appoint board members as provided herein and the system so created and established shall be forthwith constituted. The date when the system shall become operative as to any city shall be fixed by the board. [1947 c 71 § 4; Rem. Supp. 1947 § 9592-133.]

Reviser's note: Caption for 1947 c 71 § 4 reads as follows: "*Sec. 4. AUTHORIZATION AND CREATION.*"

41.44.050 Election to participate. Any city or town may elect to participate in the retirement system established by this chapter: PROVIDED, That a first-class city may establish or maintain any other retirement system authorized by any other law or its charter. The manner of election to participate in a retirement system under this chapter shall be as follows:

(1) The legislative body therein by ordinance making such election;

(2) Approval by vote of the people of an ordinance initiated by the voters making such election;

(3) Approval by vote of the people of an ordinance making such election referended to the people by the legislative body.

Any ordinance providing for participation therein may on petition of the voters be referended to the voters for approval or disapproval.

The referendum or initiative herein provided for shall be exercised under the law relating to legislative initiative or referendum of the particular city or town; and if the city or town be one for which the law does not now provide such initiative or referendum, it shall be exercised in the manner provided for legislative initiative and referendum of cities having a commission form of government under chapter 35.17 RCW,

the city or town council performing the duties and functions under that law devolving on the commission. A majority vote in the legislative body or by the electorate shall be sufficient to carry or reject. Whenever any city or town has elected to join the retirement system proper authorities in such city [or town] shall immediately file with the board an application for participation under the conditions included in this chapter on a form approved by the board. In such application the city or town shall agree to make the contributions required of participating cities [or towns] in the manner prescribed herein and shall state which employee group or groups are to originally have membership in the system.

In the case of a state association of cities and towns, election to participate shall be by majority vote of the board of directors of the association. [1994 c 81 § 76; 1971 ex.s. c 271 § 13; 1947 c 71 § 5; Rem. Supp. 1947 § 9592-134.]

Additional notes found at www.leg.wa.gov

41.44.060 Persons excluded. Police officers in first-class cities and all city firefighters shall be excluded from the provisions of this chapter, except those employees of the fire department who are not eligible to the benefits of any firefighters' pension system established by or pursuant to state law, and who shall be included in the miscellaneous personnel. [2007 c 218 § 71; 1951 c 275 § 3; 1947 c 71 § 6; Rem. Supp. 1947 § 9592-135.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Firefighters' relief and pensions: Chapters 41.16, 41.18 RCW.

Police relief and pensions in first-class cities: Chapter 41.20 RCW.

Volunteer firefighters' relief and pensions: Chapter 41.24 RCW.

41.44.070 Board of trustees. (1) The board of trustees shall consist of seven members, one of whom shall be the state insurance commissioner, ex officio; three elective city officials eligible to the benefits of the system who shall be appointed by the governor from a list of six city officials submitted by the executive committee of the association of Washington cities as the official representative of cities and towns in the state. Original terms of office of the appointees shall be one, two and three years as designated by the governor; thereafter terms shall be for three years duration. Appointments to fill vacancies other than those caused by expiration of a term, shall be for the unexpired term. Appointees shall serve until successors have been appointed and qualified.

In addition to these four members, there shall be three city employees who shall be elected by a secret ballot vote of the city employees who are members of the system. The method and details of such election shall be determined by the board of trustees. The first such election shall be held in June of 1968. The original terms of office for the elected city employee members shall be one, two and three years as designated by the board of trustees, and such terms shall begin July 1, 1968; thereafter terms shall be for three years' duration. In the case of vacancies of elected city employee positions the board of trustees shall appoint city employees to serve for the unexpired terms. Such appointees shall serve until successors have been elected.

(2) The board shall annually, dating from the first officially recorded meeting, elect a chair and secretary. Four members shall constitute a quorum.

(3) Each member of the board shall take an oath of office that he or she will diligently and honestly administer the affairs of the board, and that he or she will not knowingly violate or willfully permit to be violated any of the provisions of this chapter. [2012 c 117 § 62; 1967 ex.s. c 28 § 7; 1947 c 71 § 7; Rem. Supp. 1947 § 9592-136.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.080 Powers and duties of board—Compensation—Liability. The administration of the system is hereby vested in the board of trustees created in RCW 41.44.070 of this chapter and the board shall:

(1) Keep in convenient form such data as shall be deemed necessary for actuarial valuation purposes;

(2) From time to time, through its actuary, make an actuarial investigation into the mortality and service experience of the beneficiaries under this chapter and the various accounts created for the purpose of showing the financial status of the retirement fund;

(3) Adopt for the retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Certify annually the amount of appropriation which each city shall pay into the retirement fund in the next fiscal year, at such a time that the local authorities shall have ample opportunity for including such expense in the budget;

(5) Keep a record of all its proceedings, which shall be open to inspection by the public;

(6) From time to time adopt such rules and regulations not inconsistent with this chapter, for the administration of the provisions of this chapter, for the administration of the fund created by this chapter and the several accounts thereof, and for the transaction of the business of the board;

(7) Provide for investment, reinvestment, deposit, and withdrawal of funds;

(8) Prepare and publish annually a financial statement showing the condition of the fund and the various accounts thereof, and setting forth such other facts, recommendations, and data as may be of use in the advancement of knowledge concerning the statewide city employees retirement system, and furnish a copy thereof to each city which has joined the retirement system, and to such members as may request copies thereof;

(9) Serve without compensation but shall be reimbursed for expense incident to service as individual members thereof;

(10) Determine equitable amount of administrative expense and death-in-line-of-duty benefit expense to be borne by each city;

(11) Make available to any city considering participation in the system, the services of the actuary employed by the board for the purpose of ascertaining the probable cost of such participation. The cost of any such calculation or valuation shall be paid by the city requesting same to the retirement system;

(12) Perform such other functions as are required for the execution of the provisions of this chapter;

(13) No member of the board shall be liable for the negligence, default, or failure of any employee or of any other member of the board to perform the duties of his or her office and no member of the board shall be considered or held to be an insurer of the funds or assets of the retirement system but shall be liable only for his or her own personal default or individual failure to perform his or her duties as such member and to exercise reasonable diligence to provide for the safeguarding of the funds and assets of the system;

(14) Fix the amount of interest to be credited at a rate which shall be based upon the net annual earnings of the fund for the preceding twelve-month period and from time to time make any necessary changes in such rate;

(15) Distribute excess interest income to retired members on a cost of living index basis, as published by the United States department of health, education, and welfare, applied only to the annuity and current service portion of the retired members' retirement allowance: PROVIDED, That such distribution shall not exceed the income earned and received on open end investments. [2012 c 117 § 63; 1961 c 227 § 2; 1951 c 275 § 4; 1949 c 171 § 1; 1947 c 71 § 8; Rem. Supp. 1949 § 9592-137.]

41.44.090 Contributions by cities—Withdrawal from system. (1) There shall be paid into the retirement fund by contributions of each city the amounts necessary to pay the following:

- (a) Contributions equal to those deposited by employees;
- (b) Prior service credits at such rate as may be selected;
- (c) That part of a retirement allowance necessary to raise it to a specified minimum;
- (d) An equitable share of the administrative costs, all of which costs are to be paid by the cities;
- (e) An equitable share of the cost of the death-in-the-line-of-duty benefit, all of which costs are to be paid by the cities.

Any city having in its employ ten or more employees who are members of the system may elect to contribute, in lieu of its contributions set forth in item (a) above, an amount estimated actuarially necessary to match at retirement the accumulated normal contributions of those of its members who will ultimately retire for service or disability; provided that such election shall be made by resolution or ordinance of the legislative body of such city and, in order to become effective for the remainder of the year 1953, shall be made on or before July 1, 1953, and thereafter any election so made shall be made prior to January 1, 1954, to become then effective or prior to January 1st of any succeeding year to become effective on January 1st of such succeeding year.

Any city may, with the approval of the board, further elect to contribute in lieu of its contributions set forth in items (b) and (c) above, an amount estimated actuarially, necessary to amortize over a period of not to exceed thirty years, all liabilities on account of the participation of such a city, which are not covered by the contributions of its employees, its funds on hand and its contributions provided for in item (a) above or the contributions elected to be made in lieu thereof in cases where such city shall have elected to make said contribution in lieu of the contributions required in said item (a); provided that such election shall be made by resolution or ordinance of the legislative body of such city and, in order to

become effective for the remainder of the year 1953, shall be made on or before July 1, 1953, and thereafter any election so made shall be made prior to January 1, 1954, to become then effective or prior to January 1st of any succeeding year to become effective on January 1st of such succeeding year.

In the event that any city shall be making either of the lieu contributions as hereinabove set forth, the resulting contributions shall be adjusted to conform with facts and conditions disclosed by each succeeding actuarial valuation.

(2) Payment of the obligation set forth in subsection (1) of this section may be made in advance or may be paid currently as contributions are received from employees and pensions are paid to retired members: PROVIDED, That the share of administrative expense and expense of the death-in-the-line-of-duty benefits shall be paid as soon as funds are available to make such payment and the board shall have the right to require any city that has withdrawn from the system, to annually, at the beginning of each calendar year, deposit and pay in cash an amount estimated by the board to be sufficient to meet the obligation of such city for the ensuing year to those of its members receiving a retirement allowance. From time to time each city may apply reserves in payment of the obligations set forth above as contemplated in RCW 41.44.200.

(3) The board shall furnish each city with an estimate of the amount necessary to pay the obligations of the city in the ensuing fiscal year and the city shall provide therefor in its budget. The board shall cause to be kept an account with each city, crediting the account with such advances and payments as are made by the city and debiting the account with such charges as properly accrue against the city. The board shall furnish each city with a monthly statement of the amount of matching contributions, prior service charges and charges for minimum retirement allowances properly accruing by reason of payment of retirement allowances and deposit of contributions of members.

(4) Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of any retirement allowances or other benefits on account of the employees or retired members of any city under this chapter, for which reserves or guarantees have not been properly set up by such city or its employees to pay such retirement allowances or other benefits: PROVIDED, That nothing herein contained shall be so construed to prevent the establishment of a reserve account for annuities and pensions in which shall be placed at the time of retirement of any member the balances of the retiring member's contribution and the city's matching funds for such member and from which account all annuities and current service pensions shall be paid.

(5) Any city may, by majority vote of its electors, withdraw from participation in the retirement system two years after giving written notice to the board of such action by the electorate. It is hereby specifically provided, however, that the city's obligation to those members receiving or eligible to a retirement allowance prior to such termination of participation shall continue in full force and effect as provided in this chapter. Members not receiving or being eligible to a retirement allowance at time of such termination shall be paid their accumulated contributions on demand. Should it develop that any such city is entitled to a refund such refund shall be made within one year following demand of city entitled thereto.

[1953 c 228 § 2; 1951 c 275 § 5; 1949 c 171 § 2; 1947 c 71 § 9; Rem. Supp. 1949 § 9592-138.]

41.44.100 Retirement fund—Deposit—Investment—

Cost. (1) A fund is hereby created and established to be known as the "statewide city employees retirement fund," and shall consist of all moneys paid into it in accordance with the provisions of this chapter, whether such moneys shall take the form of cash, securities, or other assets: PROVIDED, That such assets shall be public funds to the extent necessary to authorize any bank to deposit such collateral security necessary and required under the laws of the state to secure the deposit of public funds belonging to a city.

(2) The board of trustees shall be the custodian of the retirement fund and shall arrange for the safekeeping thereof. Subject to such provisions as may be prescribed by law for the deposit of city funds in banks, cash belonging to the retirement fund may be deposited in any licensed national bank or banks in the state, or in any bank, banks or corporations authorized or licensed to do a banking business and organized under the laws of the state of Washington; and may be withdrawn on order of the board for the purpose of making such payments as are authorized and required by this chapter.

(3) The board may invest pension fund moneys in such securities of the United States, states, Dominion of Canada, public housing authorities, municipal corporations and other public bodies, as are designated by the laws of the state as lawful investments for the funds of mutual savings banks, and to invest not to exceed twenty-five percent of the system's total investments in the securities of any corporations or public utility bodies as are designated by the laws of the state as lawful investments for the funds of mutual savings banks: PROVIDED, That not more than five percent of the system's total investments may be made in the securities of any one of such corporations or public utility bodies.

(4) Subject to the limitations hereinafter provided, investment of pension funds may also be made in amounts not to exceed twenty-five percent of the system's total investments in the shares of certain open-end investment companies: PROVIDED, That not more than five percent of the system's total investments may be made in the shares of any one such open-end investment company. The total amount invested in any one company shall not exceed five percent of the assets of such company, and shall only be made in the shares of such companies as are registered as "open-end companies" under the federal investment company act of 1940, as amended. Such company must be at least ten years old and have net assets of at least five million dollars. It must have no outstanding bonds, debentures, notes, or other evidences of indebtedness, or any stock having priority over the shares being purchased, either as to distribution of assets or payment of dividends. It must have paid dividends from investment income in each of the ten years next preceding purchase. The maximum selling commission on its shares may not exceed seven and one-half percent of the sum of the asset value plus such commission.

(5) Investment of pension funds may also be made in the bonds of any municipal corporation or other public body of the state; and in any of the bonds or warrants, including local improvement bonds or warrants within the protection of the local improvement guaranty fund law, issued by any city or

town which is a member of the system. Investment of pension funds may also be made in the bonds or other obligations of any other state or territory of the United States or of any political subdivision, agency or instrumentality of any such state, territory, or political subdivision thereof.

Investment of pension funds may also be made in bonds or other obligations insured or guaranteed or which are covered by a repurchase agreement in whole or in part by the federal government or through any corporation, administrator, agency or instrumentality which is or hereafter may be created by the federal government.

(6) In order to provide for an equitable apportionment of the cost of the making and handling of the system's investments, the board may charge against the annual earnings from the system's investments, including income from the same and gains realized from the purchase and sale of its securities, a portion of such earnings computed on the book value of the investments held by the system at the end of its fiscal year, for the purpose of paying the cost of purchasing, safekeeping, servicing and handling its securities: PROVIDED, That such portion shall not exceed one-half of one percent of such value and shall not exceed the net gain from the operations for the year: PROVIDED FURTHER, That such charge shall not be considered as an administrative expense payable solely by the cities. [1967 ex.s. c 28 § 3; 1965 ex.s. c 99 § 1; 1957 c 158 § 1; 1953 c 228 § 3; 1951 c 275 § 6; 1949 c 171 § 3; 1947 c 71 § 10; Rem. Supp. 1949 § 9592-139.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.105 Supplemental benefits fund. (1) The board of trustees shall establish, in addition to the several benefits provided for, an additional and separate fund to be known as the "supplemental benefits fund" to provide for the payment of supplemental benefits, as hereinafter provided for employees of municipalities electing to participate in said fund.

(2) Any municipality which has elected to participate in this retirement system may elect to have the employees of the municipality participate in and be covered by the supplemental benefits fund. Such election is authorized to be made in any manner authorized by RCW 41.44.050, as now or hereafter amended, as it relates to participation in the system.

(3) A municipality which once elects to participate in the supplemental benefits fund shall never discontinue participation in the fund as to members who are covered in the fund.

(4) Membership in the fund shall be terminated by cessation of membership in the system.

(5) Each municipality which elects to participate in the supplemental benefits fund shall contribute to that fund, in addition to normal contributions and prior service contributions as required, such additional percentage of each payment of earnings as may be fixed by the board, on recommendation of the actuary, as necessary to accumulate the reserves needed to pay the anticipated benefit: PROVIDED, That the rate of contribution to the supplemental benefits fund shall be on the full compensation of the member.

(6) The supplemental benefit for covered employees shall be an allowance not to exceed fifteen percent of average final compensation payable at the time of retirement.

(7) Should the service of a member be discontinued by other than death or retirement, the benefits and privileges as provided by RCW 41.44.190 as now or hereafter amended, shall apply.

(8) A municipality which elects to participate in the supplemental benefits fund shall provide such benefits for all members employed by such city. [1967 ex.s. c 28 § 2.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.110 Membership. (1) Subject to subsection (2) of this section, membership of this retirement system shall be composed of the following groups of employees in any participating city or cities:

- (a) Miscellaneous personnel as defined in this chapter;
- (b) Uniformed personnel as defined in this chapter;
- (c) Elective officials, who shall have the right to membership in this retirement system upon filing written notice of such election with the board of trustees;
- (d) Employees of the retirement system itself shall be entitled to membership and any costs in connection with such membership shall be a part of the cost of administration;
- (e) Employees of any state association of cities and towns shall be entitled to membership, upon election to participate made by the board of directors pursuant to RCW 41.44.050, and any costs in connection with such membership which would be borne by a city in the case of employees of a city shall be borne by the association.

(2) Any city may, when electing to participate in this retirement system in the manner set forth in RCW 41.44.050, include any one group or combination of the groups mentioned in subsection (1) of this section. For an initial period not to exceed one year from the effective date of any city's entry into this system, if so provided at the time of its election to participate, only a majority of the employees of any group or combination of groups must be members of the system.

At all times subsequent to the effective date of the city's entry into this system, or at all times after expiration of such initial period, if such initial period is established at the time of the city's election to participate, all employees of any group or combination of groups must be included or excluded as members of this system. Groups (c) and (d) shall be considered as being composed of miscellaneous personnel as far as benefits and obligations are concerned except when the contrary is clearly indicated.

(3) Subject to subsection (2) of this section, membership in the retirement system shall be compulsory for all employees in groups (a) and (b), after qualification as provided in subsection (4) of this section.

(4) Subject to subsection (2) of this section, all employees in city service, on the effective date, or on June 9, 1949, or on expiration of the initial period therein provided if they have completed six consecutive months' service or six months' service in any calendar year prior to the expiration of such initial period, shall be members of the system, provided that such employees who are not regular full time employees and are earning less than one hundred dollars per month, or are part time employees serving in an official or special capacity may with the acquiescence of the legislative body of the city or town in which they are employed, elect on or before January 1, 1950, to discontinue membership by giving

written notice of such election to the board. All other regular employees earning more than one hundred dollars per month shall become members upon the completion of six consecutive months' service or six months' service in any calendar year. Any employee otherwise eligible, employed in a permanent position, may elect in writing to become a member of the system at any time during the initial period, or at any time prior to completing such six months' service. Such individual employees other than regular employees, who are earning less than one hundred dollars per month or who are serving in an official or special capacity may elect to become members with the acquiescence of the legislative body of the city or town in which they are employed upon the completion of six months of consecutive service or six months' service in any calendar year.

(5) It shall be the duty of the proper persons in each city to immediately report to the board routine changes in the status of personnel and to immediately furnish such other information regarding the employment of members as the board may from time to time require.

(6) Should any member withdraw more than one-quarter of his or her accumulated contributions, or should he or she die or be retired, he or she shall thereupon cease to be a member.

(7) Transfer of any employee from one city to another shall not cause the employee to lose membership in the system providing the city to which he or she transfers participates in the retirement system created herein. [2012 c 117 § 64; 1971 ex.s. c 271 § 14; 1965 ex.s. c 99 § 2; 1961 c 227 § 3; 1953 c 228 § 4; 1951 c 275 § 7; 1949 c 171 § 4; 1947 c 71 § 11; Rem. Supp. 1949 § 9592-140.]

Additional notes found at www.leg.wa.gov

41.44.120 Prior service credit. (1) Subject to subsections (4) and (5) of this section the following members shall be entitled to prior service credit:

- (a) Each member in service on the effective date.
- (b) Each member entering after the effective date if such entry is within one year after rendering service prior to the effective date.
- (c) Each member entering in accordance with the provisions and subject to the conditions and limitations prescribed in subsection (5) of this section.

As soon as practicable, the board shall issue to each member entitled to prior service credit a certificate certifying the aggregate length of service rendered prior to the effective date. Such certificate shall be final and conclusive as to his or her prior service unless hereafter modified by the board, upon application of the member.

(2) Each city joining the system shall have the privilege of selecting the rate at which prior service pensions shall be calculated for its employees and may select any one of the three rates set forth below:

- (a) 1.33% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "full prior service credit."
- (b) 1.00% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "full prior service credit."

(c) .667% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "one-half prior service credit."

(3) The above rates shall apply at the age of sixty-two or over for members included in the miscellaneous personnel and at age sixty or over for members in the uniformed personnel: PROVIDED, That if a member shall retire before attaining either of the ages above referred to, the total prior service pension shall be reduced to the percentages computed and established in accordance with the following tables, to wit:

Miscellaneous Personnel				
Percent of Full Prior Service Allowable				
Male		Female		
Age	Factor	Age	Factor	Factor
45	65.48	45	66.78	
46	66.86	46	67.91	
47	68.29	47	69.09	
48	69.77	48	70.34	
49	71.28	49	71.67	
50	72.82	50	73.10	
51	74.43	51	74.71	
52	76.13	52	76.41	
53	77.93	53	78.21	
54	79.84	54	80.11	
55	81.86	55	82.12	
56	84.00	56	84.24	
57	86.28	57	86.50	
58	88.69	58	88.89	
59	91.26	59	91.42	
60	94.00	60	94.11	
61	96.90	61	96.96	
62	100.00	62	100.00	

Uniformed Personnel		Factor
Age	Factor	Factor
45		69.66
46		71.13
47		72.65
48		74.22
49		75.83
50		77.47
51		79.18
52		80.99
53		82.91
54		84.93
55		87.09
56		89.37
57		91.79
58		94.36
59		97.09
60		100.00

(4) If sickness, injury, or service in the armed forces of the United States during the national emergency identified with World War I or World War II and/or service in the armed forces of the United States of America for extended active duty by any employee who shall have been regularly granted a leave of absence from the city service by reason thereof, prevents any regular employee from being in service on the effective date, the board shall grant prior service credit

to such person when he or she is again employed. The legislative authority in each participating city shall specify the amount of prior service to be granted or current service credit to be made available to such employees: PROVIDED, That in no case shall such service credit exceed five years. Certificate of honorable discharge from or documentary evidence of such service shall be submitted to the board before any such credit may be granted or made available. Prior or current service rates, or both, for such employees shall not exceed the rates established for fellow employees.

(5) There shall be granted to any person who was an employee of a private enterprise or a portion thereof which shall be hereafter acquired by a city as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such enterprise or portion thereof, credit for prior service for the period such person was actually employed by such private enterprise, except that this shall apply only to those persons who shall be employees of such enterprise or portion thereof at the time of its acquisition by the city and who remain in the service of such city until the effective date of membership of such person under this chapter.

There shall be granted to any person who was an employee of any state association of cities and towns, which association elects to participate in the retirement system established by this chapter, credit for prior service for the period such person was actually employed by such association, except that this shall apply only to those persons who shall be employees of such association on May 21, 1971.

Credit for such prior service shall be given only if payment for the additional cost of including such service has been made or if payment of such additional cost or reimbursement therefor has been otherwise provided for to the satisfaction of the board or if such person be entitled to any private pension or retirement benefits as a result of such service with such private enterprise, credit will be given only if he or she agrees at the time of his or her employment by the municipality to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added and accredited service by the amount of these private pension or retirement benefits received. The conditions and limitations provided for in this subsection (5) shall be embodied in any certificate of prior service issued or granted by the board where any portion of the prior service credited under this subsection is included therein.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the fund to assume its obligations. [2012 c 117 § 65; 1971 ex.s. c 271 § 15; 1959 c 70 § 2; 1957 c 158 § 2; 1951 c 275 § 8; 1947 c 71 § 12; Rem. Supp. 1947 § 9592-141.]

Additional notes found at www.leg.wa.gov

41.44.130 Contributions by employees. (1) The normal rates of contribution of members shall be based on sex and age at time of entry into the system, which age shall be the age at the birthday nearest the date of such entry.

(2) The normal rates of contribution for miscellaneous personnel shall be so fixed as to provide an annuity which, together with the pension provided by the city, shall produce as nearly as may be, a retirement allowance at the age of

sixty-two years, of one and one-third percent of the final compensation multiplied by the number of years of service of the retiring employee. The normal rate established for age sixty shall be the rate for any member who has attained a greater age before entrance into the retirement system and the normal contribution established for age twenty-four shall be the rate for any member who enters the system at an earlier age.

(3) The normal rates of contribution for uniformed personnel shall be so fixed as to provide an annuity which, together with the pension that would be derived from equal contributions by the city, shall produce as nearly as may be for members who enter service at age thirty-seven or below, a retirement allowance, at age fifty-five with twenty-five or more years of service, or at an age greater than fifty-five after twenty-five years of service, equal to fifty percent of final compensation; and for members entering service at ages over thirty-seven, a retirement allowance at age sixty-two which shall be the same proportion of fifty percent of final compensation as the member's actual years credited bear to twenty-five years. The normal rate established for age fifty shall be the rate for any member who has attained a greater age before entrance into the retirement system.

(4) Subject to the provisions of this chapter, the board shall adopt rules and regulations governing the making of deductions from the compensation of employees and shall certify to the proper officials in each city the normal rate of contribution for each member provided for in subsections (2) and (3) of this section. The proper officials in each city shall apply such rate of contribution to the full compensation of uniformed personnel and to so much of the compensation of miscellaneous personnel as does not exceed three hundred dollars per month, or four hundred dollars per month, or to any increased amount of such compensation as to members whose member cities have duly elected to increase the limitation provided for in subsection (12) of RCW 41.44.030 and shall certify to the board on each and every payroll the total amount to be contributed and shall furnish immediately to the board a copy of each and every payroll; and each of said amounts shall be forwarded immediately to the board and the board shall credit the deduction shown on such payroll to individual accounts of the members represented on such payrolls.

(5) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contributions shall be a full and complete discharge of all claims and demands whatsoever for the service rendered by such person during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter.

(6) Any member may elect to contribute in excess of the contributions provided for in this section in accordance with rules to be established by the board for the purpose of providing additional benefits, but the exercise of this privilege shall not place on the member city or cities any additional financial obligation. The board shall have authority to fix the rate of interest to be paid or allowed upon the additional contributions and from time to time make any necessary changes in said rate. Refunds of additional contributions shall be governed by the same rules as those covering normal contribu-

tions unless the board shall establish separate rules therefor. [2012 c 117 § 66; 1965 ex.s. c 99 § 3; 1961 c 227 § 4; 1957 c 158 § 3; 1951 c 275 § 9; 1947 c 71 § 13; Rem. Supp. 1947 § 9592-142.]

41.44.140 Retirement for service. Retirement of a member for service shall be made by the board as follows:

(1) Each member included in the miscellaneous personnel in service on the effective date, who, on or before such effective date, has attained the age of sixty-five years or over shall be compulsorily retired forthwith: PROVIDED, That there shall be no compulsory retirements for a period of two years immediately following the effective date, but any member having attained the age of sixty-five may voluntarily retire at any time after attaining such age. Members included in the miscellaneous personnel attaining age sixty-five after effective date shall be retired on the first day of the calendar month next succeeding the month in which the member shall have attained sixty-five, but none of such members shall be subject to compulsory retirement until two years after the effective date. The legislative authority of the city shall have the privilege at all times of extending time for retirement of any such member to his or her attainment of any age not exceeding age seventy: PROVIDED, That any such extension shall not increase the retirement age of such member in excess of one year at a time.

(2) Any member included in the miscellaneous personnel may retire by filing with the board a written application duly attested, setting forth on what date he or she desires to be retired, such application to be made at least thirty days prior to date of retirement: PROVIDED, That said member, at the time specified for his or her retirement, shall have attained the age of sixty years, or shall have thirty years of creditable service regardless of attained age: PROVIDED FURTHER, That during the two years immediately following the effective date voluntary service retirement of such members under sixty-two years of age shall not be granted.

(3) Each member included in the uniformed personnel in service on the effective date who on or before such effective date has attained the minimum age for social security benefits shall be compulsorily retired forthwith: PROVIDED, That there shall be no compulsory service retirements for a period of two years immediately following the effective date, but any such member having attained the minimum age for social security benefits may voluntarily retire at any time after attaining such age. Members included in the uniformed personnel attaining the minimum age for social security benefits after the effective date shall be retired on the first day of the calendar month next succeeding the month in which the members shall have attained the minimum age for social security benefits, but none of such members shall be subject to compulsory retirement until two years after the effective date. The legislative authority shall have the privilege at all times of extending time for retirement of any such member: PROVIDED, That any such extension shall not increase the retirement age of such member in excess of one year at a time.

(4) Any member included in the uniformed personnel may retire by filing with the board a written application duly attested, setting forth on what date he or she desires to be retired, such application to be made at least thirty days prior

to date of retirement: PROVIDED, That said members, at the time specified for retirement, shall have twenty-five years of creditable service regardless of age, or shall have attained the age of fifty-five years regardless of years of creditable service: PROVIDED FURTHER, That during the two years immediately following the effective date voluntary service retirement of such members under the minimum age for social security benefits shall not be granted.

(5) After the retirement of any employee, any member city, by unanimous vote of its legislative body and with the consent of the board, may reemploy or retain such employee in its service to fill a supervisory or key position. [2012 c 117 § 67; 1967 ex.s. c 28 § 4; 1965 ex.s. c 99 § 4; 1961 c 227 § 5; 1953 c 228 § 5; 1951 c 275 § 10; 1947 c 71 § 14; Rem. Supp. 1947 § 9592-143.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.150 Allowance on retirement for service. (1) A member upon retirement for service, shall receive a retirement allowance subject to the provisions of subsection (2) of this section, which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his or her accumulated normal contributions at the time of his or her retirement; and

(b) A pension provided by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member;

(c) For any member having credit for prior service an additional pension, provided by the contributions of the city, as set forth in RCW 41.44.120 at the rate selected by the city employing the member;

(d) Any member, excepting a part time employee, who has ten or more years of creditable service and who is retired by reason of attaining the age of sixty-five or over if included in the miscellaneous personnel or the age of fifty-five or over if included in the uniformed personnel, and whose retirement allowance is calculated to be less than sixty dollars per month, shall receive such additional pension, provided by the contributions of the city, as will make his or her total retirement allowance equal to sixty dollars per month. An annuity purchased by accumulated additional contributions in such case shall be paid in addition to the minimum guaranteed as herein provided. A part time employee having ten or more years of creditable service, retired by reason of attaining the ages in this subdivision specified and whose retirement allowance is calculated to be less than forty dollars per month, shall receive such additional pension, provided by the contributions of the city, as will make the total retirement allowance equal to forty dollars per month, together with an annuity purchased by his or her accumulated additional contributions, if any, in addition to the minimum guaranteed.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to June 11, 1953.

(e) Any member, excepting a part time employee, who has been or is retired by reason of attaining the age of sixty-five or over if included in the miscellaneous personnel or the age of fifty-five or over if included in the uniformed personnel, and whose retirement allowance is calculated to be less than sixty dollars per month, shall receive such additional

pension, provided by the contributions of the city, as will make his or her total retirement allowance equal to six dollars per month for each year of his or her creditable service: PROVIDED, That the total additional retirement allowance shall be limited to an amount equal to such amount as will make his or her total retirement allowance not more than sixty dollars per month. An annuity purchased by accumulated additional contributions, if any, in such case shall be paid in addition to the minimum guaranteed, as herein provided.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to June 11, 1953.

(f) The normal retirement age for uniformed personnel shall be age fifty-five with twenty-five years of creditable service, or shall be at an age greater than age fifty-five upon the completion of twenty-five years or more of creditable service. Upon retirement at the normal age, the retirement allowance shall be equal to fifty percent of final compensation. If retirement occurs at an age other than the normal age, the retirement allowance shall be the same proportion of fifty percent of final compensation as the member's actual years of service bears to the years of service that were or would have been served up to the normal retirement age: PROVIDED, That if retirement occurs prior to the normal age of retirement, said allowance shall be the actuarial equivalent of said allowance at the normal age of retirement.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to August 6, 1965.

(2) If the retirement allowance of the member as provided in this section, is in excess of three-fourths of his or her final compensation, the pension of the member, purchased by the contributions of the city, shall be reduced to such an amount as shall make the member's retirement allowance equal to three-fourths of his or her final compensation, except as provided in subdivision (3) of this section.

(3) A member, upon retirement from service, shall receive in addition to the retirement allowance provided in this section, an additional annuity which shall be the actuarial equivalent of any accumulated additional contributions which he or she has to his or her credit at the time of his or her retirement. [2012 c 117 § 68; 1965 ex.s. c 99 § 5; 1961 c 227 § 6; 1957 c 158 § 4; 1953 c 228 § 6; 1951 c 275 § 11; 1949 c 171 § 5; 1947 c 71 § 15; Rem. Supp. 1949 § 9592-144.]

41.44.160 Retirement for disability. Any member who has at least ten years of creditable service within the fifteen years immediately preceding retirement and has not attained the age of sixty-five years, or who attains or has attained the age of sixty-five years prior to two years after the effective date, may be retired by the board for permanent and total disability, either ordinary or accidental not incurred in line of duty, and any member, regardless of his or her age or years of service, may be retired by the board for any permanent and total disability incurred in line of duty, upon examination as follows:

Any member while in service, or while physically or mentally incapacitated for the performance of duty, if such incapacity has been continuous from discontinuance of city service, shall be examined by such medical authority as the board shall employ, upon the application of the head of the

office or department in which the member is employed with approval of the legislative body, or upon application of said member, or a person acting in his or her behalf, stating that said member is permanently and totally incapacitated, either physically or mentally, for the performance of duty and ought to be retired. If examination shows, to the satisfaction of the board, that the member should be retired, he or she shall be retired forthwith: PROVIDED, That no such application shall be considered or granted upon the application of a member unless said member or someone in his or her behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member: PROVIDED, The board shall retire the said member for disability forthwith: PROVIDED, That the disability retirement allowance shall be effective on the first of the month following that in which the member last received salary or wages in city service.

The board shall secure such medical services and advice as it may deem necessary to carry out the purpose of this section and RCW 41.44.180. [2012 c 117 § 69; 1965 ex.s. c 99 § 6; 1951 c 275 § 12; 1949 c 171 § 6; 1947 c 71 § 16; Rem. Supp. 1947 § 9592-145.]

41.44.170 Allowance on retirement for disability. On retirement for permanent and total disability not incurred in line of duty a member shall receive a retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her accumulated normal contributions; and

(2) A pension provided by the contributions of the city which, together with his or her annuity provided by his or her accumulated normal contributions, shall make his or her retirement allowance equal to thirty percent of his or her final compensation for the first ten years of service, which allowance shall be increased by one and one-half percent for each year of service in excess of ten years to a maximum of fifty percent of his or her final compensation; otherwise he or she shall receive a retirement allowance of forty dollars per month or, except as to a part time employee, such sum, monthly, not in excess of sixty dollars per month, as is equal to six dollars per month for each year of his or her creditable service, whichever is greater. If the retirement allowance of a part time employee, based upon the pension hereinabove provided, does not exceed forty dollars per month, then such part time employee shall receive a retirement allowance of forty dollars per month and no more.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to August 6, 1965.

(3) If it appears to the satisfaction of the board that permanent and total disability was incurred in line of duty, a member shall receive in lieu of the retirement allowance provided under subdivisions (1) and (2) of this section full pay from, and be furnished all hospital and medical care by, the city for a period of six months from the date of his or her disability, and commencing at the expiration of such six month period, shall receive a retirement allowance, regardless of his or her age or years of service, equal to fifty percent of his or her final compensation exclusive of any other benefit he or she may receive.

(4) No disability retirement allowance shall exceed seventy-five percent of final compensation, anything herein to the contrary notwithstanding, except as provided in subdivision (7) of this section.

(5) Upon the death of a member while in receipt of a disability retirement allowance, his or her accumulated contributions, as they were at the date of his or her retirement, less any annuity payments made to him or her, shall be paid to his or her estate, or to such persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the board. In the alternative, if there be a surviving spouse, or if no surviving spouse, there are surviving a child or children under the age of eighteen years, upon written notice to the board by such spouse, or if there be no such spouse, by the duly appointed, qualified and acting guardian of such child or children, within sixty days of the date of such member's death, there shall be paid to such spouse during his or her lifetime, or, if there be no such spouse, to such child or children, until they shall reach the age of eighteen years, a monthly pension equal to one-half of the monthly final compensation of such deceased member. If any such spouse or child or children shall marry, then such person so marrying shall thereafter receive no further pension herein provided.

(6) If disability is due to intemperance, willful misconduct, or violation of law, on the part of the member, the board, in its discretion, may pay to said member, in one lump sum his or her accumulated contribution, in lieu of a retirement allowance, and such payment shall constitute full satisfaction of all obligations of the city to such member.

(7) In addition to the annuity and pension provided for in subdivisions (1) and (2) of this section, a member shall receive an annuity which shall be the actuarial equivalent of his or her accumulated additional contributions. [2012 c 117 § 70; 1973 1st ex.s. c 154 § 78; 1965 ex.s. c 99 § 7; 1961 c 227 § 7; 1957 c 158 § 5; 1953 c 228 § 7; 1951 c 275 § 13; 1947 c 71 § 17; Rem. Supp. 1947 § 9592-146.]

Additional notes found at www.leg.wa.gov

41.44.180 Examination of disability beneficiary—Reentry. (1) The board may, at its pleasure, require any disability beneficiary under age sixty-two in the miscellaneous personnel and under age fifty-five in the uniformed personnel to undergo medical examination by medical authority designated by the board. Upon the basis of such examination the board shall determine whether such disability beneficiary is still totally and permanently incapacitated, either physically or mentally, for service in the office or department of the city where he or she was employed or in any other position in that city, the duties of which he or she might reasonably be expected to carry out.

(2) If the board shall determine that the beneficiary is not so incapacitated his or her retirement allowance shall be canceled and he or she shall be reinstated forthwith in city service. If the city is unable to find employment for a disability beneficiary found to be no longer totally and permanently disabled, the board shall continue the disability retirement allowance of the beneficiary until such time as employment is available, except as provided in paragraph (4) of this section.

(3) Should a disability beneficiary reenter city service and be eligible for membership in the retirement system, his or her retirement allowance shall be canceled and he or she shall immediately become a member of the retirement system, his or her rate of contribution for future years being that established for his or her age at the time of such reentry. His or her individual account shall be credited with his or her accumulated contributions less the annuity payments made to him or her. An amount equal to the accumulated normal contributions so credited to him or her shall again be held for the benefit of said member and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted. Such member shall receive credit for prior service in the same manner as if he or she had never been retired for disability.

(4) Should any disability beneficiary under age sixty-two in the miscellaneous personnel or under age fifty-five in the uniformed personnel, refuse to submit to medical examination, his or her retirement allowance may be discontinued until his or her withdrawal of such refusal, and should refusal continue for one year, his or her retirement allowance may be canceled. Should said disability beneficiary, prior to attaining age sixty-two or age fifty-five, as the case may be, engage in a gainful occupation the board shall reduce the amount of his or her retirement allowance to an amount, which when added to the compensation earned by him or her in such occupation, shall not exceed the amount of the final compensation on the basis of which his or her retirement allowance was determined. Should the earning capacity of such beneficiary be further altered, the board may further alter his or her retirement allowance as indicated above. When said disability beneficiary reaches age sixty-two, if included in the miscellaneous personnel, or age fifty-five, in the uniformed personnel, his or her retirement allowance shall be made equal to the amount upon which he or she was originally retired, and shall not again be modified for any cause except as provided in RCW 41.44.250.

(5) Should the retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into city service, he or she shall be paid his or her accumulated contributions, less annuity payments made to him or her. [2012 c 117 § 71; 1961 c 227 § 8; 1947 c 71 § 18; Rem. Supp. 1947 § 9592-147.]

41.44.190 Withdrawal from system—Reentry—Payment on death of member. (1) Should service of a member of the miscellaneous personnel be discontinued except by death or retirement, he or she shall be paid six months after the day of discontinuance such part of his or her accumulated contributions as he or she shall demand. Six months after the date of such discontinuance, unless on leave of absence regularly granted, or unless he or she has exercised the option hereinafter provided, his or her rights to all benefits as a member shall cease, without notice, and his or her accumulated contributions shall be returned to him or her in any event or held for his or her account if for any reason the return of the same is prevented. Should service of a member of the uniformed personnel be discontinued except by death or retirement, he or she shall be paid six months after the day of discontinuance such part of his or her accumulated contributions as he or she shall demand, and six months after the date

of such discontinuance, unless on leave of absence regularly granted, his or her rights to all benefits as a member shall cease, without notice, and his or her accumulated contributions shall be returned to him or her in any event, or held for his or her account if for any reason the same is prevented: PROVIDED, That the board may in its discretion, grant the privilege of withdrawal in the amounts above specified at any time following such discontinuance. Any member whose service is discontinued except by death or retirement, and who has five or more years of creditable service when such discontinuance occurs, may, at his or her option, leave his or her accumulated contributions in the fund and thereby be entitled to receive a deferred retirement allowance commencing at retirement age sixty for miscellaneous personnel and at age fifty-five for uniformed personnel, such retirement allowance to be computed in the same manner provided in subsection (1) of RCW 41.44.150: PROVIDED, That this option may be revoked at any time prior to commencement of annuity payments by filing a written notice of such intention with the board together with a written application for a refund of such accumulated contributions. The board may establish rules and regulations to govern withdrawal and redeposit of contributions.

(2) Should a former member, within five years after discontinuance of service, return to service in the same city in which he or she was employed he or she may restore to the fund in such manner as may be agreed upon by such person and the board, his or her withdrawn normal accumulated contributions as they were at the time of his or her separation from service and upon completion of such redeposit all his or her rights and privileges existing at the time of discontinuance of service shall be restored and his or her obligations as a member shall begin again. The rate of contribution of such returning member shall be the same as it was at the time he or she separated from service.

(3) Upon the death of any person who has not been retired, pursuant to the provisions hereof, there shall be paid to his or her estate, or to such persons having an insurable interest in his or her life as he or she shall have nominated by written designation duly executed and filed with the board, his or her accumulated contributions less any payments therefrom already made to him or her. Such payment may be made in one lump sum or may be paid in installments over a period of not to exceed five years, as may be designated by the member or his or her beneficiary, with such rate of interest as may be determined by the board.

(4) In lieu of the death benefit otherwise payable under subsection (3) of this section, there shall be paid a total allowance equal to one-fourth average final compensation per month to the surviving spouse of a member with at least twenty years service as such, at the time of death and who has not been retired and who, by reason of membership in the system, is covered by the Old Age and Survivors Insurance provisions of the Federal Social Security Act, but not at the time of death qualified to receive the benefits thereof. Said allowance shall become payable upon the death of said member or upon the date the surviving spouse becomes ineligible for any benefit payment from the Federal OASI, if later, and shall cease upon death or remarriage, or upon the date the surviving spouse would become entitled, upon application therefor; to any insurance benefit from the Federal OASI system,

whichever event shall first occur: PROVIDED, That said benefit shall cease upon the beneficiary becoming employed by any member city of said system: PROVIDED FURTHER, That this allowance shall consist of:

(a) An amount which shall be the actuarial equivalent of the normal contributions at the time specified for retirement;

(b) An amount provided by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member;

(c) Such additional amount, provided by the contributions of the city, as will make the total allowance equal to one-fourth average final compensation per month;

(d) An annuity purchased by the accumulated additional contributions, if any, in addition to the minimum guaranteed.

(5) In lieu of the death benefit otherwise payable under subsection (3) of this section, the surviving spouse of a member who dies after having attained the minimum requirements for his or her service retirement as required by RCW 41.44.140 may elect to receive the allowance which would have been paid to such surviving spouse had the member been retired on the date of his or her death and had he or she elected to receive the lesser retirement allowances provided for in option C of RCW 41.44.220.

(6) If a former member shall, within one year from date of discontinuance of service, be employed by another city participating in this retirement system he or she shall have the privilege of redepositing and the matching contributions deposited by the city or cities in which he or she was formerly employed shall again be held for the benefit of such member. If such redepositing member possessed a prior service certificate the city employing him or her at time of retirement shall accept the liability evidenced by such certificate.

Reinstatement of a prior service certificate shall be effective only upon a showing that normal contributions are on deposit in the retirement fund, to the credit of the member, covering all current service. [2012 c 117 § 72; 1967 ex.s. c 28 § 5; 1965 ex.s. c 99 § 8; 1961 c 227 § 9; 1951 c 275 § 14; 1947 c 71 § 19; Rem. Supp. 1947 § 9592-148.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.200 Withdrawal—Procedure as to city's contribution. Whenever a member withdraws his or her accumulated normal contributions the matching contributions of the city so released shall be transferred to a reserve account created for the purpose of showing the amount of credits due each city through such operation. Such credits may be used by the city to apply on any charges made against the city but only so much thereof as will insure leaving in such account an amount estimated to be sufficient to again match contributions redeposited by employees returning to service as contemplated in RCW 41.44.190. The board may credit such reserve accounts with interest at such rate as the board deems equitable: PROVIDED, That as to any member city which has elected to and is making contributions in lieu of those required in RCW 41.44.090(1)(a), there shall be no release of the city's matching contributions after the date of its commencement to make such lieu contributions: PROVIDED FURTHER, That any released contributions of any such city which have been credited to its reserve account prior to the date of such commencement, shall be available to it for the

purposes hereinabove specified, unless the board shall determine that their immediate use for such purposes would result in a harmful effect upon the assets of the system, in which event the board shall have the right to defer their use for a reasonable time in which to permit it to make adjustments in the current assets of the system to prevent the same. [2012 c 117 § 73; 1953 c 228 § 8; 1947 c 71 § 20; Rem. Supp. 1947 § 9592-140.]

41.44.210 Benefit on death in line of duty. Upon the death of any member who dies from injuries or disease arising out of or incurred in the performance of his or her duty or duties, of which the board of trustees shall be the judge, if death occurs within one year from date of discontinuance of city service caused by such injury, there shall be paid to his or her estate or to such person or persons having an insurable interest in his or her life, as he or she shall have nominated by written designation duly executed and filed with the board, the sum of one thousand dollars, purchased by the contributions of the cities participating in the retirement system; and in addition thereto there shall be paid to the surviving spouse during such spouse's lifetime, or if there be no surviving spouse, then to his or her minor child or children until they shall have reached the age of eighteen years, a monthly pension equal to one-half the monthly final compensation of such deceased member. If any such spouse, or child or children shall marry, then such person so marrying shall thereafter receive no further pension herein provided. Cost of the lump sum benefit above provided shall be determined by actuarial calculation and prorated equitably to each city. The benefits provided in this section shall be exclusive of any other benefits due the member under this chapter. [2012 c 117 § 74; 1973 1st ex.s. c 154 § 79; 1961 c 227 § 10; 1957 c 158 § 6; 1947 c 71 § 21; Rem. Supp. 1947 § 9592-150.]

Additional notes found at www.leg.wa.gov

41.44.220 Optional allowance on retirement. A member may elect to receive in lieu of the retirement allowance provided for in RCW 41.44.150, its actuarial equivalent in the form of a lesser retirement allowance, payable in accordance with the terms and conditions of one of the options set forth below in this section. Election of any option must be made by written application filed with the board at least thirty days in advance of retirement, or may be made by any member after he or she has attained the minimum requirements for his or her service retirement as required by RCW 41.44.140, and shall not be effective unless approved by the board prior to retirement of the member.

Option A. The lesser retirement allowance shall be payable to the member throughout his or her life: PROVIDED, That if he or she die before he or she receives in annuity payments referred to in paragraph (a) of subsection (1) of RCW 41.44.150 a total amount equal to the amount of his or her accumulated contributions as it was at date of his or her retirement, the balance of such accumulated contributions shall be paid in one sum to his or her estate or to such person having an insurable interest in his or her life as he or she shall nominate by written designation duly executed and filed with the board.

Option B. The lesser retirement allowance shall be payable to the member throughout life, and after death of the

member, one-half of the lesser retirement allowance shall be continued throughout the life of and paid to the wife or husband of this member.

Option C. The lesser retirement allowance shall be payable to the member throughout life, and after death of the member it shall be continued throughout the life of and paid to the wife or husband of the member.

A member may apply for some other benefit or benefits and the board may grant such application provided such other benefit or benefits, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent value to his or her retirement allowance.

The surviving spouse may elect to receive a cash refund of the member's accumulated contributions in lieu of the monthly benefit under either Option B or Option C. [2012 c 117 § 75; 1965 ex.s. c 99 § 9; 1947 c 71 § 22; Rem. Supp. 1947 § 9592-151.]

41.44.230 Monthly payments. A pension, annuity, or a retirement allowance granted under the provisions of this chapter, unless otherwise specified herein, shall be payable in monthly installments, and each installment shall cover for the current calendar month. [1947 c 71 § 23; Rem. Supp. 1947 § 9592-152.]

41.44.240 Rights immune from legal process—Exceptions. The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever whether the same be in actual possession of the person or be deposited or loaned. This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [2012 c 159 § 27; 1989 c 360 § 28; 1979 ex.s. c 205 § 7; 1947 c 71 § 24; Rem. Supp. 1947 § 9592-153.]

41.44.250 Suspension of retirement allowance. The payment of any retirement allowance to a member who has been retired from service shall be suspended during the time that the beneficiary is in receipt of compensation for service to any city or town that is a member of the statewide city employees' retirement system, except as to the amount by which such retirement allowance may exceed such compensation for the same period. It is the intent of this section to prevent any retired person from being able to receive both his or her retirement allowance and compensation for service to any city or town that is a member of the statewide city employees' retirement system: PROVIDED, That nothing in this section shall prevent county or state welfare departments from furnishing to any retired employee under the terms of this chapter the hospital, medical, dental, and other benefits granted to pensioners under the provisions of Title 74 RCW.

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[2012 c 117 § 76; 1951 c 275 § 15; 1947 c 71 § 25; Rem. Supp. 1947 § 9592-154.]

41.44.260 Merger of existing or new systems into statewide system—Contract. The council or other legislative body of any city or town in which there has been established or may hereafter be established by ordinance or pursuant to authority granted, or hereafter granted, by any of the laws of the state of Washington, any retirement system, pension, relief or disability system, excluding any system directly established by the legislature of the state of Washington and by its terms made compulsory, shall have the right by a legal contract in writing to merge or integrate its existing system with that of the statewide city employees' retirement system established by chapter 71, Laws of 1947 [chapter 41.44 RCW]. Any such contract shall contain appropriate provisions granting to any member of the systems integrated or merged the right to elect to withdraw his or her accumulated contributions accrued to the effective date of the merger or integration where the contract would result in a reduction or impairment of the benefits provided for in the existing system of which he or she is a member, and no such contracts shall be effective which shall reduce or impair the benefits which employees who are receiving benefits from either of the integrated systems would have received had the integration or merger not been effected. [1949 c 137 § 1; Rem. Supp. 1949 § 9592-133a.]

41.44.270 Agreements between board and cities which accept social security act benefits. Should any member city of the statewide city employees retirement system established pursuant to this chapter, hereafter take advantage of any benefits lawfully available to its employees and their survivors under the old age and survivors insurance system embodied in the social security act, or should any city which has lawfully taken advantage of such benefits desire to become a member of the statewide city employees retirement system, such city and the board shall have the power to enter into an agreement mutually satisfactory to both parties adjusting the contributions to be made by such city and by its employees and the benefits to be paid by the statewide city employees retirement system, in such a manner to permit the participation of such city in the system as a member with reduced benefits to its employees and reduced contributions by the city and by its employees: PROVIDED, That such adjustment shall be made upon an actuarially sound basis and that as to all matters, other than those changed by such agreement, the provisions of the statewide city employees retirement system law shall apply: PROVIDED FURTHER, That unless such an agreement is entered into by mutual consent of such city and the board, all of the provisions of the statewide city employees retirement system law shall be applicable. [1953 c 228 § 9.]

41.44.300 System abolished—Date—Transfer of assets, liabilities, and responsibilities. Notwithstanding any provisions of chapter 41.44 RCW to the contrary, the statewide employees' retirement system shall no longer exist after January 1, 1972, at which time all assets, liabilities, and responsibilities of the statewide city employees' retirement system shall be transferred to and assumed by the Washing-

ton public employees' retirement system as provided for in *RCW 41.40.405 through 41.40.407. [1971 c 75 § 4.]

*Reviser's note: RCW 41.40.405 through 41.40.407 were decodified pursuant to 1991 c 35 § 4.

41.44.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 100.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.45 RCW

ACTUARIAL FUNDING OF STATE RETIREMENT SYSTEMS

Sections

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41.45.230 Pension funding stabilization account—Creation.

41.45.010 Intent—Goals. It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system, chapter 41.32 RCW; the law enforcement officers' and firefighters' retirement systems, chapter 41.26 RCW; the school employees' retirement system, chapter 41.35 RCW; the public safety employees' retirement system, chapter 41.37 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The funding process established by this chapter is intended to achieve the following goals:

(1) To fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the school employees' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the law enforcement officers' and firefighters' retirement system plan 2 as provided by law;

(2) To fully amortize the total costs of the law enforcement officers' and firefighters' retirement system plan 1, not later than June 30, 2024;

(3) To fully amortize the unfunded actuarial accrued liability in the public employees' retirement system plan 1 and the teachers' retirement system plan 1 within a rolling ten-year period, using methods and assumptions that balance needs for increased benefit security, decreased contribution rate volatility, and affordability of pension contribution rates;

(4) To establish long-term employer contribution rates which will remain a relatively predictable proportion of the future state budgets; and

(5) To fund, to the extent feasible, all benefits for plan 2 and 3 members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service. [2009 c 561 § 1; 2005 c 370 § 4; (2005 c 370 § 3 expired July 1, 2006); 2004 c 242 § 36; 2002 c 26 § 3; 2001 2nd sp.s. c 11 § 2; (2001 2nd sp.s. c 11 § 1 expired March 1, 2002); 2000 c 247 § 501; 1998 c 341 § 401; 1995 c 239 § 305; 1989 c 273 § 1.]

Effective date—2009 c 561: "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 July 1, 2009." [2009 c 561 § 9.]

*Reviser's note: Section 18 of this act was vetoed.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the pension funding council created in RCW 41.45.100.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and firefighters' retirement system plan 1" and "law enforcement officers' and firefighters' retirement system plan 2" means the benefits and funding provisions under chapter 41.26 RCW.

(4) "Public employees' retirement system plan 1," "public employees' retirement system plan 2," and "public employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.40 RCW.

(5) "Teachers' retirement system plan 1," "teachers' retirement system plan 2," and "teachers' retirement system plan 3" mean the benefits and funding provisions under chapter 41.32 RCW.

(6) "School employees' retirement system plan 2" and "school employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.35 RCW.

(7) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

(8) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

(9) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

(10) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

(11) "Classified employee" means a member of the Washington school employees' retirement system plan 2 or plan 3 as defined in RCW 41.35.010.

(12) "Teacher" means a member of the teachers' retirement system as defined in *RCW 41.32.010(15).

(13) "Select committee" means the select committee on pension policy created in RCW 41.04.276.

(14) "Actuarial value of assets" means the value of pension plan investments and other property used by the actuary for the purpose of an actuarial valuation.

(15) "Public safety employees' retirement system plan 2" means the benefits and funding provisions established under chapter 41.37 RCW.

(16) "Normal cost" means the portion of the actuarial present value of projected benefits and expenses that is allocated to a period, typically twelve months, under the actuarial cost method. [2006 c 365 § 1. Prior: 2004 c 242 § 37; 2004 c 93 § 1; 2003 c 295 § 8; 2002 c 26 § 4; prior: 2001 2nd sp.s. c 11 § 4; 2001 2nd sp.s. c 11 § 3; 2000 c 247 § 502; 1998 c 341 § 402; 1998 c 283 § 1; 1995 c 239 § 306; 1989 c 273 § 2.]

*Reviser's note: RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (15) to subsection (25).

Effective date—2006 c 365: "This act takes effect July 1, 2009." [2006 c 365 § 5.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.030 State actuary to submit information on the experience and financial condition of each retirement system—Adoption of long-term economic assumptions. (1) Beginning September 1, 2007, and every two years thereafter, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system, and make recommendations regarding the long-term economic assumptions set forth in RCW 41.45.035. The council shall review this and such other information as it may require.

(2) By October 31, 2007, and every two years thereafter, the council, by affirmative vote of four councilmembers, may adopt changes to the long-term economic assumptions estab-

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lished in RCW 41.45.035. Any changes adopted by the council shall be subject to revision by the legislature.

The council shall consult with the economic and revenue forecast supervisor and the executive director of the state investment board, and shall consider long-term historical averages, in reviewing possible changes to the economic assumptions.

(3) The assumptions and the asset value smoothing technique established in RCW 41.45.035, as modified in the future by the council or legislature, shall be used by the state actuary in conducting all actuarial studies of the state retirement systems, including actuarial fiscal notes under RCW 44.44.040. The assumptions shall also be used for the administration of benefits under the retirement plans listed in RCW 41.45.020, pursuant to timelines and conditions established by department rules. [2007 c 280 § 1; 2001 2nd sp.s. c 11 § 5; 1995 c 233 § 1; 1993 c 519 § 17; 1989 c 273 § 3.]

Additional notes found at www.leg.wa.gov

41.45.035 Long-term economic assumptions—Investment rate of return assumptions—Asset value smoothing technique. (1) Beginning July 1, 2001, the following long-term economic assumptions shall be used by the state actuary for the purposes of RCW 41.45.030:

(a) The growth in inflation assumption shall be 3.5 percent;

(b) The growth in salaries assumption, exclusive of merit or longevity increases, shall be 4.5 percent;

(c) The investment rate of return assumption shall be 8 percent;

(d) The growth in system membership assumption shall be 1.25 percent for the public employees' retirement system, the public safety employees' retirement system, the school employees' retirement system, and the law enforcement officers' and firefighters' retirement system. The assumption shall be .90 percent for the teachers' retirement system; and

(e) From July 1, 2016, until July 1, 2017, the growth in system membership for the teachers' retirement system shall be 1.25 percent. It is the intent of the legislature to continue this growth rate assumption in the 2017-2019 fiscal biennium.

(2) Beginning July 1, 2009, the growth in salaries assumption for the public employees' retirement system, the public safety employees' retirement system, the teachers' retirement system, the school employees' retirement system, plan 1 of the law enforcement officers' and firefighters' retirement system, and the Washington state patrol retirement system, exclusive of merit or longevity increases, shall be the sum of:

(a) The growth in inflation assumption in subsection (1)(a) of this section; and

(b) The productivity growth assumption of 0.5 percent.

(3) The following investment rate of return assumptions for the public employees' retirement system, the public safety employees' retirement system, the teachers' retirement system, the school employees' retirement system, plan 1 of the law enforcement officers' and firefighters' retirement system, and the Washington state patrol retirement system, shall be used by the state actuary for the purposes of RCW 41.45.030:

(a) Beginning July 1, 2013, the investment rate of return assumption shall be 7.9 percent.

(b) Beginning July 1, 2015, the investment rate of return assumption shall be 7.8 percent.

(c) Beginning July 1, 2017, the investment rate of return assumption shall be 7.7 percent.

(d) For valuation purposes, the state actuary shall only use the assumptions in (a) through (c) of this subsection after the effective date in (a) through (c) of this subsection.

(e) By June 1, 2017, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system, and make recommendations regarding the long-term investment rate of return assumptions set forth in this subsection. The council shall review this and such other information as it may require.

(4)(a) Beginning with actuarial studies done after July 1, 2003, changes to plan asset values that vary from the long-term investment rate of return assumption shall be recognized in the actuarial value of assets over a period that varies up to eight years depending on the magnitude of the deviation of each year's investment rate of return relative to the long-term rate of return assumption. Beginning with actuarial studies performed after July 1, 2004, the actuarial value of assets shall not be greater than one hundred thirty percent of the market value of assets as of the valuation date or less than seventy percent of the market value of assets as of the valuation date. Beginning April 1, 2004, the council, by affirmative vote of four councilmembers, may adopt changes to this asset value smoothing technique. Any changes adopted by the council shall be subject to revision by the legislature.

(b) The state actuary shall periodically review the appropriateness of the asset smoothing method in this section and recommend changes to the council as necessary. Any changes adopted by the council shall be subject to revision by the legislature. [2016 1st sp.s. c 36 § 922; 2012 1st sp.s. c 7 § 7; 2009 c 561 § 2; 2004 c 93 § 2; 2003 1st sp.s. c 11 § 1; 2001 2nd sp.s. c 11 § 6.]

Effective date—2016 1st sp.s. c 36: See note following RCW 18.20.430.

Effective date—2009 c 561: See note following RCW 41.45.010.

Additional notes found at www.leg.wa.gov

41.45.050 Contributions to be based on rates established in this chapter—Allocation formula for contributions. (1) Employers of members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the public safety employees' retirement system, and the Washington state patrol retirement system shall make contributions to those systems based on the rates established in RCW 41.45.060 and 41.45.070.

(2) The state shall make contributions to the law enforcement officers' and firefighters' retirement system plan 2 based on the rates established in RCW 41.45.060 and 41.45.070. The state treasurer shall transfer the required contributions each month on the basis of salary data provided by the department.

(3) The department shall bill employers, and the state shall make contributions to the law enforcement officers' and firefighters' retirement system plan 2, using the combined rates established in RCW 41.45.060 and 41.45.070 regardless of the level of appropriation provided in the biennial budget. Any member of an affected retirement system may, by man-

damus or other appropriate proceeding, require the transfer and payment of funds as directed in this section.

(4) The contributions received for the public employees' retirement system shall be allocated between the public employees' retirement system plan 1 fund and the public employees' retirement system combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the public employees' retirement system combined plan 2 and plan 3 employer contribution shall first be deposited in the public employees' retirement system combined plan 2 and plan 3 fund. All remaining public employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan 1 fund.

(5) The contributions received for the teachers' retirement system shall be allocated between the plan 1 fund and the combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the combined plan 2 and plan 3 employer contribution shall first be deposited in the combined plan 2 and plan 3 fund. All remaining teachers' retirement system employer contributions shall be deposited in the plan 1 fund.

(6) The contributions received for the school employees' retirement system shall be allocated between the public employees' retirement system plan 1 fund and the school employees' retirement system combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the combined plan 2 and plan 3 employer contribution shall first be deposited in the combined plan 2 and plan 3 fund. All remaining school employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan 1 fund.

(7) The contributions received for the law enforcement officers' and firefighters' retirement system plan 2 shall be deposited in the law enforcement officers' and firefighters' retirement system plan 2 fund.

(8) The contributions received for the public safety employees' retirement system shall be allocated between the public employees' retirement system plan 1 fund and the public safety employees' retirement system plan 2 fund as follows: The contributions necessary to fully fund the plan 2 employer contribution shall first be deposited in the plan 2 fund. All remaining public safety employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan 1 fund. [2004 c 242 § 38; 2002 c 26 § 5; 2001 2nd sp.s. c 11 § 8; (2001 2nd sp.s. c 11 § 7 expired March 1, 2002); 2000 c 247 § 503; 1998 c 341 § 403; 1995 c 239 § 308; 1989 c 273 § 5.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.060 Basic state and employer contribution rates—Methods used—Role of council—Role of state actuary. (1) The state actuary shall provide preliminary actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035.

(2) Not later than July 31, 2008, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique included in RCW 41.45.035

or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

(a) A basic state contribution rate for the law enforcement officers' and firefighters' retirement system plan 1;

(b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system; and

(c) Basic employer contribution rates for the school employees' retirement system and the public safety employees' retirement system for funding both those systems and the public employees' retirement system plan 1.

The council may adopt annual rate changes for any plan for any rate-setting period. The contribution rates adopted by the council shall be subject to revision by the legislature.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the law enforcement officers' and firefighters' retirement system plan 1 not later than June 30, 2024;

(b) To fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the school employees' retirement system plans 2 and 3 in accordance with RCW 41.45.061, 41.45.067, and this section; and

(c) To fully fund the public employees' retirement system plan 1 and the teachers' retirement system plan 1 in accordance with RCW 41.45.070, 41.45.150, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 normal cost, a Washington state patrol retirement system normal cost, and a public safety employees' retirement system normal cost.

(5) A modified entry age normal cost method, as set forth in this chapter, shall be used to calculate employer contributions to the public employees' retirement system plan 1 and the teachers' retirement system plan 1.

(6) The employer contribution rate for the public employees' retirement system and the school employees' retirement system shall equal the sum of:

(a) The amount required to pay the combined plan 2 and plan 3 normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the public employees' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the public employees' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(7) The employer contribution rate for the public safety employees' retirement system shall equal the sum of:

(a) The amount required to pay the normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the public employees' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the public employees' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(8) The employer contribution rate for the teachers' retirement system shall equal the sum of:

(a) The amount required to pay the combined plan 2 and plan 3 normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the teachers' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the teachers' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(9) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(10) The director shall collect those rates adopted by the council. The rates established in RCW 41.45.062, or by the council, shall be subject to revision by the legislature.

(11) The state actuary shall prepare final actuarial valuation results based on the economic assumptions, asset value smoothing technique, and contribution rates included in or adopted under RCW 41.45.030, 41.45.035, and this section. [2009 c 561 § 3; 2007 c 280 § 2; 2005 c 370 § 2; (2005 c 370 § 1 expired July 1, 2006); 2004 c 242 § 39. Prior: 2003 c 294 § 10; 2003 c 92 § 3; 2002 c 26 § 2; prior: 2001 2nd sp.s. c 11 § 10; 2001 c 329 § 10; 2000 2nd sp.s. c 1 § 905; 2000 c 247 § 504; prior: 1998 c 341 § 404; 1998 c 340 § 11; 1998 c 283 § 6; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

Effective date—2009 c 561: See note following RCW 41.45.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.0604 Contribution rates—Law enforcement officers' and firefighters' retirement system plan 2. (1) Not later than July 31, 2008, and every even-numbered year thereafter, the law enforcement officers' and firefighters' plan 2 retirement board shall adopt contribution rates for the law enforcement officers' and firefighters' retirement system plan 2 as provided in RCW 41.26.720(1)(a).

(2) The law enforcement officers' and firefighters' plan 2 retirement board shall immediately notify the directors of the office of financial management and department of retirement systems of the state, employer, and employee rates adopted. Thereafter, the director shall collect those rates adopted by the board. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications. [2007 c 280 § 3; 2003 c 92 § 4.]

Additional notes found at www.leg.wa.gov

41.45.061 Required contribution rates for plan 2 members. (1) The required contribution rate for members of the plan 2 teachers' retirement system shall be fixed at the rates in effect on July 1, 1996, subject to the following:

(a) Beginning September 1, 1997, except as provided in (b) of this subsection, the employee contribution rate shall not exceed the employer plan 2 and 3 rates adopted under RCW 41.45.060, *41.45.054, and 41.45.070 for the teachers' retirement system;

(b) In addition, the employee contribution rate for plan 2 shall be increased by fifty percent of the contribution rate increase caused by any plan 2 benefit increase passed after July 1, 1996;

(c) In addition, the employee contribution rate for plan 2 shall not be increased as a result of any distributions pursuant to section 309, chapter 341, Laws of 1998 and **RCW 41.31A.020.

(2) The required contribution rate for members of the school employees' retirement system plan 2 shall equal the school employees' retirement system employer plan 2 and 3 contribution rate adopted under RCW 41.45.060, *41.45.054, and 41.45.070, except as provided in subsection (3) of this section.

(3) The member contribution rate for the school employees' retirement system plan 2 shall be increased by fifty percent of the contribution rate increase caused by any plan 2 benefit increase passed after September 1, 2000.

(4) The required contribution rate for members of the public employees' retirement system plan 2 shall be set at the same rate as the employer combined plan 2 and plan 3 rate.

(5) The required contribution rate for members of the law enforcement officers' and firefighters' retirement system plan 2 shall be set at fifty percent of the cost of the retirement system.

(6) The employee contribution rates for plan 2 under subsections (3) and (4) of this section shall not include any increase as a result of any distributions pursuant to RCW **41.31A.020 and ***41.31A.030.

(7) The required plan 2 and 3 contribution rates for employers shall be adopted in the manner described in RCW 41.45.060, *41.45.054, and 41.45.070.

(8) The required contribution rate for members of the public safety employees' retirement system plan 2 shall be set at fifty percent of the cost of the retirement system.

(9) Concurrently with the adoption of employer contribution rates, the state actuary shall calculate the required contribution rates for plan 2 members, which are fixed in accordance with this section. Upon adoption of employer contribution rates, the state actuary shall immediately notify the directors of the office of financial management and department of retirement systems of the required contribution rates for members, which shall be effective for the ensuing rate-setting period. [2007 c 280 § 4; 2004 c 242 § 40. Prior: 2001 2nd sp.s. c 11 § 13; 2001 2nd sp.s. c 11 § 12; 2001 c 180 § 1; prior: 2000 c 247 § 506; 2000 c 230 § 2; 1998 c 341 § 405; 1997 c 10 § 2; 1995 c 239 § 311.]

Reviser's note: *(1) RCW 41.45.054 was decodified pursuant to 2005 c 370 § 5, effective September 1, 2005.

***(2) RCW 41.31A.020 was repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

****(3) RCW 41.31A.030 was repealed by 2007 c 491 § 13, effective January 2, 2008.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.45.062 Annual contribution rate increases—Employer, state, and plan 2 members. The basic employer and state contribution rates and required plan 2 member contribution rates are changed to reflect the 2003 actuarial valuation and actuarial projections of the 2005 actuarial valuation, both of which incorporate the 2002 actuarial experience study conducted by the office of the state actuary for 1995-2000. This contribution rate schedule departs from the normal biennial process for setting contribution rates by requiring annual increases in rates during the 2005-2007 biennium, and by requiring annual rates to be adopted by the pension funding council for the 2007-2009 biennium. The rates are lower in the 2005-2007 biennium than required by the 2003 actuarial valuation and will be higher in the 2007-2009 biennium than required by the projected 2005 actuarial valuation.

Upon completion of the 2005 actuarial valuation, the pension funding council and the state actuary shall review the appropriateness of the contribution rates for 2007-2008 and 2008-2009 and by September 30, 2006, the pension funding council shall adopt contribution rates to complete the four-year phase-in schedule, adjusted for any material changes in benefits or actuarial assumptions, methods, or experience. This contribution rate schedule also requires a departure from the allocation formula for contributions in RCW 41.45.050, suspension of payments on the unfunded liability in the public employees' retirement system and the teachers' retirement system during the 2005-2007 biennium, and a delay in the recognition of the cost of future gain-sharing benefits until the 2007-2009 biennium.

(1) Beginning July 1, 2005, the following employer contribution rate shall be charged: 2.25 percent for the public employees' retirement system.

(2) Beginning September 1, 2005, the following employer contribution rates shall be charged:

(a) 2.75 percent for the school employees' retirement system; and

(b) 2.73 percent for the teachers' retirement system.

(3) Beginning July 1, 2005, the following member contribution rate shall be charged: 2.25 percent for the public employees' retirement system plan 2.

(4) Beginning September 1, 2005, the following member contribution rates shall be charged:

(a) 2.75 percent for the school employees' retirement system plan 2; and

(b) 2.48 percent for the teachers' retirement system plan 2.

(5) The contribution rates in subsections (1) through (4) of this section shall be collected through June 30, 2006, for the public employees' retirement system, and August 31, 2006, for the school employees' retirement system and the teachers' retirement system.

(6) Beginning July 1, 2006, the following employer contribution rate shall be charged: 3.50 percent for the public employees' retirement system.

(7) Beginning September 1, 2006, the following employer contribution rates shall be charged:

(a) 3.75 percent for the school employees' retirement system; and

(b) 3.25 percent for the teachers' retirement system.

(8) Beginning July 1, 2006, the following member contribution rate shall be charged: 3.50 percent for the public employees' retirement system plan 2.

(9) Beginning September 1, 2006, the following member contribution rates shall be charged:

(a) 3.75 percent for the school employees' retirement system plan 2; and

(b) 3.00 percent for the teachers' retirement system plan 2.

(10) During the 2005 interim, the select committee on pension policy shall study the options available to the legislature for addressing the liability associated with future gain-sharing benefits. These options may include, but shall not be limited to, repealing, delaying, or suspending the gain-sharing provisions in law; making gain-sharing discretionary; or replacing gain-sharing benefits with other benefits such as plan choice, employer defined contributions, retirement eligibility enhancements, and postretirement adjustments. The select committee on pension policy shall report the findings and recommendations of its study to the legislative fiscal committees by no later than December 15, 2005. [2005 c 370 § 6.]

Additional notes found at www.leg.wa.gov

41.45.0621 Plan 1 unfunded accrued actuarial liabilities—Contributions in addition to RCW 41.45.062—

Intent. (1) It is the intent of the legislature to provide for the systematic funding of the plan 1 unfunded accrued actuarial liabilities in a manner that promotes contribution rate adequacy and stability for the affected systems. The rates established in this section shall be collected in addition to the rates established pursuant to RCW 41.45.062.

(2) Beginning September 1, 2006, a 1.29 percent contribution is established as part of the basic state and employer contribution rate for the teachers' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the teachers' retirement system plan 1.

(3) Beginning September 1, 2006, a 0.87 percent contribution is established as part of the basic state and employer contribution rate for the school employees' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the public employees' retirement system plan 1.

(4) Beginning January 1, 2007, a 1.77 percent contribution is established as part of the basic state and employer contribution rate for the public employees' retirement system and the public safety employees' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the public employees' retirement system plan 1.

(5) The contribution rates in this section shall be collected through June 30, 2007, for the public employees' retirement system and the public safety employees' retirement system and August 31, 2007, for the teachers' retirement system and the school employees' retirement system.

(6) Upon completion of the 2005 actuarial valuation, the pension funding council and the state actuary shall review the contribution rates for the plan 1 unfunded actuarial accrued liability for fiscal year 2008 and fiscal year 2009 and by September 30, 2006, the pension funding council shall adopt contribution rates to complete the three-year phase-in schedule, adjusted for any material changes in benefits or actuarial assumptions, methods, and experience. The expected present value of projected contributions during the three-year phase-in period shall be the same as the expected present value of projected contributions that would have been collected without the phase-in, as determined by the state actuary and adjusted for any material changes in benefits or actuarial assumptions, methods, or experience. [2006 c 56 § 3.]

Effective dates—2006 c 56: See note following RCW 41.45.230.

41.45.0631 Washington state patrol retirement system—Contribution rate—Allocation of costs.

(1) The allocation of costs between the employer and members of the Washington state patrol retirement system shall be made only after the application of any minimum total contribution rate that may be in effect for the system under subsection (4) of this section. For benefit improvements effective on or after July 1, 2007, costs shall be shared equally by members and the employer, and any cap on member contributions shall be adjusted accordingly. The member contribution rate shall be based on the adjusted total contribution rate described in subsection (2) of this section. Beginning July 1, 2007, the required member contribution rate for members of the Washington state patrol retirement system shall be the lesser of the following: (a) One-half of the adjusted total contribution rate for the system; or (b) seven percent, plus fifty percent of the contribution rate increase caused by any benefit improvements effective on or after July 1, 2007.

(2) The employer shall continue to pay for all costs attributable to distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006, until such costs are fully paid. In order to avoid charging members for these costs, the total required contribution rate shall be adjusted to exclude these costs. The result of the adjustment shall be the adjusted total contribution rate that is to be used to calculate the required member contribution rate.

(3) The employer rate shall be the contribution rate required to cover all total system costs that are not covered by the member contribution rate.

(4) Beginning July 1, 2009, a minimum total contribution rate is established for the Washington state patrol retirement system. The total Washington state patrol retirement system contribution rate may exceed, but may not drop below, the established minimum total contribution rate. From July 1, 2009, through June 30, 2011, the minimum total contribution rate shall equal the total contribution rate required to fund fifty percent of the Washington state patrol retirement system's normal cost as calculated under the entry age normal cost method. Beginning July 1, 2011, the minimum total contribution rate shall equal the total contribution rate required to fund seventy percent of the Washington state patrol retirement system's normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize any unfunded costs attributable to distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006.

(5) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of this minimum total contribution rate and recommend to the council any adjustments as may be needed. Any changes adopted by the council shall be subject to revision by the legislature. [2009 c 561 § 7. Prior: 2007 c 300 § 1; 2007 c 280 § 5; 2006 c 94 § 2; 2001 c 329 § 11.]

Effective date—2009 c 561: See note following RCW 41.45.010.

Effective date—2007 c 300: "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 July 1, 2007." [2007 c 300 § 3.]

Additional notes found at www.leg.wa.gov

41.45.067 Failure of state or employer to make required contribution—Resulting increase in contribution rate borne in full by state or employer—Members' contribution deducted each payroll period. (1) Any increase in the contribution rate required as the result of a failure of the state or of an employer to make any contribution required by this section shall be borne in full by the state or by that employer not making the contribution.

(2) The director shall notify all employers of any pending adjustment in the required contribution rate and such pending adjustment in the required contribution rate and any increase shall be announced at least thirty days prior to the effective date of the change.

(3) Members' contributions required by RCW 41.45.060 and 41.45.061 shall be deducted from the members' compensation each payroll period. The members' contribution and the employers' contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends.

(4) The state's contribution required for the law enforcement officers' and firefighters' retirement system plan 2 shall be transferred to the appropriate fund from the total contributions transferred by the state treasurer under RCW 41.45.050. [2001 2nd sp.s. c 11 § 14; 2000 c 247 § 507.]

Additional notes found at www.leg.wa.gov

41.45.070 Supplemental rate. (1) In addition to the basic employer contribution rate established in RCW 41.45.060 or *41.45.054, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, public safety employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsections (6), (7), and (9) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic member, employer, and state contribution rate established in RCW 41.45.0604 for the law enforcement officers' and firefighters' retirement system plan 2, the department shall also establish supplemental rates to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and firefighters' retirement system plan 2. Except as provided in subsection (6) of this section, these supplemental rates shall be calculated by the actuary retained by the law enforcement officers' and firefighters' board and the state actuary through the process provided in RCW 41.26.720(1)(a) and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) Beginning July 1, 2009, the supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of all system pay needed to fund the cost of the benefit over a fixed ten-year period, using projected future salary growth and growth in system membership. The supplemental rate to fund benefit increases provided to active members of the public employees' retirement system plan 1 shall be charged to all system employers in the public employees' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The supplemental rate to fund benefit increases provided to active members of the teachers' retirement system plan 1 shall be charged to all system employers in the teachers' retirement system.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan 2 and plan 3, the teachers' retirement system plan 2 and plan 3, the public safety employees' retirement system plan 2, the school employees' retirement system plan 2 and plan 3, or the Washington state patrol retirement system shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, 41.45.0631, or 41.45.067.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. Beginning July 1, 2009, the supplemental rate charged under this section to fund increases in the automatic postretirement adjustments for active or retired

members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments over a fixed ten-year period, using projected future salary growth and growth in system membership. The supplemental rate to fund increases in the automatic postretirement adjustments for active members or retired members of the public employees' retirement system plan 1 shall be charged to all system employers in the public employees' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The supplemental rate to fund increases in automatic postretirement adjustments for active members or retired members of the teachers' retirement system plan 1 shall be charged to all system employers in the teachers' retirement system.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998.

(7) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to **chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998.

(8) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members and survivors pursuant to chapter 94, Laws of 2006.

(9) A supplemental rate shall not be charged to pay for the cost of the additional benefits granted to members of the teachers' retirement system and the school employees' retirement system plans 2 and 3 in sections 2, 4, 6, and 8, chapter 491, Laws of 2007 until September 1, 2008. A supplemental rate shall not be charged to pay for the cost of the additional benefits granted to members of the public employees' retirement system plans 2 and 3 under sections 9 and 10, chapter 491, Laws of 2007 until July 1, 2008. [2009 c 561 § 4; 2007 c 491 § 12; 2006 c 94 § 3; (2005 c 327 § 10 expired July 1, 2006); 2004 c 242 § 41. Prior: (2003 1st sp.s. c 11 § 3 repealed by 2005 c 327 § 11); 2003 c 92 § 5; prior: 2001 2nd sp.s. c 11 § 16; 2001 2nd sp.s. c 11 § 15; 2000 c 247 § 505; 1998 c 340 § 10; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

Reviser's note: *(1) RCW 41.45.054 was decodified by 2005 c 370 § 5, effective September 1, 2005.

** (2) Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 561: See note following RCW 41.45.010.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Effective date—2006 c 94 § 3: "Section 3 of this act takes effect July 1, 2006." [2006 c 94 § 4.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.45.080 Additional contributions may be required.

In addition to the basic and supplemental employer contributions required by RCW 41.45.060, *41.45.053, and 41.45.070, the department may also require additional employer contributions as provided by law. [2001 2nd sp.s. c 11 § 17; 1989 c 273 § 8.]

(2016 Ed.)

***Reviser's note:** RCW 41.45.053 was repealed by 2002 c 7 § 2.

Additional notes found at www.leg.wa.gov

41.45.090 Collection of actuarial data. The department shall collect and keep in convenient form such data as shall be necessary for an actuarial valuation of the assets and liabilities of the state retirement systems, and for making an actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of those systems. The department and state actuary shall enter into a memorandum of understanding regarding the specific data the department will collect, when it will be collected, and how it will be maintained. The department shall notify the state actuary of any changes it makes, or intends to make, in the collection and maintenance of such data.

At least once in each six-year period, the state actuary shall conduct an actuarial experience study of the mortality, service, compensation and other experience of the members and beneficiaries of each state retirement system, and into the financial condition of each system. The results of each investigation shall be filed with the department, the office of financial management, the budget writing committees of the Washington house of representatives and senate, the select committee on pension policy, and the pension funding council. Upon the basis of such actuarial investigation the department shall adopt such tables, schedules, factors, and regulations as are deemed necessary in the light of the findings of the actuary for the proper operation of the state retirement systems. [2003 c 295 § 9; 1998 c 283 § 7; 1989 c 273 § 9.]

41.45.100 Pension funding council—Created. (1) The pension funding council is hereby created. The council consists of the:

- (a) Director of the department of retirement systems;
- (b) Director of the office of financial management;
- (c) Chair and ranking minority member of the house of representatives appropriations committee; and
- (d) Chair and ranking minority member of the senate ways and means committee.

The council may select officers as the members deem necessary.

(2) The pension funding council shall adopt changes to economic assumptions and contribution rates by an affirmative vote of at least four members. [1998 c 283 § 2.]

41.45.110 Pension funding council—Audits required—Select committee on pension policy. The pension funding council shall solicit and administer a biennial actuarial audit of the preliminary and final actuarial valuations used for employer and member rate-setting purposes. This audit will be conducted concurrent with the actuarial valuation performed by the state actuary. At least once in each six-year period, the pension funding council shall solicit and administer an actuarial audit of the results of the experience study required in RCW 41.45.090. Upon receipt of the results of the preliminary actuarial audits required by this section, and at least thirty days prior to adopting contribution rates, the pension funding council shall submit the results to the select committee on pension policy. [2007 c 280 § 6; 2003 c 295 § 10; 1998 c 283 § 3.]

41.45.120 Pension funding work group. (1) A pension funding work group is hereby created. The work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Department of retirement systems;
 - (b) Office of financial management;
 - (c) State investment board;
 - (d) Ways and means committee of the senate;
 - (e) Appropriations committee of the house of representatives; and
 - (f) Economic and revenue forecast council.
- (2) The state actuary shall make available to the work group information related to economic assumptions and contribution rates.

(3) The pension funding work group shall provide support to the pension funding council. Meetings of the pension funding work group may be called by any member of the group for the purpose of assisting the pension funding council, reviewing actuarial valuations of the state retirement systems, reviewing economic assumptions, or for any other purpose which may assist the pension funding council.

(4) Recommendations from both affected employee and employer groups will be actively sought during the work group process. The work group shall conduct an open public meeting on these recommendations. [1998 c 283 § 4.]

41.45.130 Public employees' retirement system plan 2 assets divided—Assets transferred to school employees' retirement system. Upon the advice of the state actuary, the state treasurer shall divide the assets in the public employees' retirement system plan 2 as of September 1, 2000, in such a manner that sufficient assets remain in plan 2 to maintain the employee contribution rate calculated in the latest actuarial valuation of the public employees' retirement system plan 2. The state actuary shall take into account changes in assets that occur between the latest actuarial valuation and the date of transfer. The balance of the assets shall be transferred to the Washington school employees' retirement system plan 2 and 3. [1998 c 341 § 407.]

Additional notes found at www.leg.wa.gov

41.45.150 Unfunded liabilities—Employer contribution rates. (1) Beginning July 1, 2009, and ending June 30, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the public employees' retirement system and the public safety employees' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
1.25%	1.25%	3.75%	4.50%	5.25%	6.00%

(2) Beginning September 1, 2009, and ending August 31, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the school employees' retirement system that is used for the sole purpose

of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
1.25%	1.25%	3.75%	4.50%	5.25%	6.00%

(3) Beginning September 1, 2009, and ending August 31, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the teachers' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the teachers' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
2.04%	2.04%	6.50%	7.50%	8.50%	9.50%

(4) Beginning July 1, 2015, a minimum 3.50 percent contribution is established as part of the basic employer contribution rate for the public employees' retirement system and the public safety employees' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the public employees' retirement system equals one hundred percent of the actuarial accrued liability.

(5) Beginning September 1, 2015, a minimum 3.50 percent contribution is established as part of the basic employer contribution rate for the school employees' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the public employees' retirement system equals one hundred percent of the actuarial accrued liability.

(6) Beginning September 1, 2015, a minimum 5.75 percent contribution is established as part of the basic employer contribution rate for the teachers' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the teachers' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the teachers' retirement system equals one hundred percent of the actuarial accrued liability.

(7) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of the minimum contribution rates and recommend to the council any adjustments as may be needed due to material changes in

benefits or actuarial assumptions, methods, or experience. Any changes adopted by the council shall be subject to revision by the legislature. [2011 c 362 § 8; 2010 1st sp.s. c 26 § 7; 2009 c 561 § 5; 2006 c 365 § 2.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2009 c 561: See note following RCW 41.45.010.

Effective date—2006 c 365: See note following RCW 41.45.020.

41.45.155 Certain plans 2 and 3 normal costs—Minimum basic employer contribution rates. (1) Beginning July 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the public employees' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(2) Beginning July 1, 2011, a minimum contribution rate is established for the plan 2 normal cost as part of the basic employer contribution rate for the public safety employees' retirement system. The minimum contribution rate for the plan 2 normal cost shall equal the total contribution rate required to fund eighty percent of the plan 2 normal cost as calculated under the entry age normal cost method.

(3) Beginning September 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the school employees' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(4) Beginning September 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the teachers' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(5) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of these minimum contribution rates and recommend to the council any adjustments as may be needed due to material changes in benefits or actuarial assumptions, methods, or experience. Any changes adopted by the council shall be subject to revision by the legislature. [2009 c 561 § 6; 2006 c 365 § 3.]

Effective date—2009 c 561: See note following RCW 41.45.010.

Effective date—2006 c 365: See note following RCW 41.45.020.

41.45.158 Certain plans 2 and 3 normal costs—Minimum member contribution rates. (1) Beginning July 1, 2009, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the required contribution rate for members of plan 2 of the public employees' retirement system. The minimum contribution rate for the plans 2 and 3 employee normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employee normal cost as calculated under the entry age normal cost method.

(2) Beginning September 1, 2009, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the required contribution rate for members of plan 2 of the school employees' retirement system. The minimum contribution rate for the plans 2 and 3 employee normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employee normal cost as calculated under the entry age normal cost method.

(3) Beginning September 1, 2009, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the required contribution rate for members of plan 2 of the teachers' retirement system. The minimum contribution rate for the plans 2 and 3 employee normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employee normal cost as calculated under the entry age normal cost method.

(4) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of these minimum contribution rates and recommend to the legislature any adjustments as may be needed due to material changes in benefits or actuarial assumptions, methods, or experience. [2006 c 365 § 4.]

Effective date—2006 c 365: See note following RCW 41.45.020.

41.45.200 Contribution rates for certain justices and judges—Public employees' retirement system. (1) The required employer contribution rate in support of public employees' retirement system members employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.40.124(1) or 41.40.870(1), or who are newly elected or appointed after January 1, 2007, shall consist of the public employees' retirement system employer contribution rate established under this chapter plus two and one-half percent of pay.

(2) The required contribution rate for members of the public employees' retirement system plan 2 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.40.124(1) or 41.40.870(1), or who are newly elected or appointed after January 1, 2007, shall be two hundred fifty percent of the member contribution rate for the public employees' retirement system plan 2 established under this chapter less two and one-half percent of pay.

(3) The required contribution rate for members of the public employees' retirement system plan 1 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.40.124(1), or who are newly elected or appointed after January 1, 2007, shall be the contribution rate established

under RCW 41.40.330 plus three and seventy-six one-hundredths percent of pay. [2006 c 189 § 17.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.45.203 Contribution rates for certain justices and judges—Teachers' retirement system. (1) The required employer contribution rate in support of teachers' retirement system members employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.32.584(1), or who are newly elected or appointed after January 1, 2007, shall equal the teachers' retirement system employer contribution rate established under this chapter.

(2) The required contribution rate for members of the teachers' retirement system plan 1 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.32.584(1), or who are newly elected or appointed after January 1, 2007, shall be the deductions established under RCW 41.50.235 plus three and seventy-six one-hundredths percent of pay. [2007 c 492 § 12; 2006 c 189 § 18.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.45.207 Contribution rates for certain district or municipal court judges—Public employees' retirement system. (1) The required employer contribution rate in support of public employees' retirement system members employed as district court judges and municipal court judges who elect to participate under RCW 41.40.127(1) or 41.40.873(1), or who are newly elected or appointed after January 1, 2007, shall equal the public employees' retirement system employer contribution rate established under this chapter.

(2) The required contribution rate for members of the public employees' retirement system plan 2 employed as district court judges or municipal court judges who elect to participate under RCW 41.40.127(1) or 41.40.873(1), or who are newly elected or appointed after January 1, 2007, shall be two hundred fifty percent of the member contribution rate for the public employees' retirement system plan 2 established under this chapter.

(3) The required contribution rate for members of the public employees' retirement system plan 1 employed as district court judges or municipal court judges who elect to participate under RCW 41.40.124(1), or who are newly elected or appointed after January 1, 2007, shall be the contribution rate established under RCW 41.40.330 plus six and twenty-six one-hundredths percent of pay. [2006 c 189 § 19.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.45.230 Pension funding stabilization account—Creation. The pension funding stabilization account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for payment of state government employer contributions for members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The account may not be used to pay for any new benefit or for any benefit increase that takes effect after July 1, 2005. An increase that is provided in accordance

with a formula that is in existence on July 1, 2005, is not considered a benefit increase for this purpose. Moneys in the account shall be for the exclusive use of the specified retirement systems and may be invested by the state treasurer pursuant to RCW 43.84.080. For purposes of RCW 43.135.034, expenditures from the pension funding stabilization account shall not be considered a state program cost shift from the state general fund to another account. [2012 c 187 § 11; 2009 c 564 § 1808; 2008 c 329 § 910; 2006 c 56 § 1.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Effective dates—2006 c 56: "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 [March 15, 2006], except section 10 of this act, which takes effect July 1, 2006." [2006 c 56 § 13.]

Chapter 41.47 RCW

ACCEPTANCE OF OLD AGE AND SURVIVORS' INSURANCE—1941 ACT

Sections

41.47.010	Benefits of federal act accepted.
41.47.020	Wage deductions.
41.47.030	Operation of statute limited.
41.47.040	Severability as to coverage.
41.47.050	Contingent effective date.

Designation of agency to carry out federal social security disability program: RCW 43.17.120, 43.17.130.

41.47.010 Benefits of federal act accepted. The state of Washington in behalf of all its eligible officials and employees and the eligible officials and employees of all its counties, cities and towns, and of any and all other of its municipal corporations and political subdivisions which levy taxes and employ and pay salaries and wages to officials and employees including public utility districts, hereby accepts the benefits of the old age and survivors' insurance benefit provisions of the federal social security act, whenever the provisions of such act are extended to embrace such officials and employees. [1941 c 205 § 1; Rem. Supp. 1941 § 9998-57. Formerly RCW 74.40.010.]

41.47.020 Wage deductions. Any and all officials and boards having charge of the preparation of payrolls and payment of salaries and wages to such eligible officials and employees are hereby authorized and directed to make payroll and salary and wage deductions and to handle and dispose of the same as required by such federal act; and any official or board being authorized to disburse funds respectively for the office, department or division of the state, county, city or town, or other municipal corporation or political subdivision in which any such eligible official or employee is employed is authorized to pay and disburse out of any funds available for the operation and maintenance of such office, department or division such sums and dispose of and handle the same in such manner as is required and necessary to make payments and benefits of said federal act available to such eligible officials and employees. [1941 c 205 § 2; Rem. Supp. 1941 § 9998-58. Formerly RCW 74.40.020.]

41.47.030 Operation of statute limited. Nothing contained in this chapter shall deprive any person of benefits under any existing pension system, nor repeal, amend, modify or supersede any law, charter amendment or ordinance establishing or pertaining to an existing pension system. [1941 c 205 § 3; Rem. Supp. 1941 § 9998-59. Formerly RCW 74.40.030.]

41.47.040 Severability as to coverage. If it is found by any judicial authority of competent jurisdiction that the provisions of this chapter may not become applicable to any group of officials or employees for any reason, such inapplicability shall not prevent the same from becoming applicable as herein provided to the other officials and employees embraced herein. [1941 c 205 § 4; Rem. Supp. 1941 § 9998-60. Formerly RCW 74.40.040.]

41.47.050 Contingent effective date. This chapter shall take effect at the time and in the manner provided by the state Constitution unless at that time the federal social security act has not been amended to cover officials and employees of the state, county, city and other municipal corporations and political subdivisions, in which event it shall take effect and become operative on the first day of the second month following the month when such federal act shall become applicable to such state officials and employees. [1941 c 205 § 5; Rem. Supp. 1941 § 9998-61. Formerly RCW 74.40.050.]

Chapter 41.48 RCW FEDERAL SOCIAL SECURITY FOR PUBLIC EMPLOYEES

Sections

41.48.010	Purpose—Construction.
41.48.020	Definitions.
41.48.030	Agreement with the federal secretary of health and human services.
41.48.040	Employees' contributions.
41.48.050	Extension of social security benefits to employees of political subdivisions—Termination, procedure.
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Acceptance of old age and survivors' insurance: Chapter 41.47 RCW.

Application forms—Licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Hours and wages of department of social and health services personnel: RCW 72.01.042, 72.01.043.

Plan for OASI coverage of members of state employees' retirement system: Chapter 41.41 RCW. teachers' retirement system: Chapter 41.33 RCW.

Trusts for employee benefits: Chapter 49.64 RCW.

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41.48.010 Purpose—Construction. In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors insurance system embodied in the social security act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the social security act. Persons now members of or protected by any state or local pension or retirement plan or system may be covered under the federal social security act only as provided by the federal social security act amendments of 1954. (Public Law No. 761.) It is hereby declared to be the policy of the legislature in enacting the succeeding sections of this title that the protection afforded the employees in positions covered by a retirement system on the date an agreement under this title is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as the result of making the agreements so applicable whether the agreement provides for supplementation, integration or coordination. [1955 ex.s. c 4 § 1; 1951 c 184 § 1.]

41.48.020 Definitions. For the purposes of this chapter:

(1) "Employee" includes all officers and employees of the state or its political subdivisions except officials compensated on a fee basis;

(2) "Employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (a) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the social security act; or (b) service which under the social security act may not be included in an agreement between the state and the secretary of health, education, and welfare entered into under this chapter;

(3) "Federal insurance contributions act" means subchapter A of chapter 9 of the federal internal revenue code of 1939 and subchapters A and B of chapter 21 of the federal internal revenue code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such code of 1939 and section 3101 of such code of 1954;

(4) "Political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions. Such term also includes a proprietary enterprise acquired, purchased, or originated by the state or any of its political subdivisions subsequent to December, 1950. Such a subdivision may elect to accept federal OASI coverage under this chapter;

(5) "Secretary of health, education, and welfare" includes any individual to whom the secretary of health, education, and welfare has delegated any of his or her functions under the social security act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator has delegated any such function;

(6) "Wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal insurance contributions act, would not constitute "wages" within the meaning of that act. [2012 c 117 § 77; 1955 ex.s. c 4 § 2; 1953 c 62 § 1; 1951 c 184 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

41.48.030 Agreement with the federal secretary of health and human services. (1) The governor is hereby authorized to enter on behalf of the state into an agreement with the federal secretary of health and human services consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision not members of an existing retirement system, or to members of a retirement system established by the state or by a political subdivision thereof or by an institution of higher learning with respect to services specified in such agreement which constitute "employment" as defined in RCW 41.48.020. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the governor and secretary of health and human services shall agree upon, but, except as may be otherwise required by or under the social security act as to the services to be covered, such agreement shall provide in effect that:

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the social security act;

(b) The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in RCW 41.48.020), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(c) Such agreement shall be effective with respect to services in employment covered by the agreement or modification thereof performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year immediately preceding the calendar year in which such agreement or modification of the agreement is accepted by the secretary of health and human services;

(d) All services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the state by employees of the state, shall be covered by the agreement;

(e) All services which (i) constitute employment as defined in RCW 41.48.020, (ii) are performed in the employ of a political subdivision of the state, and (iii) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the governor under RCW 41.48.050, shall be covered by the agreement;

(f) As modified, the agreement shall include all services described in either (d) or (e) of this subsection and performed by individuals to whom section 218(c)(3)(C) of the social security act is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case he or she thereafter becomes eligible to be a member of a retirement system;

(g) As modified, the agreement shall include all services described in either (d) or (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health and human services pursuant to subsection (5) of this section; and

(h) Law enforcement officers and firefighters of each political subdivision of this state who are covered by the Washington law enforcement officers' and firefighters' retirement system act, chapter 41.26 RCW, shall constitute a separate "coverage group" for purposes of the agreement entered into under this section and for purposes of section 218 of the social security act.

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (a) to enter into an agreement with the secretary of health and human services whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality, (b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under RCW 41.48.040(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and (c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) of this section and other provisions of this chapter.

(3) The governor is empowered to authorize a referendum, and to designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, and subsection (4) of this section on the question of whether service in all positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. If a retirement system covers positions of employees of the state of Washington, of the institutions of higher learning, and positions of employees of one or more of the political subdivisions of the state, then for the purpose of the referendum as provided in this section, there may be deemed to be a separate retirement system with respect to employees of the state, or any one or more of the political subdivisions, or institutions of higher learning and the governor shall authorize a referendum upon request of the subdivisions' or institutions' of higher learning governing body: PROVIDED HOWEVER, That if a referendum of state employees generally fails to produce a favorable majority vote then the governor may authorize a referendum covering positions of employees in any state department who are compensated in whole or in part from grants made to this state under Title III of the federal social security act: PROVIDED, That any city or town affili-

ated with the statewide city employees retirement system organized under chapter 41.44 RCW may at its option agree to a plan submitted by the board of trustees of that statewide city employees retirement system for inclusion under an agreement under this chapter if the referendum to be held as provided in this section indicates a favorable result: PROVIDED FURTHER, That the teachers' retirement system be considered one system for the purpose of the referendum except as applied to the several *colleges of education. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(4) The governor, before authorizing a referendum, shall require the following conditions to be met:

(a) The referendum shall be by secret written ballot on the question of whether service in positions covered by such retirement system shall be excluded from or included under the agreement between the governor and the secretary of health and human services provided for in subsection (1) of this section;

(b) An opportunity to vote in such referendum shall be given and shall be limited to eligible employees;

(c) Not less than ninety days' notice of such referendum shall be given to all such employees;

(d) Such referendum shall be conducted under the supervision of the governor or of an agency or individual designated by the governor;

(e)(i) The proposal for coverage shall be approved only if a majority of the eligible employees vote in favor of including services in such positions under the agreement;

(ii) Coverage obtained through a divided referendum process shall extend coverage to law enforcement officers, firefighters, and employees of political subdivisions of this state, who have membership in a qualified retirement system, allowing them to obtain medicare coverage only (HI-only). In such a divided referendum process, those members voting in favor of medicare coverage constitute a separate coverage group;

(f) The state legislature, in the case of a referendum affecting the rights and liabilities of state employees covered under the state employees' retirement system and employees under the teachers' retirement system, and in all other cases the local legislative authority or governing body, shall have specifically approved the proposed plan and approved any necessary structural adjustment to the existing system to conform with the proposed plan;

(g) In the case of a referendum authorized under section 218(d)(6) of the social security act and (e)(ii) of this subsection, the retirement system will be divided into two parts or divisions. One part or division of the retirement system shall be composed of positions of those members of the system who desire coverage under the agreement as permitted by this section. The remaining part or division of the retirement system shall be composed of positions of those members who do not desire coverage under such an agreement. Each part or

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division is a separate retirement system for the purposes of section 218(d) of the social security act. The positions of individuals who become members of the system after the coverage is extended shall be included in the part or division of the system composed of members desiring the coverage, with the exception of positions that are excluded in the agreement.

(5) Upon receiving satisfactory evidence that with respect to any such referendum the conditions specified in subsection (4) of this section and section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health and human services.

(6) If the legislative body of any political subdivision of this state certifies to the governor that a referendum has been held under the terms of RCW 41.48.050(1)(i) and gives notice to the governor of termination of social security for any coverage group of the political subdivision, the governor shall give two years advance notice in writing to the federal department of health and human services of the termination of the agreement entered into under this section with respect to that coverage group. [2008 c 142 § 1; 2007 c 218 § 72; 1971 ex.s. c 257 § 19; 1967 c 5 § 1; 1957 c 170 § 1; 1955 ex.s. c 4 § 3; 1951 c 184 § 3.]

***Reviser's note:** The "colleges of education" were redesignated state colleges by 1961 c 62 § 1, formerly RCW 28.81.005, decodified in the 1969 education code. See also RCW 28B.10.016.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.48.040 Employees' contributions. (1) Every employee of the state whose services are covered by an agreement entered into under RCW 41.48.030 shall be required to pay for the period of such coverage, into the contribution account established by RCW 41.48.060, contributions, with respect to wages (as defined in RCW 41.48.020), equal to the amount of employee tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employees' retention in the service of the state, or his or her entry upon such service, after the enactment of this chapter.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe. [2012 c 117 § 78; 1955 ex.s. c 4 § 4; 1951 c 184 § 4.]

41.48.050 Extension of social security benefits to employees of political subdivisions—Termination, procedure. (1) Each political subdivision of the state is hereby authorized to submit for approval by the governor a plan for extending the benefits of title II of the social security act, in conformity with the applicable provisions of such act, to

those employees of such political subdivisions who are not covered by an existing pension or retirement system. Each pension or retirement system established by the state or a political subdivision thereof is hereby authorized to submit for approval by the governor a plan for extending the benefits of title II of the social security act, in conformity with applicable provisions of such act, to members of such pension or retirement system. Each such plan and any amendment thereof shall be approved by the governor if he or she finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the governor, except that no such plan shall be approved unless—

(a) It is in conformity with the requirements of the social security act and with the agreement entered into under RCW 41.48.030;

(b) It provides that all services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;

(c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) of this section are expected to be derived and contains reasonable assurance that such sources will be adequate for such purposes;

(d) It provides that in the plan of coverage for members of the state teachers' retirement system or for state employee members of the state employees' retirement system, there shall be no additional cost to or involvement of the state until such plan has received prior approval by the legislature;

(e) It provides for such methods of administration of the plan by the political subdivision as are found by the governor to be necessary for the proper and efficient administration of the plan;

(f) It provides that the political subdivision will make such reports, in such form and containing such information, as the governor may from time to time require and comply with such provisions as the governor or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports; and

(g) It authorizes the governor to terminate the plan in its entirety, in his or her discretion, if he or she finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the governor and may be consistent with the provisions of the social security act;

(h) It provides that law enforcement officers and firefighters of each political subdivision of this state who are covered by the Washington Law Enforcement Officers' and Firefighters' Retirement System Act (chapter 209, Laws of 1969 ex. sess.) as now in existence or hereafter amended shall constitute a separate "coverage group" for purposes of the plan or agreement entered into under this section and for purposes of section 216 of the social security act. To the extent that the plan or agreement entered into between the state and any political subdivision of this state is inconsistent with this subsection, the governor shall seek to modify the inconsistency;

(i) It provides that the plan or agreement may be terminated by any political subdivision as to any such coverage

group upon giving at least two years advance notice in writing to the governor, effective at the end of the calendar quarter specified in the notice. It shall specify that before notice of such termination is given, a referendum shall be held among the members of the coverage group under the following conditions:

(i) The referendum shall be conducted under the supervision of the legislative body of the political subdivision.

(ii) Not less than sixty days' notice of such referendum shall be given to members of the coverage group.

(iii) An opportunity to vote by secret ballot in such referendum shall be given and shall be limited to all members of the coverage group.

(iv) The proposal for termination shall be approved only if a majority of the coverage group vote in favor of termination.

(v) If a majority of the coverage group vote in favor of termination, the legislative body of the political subdivision shall certify the results of the referendum to the governor and give notice of termination of such coverage group.

(2) The governor shall not finally refuse to approve a plan submitted by a political subdivision under subsection (1) [of this section], and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(3)(a) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution account, with respect to wages (as defined in RCW 41.48.020), at such time or times as the governor may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the governor under RCW 41.48.030.

(b) Each political subdivision required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this chapter, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his or her wages (as defined in RCW 41.48.020), not exceeding the amount of employee tax which is imposed by the federal insurance contributions act, and to deduct the amount of such contribution from his or her wages as and when paid. Contributions so collected shall be paid into the OASI contribution account in partial discharge of the liability of such political subdivision or instrumentality under paragraph (a) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(4) Delinquent reports and payments due under paragraph (f) of subsection (1) and paragraph (a) of subsection (3) of this section will be subject to an added interest charge of six percent per year or, if higher, the rate chargeable to the state by the secretary by virtue of federal law, if the late report or payment contributes to any federal penalty for late filing of reports or for late deposit of contributions. Delinquent contributions, interest, and penalties may be recovered by civil action or may, at the request of the governor, be deducted from any other moneys payable to the political subdivision by any department or agency of the state. [2012 c 117 § 79; 1981 c 119 § 1; 1971 ex.s. c 257 § 20; 1955 ex.s. c 4 § 5; 1951 c 184 § 5.]

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Law enforcement officers' and firefighters' retirement system: Chapter 41.26 RCW.

Public employees' retirement system: Chapter 41.40 RCW.

Teachers' retirement system: Chapter 41.32 RCW.

41.48.060 OASI contribution account. (1) There is hereby established a special account in the state treasury to be known as the OASI contribution account. Such account shall consist of and there shall be deposited in such account: (a) All contributions and penalties collected under RCW 41.48.040 and 41.48.050; (b) all moneys appropriated thereto under this chapter; (c) any property or securities belonging to the account; and (d) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source. All moneys in the account shall be mingled and undivided. Subject to the provisions of this chapter, the governor is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter. During the 2009-2011 fiscal biennium, moneys in the OASI contribution account may also be transferred into the OASI revolving fund.

(2) The OASI contribution account shall be established and held separate and apart from any other funds of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such account shall be made for, and solely for (a) payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under RCW 41.48.030; (b) payment of refunds provided for in RCW 41.48.040(3); and (c) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(3) From the OASI contribution account the custodian of the fund [account] shall pay to the secretary of the treasury such amounts and at such time or times as may be directed by the governor in accordance with any agreement entered into under RCW 41.48.030 and the social security act.

(4) The treasurer of the state shall be ex officio treasurer and custodian of the OASI contribution account and shall administer such account in accordance with the provisions of this chapter and the directions of the governor and shall pay all warrants drawn upon it in accordance with the provisions of this section and with the regulations as the governor may prescribe pursuant thereto. [2009 c 564 § 923; 1991 sp.s. c 13 § 112; 1973 c 126 § 14; 1967 c 213 § 1; 1951 c 184 § 6.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

41.48.065 OASI revolving fund. (1) There is hereby established a separate fund in the custody of the state treasurer to be known as the OASI revolving fund. The fund shall consist of all moneys designated for deposit in the fund. The OASI revolving fund shall be used exclusively for the purpose of this section, including the costs of program administration. Withdrawals from the fund may be made for the payment of amounts the state may be obligated to pay or forfeit

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by reason of any failure of any public agency to pay assessments on contributions or interest assessments required under the federal-state agreement under this chapter or federal regulations.

(2) All costs allocable to the administration of this chapter shall be charged to and paid to the OASI revolving fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions.

(3) The treasurer of the state shall be ex officio treasurer and custodian of the fund and shall administer the fund in accordance with this chapter and the directions of the governor and shall pay all amounts drawn upon it in accordance with this section and with the regulations the governor may prescribe under this section. [2009 c 171 § 1; 1991 sp.s. c 13 § 111; 1983 1st ex.s. c 6 § 1.]

Additional notes found at www.leg.wa.gov

41.48.070 Employees may elect. The governing body of any political subdivision having any coverage group, as the term is defined in title II of the social security act, not covered by a state or municipal retirement system may submit for an advisory vote to the members of such coverage group the question of whether they prefer coverage by federal old-age and survivors insurance or coverage by a state or municipal retirement system. [1951 c 184 § 7.]

41.48.080 Administration costs—Allocation. All costs allocable to the administration of this chapter shall be charged to and paid to the OASI revolving fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions. [2009 c 171 § 2; 1951 c 184 § 9.]

41.48.090 Rules and regulations. The governor shall make and publish such rules and regulations, not inconsistent with the provisions of this chapter, as he or she finds necessary or appropriate to the efficient administration of the functions with which he or she is charged under this chapter. [2012 c 117 § 80; 1951 c 184 § 10.]

41.48.100 Governor may delegate authority. Any authority conferred upon the governor by this chapter may be exercised by an official or state agency designated by him or her. [2012 c 117 § 81; 1951 c 184 § 11.]

41.48.110 Legislative declaration—Payments to state employees on account of sickness. It is the policy of the state of Washington to pay its employees on account of sickness or accident disability in accordance with applicable leave regulations and in such a manner so such payments are excluded from federal old age and survivors' insurance contribution requirements. [1979 ex.s. c 247 § 3.]

41.48.120 Sick leave account created—Payments to state employees on account of sickness—Exclusion from wages. There is created in the general fund a separate account to be known as the sick leave account, to be used for payments made after January 1, 1980, to state employees made on account of sickness, for the purpose of excluding such payments from the meaning of "wages" under federal

old age and survivors' insurance. The legislature shall appropriate amounts necessary for the account. [1979 c 152 § 1.]

Additional notes found at www.leg.wa.gov

41.48.130 Sick leave payments—Accounting plan and payroll procedures. The director of the office of financial management shall, by January 1, 1980, develop an accounting plan and payroll procedures sufficient to meet the requirements of federal statutes and regulations for the purpose of implementing RCW 41.48.120. [1979 c 152 § 2.]

Additional notes found at www.leg.wa.gov

41.48.140 Establishment of sick leave rules by personnel authorities. Nothing in RCW 41.48.120 or 41.48.130 shall affect the power of the Washington personnel resources board or any other state personnel authority to establish sick leave rules except as may be required under RCW 41.48.120 or 41.48.130: PROVIDED, That each personnel board and personnel authority shall establish the maximum number of working days an employee under its jurisdiction may be absent on account of sickness or accident disability without a medical certificate.

"Personnel authority" as used in this section, means a state agency, board, committee, or similar body having general authority to establish personnel rules. [1993 c 281 § 39; 1979 c 152 § 3.]

Additional notes found at www.leg.wa.gov

41.48.150 Definition—"Employee." "Employee," as used in RCW 41.48.120 and 41.48.140, includes all officers and employees of the state, except officials and employees compensated on a fee basis, for whom contributions are made to federal old age and survivors' insurance. [1979 c 152 § 4.]

Additional notes found at www.leg.wa.gov

41.48.160 Political subdivisions—Sick leave payments—Adoption of accounting plan and payroll procedures. A political subdivision of the state may, pursuant to ordinance or resolution, adopt an accounting plan and payroll procedures sufficient to meet the requirements of federal statutes and regulations and the department of health, education, and welfare for the purpose of excluding payments made on account of sickness, from the meaning of "wages" under federal old age and survivors' insurance. [1979 c 152 § 5.]

Additional notes found at www.leg.wa.gov

41.48.170 Sick leave payments—Transfers of moneys to sick leave account. The office of financial management shall direct the state treasurer to, and the state treasurer shall, periodically transfer to the sick leave account in the general fund moneys sufficient to reimburse the sick leave account for payments on account of sickness. State agencies shall place in allotment reserve status and cause to be lapsed at the end of the biennium an amount equal to the sick leave pay and the employer's share of all federal old age and survivor's insurance payments rendered unnecessary by reason of RCW 41.48.120. When directing state agencies to place funds in reserve status, the office of financial management shall promulgate allotment instructions which conserve, to the fullest extent possible, state general fund appropriations. [1979 ex.s. c 247 § 2.]

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41.48.180 Sick leave payments—Inclusion in reports to retirement system—Compensation for unused sick leave. Payments to employees pursuant to RCW 41.48.120 or 41.48.160 shall be included in compensation reported to the appropriate retirement system. Any compensation for unused sick leave shall not be considered payment on account of sickness and shall not be paid from the sick leave account. [1979 c 152 § 6.]

Additional notes found at www.leg.wa.gov

Chapter 41.50 RCW

DEPARTMENT OF RETIREMENT SYSTEMS

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41.50.005 Policy and intent. The legislature sets forth as retirement policy and intent:

(1) The retirement systems of the state shall provide similar benefits wherever possible.

(2) Persons hired into eligible positions shall accrue service credit for all service rendered.

(3) The calculation of benefits shall be done in such a manner as to prevent the arithmetic lowering of benefits.

(4) Liberalization of the granting of service credit shall not jeopardize part-time employment of retirees in ineligible positions. [1991 c 343 § 2.]

Findings—1991 c 343: "The legislature finds:

(1) There is a dichotomy in the provision of service credit within the major two retirement systems of the state. Within plan 1 of the public employees' retirement system, credit is given in whole months upon completing seventy hours per month. Within plan 1 of the teachers' retirement system, full annual service credit is given for full-time employment of four-fifths or more of a school year and partial annual service credit is given for employment of less than four-fifths of a school year but more than twenty days in a school year. Plan 2 of both the public employees' and teachers' retirement systems' full monthly service credit is based on completing ninety hours in each month.

(2) There is an expressed interest by public employers in encouraging job-sharing or tandem positions wherein two persons perform one job. This is seen as opening up job opportunities for those persons who have family responsibilities prohibiting full-time employment." [1991 c 343 § 1.]

Additional notes found at www.leg.wa.gov

41.50.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Actuarial value" means the present value of a change in actuarial liability;

(2) "Department" means the department of retirement systems; and

(3) "Director" means the director of the department of retirement systems. [1994 c 197 § 30; 1975-'76 2nd ex.s. c 105 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.020 Department of retirement systems—Created—Director. There is created a department of state government to be known as the department of retirement systems. The executive and administrative head of the department shall be the director, who shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and may be removed upon written notification by the governor to the respective retirement boards.

The director shall have complete charge of and supervisory powers over the department and shall be paid a salary fixed by the governor in accordance with the provisions of RCW 43.03.040. If a vacancy occurs in the position of director while the senate is not in session, the governor shall make

a temporary appointment until the next meeting of the senate at which time he or she shall present to that body the name of the person appointed to the position of director. [2012 c 117 § 82; 1975-'76 2nd ex.s. c 105 § 4.]

41.50.030 Transfer of powers, duties, and functions of certain systems, administrators, and committees to department of retirement systems. (1) As soon as possible but not more than one hundred and eighty days after March 19, 1976, there is transferred to the department of retirement systems, except as otherwise provided in this chapter, all powers, duties, and functions of:

- (a) The Washington public employees' retirement system;
- (b) The Washington state teachers' retirement system;
- (c) The Washington law enforcement officers' and firefighters' retirement system;
- (d) The Washington state patrol retirement system;
- (e) The Washington judicial retirement system; and
- (f) The state treasurer with respect to the administration of the judges' retirement fund imposed pursuant to chapter 2.12 RCW.

(2) On July 1, 1996, there is transferred to the department all powers, duties, and functions of the deferred compensation committee.

(3) The department shall administer chapter 41.34 RCW.

(4) The department shall administer the Washington school employees' retirement system created under chapter 41.35 RCW.

(5) The department shall administer the Washington public safety employees' retirement system created under chapter 41.37 RCW.

(6) The department shall administer the collection of employer contributions and initial prefunding of the higher education retirement plan supplemental benefits, also referred to as the annuity or retirement income plans created under chapter 28B.10 RCW. [2011 1st sp.s. c 47 § 20; 2004 c 242 § 42; 1998 c 341 § 501; 1995 c 239 § 316; 1975-'76 2nd ex.s. c 105 § 5.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.033 Crediting interest to retirement system accounts. (1) The director shall determine when interest, if provided by a plan, shall be credited to accounts in the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the public safety employees' retirement system, the law enforcement officers' and firefighters' retirement system, or the Washington state patrol retirement system. The amounts to be credited and the methods of doing so shall be at the director's discretion, except that if interest is credited, it shall be done at least quarterly.

(2) Interest as determined by the director under this section is "regular interest" as defined in RCW *41.40.010(15), **41.32.010(23), ***41.35.010(12), ****41.37.010(12), *****41.26.030(23), and *****43.43.120(8).

(3) The legislature affirms that the authority of the director under RCW 41.40.020 and 41.50.030 includes the authority and responsibility to establish the amount and all conditions for regular interest, if any. The legislature intends chapter 493, Laws of 2007 to be curative, remedial, and retroactively applicable. [2007 c 493 § 1.]

Reviser's note: *(1) RCW 41.40.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (15) to subsection (31).

***(2) RCW 41.32.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (23) to subsection (38).

****(3) RCW 41.35.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12) to subsection (26).

*****4) RCW 41.37.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12) to subsection (23).

*****5) RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (23) to subsection (24).

*****6) RCW 43.43.120 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (8) to subsection (17).

41.50.040 Manner of selection and terms of transferred board members not affected. This chapter shall not affect the manner for selecting members of the boards affected by RCW 41.50.030, nor shall it affect the terms of any members serving on such boards. [1975-'76 2nd ex.s. c 105 § 6.]

41.50.050 Powers, duties, and functions of director. The director shall:

(1) Have the authority to organize the department into not more than four divisions, each headed by an assistant director;

(2) Have free access to all files and records of various funds assigned to the department and inspect and audit the files and records as deemed necessary;

(3) Employ personnel to carry out the general administration of the department;

(4) Submit an annual written report of the activities of the department to the governor and the chairs of the appropriate legislative committees with one copy to the staff of each of the committees, including recommendations for statutory changes the director believes to be desirable;

(5) Adopt such rules and regulations as are necessary to carry out the powers, duties, and functions of the department pursuant to the provisions of chapter 34.05 RCW. [1995 c 239 § 317; 1993 c 61 § 1; 1987 c 505 § 24; 1981 c 3 § 33; 1977 ex.s. c 251 § 1; 1975-'76 2nd ex.s. c 105 § 7.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.055 Director of retirement systems to administer Washington law enforcement officers' and firefighters' retirement system—Duties. The administration of the Washington law enforcement officers' and firefighters' retirement system is hereby vested in the director of retirement systems, and the director shall:

(1) Keep in convenient form such data as shall be deemed necessary for actuarial evaluation purposes;

(2) As of March 1, 1970, and at least every two years thereafter, through the state actuary, make an actuarial valuation as to the mortality and service experience of the beneficiaries under this chapter and the various accounts created for

the purpose of showing the financial status of the retirement fund;

(3) Adopt for the Washington law enforcement officers' and firefighters' retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Keep a record of all its proceedings, which shall be open to inspection by the public;

(5) From time to time adopt such rules and regulations not inconsistent with chapter 41.26 RCW, for the administration of the provisions of this chapter, for the administration of the fund created by this chapter and the several accounts thereof, and for the transaction of the business of the system;

(6) Prepare and publish annually a financial statement showing the condition of the Washington law enforcement officers' and firefighters' fund and the various accounts thereof, and setting forth such other facts, recommendations and data as may be of use in the advancement of knowledge concerning the Washington law enforcement officers' and firefighters' retirement system, and furnish a copy thereof to each employer, and to such members as may request copies thereof;

(7) Perform such other functions as are required for the execution of the provisions of chapter 41.26 RCW;

(8) Fix the amount of interest to be credited at a rate which shall be based upon the net annual earnings of the Washington law enforcement officers' and firefighters' fund for the preceding twelve-month period and from time to time make any necessary changes in such rate;

(9) Pay from the department of retirement systems expense fund the expenses incurred in administration of the Washington law enforcement officers' and firefighters' retirement system from those funds appropriated for that purpose;

(10) Perform any other duties prescribed elsewhere in chapter 41.26 RCW;

(11) Issue decisions relating to appeals initiated pursuant to RCW 41.16.145 and 41.18.104 as now or hereafter amended and shall be authorized to order increased benefits pursuant to RCW 41.16.145 and 41.18.104 as now or hereafter amended. [1991 c 35 § 16; 1982 c 163 § 6; 1981 c 3 § 27; 1975-'76 2nd ex.s. c 44 § 3; 1971 ex.s. c 216 § 1; 1969 ex.s. c 209 § 6. Formerly RCW 41.26.060.]

Intent—1991 c 35: See note following RCW 41.26.005.

Intent of amendment—1981 c 3: See note following RCW 2.10.080.

Additional notes found at www.leg.wa.gov

41.50.060 Delegation of powers, duties, and functions—Director's responsibilities. The director may delegate the performance of such powers, duties, and functions, other than those relating to rule making, to employees of the department, but the director shall remain and be responsible for the official acts of the employees of the department.

The director shall be responsible for the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the judicial retirement system, the law enforcement officers' and firefighters' retirement system, the public safety employees' retirement system, and the Washington state patrol retirement system. The director shall also be responsible for the deferred compensation program. [2004 c 242 § 43; 1998 c 341 § 502; 1995 c 239 § 318; 1975-'76 2nd ex.s. c 105 § 8.]

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Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.065 Accumulated service credit—Annual notification to members. (1) The department shall annually notify each member of each retirement system listed in RCW 41.50.030 of his or her:

(a) Service credit accumulated in the preceding calendar year; and

(b) Total service credit accumulated.

(2) The department shall begin notifying members under this section according to the following schedule:

(a) All members of the teachers' retirement system shall begin receiving annual notification of accumulated service credit and service credit earned within the preceding school year or one school year, as appropriate, no later than January 1, 1991;

(b) All members, other than members of the teachers' retirement system, shall begin receiving annual notification of service credit accumulated within the preceding calendar year or school year, as appropriate, no later than June 30, 1992;

(c) All members within five years of being eligible for service retirement shall begin receiving annual notification of total service credit accumulated no later than October 1, 1993;

(d) Members, other than members of the teachers' retirement system, who are not within five years of being eligible for service retirement shall begin receiving annual notification of total service credit accumulated according to the following schedule:

(i) For members of the law enforcement officers' and firefighters' retirement system, Washington state patrol retirement system, judicial retirement system, and judges' retirement system, no later than August 30, 1993;

(ii) For employees of the state of Washington who are members of the public employees' retirement system, no later than August 30, 1994;

(iii) For employees of political subdivisions of the state of Washington, no later than January 31, 1995;

(iv) For employees of institutions of higher education as defined in RCW 28B.10.016, no later than June 30, 1995; and

(v) For school district employees who are members of the public employees' retirement system, no later than April 30, 1996.

(3) The department shall adopt rules implementing this section. [1991 c 282 § 1; 1990 c 8 § 2.]

Findings—1990 c 8: "The legislature recognizes that:

(1) It is important that members of the retirement system are informed about the amount of service credit they have earned. Untimely and inaccurate reporting by employers hampers the department's ability to inform members of the service credit they have earned;

(2) Requiring a transfer of funds from the retirement accounts of members of the public employees' retirement system and the law enforcement officers' and firefighters' retirement system to the expense funds of those systems does not represent added revenue to the systems but is instead a transfer from the trust fund to the expense fund that causes administrative costs and results in a loss to the system or to the member; and

(3) A standardized time period for school administrator contracts and a prohibition against retroactive revision of those contracts is needed to prevent potential abuses of the average final compensation calculation process." [1990 c 8 § 1.]

41.50.070 Personnel. In addition to the exemptions set forth in RCW 41.06.070, the assistant directors, not to exceed two, and an internal auditor shall also be exempt from the application of the state civil service law, chapter 41.06 RCW.

The officers and exempt personnel appointed by the director pursuant to this section shall be paid salaries fixed by the governor in accordance with the procedure established by law for fixing salaries for officers exempt from the operation of the state civil service law.

All employees classified under chapter 41.06 RCW and engaged in duties pertaining to the functions transferred by this chapter shall be assigned to the department to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state merit system. [1975-'76 2nd ex.s. c 105 § 9.]

41.50.075 Funds established. (1) Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and firefighters' system plan 1 retirement fund, and the Washington law enforcement officers' and firefighters' system plan 2 retirement fund which shall consist of all moneys paid into them in accordance with the provisions of this chapter and chapter 41.26 RCW, whether such moneys take the form of cash, securities, or other assets. The plan 1 fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and firefighters' retirement system plan 1, and the plan 2 fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and firefighters' retirement system plan 2.

(2) All of the assets of the Washington state teachers' retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system plan 1 fund and the teachers' retirement system combined plan 2 and 3 fund. The plan 1 fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan 1, and the combined plan 2 and 3 fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan 2 and 3.

(3) There is hereby established in the state treasury two separate funds, namely the public employees' retirement system plan 1 fund and the public employees' retirement system combined plan 2 and plan 3 fund. The plan 1 fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan 1, and the combined plan 2 and plan 3 fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plans 2 and 3.

(4) There is hereby established in the state treasury the school employees' retirement system combined plan 2 and 3 fund. The combined plan 2 and 3 fund shall consist of all moneys paid to finance the benefits provided to members of the school employees' retirement system plan 2 and plan 3.

(5) There is hereby established in the state treasury the public safety employees' retirement system plan 2 fund. The plan 2 fund shall consist of all moneys paid to finance the benefits provided to members of the public safety employees'

retirement system plan 2. [2004 c 242 § 44; 2000 c 247 § 601; 1998 c 341 § 503; 1996 c 39 § 16; 1995 c 239 § 312; 1991 c 35 § 108.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1991 c 35: See note following RCW 41.26.005.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.077 State treasurer is custodian of funds. The state treasurer is the custodian of, and accountant for, all funds and holdings of the retirement systems listed in RCW 41.50.030. [1991 c 35 § 109.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.080 Investment of funds of various systems. The state investment board shall provide for the investment of all funds of the Washington public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the Washington law enforcement officers' and firefighters' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the Washington public safety employees' retirement system, the higher education retirement plan supplemental benefit fund, and the judges' retirement fund, pursuant to RCW 43.84.150, and may sell or exchange investments acquired in the exercise of that authority. [2011 1st sp.s. c 47 § 21; 2004 c 242 § 45; 1998 c 341 § 504; 1981 c 3 § 34; 1977 ex.s. c 251 § 2; 1975-'76 2nd ex.s. c 105 § 10.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

41.50.085 Investments in accordance with established standards. Any investments under RCW 43.84.150 by the state investment board shall be made in accordance with the standards established in RCW 43.33A.140. [1998 c 14 § 2; 1977 ex.s. c 251 § 7.]

41.50.088 Duties of director—Retirement investments. (1) The director shall adopt rules as necessary and exercise the following powers and duties:

(a) The director shall recommend to the state investment board types of options for member self-directed investment in the teachers' retirement system plan 3, the school employees' retirement system plan 3, and the public employees' retirement system plan 3 as deemed by the director to be reflective of the members' preferences;

(b) By July 1, 2005, subject to favorable tax determination by the internal revenue service, the director shall make optional actuarially equivalent life annuity benefit payment schedules available to members and survivors that may be purchased from the combined plan 2 and plan 3 funds under RCW 41.50.075; and

(c) Determination of the basis for administrative charges to the self-directed investment fund to offset self-directed account expenses;

(2) The director shall recommend to the state investment board types of options for participant self-directed investment in the state deferred compensation plan, as deemed by the director to be reflective of the participants' preferences.

[2010 1st sp.s. c 7 § 28; 2005 c 327 § 14; 2000 c 247 § 602. Prior: 1998 c 341 § 507; 1998 c 116 § 10; 1995 c 239 § 302.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.090 Department succeeds to and vested with transferred powers, duties, and functions—Boards to be kept informed—Approval of rules—Disability benefit applications. (1) Except as otherwise provided in this section, on the effective date of transfer as provided in RCW 41.50.030, the department shall succeed to and is vested with all powers, duties, and functions now or by any concurrent act of this 1976 legislature vested in the individual retirement boards set forth in RCW 41.50.030 relating to the administration of their various retirement systems, including but not limited to the power to appoint a staff and define the duties thereof: PROVIDED, That actuarial services required by the department shall be performed by the state actuary as provided in RCW 44.44.040.

(2) The department shall keep each retirement board fully informed on the administration of the corresponding retirement system, and shall furnish any information requested by a retirement board.

(3) Rules proposed by the director under RCW 2.10.070, 41.50.055, 41.32.025, or 41.40.020 shall be submitted to the appropriate retirement boards for review prior to adoption. After receiving approval of the members of the appropriate board, such rules shall become effective as provided by the administrative procedure act, chapter 34.05 RCW.

(4) Each retirement board shall continue to perform all functions as are vested in it by law with respect to applications for benefits paid upon either temporary or permanent disability, with such staff assistance from the department as may be required. The director shall perform those functions with respect to disability benefits as are vested in him or her by RCW 41.26.120, 41.26.125, and 41.26.200. [1985 c 102 § 6; 1983 c 3 § 97; 1981 c 294 § 8; 1975-'76 2nd ex.s. c 105 § 11.]

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

Additional notes found at www.leg.wa.gov

41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. (1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department, the expenses of administration of the retirement systems, and the expenses of the administration of the office of the state actuary created in chapters 2.10, 2.12, 28B.10, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37, 43.43, and 44.44 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 28B.10.400, 41.26.030, 41.32.010, 41.35.010, 41.37.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of

the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 28B.10.400, 41.26.030, 41.32.010, 41.35.010, 41.37.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under RCW 41.34.060(4) shall be paid pursuant to subsection (1) of this section.

(7) During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the department of retirement systems' expense fund to the state general fund such amounts as reflect the excess fund balance of the fund. During the 2015-2017 fiscal biennium, state contributions to the judicial retirement system may be made in part by appropriations from the department of retirement systems expense fund. [2015 3rd sp.s. c 4 § 951. Prior: 2011 1st sp.s. c 50 § 936; 2011 1st sp.s. c 47 § 22; 2009 c 564 § 924; 2008 c 329 § 911; 2005 c 518 § 923; 2004 c 242 § 46; 2003 1st sp.s. c 25 § 914; prior: 2003 c 295 § 3; 2003 c 294 § 11; 1998 c 341 § 508; 1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Findings—1990 c 8: See note following RCW 41.50.065.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.112 Report of member data—Department-designed format. Employers, as defined in RCW 41.26.030, 41.32.010, 41.34.020, 41.35.010, and 41.40.010, must report all member data to the department in a format designed and communicated by the department. Employers failing to comply with this reporting requirement shall be assessed an additional fee as defined under RCW 41.50.110(5). [2000 c 247 § 1107.]

Additional notes found at www.leg.wa.gov

41.50.120 Payment of moneys due department by employers—Interest. Notwithstanding any provision of law to the contrary, all employers of members of retirement systems administered by the department shall transmit by a warrant or check to the department within fifteen days following the end of each calendar month the moneys due the department as determined by the statutes governing each system together with such reports as the department may require. The director may collect interest on any employer's overdue payments at the rate of one percent per month on the outstanding balance where necessary to secure adherence to timeliness requirements. [1979 ex.s. c 249 § 9.]

41.50.125 Interest on contributions—Department may charge. The department may charge interest, as determined by the director, on member or employer contributions owing to any of the retirement systems listed in RCW 41.50.030. The department's authority to charge interest shall extend to all optional and mandatory billings for contributions where member or employer contributions are paid other than immediately after service is rendered. Except as explicitly limited by statute, the director may delay the imposition of interest charges on late contributions under this section if the delay is necessary to implement required changes in the department's accounting and information systems. [1994 c 177 § 2.]

Findings—1994 c 177: "The legislature finds that:

(1) Whenever employer or member contributions are not made at the time service is rendered, the state retirement system trust funds lose investment income which is a major source of pension funding. The department of retirement systems has broad authority to charge interest to compensate for the loss to the trust funds, subject only to explicit statutory provisions to the contrary.

(2) The inherent authority of the department to recover all overpayments and unauthorized payments from the retirement trust funds, for the benefit of members and taxpayers, should be established clearly in statute." [1994 c 177 § 1.]

41.50.130 Correction of retirement systems' records—Adjustment in payment of benefits—Limitations. (1) The director may at any time correct errors appearing in the records of the retirement systems listed in RCW 41.50.030. Should any error in such records result in any member, beneficiary, or other person or entity receiving more or less than he or she would have been entitled to had the

records been correct, the director, subject to the conditions set forth in this section, shall adjust the payment in such a manner that the benefit to which such member, beneficiary, or other person or entity was correctly entitled shall be paid in accordance with the following:

(a) In the case of underpayments to a member or beneficiary, the retirement system shall correct all future payments from the point of error detection, and shall compute the additional payment due for the allowable prior period which shall be paid in a lump sum by the appropriate retirement system.

(b) In the case of overpayments to a retiree or other beneficiary, the retirement system shall adjust the payment so that the retiree or beneficiary receives the benefit to which he or she is correctly entitled. The retiree or beneficiary shall either repay the overpayment in a lump sum within ninety days of notification or, if he or she is entitled to a continuing benefit, elect to have that benefit actuarially reduced by an amount equal to the overpayment. The retiree or beneficiary is not responsible for repaying the overpayment if the employer is liable under RCW 41.50.139.

(c) In the case of overpayments to a person or entity other than a member or beneficiary, the overpayment shall constitute a debt from the person or entity to the department, recovery of which shall not be barred by laches or statute of limitations.

(2) Except in the case of actual fraud, in the case of overpayments to a member or beneficiary, the benefits shall be adjusted to reflect only the amount of overpayments made within three years of discovery of the error, notwithstanding any provision to the contrary in chapter 4.16 RCW.

(3) Except in the case of actual fraud, no monthly benefit shall be reduced by more than fifty percent of the member's or beneficiary's corrected benefit. Any overpayment not recovered due to the inability to actuarially reduce a member's benefit due to: (a) The provisions of this subsection; or (b) the fact that the retiree's monthly retirement allowance is less than the monthly payment required to effectuate an actuarial reduction, shall constitute a claim against the estate of a member, beneficiary, or other person or entity in receipt of an overpayment.

(4) Except as provided in subsection (2) of this section, obligations of employers or members until paid to the department shall constitute a debt from the employer or member to the department, recovery of which shall not be barred by laches or statutes of limitation. [1997 c 254 § 15; 1994 c 177 § 3; 1987 c 490 § 1; 1982 c 13 § 1.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.131 Correction of errors in reporting compensation earnable. (1) Notwithstanding RCW 41.50.130, the department is not required to correct, nor to cause any employer to correct the reporting error described in subsection (2) of this section.

(2) Standby pay and other similar forms of compensation that are not pay for time worked were not salary or wages for personal services within the meaning of RCW 41.40.010(8). Contrary to RCW 41.40.010(8), some employers have been reporting standby pay to the department as compensation earnable. To avoid unduly impacting the retirement allow-

ances of persons who have retired on or before June 9, 1994, the department is not required to correct, nor cause to be corrected, any misreporting of amounts identified as standby pay through June 9, 1994. Any erroneous reporting of amounts identified as standby pay to the department on or after June 9, 1994, shall be corrected as an error under RCW 41.50.130.

(3) The forgiveness of past misreporting under subsection (2) of this section constitutes a benefit enhancement for those individuals for whom amounts received as standby pay were misreported to the department. Prior to June 9, 1994, no retirement system member had any right, contractual or otherwise, to have amounts identified as standby pay included as compensation earnable. [1994 c 177 § 9.]

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.132 Correction of erroneous deduction or pick-up of contributions. (1) By December 31, 1992, the department of retirement systems shall implement and complete the following process for those members of the law enforcement officers' and firefighters' retirement system plan 2, public employees' retirement system plans 1 and 2, and teachers' retirement system plan 2 who erroneously had contributions either deducted or picked-up from their earnings on and after January 1, 1987:

(a) Create a list of transactions by employer for those members whose employer either deducted or picked-up employee contributions during a month where an employee did not work sufficient hours to earn service credit;

(b) Provide the affected employers with direction and guidance for the review of the transmitted lists from this subsection and the employers' preparation of any necessary correcting transactions to the department's records;

(c) Receive all correcting transactions submitted by the employer.

(2) All debits and credits to all member accounts affected by this remedial process shall be reconciled by the department.

(3) All moneys payable to an affected member, or any moneys to be further deducted or picked-up from such member's earnings, shall be determined and accomplished solely by the employer.

(4) After December 31, 1992, no credit of employer contributions shall be made.

(5) Return of contributions to an employee by the department is limited solely to when such member retires or otherwise terminates his or her membership and chooses to withdraw them with any accumulated interest.

(6) Employer contributions forfeited under this section shall be transferred to the department of retirement systems expense account. [1991 c 343 § 13.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

41.50.133 Recovery of certain overpayments to surviving beneficiaries under the teachers' retirement system. (1) The director of the department of retirement systems shall not recover from surviving beneficiaries of members who died in service any pension overpayment based on the application of section 2, chapter 96, Laws of 1979 ex. sess., nor shall such benefits be reduced.

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(2) The director of the department of retirement systems shall not recover from retirees any pension overpayments made between July 1, 1990, and February 1, 1992, based upon the application of *RCW 41.40.198, 41.40.1981, 41.40.325, 41.32.485, 41.32.487, or 41.32.575 due to the incorrect calculation of the "age sixty-five allowance" as this term is defined in *RCW 41.32.575(1)(a) and 41.40.325(1)(a). [1992 c 212 § 21; 1987 c 490 § 2.]

*Reviser's note: RCW 41.40.198, 41.40.1981, 41.40.325, 41.32.487, and 41.32.575 were repealed by 1995 c 345 § 11.

41.50.135 Collection of overpayments—Determination of liability—Administrative process created. (1) If the department finds that any member, beneficiary, or other person or entity has been paid an amount of retirement benefits to which that person or entity is not entitled, and the person is not entitled to a continuing benefit from any of the retirement systems listed in RCW 41.50.030, the department may issue an order and notice of assessment specifying the amount due, including interest, to be remitted to the department. The order and notice of assessment shall be served upon any person or entity who may have received benefits to which the person or entity is not entitled. The order and notice of assessment shall be served by the department in the manner prescribed for the service of a summons in a civil action, or by certified mail to the last known address of the obligor as shown by the records of the department.

(2) Any notice of assessment under subsection (1) of this section shall constitute a determination of liability from which the member, beneficiary, or other person or entity served may appeal by filing a petition for adjudicative proceedings with the director personally or by mail within sixty days from the date the assessment was served. If a petition for adjudicative proceedings is not filed within sixty days of the delivery of the notice of assessment, the determination that was the basis for establishing the overpayment debt and the assessment is conclusive and final.

(3) This section creates an administrative process for the collection of overpayments from persons who are not entitled to a continuing benefit from one of the retirement systems listed in RCW 41.50.030. The collection of overpayments from persons entitled to a continuing benefit from one of the retirement systems listed in RCW 41.50.030 is governed by RCW 41.50.130. [1996 c 56 § 1.]

41.50.136 Collection of overpayments—Issuance of warrant—Lien. Whenever a notice of determination of liability becomes conclusive and final under RCW 41.50.135, the director, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien

upon the title to, and any interest in, all real and personal property of the person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A copy of the warrant shall be mailed to the person mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk. [2001 c 146 § 5; 1996 c 56 § 2.]

41.50.137 Collection of overpayments—Department may issue subpoenas. The department may issue subpoenas to compel the statement of witnesses and the production of any books, records, or documents necessary or relevant to the department's administration of duties under this chapter. It is unlawful for any person or entity, without just cause, to fail to comply with any subpoena issued under this section. [1996 c 56 § 3.]

41.50.138 Collection of overpayments—Waiver of overpayment. (1) The director may waive repayment of all or part of a retirement allowance overpayment, under RCW 41.50.130 only, if:

(a) The overpayment was not the result of the retiree's or the beneficiary's nondisclosure, fraud, misrepresentation, or other fault; and

(b) The director finds in his or her sole discretion that recovery of the overpayment would be a manifest injustice.

(2) The director may not waive an overpayment if the member, retiree, or beneficiary:

(a) Provided incorrect information to the department or the employer which caused the overpayment;

(b) Failed to provide information to the department or the employer which was necessary to correctly calculate the retirement allowance;

(c) Caused the employer to provide incorrect information or fail to provide necessary information; or

(d) Knew or reasonably should have known that he or she was in receipt of an overpayment.

(3) If the director waives an overpayment and the overpayment occurred because the member's or retiree's employer:

(a) Provided incorrect information to the department which caused the overpayment;

(b) Failed to provide information to the department which was necessary to correctly calculate the retirement allowance;

(c) Caused another party to provide incorrect information or fail to provide necessary information; or

(d) Knew or reasonably should have known that the information provided would cause the retiree or beneficiary to be overpaid;

then the department shall bill the member's or retiree's employer for the amount of the overpayment that would have been recoverable under RCW 41.50.130 had the overpayment not been waived pursuant to this section.

(4) Nothing in this section authorizes the director to waive the prospective correction of an overstated retirement allowance.

(5) If the director waives an overpayment he or she must state in writing:

(a) The nature of and reason for the overpayment;

(b) The reason for the waiver; and

(c) The amount of the overpayment that is waived.

The department will maintain a file containing documentation of all overpayments waived. The department will provide the file to any person upon request.

(6) This section applies to overpayments identified on or after September 1, 1994. [1996 c 56 § 4.]

41.50.139 Retirement status reports—Overpayments—Employer obligations. (1) Retirement system employers shall elicit on a written form from all new employees as to their having been retired from a retirement system listed in RCW 41.50.030. Employers must report any retirees in their employ to the department. If a retiree works in excess of applicable postretirement employment restrictions and the employer failed to report the employment of the retiree, that employer is liable for the loss to the trust fund.

(2) If an employer erroneously reports to the department that an employee has separated from service such that a person receives a retirement allowance in contravention of the applicable retirement system statutes, the person's retirement status shall remain unaffected and the employer is liable for the resulting overpayments.

(3) Upon receipt of a billing from the department, the employer shall pay into the appropriate retirement system trust fund the amount of the overpayment plus interest as determined by the director. The employer's liability under this section shall not exceed the amount of overpayments plus interest received by the retiree within three years of the date of discovery, except in the case of fraud. In the case of fraud, the employer is liable for the entire overpayment plus interest. [1997 c 254 § 16.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.50.140 Cooperation of employers in administration of systems—Employer contributions for retroactive service credit—Employee contributions paid by employer. (1) Every employer participating in one or more of the retirement systems listed in RCW 41.50.030 shall fully cooperate in the administration of the systems in which its employees participate, including the distribution of information to employees, and shall accept and carry out all other duties as required by law, regulation, or administrative instruction.

(2) If an employee is entitled to retroactive service credit which was not previously established through no fault of the employee, or through an employer error which has caused a member's compensation or contributions to be understated or overstated so as to cause a loss to the retirement funds, the director may bill the employer for the loss, to include interest, if applicable. The employer contributions, with interest thereon, will be treated as if in fact the interest was part of the normal employer contribution and no distribution of interest received shall be required.

(3) Employer-paid employee contributions will not be credited to a member's account until the employer notifies the director in writing that the employer has been reimbursed by the employee or beneficiary for the payment. The employer shall have the right to collect from the employee the amount of the employee's obligation. Failure on the part of the employer to collect all or any part of the sums which may be

due from the employee or beneficiary shall in no way cause the employer obligation for the total liability to be lessened. [1982 1st ex.s. c 52 § 33.]

Additional notes found at www.leg.wa.gov

41.50.145 Plan 3—Loss of investment return due to error—Liability. (1) If the department determines that due to employer error a member of plan 3 has suffered a loss of investment return, the employer shall pay the department for credit to the member's account the amount determined by the department as necessary to correct the error.

(2) If the department determines that due to departmental error a member of plan 3 has suffered a loss of investment return, the department shall credit to the member's account from the appropriate retirement system combined plan 2 and 3 fund the amount determined by the department as necessary to correct the error. [1999 c 223 § 2; 1998 c 341 § 515.]

Additional notes found at www.leg.wa.gov

41.50.150 Retirement benefits based on excess compensation—Employer liable for extra retirement costs.

(1) The employer of any employee whose retirement benefits are based in part on excess compensation, as defined in this section, shall, upon receipt of a billing from the department, pay into the appropriate retirement system the present value at the time of the employee's retirement of the total estimated cost of all present and future benefits from the retirement system attributable to the excess compensation. The state actuary shall determine the estimated cost using the same method and procedure as is used in preparing fiscal note costs for the legislature. However, the director may in the director's discretion decline to bill the employer if the amount due is less than fifty dollars. Accounts unsettled within thirty days of the receipt of the billing shall be assessed an interest penalty of one percent of the amount due for each month or fraction thereof beyond the original thirty-day period.

(2) "Excess compensation," as used in this section, includes the following payments, if used in the calculation of the employee's retirement allowance:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means:

- (i) Any payment in lieu of an accrual of annual leave; or
- (ii) Any payment added to salary or wages, concurrent with a reduction of annual leave;
- (b) A cash out of any other form of leave;
- (c) A payment for, or in lieu of, any personal expense or transportation allowance to the extent that payment qualifies as reportable compensation in the member's retirement system;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular daily or hourly rate of pay; and

(e) Any termination or severance payment.

(3) This section applies to the retirement systems listed in RCW 41.50.030 and to retirements occurring on or after March 15, 1984. Nothing in this section is intended to amend or determine the meaning of any definition in chapter 2.10, 2.12, 41.26, 41.32, 41.40, 41.35, 41.37, or 43.43 RCW or to determine in any manner what payments are includable in the calculation of a retirement allowance under such chapters.

(2016 Ed.)

(4) An employer is not relieved of liability under this section because of the death of any person either before or after the billing from the department. [2004 c 242 § 47; 1998 c 341 § 509; 1997 c 221 § 1; 1995 c 244 § 1; 1984 c 184 § 1.]

Intent—Application—1995 c 244 § 1: "The definition of "cash out" added to RCW 41.50.150(2)(a) by this act is a clarification of the legislature's original intent regarding the meaning of the term. The definition of "cash out" applies retroactively to payments made before July 23, 1995." [1995 c 244 § 2.]

Additional notes found at www.leg.wa.gov

41.50.152 Payment of excess compensation—Public notice requirements. (1) Except as limited by subsection (3) of this section, the governing body of an employer under chapter 41.32, 41.35, 41.37, or 41.40 RCW shall comply with the provisions of subsection (2) of this section prior to executing a contract or collective bargaining agreement with members under chapter 41.32, 41.35, 41.37, or 41.40 RCW which provides for:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means any payment in lieu of an accrual of annual leave or any payment added to regular salary, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular rate of pay; or

(e) Any other termination or severance payment.

(2) Any governing body entering into a contract that includes a compensation provision listed in subsection (1) of this section shall do so only after public notice in compliance with the open public meetings act, chapter 42.30 RCW. This notification requirement may be accomplished as part of the approval process for adopting a contract in whole, and does not require separate or additional open public meetings. At the public meeting, full disclosure shall be made of the nature of the proposed compensation provision, and the employer's estimate of the excess compensation billings under RCW 41.50.150 that the employing entity would have to pay as a result of the proposed compensation provision. The employer shall notify the department of its compliance with this section at the time the department bills the employer under RCW 41.50.150 for the pension impact of compensation provisions listed in subsection (1) of this section that are adopted after July 23, 1995.

(3) The requirements of subsection (2) of this section shall not apply to the adoption of a compensation provision listed in subsection (1) of this section if the compensation would not be includable in calculating benefits under chapter 41.32, 41.35, 41.37, or 41.40 RCW for the employees covered by the compensation provision. [2004 c 242 § 48; 1998 c 341 § 510; 1995 c 387 § 1.]

Additional notes found at www.leg.wa.gov

41.50.155 Erroneous withdrawals of contributions—

Restoration. (1) If a person receives a withdrawal of accumulated contributions from any of the retirement systems listed in RCW 41.50.030 in contravention of the restrictions on withdrawal for the particular system, the member shall no

longer be entitled to credit for the period of service represented by the withdrawn contributions. The erroneous withdrawal shall be treated as an authorized withdrawal, subject to all conditions imposed by the member's system for restoration of withdrawn contributions. Failure to restore the contributions within the time permitted by the system shall constitute a waiver by the member of any right to receive a retirement allowance based upon the period of service represented by the withdrawn contributions.

(2) All erroneous withdrawals occurring prior to June 9, 1994, shall be subject to the provisions of this section. The deadline for restoring the prior erroneous withdrawals shall be five years from June 9, 1994, for members who are currently active members of a system. [1994 c 177 § 4.]

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.160 Restoration of withdrawn contributions.

The department of retirement systems shall incorporate the development of individual member accounts receivable into its information systems projects for fiscal years 1993 and 1994, so that by January 1, 1994, members of state retirement systems who are otherwise eligible to restore previously withdrawn contributions have the option to make restoration in a manner determined by the department. [1994 c 197 § 31; 1992 c 195 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.165 Establishing, restoring service credit—Conditions. (1) Except for those affected by subsection (4) of this section, a member of a retirement system specified by RCW 41.50.030 or, one previously established by the state but closed to new membership, may, as provided in each retirement system:

(a) Establish allowable membership service not previously credited;

(b) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(c) Restore service credit represented by a lump sum payment in lieu of benefits.

(2) Persons who previously have failed to:

(a) Establish service credit for service previously earned;

or

(b) Reestablish service credit by the restoration of withdrawn contributions or repayment of a lump sum payment in lieu of a benefit, may now establish or reestablish such service credit by paying the actuarial value of the resulting increase in their benefit in a manner defined by the department.

(3) Any establishment of service credit for service previously rendered, restoration of service credit destroyed, or repayment of a lump sum received in lieu of benefit must be completed prior to retirement.

(4) Service credit is established for or restored to the period in which the service credit is earned. [1994 c 197 § 2.]

Intent—1994 c 197: "(1) This act removes the time limitations within the state's retirement systems for:

(a) The restoration of service credit represented by employee contributions withdrawn by a member of a state's retirement systems; or

(b) The crediting of certain service that, under the provisions of the system, was not creditable at the time it was performed, such as a probationary period or interrupted military service.

(2) This act expands the current procedures for establishing service credit previously earned, restoring withdrawn contributions, or repaying lump sums received in lieu of a benefit. In so doing, it allows the member of one of the state's retirement systems to obtain additional service credit by paying the value of this added benefit that was previously unavailable." [1994 c 197 § 1.]

Additional notes found at www.leg.wa.gov

41.50.170 Notification of restoration rights. Upon termination for reasons other than retirement, the department shall inform a member withdrawing his or her contributions, and the member shall acknowledge in writing, of the right to restore such contributions upon reestablishment of membership in the respective retirement system and the requirements involved in such restoration. [1994 c 197 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.175 Adoption of rules. The department shall adopt rules under chapter 34.05 RCW implementing and administering chapter 197, Laws of 1994. These rules are to include, but are not limited to:

(1) The application and calculation of actuarial value, with the agreement of the state actuary; and

(2) Establishing the minimum partial payment or the minimum units of restored service, or both. [1994 c 197 § 4.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.200 Subdivision of retirement system funds. In the records of the teachers' retirement system the teachers' retirement system plan 1 fund shall be subdivided into the member reserve, the pension reserve, and other funds as may from time to time be created by the director for the purpose of the internal accounting record. The director may adopt rules creating or deleting funds as he or she deems necessary. [1992 c 212 § 2; 1991 c 35 § 32; 1989 c 273 § 16; 1982 1st ex.s. c 52 § 7; 1969 ex.s. c 150 § 1; 1963 ex.s. c 14 § 2; 1955 c 274 § 2; 1947 c 80 § 3; Rem. Supp. 1947 § 4995-28. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; 1923 c 187 § 5, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.030.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.205 Records—Teachers' retirement system annual report. The department shall keep a record of all its proceedings, which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Washington state teachers' retirement system for the preceding school year; the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system. [1991 c 35 § 33; 1969 ex.s. c 150 § 4; 1947 c 80 § 12; Rem. Supp. 1947 § 4995-31. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.120.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.210 Medical director. The director shall designate a medical director. If required, other physicians may be

employed to report on special cases. The medical director shall arrange for and pass upon all medical examinations required under the provisions of chapter 41.32 RCW, investigate all essential statements and certificates by or on behalf of a member in connection with an application for a disability allowance, and report in writing to the board of trustees the conclusions and recommendations upon all matters under referral. [1992 c 72 § 10; 1991 c 35 § 34; 1947 c 80 § 13; Rem. Supp. 1947 § 4995-32. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.130.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.215 Teachers' retirement system funds—Annual interest to be credited. From interest and other earnings on the moneys of the Washington state teachers' retirement system, and except as otherwise provided in *RCW 41.32.499, at the close of each fiscal year the department shall make an allowance of regular interest on the balance which was on hand at the beginning of the fiscal year in each of the teachers' retirement system funds as they may deem advisable; however, no interest shall be credited to the expense fund. [1992 c 212 § 6; 1991 c 35 § 36; 1973 1st ex.s. c 189 § 7; 1955 c 274 § 5; 1947 c 80 § 19; Rem. Supp. 1947 § 4995-38. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part. Formerly RCW 41.32.190.]

*Reviser's note: RCW 41.32.499 was repealed by 1995 c 345 § 11.

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.220 Trustees, employees not to guarantee loans. No trustee or employee of the department shall become an endorser or surety or an obligor for moneys loaned by the department. [1991 c 35 § 37; 1947 c 80 § 23; Rem. Supp. 1947 § 4995-42. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part. Formerly RCW 41.32.230.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.230 Employer reports to department. On or before a date specified by the department in each month every employer shall file a report with the department on a form provided, stating the name of the employer and with respect to each employee who is a member or who is required to become a member of the Washington state teachers' retirement system: (1) The full name, (2) the earnable compensation paid, (3) the employee's contribution to the retirement system, and (4) other information as the department shall require. [1991 c 35 § 51; 1983 c 56 § 14; 1975-76 2nd ex.s. c 16 § 1. Prior: 1975 1st ex.s. c 275 § 150; 1975 c 43 § 32; 1969 ex.s. c 176 § 96; 1967 c 50 § 4; 1963 ex.s. c 14 § 13; 1947 c 80 § 42; Rem. Supp. 1947 § 4995-61. Formerly RCW 41.32.420.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.235 Teachers' retirement system salary deductions. Every officer authorized to issue salary warrants to teachers shall deduct from the salary payments to any mem-

ber of the Washington state teachers' retirement system plan 1 regularly employed an amount which will result in total deductions of six percent of the amount of earnable compensation paid in any fiscal year. These deductions shall be transmitted and reported to the retirement system as directed by the department. [1991 c 35 § 52; 1967 c 50 § 5; 1963 ex.s. c 14 § 14; 1955 c 274 § 20; 1947 c 80 § 43; Rem. Supp. 1947 § 4995-62. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part. Formerly RCW 41.32.430.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.240 Duties of payroll officer. The person responsible for making up the payroll shall transmit promptly to the department at the end of each and every payroll period a copy of the original payroll voucher or such other payroll report as the department may require showing thereon all deductions for contributions for the teachers' retirement system made from the earnable compensation of a member of the teachers' retirement system together with warrants or checks covering the total of such deductions. The department shall place such moneys into the proper funds established in this chapter. [1977 ex.s. c 293 § 17. Formerly RCW 41.32.830.]

Additional notes found at www.leg.wa.gov

41.50.255 Payment of legal and medical expenses of retirement systems. The director is authorized to pay from the interest earnings of the trust funds of the public employees' retirement system, the teachers' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the judges' retirement system, the school employees' retirement system, the public safety employees' retirement system, or the law enforcement officers' and firefighters' retirement system lawful obligations of the appropriate system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the appropriate trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

The director may also pay from the interest earnings of the trust funds specified in this section costs incurred in investigating fraud and collecting overpayments, including expenses incurred to review and investigate cases of possible fraud against the trust funds and collection agency fees and other costs incurred in recovering overpayments. Recovered funds must be returned to the appropriate trust funds. [2004 c 242 § 49; 1998 c 341 § 511; 1995 c 281 § 1; 1993 sp.s. c 24 § 916; 1991 c 35 § 73; 1984 c 184 § 7. Formerly RCW 41.40.083.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.260 Public employees' retirement system funds created. For the purpose of the internal accounting record of the public employees' retirement system and not the segregation of moneys on deposit with the state treasurer there are hereby created the employees' savings fund, the benefit account fund, and such other funds as the director may from time to time create.

(1) The employees' savings fund shall be the fund in which shall be accumulated the contributions from the compensation of public employees' retirement system members. The director shall provide for the maintenance of an individual account for each member of the public employees' retirement system showing the amount of the member's contributions together with interest accumulations thereon. The contributions of a member returned to the former employee upon the individual's withdrawal from service, or paid in event of the employee's or former employee's death, as provided in chapter 41.40 RCW, shall be paid from the employees' savings fund. The accumulated contributions of a member, upon the commencement of the individual's retirement, shall be transferred from the employees' savings fund to the benefit account fund.

(2) The benefit account fund shall be the fund in which shall be accumulated the reserves for the payment of all public employees' retirement system retirement allowances and death benefits, if any, in respect of any beneficiary. The amounts contributed by all public employees' retirement system employers to provide pension benefits shall be credited to the benefit account fund. The benefit account fund shall be the fund from which shall be paid all public employees' retirement system retirement allowances, or benefits in lieu thereof because of which reserves have been transferred from the employees' savings fund to the benefit account fund. At the time a recipient of a retirement allowance again becomes a member of the public employees' retirement system, the department shall transfer from the benefit account fund to the employees' savings fund and credit to the individual account of such a member a sum equal to the excess, if any, of the individual's account at the date of the member's retirement over any service retirement allowance received since that date. [1992 c 212 § 11; 1991 c 35 § 74; 1982 1st ex.s. c 52 § 18; 1973 1st ex.s. c 190 § 4; 1972 ex.s. c 151 § 2; 1967 c 127 § 2; 1963 c 174 § 7; 1953 c 200 § 4; 1949 c 240 § 6; 1947 c 274 § 11; Rem. Supp. 1949 § 11072-11. Formerly RCW 41.40.100.]

Intent—1991 c 35: See note following RCW 41.26.005.

Additional notes found at www.leg.wa.gov

41.50.265 Public employees' retirement system funds—Report of the state treasurer—Members may receive reports and statements. The state treasurer shall furnish annually to the department a statement of the amount of the funds in the treasurer's custody belonging to the public employees' retirement system. Copies of this annual report shall be available to public employees' retirement system members upon request. The records of the department shall be open to public inspection. Any member of the public employees' retirement system shall be furnished with a statement of the amount to the credit of his or her individual

account in the employees' savings fund upon his or her written request, provided that the department shall not be required to answer more than one such request of any member in any one year. [1991 c 35 § 75; 1947 c 274 § 12; Rem. Supp. 1947 § 11072-12. Formerly RCW 41.40.110.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.270 Transmittal of total of public employees' retirement system members' deductions. The person responsible for making up the payroll shall transmit promptly to the department at the end of each and every payroll period a copy of the original payroll voucher or any other payroll report as the department may require showing thereon all deductions for the public employees' retirement system made from the compensation earnable of each member, together with warrants or checks covering the total of the deductions. The department after making a record of all receipts shall pay them to the state treasurer for use according to the provisions of chapter 41.40 RCW. [1991 c 35 § 90; 1977 ex.s. c 295 § 19; 1947 c 274 § 36; Rem. Supp. 1947 § 11072-36. Formerly RCW 41.40.350.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.500 Mandatory assignment of retirement benefits—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.50.500 through 41.50.650, 41.50.670 through 41.50.720, and 26.09.138.

(1) "Benefits" means periodic retirement payments or a withdrawal of accumulated contributions.

(2) "Disposable benefits" means that part of the benefits of an individual remaining after the deduction from those benefits of any amount required by law to be withheld. The term "required by law to be withheld" does not include any deduction elective to the member.

(3) "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state.

(4) "Mandatory benefits assignment order" means an order issued to the department of retirement systems pursuant to RCW 41.50.570 to withhold and deliver benefits payable to an obligor under chapter 2.10, 2.12, 41.26, 41.32, 41.40, 41.35, 41.37, or 43.43 RCW.

(5) "Obligee" means an ex spouse or spouse to whom a duty of spousal maintenance or property division obligation is owed.

(6) "Obligor" means the spouse or ex spouse owing a duty of spousal maintenance or a property division obligation.

(7) "Periodic retirement payments" means periodic payments of retirement allowances, including but not limited to service retirement allowances, disability retirement allowances, and survivors' allowances. The term does not include a withdrawal of accumulated contributions.

(8) "Property division obligation" means any outstanding court-ordered property division or court-approved property settlement obligation incident to a decree of divorce, dissolution, or legal separation.

(9) "Standard allowance" means a benefit payment option selected under RCW 2.10.146(1)(a), 41.26.460(1)(a), 41.32.785(1)(a), 41.40.188(1)(a), 41.40.660(1), 41.40.845(1)(a), 41.37.170, or 41.35.220 that ceases upon the death of the retiree. Standard allowance also means the benefit allowance provided under RCW 2.10.110, 2.10.130, 43.43.260, 41.26.100, 41.26.130(1)(a), or chapter 2.12 RCW. Standard allowance also means the maximum retirement allowance available under RCW 41.32.530(1) following member withdrawal of accumulated contributions, if any.

(10) "Withdrawal of accumulated contributions" means a lump sum payment to a retirement system member of all or a part of the member's accumulated contributions, including accrued interest, at the request of the member including any lump sum amount paid upon the death of the member. [2004 c 242 § 50; 2000 c 247 § 603; 1998 c 341 § 512; 1991 c 365 § 1; 1987 c 326 § 1.]

Additional notes found at www.leg.wa.gov

41.50.510 Mandatory assignment of retirement benefits—Remedies—Applicability. (1) The remedies provided in RCW 41.50.530 through 41.50.650 and 26.09.138 are in addition to, and not in substitution for, any other remedies provided by law to enforce a dissolution order against an obligor.

(2) The remedies provided in RCW 41.50.530 through 41.50.630 shall be the exclusive remedies enforceable against the department of retirement systems or the retirement systems listed in RCW 41.50.030 to recover spousal maintenance pursuant to a dissolution, divorce, or legal separation order.

(3) RCW 41.50.530 through 41.50.650 and 26.09.138 apply to all dissolution orders incident to a decree of divorce, dissolution, or legal separation whether entered before or after July 1, 1987. [1991 c 365 § 2; 1987 c 326 § 2.]

Additional notes found at www.leg.wa.gov

41.50.520 Mandatory assignment of retirement benefits—Other remedies not limited. Nothing in RCW 41.50.500 through 41.50.650 limits the use of any and all civil and criminal remedies against an obligor to enforce the obligations of a dissolution order. [1987 c 326 § 3.]

41.50.530 Mandatory assignment of retirement benefits—Proceeding to enforce spousal maintenance—Venue—Jurisdiction. (1) A proceeding to enforce a duty of spousal maintenance through a mandatory benefits assignment order may be commenced by an obligee:

- (a) By filing a petition for an original action; or
- (b) By motion in an existing action or under an existing cause number.

(2) Venue for the action is in the superior court of the county of the state of Washington where the obligee resides or is present, where the obligor resides, or where the prior dissolution order was entered.

(3) The court retains continuing jurisdiction under RCW 41.50.500 through 41.50.650 and 26.09.138 until the obligor

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has satisfied all duties of spousal maintenance, including arrearages, to the obligee. [1991 c 365 § 3; 1987 c 326 § 4.]

Additional notes found at www.leg.wa.gov

41.50.540 Mandatory assignment of retirement benefits—Notice to obligor. (1) Every court order or decree establishing a spousal maintenance obligation may state that if any such payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems, the obligee may seek a mandatory benefits assignment order without prior notice to the obligor. Failure to include this provision does not affect the validity of the dissolution order.

(2) If the dissolution order under which the obligor owes the duty of spousal maintenance is not in compliance with subsection (1) of this section or if the obligee cannot show that the obligor has approved or received a copy of the court order or decree that complies with subsection (1) of this section, then notice shall be provided to the obligor at least fifteen days before the obligee seeks a mandatory benefits assignment order. The notice shall state that, if a spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems, the obligee may seek a mandatory benefits assignment order without further notice to the obligor. Service of the notice shall be by personal service, or by any form of mail requiring a return receipt. The notice requirement under this subsection is not jurisdictional. [1991 c 365 § 4; 1987 c 326 § 5.]

Additional notes found at www.leg.wa.gov

41.50.550 Mandatory assignment of retirement benefits—Withdrawal of accumulated contributions—Notice to obligee—Payment to obligee. (1) An obligee who wishes to be notified by the department of retirement systems if the obligor seeks a withdrawal of accumulated contributions shall submit such a request to the department in writing on a form supplied by the department. The request shall be filed by certified or registered mail and shall include the obligee's address and a copy of the dissolution order requiring the spousal maintenance owed.

(2) The department shall thereafter promptly send notice to the obligee at the address provided in subsection (1) of this section when the obligor applies for a withdrawal of accumulated contributions. The department shall not process the obligor's request for a withdrawal of accumulated contributions sooner than seventy-five days after sending the notice to the obligee.

(3) The department shall pay directly to an obligee who has not obtained a mandatory benefits assignment order all or part of the accumulated contributions if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states:

"At such time as (the obligor) requests a withdrawal of accumulated contributions as defined in RCW 41.50.500, the department of retirement systems shall pay to (the obligee) dollars from such accumulated

contributions or . . . percentage of such accumulated contributions (whichever is provided by the court)." [1991 c 365 § 5; 1987 c 326 § 6.]

Additional notes found at www.leg.wa.gov

41.50.560 Mandatory assignment of retirement benefits—Petition for order. (1) A petition or motion seeking a mandatory benefits assignment order in an action under RCW 41.50.530 may be filed by an obligee if the obligor is more than fifteen days past due in spousal maintenance payments and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the mandatory benefits assignment order, including:

(a) That the obligor, stating his or her name, residence, and social security number, (i) is more than fifteen days past due in spousal maintenance payments and that the total of such past due payments is equal to or greater than one hundred dollars, or (ii) has requested a withdrawal of accumulated contributions from the department of retirement systems;

(b) A description of the terms of the dissolution order requiring payment of spousal maintenance and the amount, if any, past due;

(c) The name of the public retirement system or systems from which the obligor is currently receiving periodic retirement benefits or from which the obligor has requested a withdrawal of accumulated contributions; and

(d) That notice has been provided to the obligor as required by RCW 41.50.540.

(2) If the court in which a mandatory benefits assignment order is sought does not already have a copy of the dissolution order in the court file, then the obligee shall attach a copy of the dissolution order to the petition or motion seeking the mandatory benefits assignment order. [1991 c 365 § 6; 1987 c 326 § 7.]

Additional notes found at www.leg.wa.gov

41.50.570 Mandatory assignment of retirement benefits—Issuance of order. Upon receipt of a petition or motion seeking a mandatory benefits assignment order that complies with RCW 41.50.560, the court shall issue a mandatory benefits assignment order as provided in RCW 41.50.590, including the information required in RCW 41.50.580 (1)(a) or (2)(a), directed to the department of retirement systems, and commanding the department to answer the order on the forms served with the order that comply with RCW 41.50.610 within twenty days after service of the order upon the department. [1987 c 326 § 8.]

41.50.580 Mandatory assignment of retirement benefits—Order—Contents. (1)(a) The mandatory benefits assignment order issued pursuant to RCW 41.50.570 and directed at periodic retirement benefits shall include:

(i) The maximum amount of current spousal maintenance to be withheld from the obligor's periodic retirement benefits each month;

(ii) The total amount of the arrearage judgments previously entered by the court, if any, together with interest, if any; and

(iii) The maximum amount to be withheld from the obligor's periodic retirement payments each month to satisfy the arrearage judgments specified in (a)(ii) of this subsection.

(b) The total amount to be withheld from the obligor's periodic retirement payments each month pursuant to a mandatory benefits assignment order shall not exceed fifty percent of the disposable benefits of the obligor. If the amounts to be paid toward the arrearage are specified in the assignment order, then the maximum amount to be withheld is the sum of the current maintenance ordered and the amount ordered to be paid toward the arrearage, or fifty percent of the disposable benefits of the obligor, whichever is less.

(c) Fifty percent of the disposable benefits of the obligor are exempt from collection under the assignment order, and may be disbursed by the department to the obligor. The provisions of RCW 6.27.150 do not apply to mandatory benefits assignment orders under this chapter.

(2)(a) A mandatory benefits assignment order issued pursuant to RCW 41.50.570 and directed at a withdrawal of accumulated contributions shall include:

(i) The maximum amount of current spousal maintenance to be withheld from the obligor's accumulated contributions;

(ii) The total amount of the arrearage judgments for spousal maintenance payments entered by the court, if any, together with interest, if any; and

(iii) The amount to be withheld from the obligor's withdrawal of accumulated contributions to satisfy the current maintenance obligation and the arrearage judgments specified in (a)(i) and (ii) of this subsection;

(b) The total amount to be withheld from the obligor's withdrawal of accumulated contributions may be up to one hundred percent of the disposable benefits of the obligor.

(3) If an obligor is subject to two or more mandatory benefits assignment orders on account of different obligees and if the nonexempt portion of the obligor's benefits is not sufficient to respond fully to all the mandatory benefits assignment orders, the department shall apportion the obligor's nonexempt disposable benefits among the various obligees in proportionate shares to the extent permitted by federal law. Any obligee may seek a court order directing the department to reapportion the obligor's nonexempt disposable earnings upon notice to all interested obligees. The order must specifically supersede the terms of previous mandatory benefits assignment orders the terms of which it alters. Notice shall be by personal service, or in a manner provided by the civil rules of superior court or applicable statute. [1991 c 365 § 7; 1987 c 326 § 9.]

Additional notes found at www.leg.wa.gov

41.50.590 Mandatory assignment of retirement benefits—Order—Form. The mandatory benefits assignment order shall be in the following form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

Obligee vs. Obligor
MANDATORY BENEFITS ASSIGNMENT ORDER
The Department of Retirement Systems of the State of Washington
THE STATE OF WASHINGTON TO: The Department of Retirement Systems
AND TO: Obligor

The above-named obligee claims that the above-named obligor is more than fifteen days past due in spousal maintenance payments and that the total amount of such past due payments is equal to or greater than one hundred dollars or that the obligor has requested a withdrawal of accumulated contributions from the department of retirement systems. The amount of the accrued past due spousal maintenance debt as of this date is dollars. If the obligor is receiving periodic retirement payments from the department, the amount to be withheld from the obligor's benefits to satisfy such accrued spousal maintenance is dollars per month and the amount to be withheld from the obligor's benefits to satisfy current and continuing spousal maintenance is per month. Upon satisfaction of the accrued past due spousal maintenance debt, the department shall withhold only dollars, the amount necessary to satisfy current and continuing spousal maintenance from the obligor's benefits. If the obligor has requested a withdrawal of accumulated contributions from the department, the amount to be withheld from the obligor's benefits to satisfy such accrued spousal maintenance is dollars.

You are hereby commanded to answer this order by filling in the attached form according to the instructions, and you must mail or deliver the original of the answer to the court, one copy to the obligee or obligee's attorney, and one copy to the obligor within twenty days after service of this benefits assignment order upon you.

- (1) If you are currently paying periodic retirement payments to the obligor, then you shall do as follows:
(a) Withhold from the obligor's retirement payments each month the lesser of:
(i) The sum of the specified arrearage payment amount plus the specified current spousal maintenance amount; or
(ii) Fifty percent of the disposable benefits of the obligor.
(b) The total amount withheld above is subject to the mandatory benefits assignment order, and all other sums may be disbursed to the obligor.

You shall continue to withhold the ordered amounts from nonexempt benefits of the obligor until notified by a court order that the mandatory benefits assignment order has been modified or terminated. You shall promptly notify the court if and when the obligor is no longer receiving periodic

retirement payments from the department of retirement systems.

You shall deliver the withheld benefits to the clerk of the court that issued this mandatory benefits assignment order each month, but the first delivery shall occur no sooner than twenty days after your receipt of this mandatory benefits assignment order.

(2) If you are not currently paying periodic retirement payments to the obligor but the obligor has requested a withdrawal of accumulated contributions, then you shall do as follows:

- (a) Withhold from the obligor's benefits the sum of the specified arrearage payment amount plus the specified interest amount, up to one hundred percent of the disposable benefits of the obligor.
(b) The total amount withheld above is subject to the mandatory benefits assignment order, and all other sums may be disbursed to the obligor.

You shall mail a copy of this order and a copy of your answer to the obligor at the mailing address in the department's files as soon as is reasonably possible. This mandatory benefits assignment order has priority over any assignment or order of execution, garnishment, attachment, levy, or similar legal process authorized by Washington law, except for a wage assignment order for child support under chapter 26.18 RCW or order to withhold or deliver under chapter 74.20A RCW.

NOTICE TO OBLIGOR: YOU HAVE A RIGHT TO REQUEST A HEARING IN THE SUPERIOR COURT THAT ISSUED THIS MANDATORY BENEFITS ASSIGNMENT ORDER, TO REQUEST THAT THE COURT QUASH, MODIFY, OR TERMINATE THE MANDATORY BENEFITS ASSIGNMENT ORDER.

DATED THIS day of , (year)

Obligee, Judge/Court Commissioner or obligee's attorney

[2016 c 202 § 32; 1991 c 365 § 8; 1987 c 326 § 10.]

Additional notes found at www.leg.wa.gov

41.50.600 Mandatory assignment of retirement benefits—Duties of department. (1) The director or the director's designee shall answer an order by sworn affidavit within twenty days after the date of service. The answer shall state whether the obligor receives periodic payments from the department of retirement systems, whether the obligor has requested a withdrawal of accumulated contributions from the department, whether the department will honor the mandatory benefits assignment order and if not, the reasons why, and whether there are other current court or administrative orders on file with the department directing the department to withhold all or a portion of the obligor's benefits.

(2)(a) If any periodic retirement payments are currently payable to the obligor, the funds subject to the mandatory benefits assignment order shall be withheld from the next periodic retirement payment due twenty days or more after receipt of the mandatory benefits assignment order. The withheld amount shall be delivered to the clerk of the court that

issued the mandatory benefits assignment order each month, but the first delivery shall occur no sooner than twenty days after receipt of the mandatory benefits assignment order.

(b) The department shall continue to withhold the ordered amount from nonexempt benefits of the obligor until notified by the court that the mandatory benefits assignment order has been modified or terminated. If the department is initially unable to comply, or able to comply only partially, with the withholding obligation, the court's order shall be interpreted to require the department to comply to the greatest extent possible at the earliest possible date. The department shall notify the court of changes in withholding amounts and the reason for the change. When the obligor is no longer eligible to receive funds from one or more public retirement systems the department shall promptly notify the court.

(3)(a) If no periodic retirement payments are currently payable to the obligor but the obligor has requested a withdrawal of accumulated contributions, the funds subject to the mandatory benefits assignment order shall be withheld from the withdrawal payment. The withheld amount shall be delivered to the clerk of the court that issued the mandatory benefits assignment order.

(b) If the department is unable to comply fully with the withholding obligation, the court's order shall be interpreted to require the department to comply to the greatest extent possible.

(4) The department may deduct a processing fee from the remainder of the obligor's funds after withholding under the mandatory benefits assignment order, unless the remainder is exempt under RCW 41.50.580. The processing fee may not exceed (a) twenty-five dollars for the first disbursement made by the department to the superior court clerk; and (b) six dollars for each subsequent disbursement to the clerk. Funds collected pursuant to this subsection shall be deposited in the department of retirement systems expense fund.

(5) A court order for spousal maintenance governed by RCW 41.50.500 through 41.50.650 or 26.09.138 shall have priority over any other assignment or order of execution, garnishment, attachment, levy, or similar legal process authorized under Washington law, except for a mandatory wage assignment for child support under chapter 26.18 RCW, or an order to withhold and deliver under chapter 74.20A RCW.

(6) If the department, without good cause, fails to withhold funds as required by a mandatory benefits assignment order issued under RCW 41.50.570, the department may be held liable to the obligee for any amounts wrongfully disbursed to the obligor in violation of the mandatory benefits assignment order. However, the department shall under no circumstances be held liable for failing to withhold funds from a withdrawal of accumulated contributions unless the mandatory benefits assignment order was properly served on the department at least thirty days before the department made the withdrawal payment to the obligor. If the department is held liable to an obligee for failing to withhold funds as required by a mandatory benefits assignment order, the department may recover such amounts paid to an obligee by thereafter either withholding such amounts from the available nonexempt benefits of the obligor or filing a legal action against the obligor.

(7) If the department complies with a court order pursuant to RCW 41.50.500 through 41.50.650, neither the department, its officers, its employees, nor any of the retirement systems listed in RCW 41.50.030 may be liable to the obligor or an obligee for wrongful withholding.

(8) The department may combine amounts withheld from various obligors into a single payment to the superior court clerk, if the payment includes a listing of the amounts attributable to each obligor and other information as required by the clerk.

(9) The department shall mail to the obligor at the obligor's last known mailing address appearing in the department's files copies of the mandatory benefits assignment order and the department's answer within twenty days after receiving the mandatory benefits assignment order.

(10) The department shall not consider any withholding allowance that is elective to the employee to be a mandatory deduction for purposes of calculating the member's disposable benefits subject to a mandatory benefits assignment order. The department shall withhold elective withholdings as elected by the employee after deducting from the benefit the amount owing to an obligee pursuant to a mandatory benefits assignment order. [1991 c 365 § 9; 1987 c 326 § 11.]

Additional notes found at www.leg.wa.gov

41.50.610 Mandatory assignment of retirement benefits—Order—Answer—Form. The answer of the department shall be made on forms, served on the director with the mandatory benefits assignment order, substantially as follows:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR THE
COUNTY OF

..... No.

Obligee

vs.

.....

Obligor

.....

Department of Retirement Systems of
the State of Washington

1. At the time of the service of the mandatory benefits assignment order on the department, was the above-named obligor receiving periodic retirement payments from the department of retirement systems?

Yes No (check one).

2. At the time of the service of the mandatory benefits assignment order on the department, had the above-named obligor requested a withdrawal of accumulated contributions from the department?

Yes No (check one).

3. Are there any other court or administrative orders on file with the department currently in effect directing the department to withhold all or a portion of the obligor's benefits?

Yes No (check one).

4. If the answer to question one or two is yes and the department cannot comply fully with the mandatory benefits assignment order, provide an explanation.

I declare under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

.....
Signature of director	Date and place
or
.....
Signature of person answering for director	Place
.....	
Connection with director	

[1987 c 326 § 12.]

41.50.620 Mandatory assignment of retirement benefits—Order—Service. (1) Service of the mandatory benefits assignment order on the department is invalid unless it is served with four answer forms in conformance with RCW 41.50.610, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney or the obligee, and the obligor at the last mailing address known to the obligee. The obligee shall also include an extra copy of the mandatory benefits assignment order for the department to mail to the obligor. Service on the department shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the mandatory benefits assignment order on the department, the obligee shall mail or cause to be mailed by certified or registered mail a copy of the mandatory benefits assignment order to the obligor at the obligor's last mailing address known to the obligee; or, in the alternative, a copy of the mandatory benefits assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the department. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection requires, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion, may quash the mandatory benefits assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the obligor has been prejudiced due to the failure to mail or serve the copy. [1991 c 365 § 10; 1987 c 326 § 13.]

Additional notes found at www.leg.wa.gov

41.50.630 Mandatory assignment of retirement benefits—Hearing to quash, modify, or terminate order. In a hearing to quash, modify, or terminate the mandatory benefits assignment order, the court may grant relief only upon a showing that the mandatory benefits assignment order causes extreme hardship or substantial injustice. Satisfaction by the obligor of all past due payments subsequent to the issuance of the mandatory benefits assignment order is not grounds to quash, modify, or terminate the mandatory benefits assignment order. If a mandatory benefits assignment order has been in operation for twelve consecutive months and the obli-

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gor's spousal maintenance is current, the court may terminate the order upon motion of the obligor unless the obligee can show good cause as to why the mandatory benefits assignment order should remain in effect. [1991 c 365 § 11; 1987 c 326 § 14.]

Additional notes found at www.leg.wa.gov

41.50.640 Mandatory assignment of retirement benefits—Award of costs to prevailing party. In any action to enforce a dissolution order by means of a mandatory benefits assignment order pursuant to RCW 41.50.530 through 41.50.630 and 26.09.138, the court may award costs to the prevailing party, including an award for reasonable attorneys' fees consistent with RCW 26.09.140. An obligor shall not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question. This section does not authorize an award of attorneys' fees against the department of retirement systems or any of the retirement systems listed in RCW 41.50.030. [1987 c 326 § 15.]

41.50.650 Payments pursuant to court orders entered under prior law. (1) Notwithstanding RCW 2.10.180(1), 2.12.090(1), *41.26.180(1), 41.32.052(1), 41.40.052(1), and 43.43.310(1) as those sections existed between July 1, 1987, and July 28, 1991, the department of retirement systems shall make direct payments of benefits to a spouse or ex spouse pursuant to court orders or decrees entered before July 1, 1987, that complied with all the requirements in RCW 2.10.180(1), 2.12.090(2), *41.26.180(3), 41.32.052(3), 41.40.052(3), 43.43.310(2), and **41.04.310 through 41.04.330, as such requirements existed before July 1, 1987. The department shall be responsible for making direct payments only if the decree or court order expressly orders the department to make direct payments to the spouse or ex spouse and specifies a sum certain or percentage amount of the benefit payments to be made to the spouse or ex spouse.

(2) The department of retirement systems shall notify a spouse or ex spouse who, pursuant to a mandatory benefits assignment order entered between July 1, 1987, and July 28, 1991, is receiving benefits in satisfaction of a court-ordered property division, that he or she is entitled to receive direct payments of a court-ordered property division pursuant to RCW 41.50.670 if the dissolution order fully complies or is modified to fully comply with the requirements of RCW 41.50.670 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, *41.26.180, 41.32.052, 41.40.052, 43.43.310, and 26.09.138. The department shall send notice in writing as soon as reasonably feasible but no later than ninety days after July 28, 1991. The department shall also send notice to the obligor member spouse. [1991 c 365 § 12; 1987 c 326 § 16.]

Reviser's note: *(1) RCW 41.26.180 was recodified as RCW 41.26.053 pursuant to 1994 c 298 § 5.

***(2) RCW 41.04.310 through 41.04.330 were repealed by 1987 c 326 § 21, effective July 1, 1987.

Additional notes found at www.leg.wa.gov

41.50.660 Mandatory assignment of retirement benefits—Rules. The director shall adopt such rules under RCW

41.50.050 as the director may find necessary to carry out the purposes of RCW 41.50.500 through 41.50.650 and to avoid conflicts with any applicable federal or state laws. [1987 c 326 § 27.]

41.50.670 Property division obligations—Direct payments pursuant to court order. (1) Nothing in this chapter regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an obligee to direct payments of retirement benefits to satisfy a property division obligation ordered pursuant to a court decree of dissolution or legal separation or any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation as provided in RCW 2.10.180, 2.12.090, 41.26.053, 41.26.162, 41.32.052, 41.35.100, 41.34.070(4), 41.40.052, 43.43.310, 41.37.090, or 26.09.138, as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991. The department shall pay benefits under this chapter in a lump sum or as a portion of periodic retirement payments as expressly provided by the dissolution order. A dissolution order may not order the department to pay a periodic retirement payment or lump sum unless that payment is specifically authorized under the provisions of chapter 2.10, 2.12, 41.26, 41.32, 41.35, 41.34, 41.40, 41.37, or 43.43 RCW, as applicable.

(2) The department shall pay directly to an obligee the amount of periodic retirement payments or lump sum payment, as appropriate, specified in the dissolution order if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states in the following form:

If (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to (the obligee) dollars from such payments or . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to (the obligee) dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(3) This section does not require a member to select a standard allowance upon retirement nor does it require the department to recalculate the amount of a retiree's periodic retirement payment based on a change in survivor option.

(4) A court order under this section may not order the department to pay more than seventy-five percent of an obligor's periodic retirement payment to an obligee.

(5) Persons whose court decrees were entered between July 1, 1987, and July 28, 1991, shall also be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders

comply or are modified to comply with this section and RCW 41.50.680 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, 41.26.053, 41.32.052, 41.35.100, 41.34.070, 41.40.052, 43.43.310, 41.37.090, and 26.09.138.

(6) The obligee must file a copy of the dissolution order with the department within ninety days of that order's entry with the court of record.

(7) A division of benefits pursuant to a dissolution order under this section shall be based upon the obligor's gross benefit prior to any deductions. If the department is required to withhold a portion of the member's benefit pursuant to 26 U.S.C. Sec. 3402 and the sum of that amount plus the amount owed to the obligee exceeds the total benefit, the department shall satisfy the withholding requirements under 26 U.S.C. Sec. 3402 and then pay the remainder to the obligee. The provisions of this subsection do not apply to amounts withheld pursuant to 26 U.S.C. Sec. 3402(i). [2004 c 242 § 51; 2002 c 158 § 5; 1998 c 341 § 513; 1996 c 39 § 18; 1991 c 365 § 13.]

Additional notes found at www.leg.wa.gov

41.50.680 Property division obligations—Processing fee. The department may deduct a processing fee for administering direct payments under RCW 41.50.670 according to the dissolution order. The fee may not exceed (1) seventy-five dollars or the actual average administrative costs, whichever is less, for the first disbursement made by the department; and (2) six dollars or the actual average administrative costs, whichever is less for subsequent disbursements. The department shall deduct the fee in equal dollar amounts from the obligee's and obligor's payments. The funds collected pursuant to this section shall be deposited in the department of retirement systems expense account. [1991 c 365 § 14.]

Additional notes found at www.leg.wa.gov

41.50.690 Property division obligations—Obligee entitled to statement of obligor's retirement benefits—When. Unless otherwise prohibited by federal law, following both the initial and final postretirement audit of an obligor's retirement benefit, the department shall provide an obligee entitled to direct payment of retirement benefits pursuant to a dissolution order under RCW 41.50.670 with a statement of monthly retirement benefit allowance to be paid to the obligor, and other retirement benefit information available to the obligor including the average final compensation, total years of service, retirement date, the amount of the employee contributions made prior to implementation of employer pickup under RCW 41.04.445 and 41.04.450, and savings and interest. [1991 c 365 § 15.]

Additional notes found at www.leg.wa.gov

41.50.700 Property division obligations—Cessation upon death of obligee or obligor—Payment treated as deduction from member's periodic retirement payment. (1) Except under subsection (3) of this section and RCW 41.26.460(5), 41.32.530(5), 41.32.785(5), 41.32.851(4), 41.35.220(4), 41.40.188(5), 41.40.660(5), 41.40.845(4), 43.43.271(4), and 41.34.080, the department's obligation to provide direct payment of a property division obligation to an obligee under RCW 41.50.670 shall cease upon the death of the obligee or upon the death of the obligor, whichever comes first. However, if an obligor dies and is eligible for a lump

sum death benefit, the department shall be obligated to provide direct payment to the obligee of all or a portion of the withdrawal of accumulated contributions pursuant to a court order that complies with RCW 41.50.670.

(2) The direct payment of a property division obligation to an obligee under RCW 41.50.670 shall be paid as a deduction from the member's periodic retirement payment. An obligee may not direct the department to withhold any funds from such payment.

(3) The department's obligation to provide direct payment to a nonmember ex spouse from a preretirement divorce meeting the criteria of RCW *41.26.162(2) or 43.43.270(2) may continue for the life of the member's surviving spouse qualifying for benefits under RCW 41.26.160, 41.26.161, or 43.43.270(2). Upon the death of the member's surviving spouse qualifying for benefits under RCW 41.26.160, 41.26.161, or 43.43.270(2), the department's obligation under this subsection shall cease. The department's obligation to provide direct payment to a nonmember ex spouse qualifying for a continued split benefit payment under *RCW 41.26.162(3) shall continue for the life of that nonmember ex spouse. [2003 c 294 § 12; 2002 c 158 § 6; 1991 c 365 § 16.]

*Reviser's note: RCW 41.26.162 was amended by 2005 c 62 § 3, deleting subsections (2) and (3).

Additional notes found at www.leg.wa.gov

41.50.710 Property division obligations—Remedies exclusive—Payment pursuant to court order defense against claims. (1) The remedies provided in RCW 41.50.670 through 41.50.720 are the exclusive remedies enforceable against the department or the retirement systems listed in RCW 41.50.030 for the direct payment of retirement benefits to satisfy a property division obligation pursuant to a dissolution order. The department shall not be required to make payments to an obligee of benefits accruing prior to (a) thirty calendar days following service of the dissolution order on the department; or (b) benefit payments restrained under RCW 41.50.720.

(2) Whenever the department of retirement systems makes direct payments of property division to a spouse or ex spouse under RCW 41.50.670 to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the department for the department to show that the payments were made pursuant to court decree. [1991 c 365 § 17.]

Additional notes found at www.leg.wa.gov

41.50.720 Payment of benefits—Restraining orders. A party to a dissolution proceeding may file a motion with the court requesting the court to enter an order restraining the department from paying any benefits to a member until further order of the court. The department shall not initiate payment of benefits to a member from the time a restraining order is served on the department until the court enters a further order disposing of the benefits. [1991 c 365 § 25.]

Additional notes found at www.leg.wa.gov

(2016 Ed.)

41.50.730 Retirement or termination agreement payments—Effect on pension benefits calculation. Any payment made by an employer to a member of any retirement system enumerated in RCW 41.50.030 based on either an agreement of the employee to terminate or retire; or notification to the employer of intent to retire; shall affect retirement as follows:

(1) If the agreement does not require the employee to perform additional service, the payment shall not be used in any way to calculate the pension benefit.

(2) If the agreement requires additional service and results in payment at the same or a lower rate than that paid for the same or similar service by other employees it may be included in the pension benefit calculation but shall be deemed excess compensation and is billable to the employer as provided in RCW 41.50.150.

(3) If the agreement requires additional service and results in payment at a rate higher than that paid for the same or similar service by other employees, that portion of the payment which equals the payment for the same or similar service shall be treated as described in subsection (2) of this section, and the balance of the payment shall be treated as described in subsection (1) of this section. [1993 c 270 § 1.]

41.50.740 Retirement or termination agreement payments—Opportunity to change payment options. Members of the teachers' retirement system who retired prior to January 1, 1993, from service with a community college district whose reported earnable compensation included payments made pursuant to an agreement to terminate or retire, or to provide notice of intent to retire, and whose retirement allowance has been reduced under RCW 41.50.150 or is reduced after July 25, 1993, under RCW 41.50.730, shall have an opportunity to change the retirement allowance payment option selected by the member under RCW 41.32.530. Any request for a change shall be made in writing to the department no later than October 31, 1993, and shall apply prospectively only. [1993 c 270 § 2.]

41.50.750 Retirement or termination agreement payments—Overpayments not required to be repaid. (1) Retirees whose reported earnable compensation included payments made pursuant to an agreement to terminate or retire, or to provide notice of intent to retire, shall not be required to repay to the trust funds any overpayments resulting from the employer misreporting, subject to the conditions provided in subsection (2) of this section. The retirees' allowances shall be prospectively adjusted to reflect the benefits to which the retirees are correctly entitled.

(2) Subsection (1) of this section shall apply only to members of the teachers' retirement system who retired prior to January 1, 1993, from service with a community college district.

(3) Any retirees under subsection (2) of this section who, since January 1, 1990, have had their retirement allowances reduced under RCW 41.50.130(1)(b) because of the inclusion of retirement agreement payments in calculating their allowances, shall have their allowances adjusted to reflect the benefits to which the retirees are correctly entitled, but without a reduction to recoup prior overpayments. The retirees shall be reimbursed by the retirement system for the cumulative

amount of the reduction in the retirement allowance that has occurred since January 1, 1990, to recoup prior overpayments.

(4) Any retirees covered by subsection (2) of this section who, after January 1, 1990, repaid a previous overpayment in a lump sum under RCW 41.50.130(1)(b) because of the inclusion of retirement agreement payments in calculating their allowances, shall be reimbursed by the retirement system for the amount of the lump sum repayment. [1993 c 270 § 3.]

41.50.760 Cost-of-living adjustments—Alternative calculation—Election. The department of retirement systems may continue to pay cost-of-living adjustments consistent with the provisions of the statutes repealed by section 11, chapter 345, Laws of 1995, in lieu of the benefits provided by RCW 41.32.489, 41.32.4872, 41.40.197, and 41.40.1986, if the department determines that: (1) A member earned service credit under chapter 41.40 or 41.32 RCW on or after May 8, 1989; and (2) a retiree would receive greater increases in the next ten years under the statutes repealed by section 11, chapter 345, Laws of 1995 than under the provisions of RCW 41.32.489, 41.32.4872, 41.40.197, and 41.40.1986; and (3) the retiree does not elect the benefits provided by chapter 345, Laws of 1995 over the benefits provided under the statutes repealed by section 11, chapter 345, Laws of 1995. The election must be made in a manner prescribed by the department. [1995 c 345 § 13.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.50.770 Deferred compensation plans. (1) "Employee" as used in this section and RCW 41.50.780 includes all full-time, part-time, and career seasonal employees of the state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of the government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and of the superior and district courts; and members of the state legislature or of the legislative authority of any county, city, or town.

(2) The state, through the department, and any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body is authorized to contract with an employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the amount allowable under 26 U.S.C. Sec. 401(a) or 457, and deposit or invest such deferred portion in a credit union, savings and loan association, bank, or mutual savings bank or purchase life insurance, shares of an investment company, individual securities, or fixed and/or variable annuity contracts from any insurance company or any investment company licensed to contract business in this state.

(3) Beginning no later than January 1, 2017, all persons newly employed by the state on a full-time basis who are eligible to participate in a deferred compensation plan under 26 U.S.C. Sec. 457 shall be enrolled in the state deferred compensation plan unless the employee affirmatively elects to waive participation in the plan. Persons who participate in the plan without having selected a deferral amount or investment

option shall contribute three percent of taxable compensation to their plan account which shall be invested in a default option selected by the state investment board in consultation with the director. This subsection does not apply to higher education undergraduate and graduate student employees and shall be administered consistent with the requirements of the federal internal revenue code.

(4) Beginning no later than January 1, 2017, any county, municipality, or other political subdivision offering the state deferred compensation plan authorized under this section, may choose to administer the plan with an opt-out feature for new employees as described in subsection (3) of this section.

(5) Employees participating in the state deferred compensation plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a) administered by the department shall self-direct the investment of the deferred portion of their income through the selection of investment options as set forth in subsection (6) of this section.

(6) The department can provide such plans as it deems are in the interests of state employees. In addition to the types of investments described in this section, the state investment board, with respect to the state deferred compensation plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a), shall invest the deferred portion of an employee's income, without limitation as to amount, in accordance with RCW 43.84.150, 43.33A.140, and 41.50.780, and pursuant to investment policy established by the state investment board for the state deferred compensation plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a). The state investment board, after consultation with the director regarding any recommendations made pursuant to RCW 41.50.088(2), shall provide a set of options for participants to choose from for investment of the deferred portion of their income. Any income deferred under these plans shall continue to be included as regular compensation, for the purpose of computing the state or local retirement and pension benefits earned by any employee.

(7) Coverage of an employee under optional salary deferral programs under this section shall not render such employee ineligible for simultaneous membership and participation in any pension system for public employees. [2016 c 112 § 1; 2014 c 172 § 1; 2010 1st sp.s. c 7 § 29; 1998 c 116 § 11; 1995 c 239 § 314.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.780 Deferred compensation principal and administrative accounts created—Participation in deferred compensation plans—Department's duties. (1) The deferred compensation principal account is hereby created in the state treasury.

(2) The amount of compensation deferred under 26 U.S.C. Sec. 457 by employees under agreements entered into under the authority contained in RCW 41.50.770 shall be paid into the deferred compensation principal account and shall be sufficient to cover costs of administration and staff-

ing in addition to such other amounts as determined by the department. The deferred compensation principal account shall be used to carry out the purposes of RCW 41.50.770. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department under RCW 41.50.770. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under RCW 41.50.770, including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state or other qualifying service. Accordingly, the deferred compensation principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein.

(4) All moneys in the state deferred compensation principal account and the state deferred compensation administrative account, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the state deferred compensation plan's participants and their beneficiaries. Neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, has any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments under the plan. These payments and right thereto are nonassignable and nontransferable. Unpaid accumulated deferrals are not subject to attachment, garnishment, or execution and are not transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law.

(5) The state investment board has the full power to invest moneys in the state deferred compensation principal account and the state deferred compensation administrative account in accordance with RCW 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment directions received pursuant to RCW 41.50.770. All investment and operating costs of the state investment board associated with the investment of the deferred compensation plan assets shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation principal account.

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from participant investments selected pursuant to RCW 41.50.770(5).

(b) Neither the department, nor the director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.50.770(5).

(7) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the department pertaining to the deferred compensation plan including staffing and administrative expenses shall be paid out of the deferred compensation administrative account.

Any excess balances credited to this account over administrative expenses disbursed from this account shall be transferred to the deferred compensation principal account at such time and in such amounts as may be determined by the department with the approval of the office of financial management. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from this account shall be transferred to this account from the deferred compensation principal account.

(8)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.50.770 and this section. The department shall account for and report on the investment of state deferred compensation plan assets or may enter into an agreement with the state investment board for such accounting and reporting.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks.

(9) The department may adopt rules necessary to carry out its responsibilities under RCW 41.50.770 and this section. [2016 c 112 § 2; 2010 1st sp.s. c 7 § 30; 2008 c 229 § 12; 2001 c 181 § 2. Prior: 1998 c 245 § 42; 1998 c 116 § 12; 1995 c 239 § 315.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Effective date—2008 c 229: See note following RCW 41.05.295.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.785 Money-purchase retirement savings principal and administrative accounts created—Participation in money-purchase retirement savings plans—Department's duties. (1) The money-purchase retirement savings principal account is hereby created in the state treasury.

(2) The amount of compensation deferred under 26 U.S.C. Sec. 401(a) by employees under agreements entered into under the authority contained in RCW 41.50.770 shall be paid into the money-purchase retirement savings principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by the department. The money-purchase retirement

savings principal account shall be used to carry out the purposes of RCW 41.50.770. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department under RCW 41.50.770. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under RCW 41.50.770, including the making of payments therefrom to the employees participating in a 26 U.S.C. Sec. 401(a) plan upon their separation from state or other qualifying service. Accordingly, the money-purchase retirement savings principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein.

(4) All moneys in the state money-purchase retirement savings principal account and the state money-purchase retirement savings administrative account, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the state 26 U.S.C. Sec. 401(a) plan's participants and their beneficiaries. Neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, has any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments under the plan. These payments and right thereto are nonassignable and nontransferable. Unpaid accumulated deferrals are not subject to attachment, garnishment, or execution and are not transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law.

(5) The state investment board has the full power to invest moneys in the state money-purchase retirement savings principal account and the state money-purchase retirement savings administrative account in accordance with RCW 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment directions received pursuant to RCW 41.50.770. All investment and operating costs of the state investment board associated with the investment of the money-purchase retirement savings plan assets shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, one hundred percent of all earnings from these investments shall accrue directly to the money-purchase retirement savings principal account.

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from participant investments selected pursuant to RCW 41.50.770(5).

(b) Neither the department, nor the director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.50.770(5).

(7) The money-purchase retirement savings administrative account is hereby created in the state treasury. All expenses of the department pertaining to the money-purchase retirement savings plan including staffing and administrative expenses shall be paid out of the money-purchase retirement savings administrative account. Any excess balances credited

to this account over administrative expenses disbursed from this account shall be transferred to the money-purchase retirement savings principal account at such time and in such amounts as may be determined by the department with the approval of the office of financial management. Any deficiency in the money-purchase retirement savings administrative account caused by an excess of administrative expenses disbursed from this account shall be transferred to this account from the money-purchase retirement savings principal account.

(8)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.50.770 and this section. The department shall account for and report on the investment of state money-purchase retirement savings plan assets or may enter into an agreement with the state investment board for such accounting and reporting.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the money-purchase retirement savings funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the money-purchase retirement savings funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks.

(9) The department may adopt rules necessary to carry out its responsibilities under RCW 41.50.770 and this section. [2016 c 112 § 3.]

41.50.790 Survivor benefits—Dissolution orders. (1)

The department shall designate an obligee as a survivor beneficiary of a member under RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.37.170, or 41.40.845 if the department has been served by registered or certified mail with a dissolution order as defined in RCW 41.50.500 at least thirty days prior to the member's retirement. The department's duty to comply with the dissolution order arises only if the order contains a provision that states in substantially the following form:

When (the obligor) applies for retirement the department shall designate (the obligee) as survivor beneficiary with a survivor benefit.

The survivor benefit designated in the dissolution order must be consistent with the survivor benefit options authorized by statute or administrative rule.

(2) The obligee's entitlement to a survivor benefit pursuant to a dissolution order filed with the department in compliance with subsection (1) of this section shall cease upon the death of the obligee.

(3)(a) A subsequent dissolution order may order the department to divide a survivor benefit between a survivor beneficiary and an alternate payee. In order to divide a survivor benefit between more than one payee, the dissolution order must:

(i) Be ordered by a court of competent jurisdiction following notice to the survivor beneficiary;

(ii) Contain a provision that complies with subsection (1) of this section designating the survivor beneficiary;

(iii) Contain a provision clearly identifying the alternate payee or payees; and

(iv) Specify the proportional division of the benefit between the survivor beneficiary and the alternate payee or payees.

(b) The department will calculate actuarial adjustment for the court-ordered survivor benefit based upon the life of the survivor beneficiary.

(c) If the survivor beneficiary dies, the department shall terminate the benefit. If the alternate payee predeceases the survivor beneficiary, all entitlement of the alternate payee to a benefit ceases and the entire benefit will revert to the survivor beneficiary.

(d) For purposes of this section, "survivor beneficiary" means:

(i) The obligee designated in the provision of dissolution filed in compliance with subsection (1) of this section; or

(ii) In the event of more than one dissolution order, the obligee named in the first decree of dissolution received by the department.

(e) For purposes of this section, "alternate payee" means a person, other than the survivor beneficiary, who is granted a percentage of a survivor benefit pursuant to a dissolution order.

(4) The department shall under no circumstances be held liable for not designating an obligee as a survivor beneficiary under subsection (1) of this section if the dissolution order or amendment thereto is not served on the department by registered or certified mail at least thirty days prior to the member's retirement.

(5) If a dissolution order directing designation of a survivor beneficiary has been previously filed with the department in compliance with this section, no additional obligation shall arise on the part of the department upon filing of a subsequent dissolution order unless the subsequent dissolution order:

(a) Specifically amends or supersedes the dissolution order already on file with the department; and

(b) Is filed with the department by registered or certified mail at least thirty days prior to the member's retirement.

(6) The department shall designate a court-ordered survivor beneficiary pursuant to a dissolution order filed with the department before June 6, 1996, only if the order:

(a) Specifically directs the member or department to make such selection;

(b) Specifies the survivor option to be selected; and

(c) The member retires after June 6, 1996. [2004 c 242 § 52; 2002 c 26 § 8; 1998 c 341 § 514; 1996 c 175 § 1.]

Additional notes found at www.leg.wa.gov

41.50.800 Apportionment of budgeted funds of affected agencies. If apportionments of budgeted funds are required because of the transfers herein authorized, the director of financial management shall certify such apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustment in funds and appropriation accounts and equipment records in accordance with such certification. [1979 c 151 § 64; 1975-'76 2nd ex.s. c 105 § 13.]

41.50.801 Continuation of rules, pending business, contracts, investments, etc. On the effective date of transfer as provided in RCW 41.50.030, all rules and regulations, and all pending business before any of the retirement boards whose powers, duties, and functions are transferred to the department by this chapter shall be continued and acted upon by the department.

All existing contracts and obligations pertaining to the functions herein transferred shall remain in full force and effect, and shall be performed by the department. None of the transfers directed by this chapter shall affect the validity of any act performed by a retirement board or by any official or employee thereof prior to the effective date of transfer as provided in RCW 41.50.030.

None of the transfers involving investment of funds by any of the retirement boards shall affect the validity of any act performed by such boards or by any official or employee thereof prior to the effective date of transfer as provided in RCW 41.50.030. [1975-'76 2nd ex.s. c 105 § 14.]

41.50.802 Transfer of reports, documents, etc., property, funds, assets, appropriations, etc. All reports, documents, surveys, books, records, files, papers, or other writings relating to the administration of the powers, duties, and functions transferred by this chapter shall be made available to the department and to the state actuary.

All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the powers, duties, and functions transferred by this chapter shall be made available to the department.

All funds, credits, or other assets held in connection with powers, duties, and functions transferred by this chapter shall be assigned to the department.

Any appropriations made to any committee, division, board, or any other state agency for the purpose of carrying out the powers, duties, and functions transferred by this chapter shall, in the manner prescribed by the director of financial management, be transferred and credited to the department for the purpose of carrying out such transferred powers, duties, and functions. [1979 c 151 § 65; 1975-'76 2nd ex.s. c 105 § 15.]

41.50.803 Savings. Nothing in this chapter nor in the amendment of RCW 43.17.010, 43.17.020, or *43.33.070 shall be construed to affect any existing rights acquired under RCW 43.17.010, 43.17.020, or *43.33.070 except as to the governmental agencies referred to and their officials and employees, nor as affecting any actions, activities, or proceedings validated thereunder, nor as affecting any civil or criminal proceedings instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administra-

tive action taken thereunder; and neither the abolition of any agency or division thereof nor any transfer of powers, duties, and functions as provided in this chapter shall affect the validity of any act performed by such agency or division thereof or any officer thereof prior to the effective date of transfer as provided in RCW 41.50.030. [1975-'76 2nd ex.s. c 105 § 16.]

*Reviser's note: RCW 43.33.070 was repealed by 1981 c 3 § 48, effective July 1, 1981.

41.50.810 Blind mailings to retirees—Restrictions.

(1) Any organization that exclusively provides representation or services to retired members of the Washington state retirement systems and has membership dues deducted through the department of retirement systems has the right to request the department to assist in doing blind mailings to retirees twice each year. The mailings must provide information to members of the retirement systems eligible for membership in the retiree organization regarding services offered by the retiree organization. The mailings shall not be for the purpose of supporting or opposing any political party, ballot measure, or candidate. The retiree organization must provide all printed materials to be mailed and envelopes to a mail processing center and pay all costs for generating mailing labels, inserting materials into envelopes, sealing, labeling, and delivering materials to be mailed to a bulk mail center or post office. The organization must use its own bulk mail permit and pay all postage costs.

(2) The department must provide requested retiree data for addressing the envelopes to the mail center under a secure data share agreement with the mail center under which neither the organizations nor any other entity has direct access to any names or addresses. The department has no obligation to approve or disapprove, or in any other way take any responsibility for, the content of the mailings. Only organizations that meet the requirements under subsection (1) of this section and have legal authority to provide services to retirement system retirees have the right to request assistance with blind mailings. [2009 c 30 § 1.]

41.50.901 Effective date—1987 c 326. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 326 § 29.]

41.50.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and

applicable to individuals in state registered domestic partnerships. [2009 c 521 § 101.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.54 RCW PORTABILITY OF PUBLIC RETIREMENT BENEFITS

Sections

41.54.010	Definitions.
41.54.020	Benefits under prior retirement systems—Restoration of contributions.
41.54.030	Calculation of service retirement allowance.
41.54.032	Calculation of disability retirement allowance.
41.54.034	Calculation of surviving spouse's death benefit.
41.54.040	Payment of retirement allowance and postretirement adjustments—Death benefit.
41.54.070	Benefits under chapter—Minimum and maximum.
41.54.080	Benefits under chapter—Contractual rights not established.
41.54.090	Benefits under chapter—Lump sum payment.
41.54.100	Transfer of membership under chapter 341, Laws of 1998—Benefits not diminished.
41.54.900	Effective dates—1987 c 192.
41.54.901	Effective date—1988 c 195.
41.54.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

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

(1) "Base salary" means salaries or wages earned by a member of a system during a payroll period for personal services and includes wages and salaries deferred under provisions of the United States internal revenue code, but shall exclude overtime payments, nonmoney maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for voluntary retirement, any other form of leave, or any similar lump sum payment; except that forms of payment which are excluded under this subsection shall be included in base salary when reportable to the department in all of a dual member's retirement systems, and when none of the dual member's retirement systems are the Washington state patrol retirement system.

(2) "Department" means the department of retirement systems.

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

(4) "Dual member" means a person who (a) is or becomes a member of a system on or after July 1, 1988, (b) has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or subsection (6) of this section.

(5) "Service" means the same as it may be defined in each respective system. For the purposes of RCW 41.54.030, military service granted under RCW 41.40.170(3) or 43.43.260 may only be based on service accrued under chapter 41.40 or 43.43 RCW, respectively.

(6) "System" means the retirement systems established under chapters 41.32, 41.40, 41.44, 41.35, 41.37, and 43.43 RCW; plan 2 of the system established under chapter 41.26

RCW; and the city employee retirement systems for Seattle, Tacoma, and Spokane. [2007 c 207 § 1; 2004 c 242 § 58; 1998 c 341 § 702; 1993 c 517 § 8; 1990 c 192 § 1; 1988 c 195 § 1; 1987 c 192 § 1.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

41.54.020 Benefits under prior retirement systems—Restoration of contributions. (1) Those persons who are dual members on or after July 1, 1988, shall not receive a retirement benefit from any prior system while dual members without the loss of all benefits under this chapter. Retroactive retirement in any prior system will cancel membership in any subsequent systems except as allowed under RCW 41.04.270 and will result in the refund of all employee and employer contributions made to such systems.

(2) If a member has withdrawn contributions from a prior system, the member may restore the contributions, together with interest since the date of withdrawal as determined by the system, and recover the service represented by the contributions. Such restoration must be completed within two years of establishing dual membership or prior to retirement, whichever occurs first.

(3) If a member does not meet the time limitation under subsection (2) of this section, the member, prior to retirement, may restore the service credit destroyed by the withdrawn contributions by paying the amount required under RCW 41.50.165(2).

(4) Any service accrued in one system by the member shall not accrue in any other system. [1994 c 197 § 32; 1987 c 384 § 2; 1987 c 192 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Additional notes found at www.leg.wa.gov

41.54.030 Calculation of service retirement allowance. (1) A dual member may combine service in all systems for the purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under RCW 41.26.530(2), 41.32.840(2), 41.35.620, or 41.40.790.

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan 1 of the public employees' retirement system established under chapter 41.40 RCW. [2007 c 207 § 2; 2003 c 294 § 13; 1998 c 341 § 703. Prior: 1996 c 55 § 4; 1996 c 55

(2016 Ed.)

§ 3; 1996 c 39 § 19; 1995 c 239 § 319; 1990 c 192 § 2; 1988 c 195 § 2; 1987 c 192 § 3.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.54.032 Calculation of disability retirement allowance. (1) If a dual member becomes disabled, the member's service in all systems may be combined for the sole purpose of determining the member's eligibility to receive a disability retirement allowance from the member's current system.

(2) The member's current system shall use its own criteria to:

(a) Determine the member's eligibility for a disability retirement allowance; and

(b) Calculate the disability retirement allowance based on service actually established in the current system. The member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) Subsections (1) and (2) of this section shall not apply to the member's prior system.

(4) A dual member who is eligible to receive a disability retirement under the current system may elect to receive a service retirement from all prior systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the service retirement allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the service retirement allowance.

(5) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age, may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(6) This section shall not apply to any disability benefit under:

(a) RCW 41.40.220; or

(b) The Washington state patrol retirement system established under chapter 43.43 RCW. [1996 c 55 § 1.]

41.54.034 Calculation of surviving spouse's death benefit. (1) If a dual member dies in service in any system, the member's service in all systems may be combined for the sole purpose of determining the surviving spouse's eligibility to receive a death benefit from each of the member's current and prior systems.

(2) Each system shall use its own criteria to:

(a) Determine the surviving spouse's eligibility for a death benefit; and

(b) Calculate the death benefit based on service actually established in that system.

(3) The surviving spouse shall receive the same benefit from each system that would have been received if the member were active in the system at the time of death. The spouse shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(4) This section shall not apply to the Washington state patrol retirement system established under chapter 43.43 RCW. [1996 c 55 § 2.]

41.54.040 Payment of retirement allowance and post-retirement adjustments—Death benefit. (1) The allowances calculated under RCW 41.54.030, 41.54.032, and 41.54.034 shall be paid separately by each respective current and prior system. Any deductions from such separate payments shall be according to the provisions of the respective systems.

(2) Postretirement adjustments, if any, shall be applied by the respective systems based on the payments made under subsection (1) of this section.

(3) The department shall adopt rules under chapter 34.05 RCW to ensure that where a dual member has service in a system established under chapter 41.32, 41.40, 41.44, 41.35, 41.37, or 43.43 RCW; service in plan 2 of the system established under chapter 41.26 RCW; and service under the city employee retirement system for Seattle, Tacoma, or Spokane, the additional cost incurred as a result of the dual member receiving a benefit under this chapter shall be borne by the retirement system incurring the additional cost. [2004 c 242 § 59; 1998 c 341 § 704; 1996 c 55 § 5. Prior: 1993 c 519 § 16; 1993 c 517 § 9; 1990 c 192 § 5; 1988 c 195 § 3; 1987 c 192 § 4.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Additional notes found at www.leg.wa.gov

41.54.070 Benefits under chapter—Minimum and maximum. (1) The benefit granted by this chapter shall not result in a total benefit less than would have been received absent such benefit.

(2) The total sum of the retirement allowances received under this chapter shall not exceed the largest amount the dual member would receive if all the service had been rendered in any one system. When calculating the maximum benefit a dual member would receive: (a) Military service granted under RCW 41.40.170(3) or 43.43.260 shall be based only on service accrued under chapter 41.40 or 43.43 RCW, respectively; and (b) the calculation shall be made assuming that the dual member did not defer any allowances pursuant to RCW 41.54.030(3). When a dual member's combined retirement allowances would exceed the limitation imposed by this subsection, the allowances shall be reduced by the systems on a proportional basis, according to service. The limitation imposed by this subsection shall not apply to a dual member with:

(i) Less than fifteen years of service credit in a plan with a retirement benefit cap as defined by the department; and

(ii) Service credit in a plan with no retirement benefit cap. [2007 c 207 § 3; 1996 c 55 § 6; 1988 c 195 § 4; 1987 c 192 § 7.]

41.54.080 Benefits under chapter—Contractual rights not established. The benefits provided under RCW 41.54.010 through 41.54.070 are not provided to employees as a matter of contractual right and the legislature retains the right to alter or abolish these benefits at any time prior to a member's retirement. [1987 c 192 § 8.]

41.54.090 Benefits under chapter—Lump sum payment. (1) The systems may pay a dual member a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.54.030 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from the system making the lump sum payment. [1988 c 195 § 6.]

41.54.100 Transfer of membership under chapter 341, Laws of 1998—Benefits not diminished. Persons who were members of the public employees' retirement system plan 2 prior to September 1, 2000, and were transferred or mandated into membership pursuant to chapter 341, Laws of 1998 shall suffer no diminution of benefits guaranteed to public employees' retirement system plan 2 members as of the date of their change in membership. [1998 c 341 § 705.]

Additional notes found at www.leg.wa.gov

41.54.900 Effective dates—1987 c 192. (1) Section 5 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987.

(2) The remainder of this act shall take effect on July 1, 1988. [1987 c 192 § 11.]

41.54.901 Effective date—1988 c 195. This act shall take effect July 1, 1988. [1988 c 195 § 7.]

41.54.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 102.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.56 RCW

PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

Sections

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41.56.021	Application of chapter to employees of institutions of higher education—Exceptions—Limitations on bargaining.

- 41.56.022 Application of chapter to University of Washington printing craft employees.
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- 41.56.025 Application of chapter to education providers under chapter 28A.193 RCW.
- 41.56.0251 Application of chapter to charter schools.
- 41.56.026 Application of chapter to individual providers under chapter 74.39A RCW.
- 41.56.027 Application of chapter to passenger-only ferry employees.
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- 41.56.029 Application of chapter to adult family home providers—Governor as public employer—Procedure—Intent.
- 41.56.030 Definitions.
- 41.56.040 Right of employees to organize and designate representatives without interference.
- 41.56.050 Disagreement in selection of bargaining representative—Disagreement as to merger of bargaining units—Intervention by commission.
- 41.56.060 Determination of bargaining unit—Bargaining representative.
- 41.56.070 Election to ascertain bargaining representative.
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- 41.56.090 Rules and regulations.
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- 41.56.110 Dues—Deduction from pay.
- 41.56.113 Individual providers—Family child care providers—Adult family home providers—Language access providers—Deductions from payments for dues—State is payor, not employer.
- 41.56.120 Right to strike not granted.
- 41.56.122 Collective bargaining agreements—Authorized provisions.
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- 41.56.125 Arbitrators—Selection—Additional method.
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- 41.56.513 Application of chapter to certain postdoctoral and clinical university employees.
- 41.56.900 Short title—Effective date—1967 ex.s. c 108.
- 41.56.905 Uniformed personnel—Provisions additional—Liberal construction.
- 41.56.906 Construction of chapter—Certain agreements subject to RCW 28A.400.320.
- 41.56.913 Conflict with federal requirements—2006 c 54.
- 41.56.914 Short title—2006 c 54.
- 41.56.915 Effective date—2006 c 54.
- 41.56.950 Retroactive date in collective bargaining agreements allowable, when.

Reviser's note: Throughout chapter 41.56 RCW, the phrase "this act" has been changed to "this chapter." "This act" [1967 ex.s. c 108] is codified as this chapter and RCW 41.06.150.

41.56.010 Declaration of purpose. The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers. [1967 ex.s. c 108 § 1.]

41.56.020 Application of chapter. This chapter shall apply to any county or municipal corporation, or any political subdivision of the state of Washington, including district courts and superior courts, except as otherwise provided by RCW 54.04.170, 54.04.180, and chapters 41.59, 47.64, and 53.18 RCW. [1999 c 217 § 1; 1994 c 297 § 1; 1993 c 76 § 2; 1992 c 36 § 1; 1989 c 275 § 1; 1987 c 135 § 1; 1985 c 7 § 107; 1983 c 3 § 98; 1967 ex.s. c 108 § 2.]

Additional notes found at www.leg.wa.gov

41.56.021 Application of chapter to employees of institutions of higher education—Exceptions—Limitations on bargaining. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to employees of institutions of higher education who are exempted from civil service pursuant to RCW 41.06.070(2), with the following exceptions:

(a) Executive employees, including all members of the governing board of each institution of higher education and related boards; all presidents and vice presidents; deans, directors, and chairs; and executive heads of major administrative or academic divisions;

(b) Managers who perform any of the following functions:

(i) Formulate, develop, or establish institutional policy, or direct the work of an administrative unit;

(ii) Manage, administer, and control a program, including its physical, financial, or personnel resources;

(iii) Have substantial responsibility for human resources administration, legislative relations, public information, internal audits and investigations, or the preparation and administration of budgets;

(iv) Functionally is above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment;

(c) Employees who, in the regular course of their duties, act as a principal assistant, administrative assistant, or per-

sonal assistant to employees as defined by (a) of this subsection;

(d) Confidential employees;

(e) Employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.

(2) Employees subject to this section shall not be included in any unit of employees certified under RCW 41.56.022, 41.56.024, or 41.56.203, chapter 41.76 RCW, or chapter 41.80 RCW. Employees whose eligibility for collective bargaining is covered by chapter 28B.52, 41.76, or 41.80 RCW are exempt from the provisions of this chapter.

(3) Institutions of higher education and the exclusive bargaining representatives shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(4) Institutions of higher education and the exclusive bargaining representative shall not bargain over rights of management that, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include but not be limited to the following:

(a) The functions and programs of the institution, the use of technology, and the structure of the organization;

(b) The institution's budget and the size of its workforce, including determining the financial basis for layoffs;

(c) The right to direct and supervise employees;

(d) The right to take whatever actions are deemed necessary to carry out the mission of the state and the institutions of higher education during emergencies;

(e) Retirement plans and retirement benefits; or

(f) Health care benefits or other employee insurance benefits, except as provided in RCW 41.80.020. [2007 c 136 § 1.]

41.56.022 Application of chapter to University of Washington printing craft employees. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to the University of Washington with respect to the printing craft employees in the department of printing at the University of Washington. [1987 c 484 § 1.]

41.56.024 Application of chapter to classified employees of technical colleges. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to classified employees of technical colleges as provided for in RCW 28B.50.874. [1991 c 238 § 112.]

41.56.025 Application of chapter to education providers under chapter 28A.193 RCW. This chapter applies to the bargaining unit of classified employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.193 RCW. Such bargaining units must be limited to the employees working as education providers to juveniles in each adult correctional facility maintained by the department of corrections and must be separate from other bargaining

units in school districts, educational service districts, or institutions of higher education. [1998 c 244 § 12.]

Additional notes found at www.leg.wa.gov

41.56.0251 Application of chapter to charter schools. In addition to the entities listed in RCW 41.56.020, this chapter applies to any charter school established under chapter 28A.710 RCW. Any bargaining unit or units established at the charter school must be limited to employees working in the charter school and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. Any charter school established under chapter 28A.710 RCW is a separate employer from any school district, including the school district in which it is located. [2016 c 241 § 137. Prior: 2013 c 2 § 307 (Initiative Measure No. 1240, approved November 6, 2012).]

Application of chapter 241, Laws of 2016—Effective date—2016 c 241: See RCW 28A.710.900 and 28A.710.901.

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.56.026 Application of chapter to individual providers under chapter 74.39A RCW. In addition to the entities listed in RCW 41.56.020, this chapter applies to individual providers under RCW 74.39A.270 and 74.39A.300. [2002 c 3 § 12 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

41.56.027 Application of chapter to passenger-only ferry employees. In addition to the entities listed in RCW 41.56.020, this chapter does apply to:

(1) Public employees of public transportation benefit areas providing passenger-only ferry service as provided in RCW 47.64.090; and

(2) Public employees of ferry districts providing passenger-only ferry service as provided in RCW 47.64.090. [2003 c 91 § 2.]

Additional notes found at www.leg.wa.gov

41.56.028 Application of chapter to family child care providers—Governor as public employer—Procedure—Intent. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to family child care providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of family child care providers who, solely for the purposes of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW.

(2) This chapter governs the collective bargaining relationship between the governor and family child care providers, except as follows:

(a) A statewide unit of all family child care providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060.

(b) The exclusive bargaining representative of family child care providers in the unit specified in (a) of this subsection

tion shall be the representative chosen in an election conducted pursuant to RCW 41.56.070, except that in the initial election conducted under chapter 54, Laws of 2006, if more than one labor organization is on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be held.

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for child care providers under this section shall be limited solely to: (i) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(d) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the exclusive bargaining representative of family child care providers, negotiations shall be commenced initially upon certification of an exclusive bargaining representative under (a) of this subsection and, thereafter, by February 1st of any even-numbered year; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, is not binding on the state.

(e) Family child care providers do not have the right to strike.

(3) Family child care providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any purpose. This section applies only to the governance of the collective bargaining relationship between the employer and family child care providers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The parents' or legal guardians' right to choose and terminate the services of any family child care provider that provides care for their child or children;

(b) The secretary of the department of social and health services' right to adopt requirements under RCW 74.15.030, except for requirements related to grievance procedures and collective negotiations on personnel matters as specified in subsection (2)(c) of this section;

(c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130; and

(d) The legislature's right to make programmatic modifications to the delivery of state services through child care subsidy programs, including standards of eligibility of parents, legal guardians, and family child care providers participating in child care subsidy programs, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this section that does not expressly reserve the legislative rights described in this subsection (4)(d).

(2016 Ed.)

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement such agreement.

(6) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section shall not be submitted by the governor to the legislature unless such request has been:

(a) Submitted to the director of financial management by October 1st before the legislative session at which the request is to be considered, except that, for initial negotiations under this section, the request must be submitted by November 15, 2006; and

(b) Certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under this section.

(7) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(8) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and benefit provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in subsection (4)(d) of this section.

(10) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of family child care providers and their exclusive bargaining representative to the extent such activities are authorized by this chapter. [2007 c 278 § 2; 2006 c 54 § 1.]

41.56.029 Application of chapter to adult family home providers—Governor as public employer—Procedure—Intent. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to adult family home providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of adult family home providers who, solely for the purposes

of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee.

(2) There shall be collective bargaining, as defined in RCW 41.56.030, between the governor and adult family home providers, except as follows:

(a) A statewide unit of all adult family home providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060.

(b) The exclusive bargaining representative of adult family home providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070.

Bargaining authorization cards furnished as the showing of interest in support of any representation petition or motion for intervention filed under this section shall be exempt from disclosure under chapter 42.56 RCW.

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for adult family home providers under this section shall be limited solely to: (i) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(d) In addition to the entities listed in the mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480, the provisions apply to the governor or the governor's designee and the exclusive bargaining representative of adult family home providers, except that:

(i) In addition to the factors to be taken into consideration by an interest arbitration panel under RCW 41.56.465, the panel shall consider the financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement.

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, the decision is not binding on the state.

(e) Adult family home providers do not have the right to strike.

(3) Adult family home providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any other purpose. This section applies only to the governance of the collective bargaining relationship between the employer and adult family home providers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term care services under chapter 70.128 RCW, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in col-

lective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for adult family home providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services;

(c) The legislature's right to make programmatic modifications to the delivery of state services under chapter 70.128 RCW, including standards of eligibility of consumers and adult family home providers participating in the programs under chapter 70.128 RCW, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (4)(c);

(d) The residents', parents', or legal guardians' right to choose and terminate the services of any licensed adult family home provider; and

(e) RCW 43.43.832, 43.20A.205, or 74.15.130.

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement the agreement.

(6) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section shall not be submitted by the governor to the legislature unless the request has been:

(a) Submitted to the director of financial management by October 1st prior to the legislative session at which the requests are to be considered; and

(b) Certified by the director of financial management as financially feasible for the state or reflective of a binding decision of an arbitration panel reached under subsection (2)(d) of this section.

(7) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any collective bargaining agreement must be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

(8) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in the agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement.

(10) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of adult family home providers and their exclusive bargaining representative to the extent the activities are authorized by this chapter. [2007 c 184 § 1.]

Part headings not law—2007 c 184: "Part headings used in this act are not any part of the law." [2007 c 184 § 9.]

Severability—2007 c 184: "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." [2007 c 184 § 10.]

Conflict with federal requirements—2007 c 184: "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." [2007 c 184 § 11.]

41.56.030 Definitions. As used in this chapter:

(1) "Adult family home provider" means a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(2) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(3) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340 or *74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the state under RCW 74.15.030 or is exempt from licensing under chapter 74.15 RCW.

(8) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(9) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University,

Western Washington University, The Evergreen State College, and the various state community colleges.

(10)(a) "Language access provider" means any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department.

(b) "Language access provider" does not mean an owner, manager, or employee of a broker or a language access agency.

(11) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(12) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(13) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of

one million or more whose duties include crash fire rescue or other firefighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer; or (i) court marshals of any county who are employed by, trained for, and commissioned by the county sheriff and charged with the responsibility of enforcing laws, protecting and maintaining security in all county-owned or contracted property, and performing any other duties assigned to them by the county sheriff or mandated by judicial order. [2015 2nd sp.s. c 6 § 1; 2011 1st sp.s. c 21 § 11; 2010 c 296 § 3; 2007 c 184 § 2; 2006 c 54 § 2; 2004 c 3 § 6; 2002 c 99 § 2. Prior: 2000 c 23 § 1; 2000 c 19 § 1; 1999 c 217 § 2; 1995 c 273 § 1; prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.]

*Reviser's note: RCW 74.08A.340 was repealed by 2012 c 217 § 2.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Public employment relations commission: Chapter 41.58 RCW.

Additional notes found at www.leg.wa.gov

41.56.040 Right of employees to organize and designate representatives without interference. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter. [1967 ex.s. c 108 § 4.]

41.56.050 Disagreement in selection of bargaining representative—Disagreement as to merger of bargaining units—Intervention by commission. (1) In the event that a public employer and public employees are in disagreement as to the selection of a bargaining representative, the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090.

(2) In the event that a public employer and a bargaining representative are in disagreement as to the merger of two or more bargaining units in the employer's workforce that are represented by the same bargaining representative, the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090. [2011 c 222 § 1; 1975 1st ex.s. c 296 § 16; 1967 ex.s. c 108 § 5.]

Additional notes found at www.leg.wa.gov

41.56.060 Determination of bargaining unit—Bargaining representative. (1) The commission, after hearing

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upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. The commission shall determine the bargaining representative by: (a) Examination of organization membership rolls; (b) comparison of signatures on organization bargaining authorization cards; or (c) conducting an election specifically therefor.

(2) For classified employees of school districts and educational service districts:

(a) Appropriate bargaining units existing on July 24, 2005, may not be divided into more than one unit without the agreement of the public employer and the certified bargaining representative of the unit; and

(b) In making bargaining unit determinations under this section, the commission must consider, in addition to the factors listed in subsection (1) of this section, the avoidance of excessive fragmentation. [2005 c 232 § 1; 1975 1st ex.s. c 296 § 17; 1967 ex.s. c 108 § 6.]

Additional notes found at www.leg.wa.gov

41.56.070 Election to ascertain bargaining representative. In the event the commission elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue. The ballot shall contain the name of such bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the public employees within the unit, together with a choice for any public employee to designate that he or she does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority vote of the public employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which received the largest and second-largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall any agreement be valid if it provides for a term of existence for more than three years, except that any agreement entered into between school districts, cities, counties, or municipal corporations, and their respective employees, may provide for a term of existence of up to six years. [2012 c 117 § 83. Prior: 2007 c 75 § 2; 2007 c 75 § 1; 1975 1st ex.s. c 296 § 18; 1967 ex.s. c 108 § 7.]

Additional notes found at www.leg.wa.gov

41.56.080 Certification of bargaining representative—Scope of representation. The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his or her grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance. [2012 c 117 § 84; 1975 1st ex.s. c 296 § 19; 1967 ex.s. c 108 § 8.]

Additional notes found at www.leg.wa.gov

41.56.090 Rules and regulations. The commission shall promulgate, revise or rescind such rules and regulations as it may deem necessary or appropriate to administer the provisions of this chapter in conformity with the intent and purpose of this chapter and consistent with the best standards of labor-management relations. [1975 1st ex.s. c 296 § 20; 1967 ex.s. c 108 § 9.]

Additional notes found at www.leg.wa.gov

41.56.100 Authority and duty of employer to engage in collective bargaining—Limitations—Mediation, grievance procedures upon failure to agree. (1) A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative. However, a public employer is not required to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution, or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure, and authority to the board created by chapter 41.06 RCW.

(2) Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the commission. This subsection does not apply to negotiations and mediations conducted between a school district employer and an exclusive bargaining representative under RCW 28A.657.050.

(3) If a public employer implements its last and best offer where there is no contract settlement, allegations that either party is violating the terms of the implemented offer shall be subject to grievance arbitration procedures if and as such procedures are set forth in the implemented offer, or, if not in the implemented offer, if and as such procedures are set forth in the parties' last contract. [2010 c 235 § 801; 1989 c 45 § 1; 1975 1st ex.s. c 296 § 21; 1967 ex.s. c 108 § 10.]

Finding—2010 c 235: See note following RCW 28A.405.245.

Arbitration of labor disputes: Chapter 49.08 RCW.

Additional notes found at www.leg.wa.gov

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41.56.110 Dues—Deduction from pay. Upon the written authorization of any public employee within the bargaining unit and after the certification or recognition of such bargaining representative, the public employer shall deduct from the pay of such public employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative. [1973 c 59 § 1; 1967 ex.s. c 108 § 11.]

41.56.113 Individual providers—Family child care providers—Adult family home providers—Language access providers—Deductions from payments for dues—State is payor, not employer. (1) This subsection (1) applies only if the state makes the payments directly to a provider.

(a) Upon the written authorization of an individual provider, a family child care provider, an adult family home provider, or a language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to (c) of this subsection, deduct from the payments to an individual provider, a family child care provider, an adult family home provider, or a language access provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(b) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers, family child care providers, adult family home providers, or language access providers enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to (c) of this subsection, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(ii) Includes requirements for deductions of payments other than the deduction under (a)(i) of this subsection, the state, as payor, but not as the employer, shall, subject to (c) of this subsection, make such deductions upon written authorization of the individual provider, family child care provider, adult family home provider, or language access provider.

(c)(i) The initial additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, and language access providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(ii) The allocation of ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, or language access providers under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the governor unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargain-

ing representative and the governor, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300, 41.56.028, 41.56.029, or 41.56.510, as applicable, the ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, or language access providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(d) The governor and the exclusive bargaining representative of a bargaining unit of family child care providers may not enter into a collective bargaining agreement that contains a union security provision unless the agreement contains a process, to be administered by the exclusive bargaining representative of a bargaining unit of family child care providers, for hardship dispensation for license-exempt family child care providers who are also temporary assistance for needy families recipients or WorkFirst participants.

(2) This subsection (2) applies only if the state does not make the payments directly to a provider.

(a) Upon the written authorization of a language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state shall require through its contracts with third parties that:

(i) The monthly amount of dues as certified by the secretary of the exclusive bargaining representative be deducted from the payments to the language access provider and transmitted to the treasurer of the exclusive bargaining representative; and

(ii) A record showing that dues have been deducted as specified in (a)(i) of this subsection be provided to the state.

(b) If the governor and the exclusive bargaining representative of the bargaining unit of language access providers enter into a collective bargaining agreement that includes a union security provision authorized in RCW 41.56.122, the state shall enforce the agreement by requiring through its contracts with third parties that:

(i) The monthly amount of dues required for membership in the exclusive bargaining representative as certified by the secretary of the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues, be deducted from the payments to the language access provider and transmitted to the treasurer of the exclusive bargaining representative; and

(ii) A record showing that dues or fees have been deducted as specified in (a)(i) of this subsection be provided to the state. [2010 c 296 § 4; 2007 c 184 § 3; 2006 c 54 § 3; 2004 c 3 § 7; 2002 c 99 § 1.]

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Additional notes found at www.leg.wa.gov

41.56.120 Right to strike not granted. Nothing contained in this chapter shall permit or grant any public employee the right to strike or refuse to perform his or her official duties. [2012 c 117 § 85; 1967 ex.s. c 108 § 12.]

[Title 41 RCW—page 354]

41.56.122 Collective bargaining agreements—Authorized provisions. A collective bargaining agreement may:

(1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission, the terms of the collective bargaining agreement shall prevail.

(2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement. [1975 1st ex.s. c 296 § 22; 1973 c 59 § 2.]

Additional notes found at www.leg.wa.gov

41.56.123 Collective bargaining agreements—Effect of termination—Application of section. (1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(2) This section does not apply to provisions of a collective bargaining agreement which both parties agree to exclude from the provisions of subsection (1) of this section and to provisions within the collective bargaining agreement with separate and specific termination dates.

(3) This section shall not apply to the following:

(a) Bargaining units covered by RCW 41.56.430 et seq. for fact-finding and interest arbitration;

(b) Collective bargaining agreements authorized by chapter 53.18 RCW; or

(c) Collective bargaining agreements authorized by chapter 54.04 RCW.

(4) This section shall not apply to collective bargaining agreements in effect or being bargained on July 23, 1989. [1993 c 398 § 4; 1989 c 46 § 1.]

Additional notes found at www.leg.wa.gov

41.56.125 Arbitrators—Selection—Additional method. In addition to any other method for selecting arbitrators, the parties may request the public employment relations commission to, and the commission shall, appoint a

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qualified person who may be an employee of the commission to act as an arbitrator to assist in the resolution of a labor dispute between such public employer and such bargaining representative arising from the application of the matters contained in a collective bargaining agreement. The arbitrator shall conduct such arbitration of such dispute in a manner as provided for in the collective bargaining agreement: PROVIDED, That the commission shall not collect any fees or charges from such public employer or such bargaining representative for services performed by the commission under the provisions of this chapter: PROVIDED FURTHER, That the provisions of chapter 49.08 RCW shall have no application to this chapter. [1975 1st ex.s. 296 § 23; 1973 c 59 § 3.]

Additional notes found at www.leg.wa.gov

41.56.130 Rules and regulations of Washington state personnel resources board—Mandatory subjects. See RCW 41.06.150.

41.56.140 Unfair labor practices for public employer enumerated. It shall be an unfair labor practice for a public employer:

- (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
- (2) To control, dominate, or interfere with a bargaining representative;
- (3) To discriminate against a public employee who has filed an unfair labor practice charge;
- (4) To refuse to engage in collective bargaining with the certified exclusive bargaining representative. [2011 c 222 § 2; 1969 ex.s. c 215 § 1.]

41.56.150 Unfair labor practices for bargaining representative enumerated. It shall be an unfair labor practice for a bargaining representative:

- (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
- (2) To induce the public employer to commit an unfair labor practice;
- (3) To discriminate against a public employee who has filed an unfair labor practice charge;
- (4) To refuse to engage in collective bargaining. [1969 ex.s. c 215 § 2.]

41.56.160 Commission to prevent unfair labor practices and issue remedial orders and cease and desist orders. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such

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as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [1994 c 58 § 1; 1983 c 58 § 1; 1975 1st ex.s. c 296 § 24; 1969 ex.s. c 215 § 3.]

Additional notes found at www.leg.wa.gov

41.56.165 Applicability of administrative procedure act to commission action. Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules adopted in accordance with chapter 34.05 RCW, and the right of judicial review provided by chapter 34.05 RCW shall be applicable to all such actions and rules. [1994 c 58 § 2.]

41.56.203 University of Washington—Certain employees enrolled in an academic program—Scope of collective bargaining. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the University of Washington with respect to employees who are enrolled in an academic program and are in a classification in (a) through (i) of this subsection on any University of Washington campus. The employees in (a) through (i) of this subsection constitute an appropriate bargaining unit:

- (a) Predoctoral instructor;
- (b) Predoctoral lecturer;
- (c) Predoctoral teaching assistant;
- (d) Predoctoral teaching associates I and II;
- (e) Tutors, readers, and graders in all academic units and tutoring centers;
- (f) Predoctoral staff assistant;
- (g) Predoctoral staff associates I and II;
- (h) Except as provided in this subsection (1)(h), predoctoral researcher, predoctoral research assistant, and predoctoral research associates I and II. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include predoctoral researchers, predoctoral research assistants, and predoctoral research associates I and II who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university; and

(i) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (h) of this subsection.

(2)(a) The scope of bargaining for employees at the University of Washington under this section excludes:

- (i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by the University of Washington;
- (ii) The amount of tuition or fees at the University of Washington. However, tuition and fee remission and waiver is within the scope of bargaining;
- (iii) The academic calendar of the University of Washington; and
- (iv) The number of students to be admitted to a particular class or class section at the University of Washington.

(b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(ii) The University of Washington may provide additional compensation to student employees covered by this section that exceeds that provided by the legislature. [2002 c 34 § 2.]

Intent—2002 c 34: "(1) This act is intended to promote cooperative labor relations between the University of Washington and the employees who provide instructional, research, and related academic services, and who are enrolled as students at the university by extending collective bargaining rights under chapter 41.56 RCW and using the orderly procedures administered by the public employment relations commission. To achieve this end, the legislature intends that under chapter 41.56 RCW the university will exclusively bargain in good faith over all matters within the scope of bargaining under RCW 41.56.203.

(2) The legislature recognizes the importance of the shared governance practices developed at the University of Washington. The legislature does not intend to restrict, limit, or prohibit the exercise of the functions of the faculty in any shared governance mechanisms or practices, including the faculty senate, faculty councils, and faculty codes of the University of Washington; nor does the legislature intend to restrict, limit, or prohibit the exercise of the functions of the graduate and professional student senate, the associated students of the University of Washington, or any other student organization in matters outside the scope of bargaining covered by chapter 41.56 RCW.

(3) The legislature intends that nothing in this act will restrict, limit, or prohibit the University of Washington from consideration of the merits, necessity, or organization of any program, activity, or service established by the University of Washington, including, but not limited to, any decision to establish, modify, or discontinue any such program, activity, or service. The legislature further intends that nothing in this act will restrict, limit, or prohibit the University of Washington from having sole discretion over admission requirements for students, criterion for the award of certificates and degrees to students, academic criterion for selection of employees covered by this chapter, initial appointment of students, and the content, conduct, and supervision of courses, curricula, grading requirements, and research programs.

(4) The legislature does not intend to limit the matters excluded from collective bargaining to those items specified in this act." [2002 c 34 § 1.]

Additional notes found at www.leg.wa.gov

41.56.205 Washington State University—Certain employees enrolled in an academic program—Scope of collective bargaining. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to Washington State University with respect to employees who are enrolled in an academic program and are in a classification in (a) through (g) of this subsection on any Washington State University campus. The employees in (a) through (g) of this subsection constitute an appropriate bargaining unit:

- (a) Graduate teaching assistant;
- (b) Graduate staff assistant;
- (c) Graduate project assistant;
- (d) Graduate veterinary assistant;
- (e) Tutor, reader, and graders in all academic units and tutoring centers;

(f) Except as provided in this subsection (1)(f), graduate research assistant. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include graduate research assistants who are performing research primarily related to their dissertation and who have incidental or

no service expectations placed upon them by the university; and

(g) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (f) of this subsection.

(2)(a) The scope of bargaining for employees at Washington State University under this section excludes:

(i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by Washington State University;

(ii) The amount of tuition or fees at Washington State University. However, tuition and fee remission and waiver is within the scope of bargaining;

(iii) The academic calendar of Washington State University; and

(iv) The number of students to be admitted to a particular class or class section at Washington State University.

(b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(ii) Washington State University may provide additional compensation to student employees covered by this section that exceeds that provided by the legislature. [2008 c 203 § 2.]

Intent—2008 c 203: "(1) The legislature acknowledges the ability of student employees who provide instructional, research, and related academic services at the University of Washington to collectively bargain and recognizes that student employees performing equivalent services at Washington State University do not enjoy collective bargaining rights. The legislature further recognizes that while the titles of the student employees may differ between the two institutions, student employees at Washington State University should enjoy the same collective bargaining rights as their counterparts at the University of Washington. The legislature therefore intends to grant bargaining rights to student employees at Washington State University to the same extent such rights are granted to student employees at the University of Washington.

(2) This act is intended to promote cooperative labor relations between Washington State University and the employees who provide instructional, research, and related academic services, and who are enrolled as students at the university by extending collective bargaining rights under chapter 41.56 RCW and using the orderly procedures administered by the public employment relations commission. To achieve this end, the legislature intends that under chapter 41.56 RCW the university will exclusively bargain in good faith over all matters within the scope of bargaining under section 2 of this act.

(3) The legislature recognizes the importance of the shared governance practices developed at Washington State University. The legislature does not intend to restrict, limit, or prohibit the exercise of the functions of the faculty in any shared governance mechanisms or practices, including the faculty senate, faculty councils, and faculty codes of Washington State University; nor does the legislature intend to restrict, limit, or prohibit the exercise of the functions of the graduate and professional student association, the associated students of Washington State University, or any other student organization in matters outside the scope of bargaining covered by chapter 41.56 RCW.

(4) The legislature intends that nothing in this act will restrict, limit, or prohibit Washington State University from consideration of the merits, necessity, or organization of any program, activity, or service established by Washington State University, including, but not limited to, any decision to establish, modify, or discontinue any such program, activity, or service. The legislature further intends that nothing in this act will restrict, limit, or prohibit Washington State University from having sole discretion over admission requirements for students, criterion for the award of certificates and

degrees to students, academic criterion for selection of employees covered by this act, initial appointment of students, and the content, conduct, and supervision of courses, curricula, grading requirements, and research programs.

(5) The legislature does not intend to limit the matters excluded from collective bargaining to those items specified in section 2 of this act." [2008 c 203 § 1.]

41.56.210 Department to prevent unfair labor practices and issue remedial orders—Application to state civil service employees. See RCW 41.06.340.

41.56.220 Right of employee representing bargaining unit to be absent from employment during legislative session—Replacement. Any public employee who represents fifty percent or more of a bargaining unit or who represents on a statewide basis a group of five or more bargaining units shall have the right to absent himself or herself from his or her employment without pay and without suffering any discrimination in his or her future employment and without losing benefits incident to his or her employment while representing his or her bargaining unit at the legislature of the state of Washington during any regular or special session thereof: PROVIDED, That such employee is replaced by his or her bargaining unit with an employee who shall be paid by the employer and who shall be qualified to perform the duties and obligations of the absent member in accordance with the rules of the civil service or other standards established by his or her employer for such absent employee. [2012 c 117 § 86; 1980 c 87 § 17; 1969 ex.s. c 174 § 1.]

41.56.230 Rights of employees and bargaining representatives of school districts dissolved due to financial insolvency. Notwithstanding any other provision of this chapter, employees and bargaining representatives of school districts that are dissolved due to financial insolvency shall have resort to collective bargaining, including grievance arbitration and other processes, only to the extent provided by RCW 28A.315.229. [2012 c 186 § 23.]

Effective date—2012 c 186: See note following RCW 28A.315.025.

Rule-making authority—2012 c 186: See RCW 28A.315.902.

41.56.430 Uniformed personnel—Legislative declaration. The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes. [1973 c 131 § 1.]

Additional notes found at www.leg.wa.gov

41.56.440 Uniformed personnel—Negotiations—Declaration of an impasse—Appointment of mediator. Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either

party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: PROVIDED, That a mediator does not have a power of compulsion. [1979 ex.s. c 184 § 1; 1975-'76 2nd ex.s. c 14 § 1; 1975 1st ex.s. c 296 § 28; 1973 c 131 § 3.]

Additional notes found at www.leg.wa.gov

41.56.450 Uniformed personnel—Interest arbitration panel—Powers and duties—Hearings—Findings and determination. If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (1) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or

any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chair of the arbitration panel, unless the parties agree to a longer period.

The neutral chair shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious. [2012 c 117 § 87; 1983 c 287 § 2; 1979 ex.s. c 184 § 2; 1975-'76 2nd ex.s. c 14 § 2; 1975 1st ex.s. c 296 § 29; 1973 c 131 § 4.]

Additional notes found at www.leg.wa.gov

41.56.452 Interest arbitration panel a state agency.

An interest arbitration panel created pursuant to RCW 41.56.450, in the performance of its duties under chapter 41.56 RCW, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter. [1983 c 287 § 3; 1980 c 87 § 19.]

Additional notes found at www.leg.wa.gov

41.56.465 Uniformed personnel—Interest arbitration panel—Determinations—Factors to be considered.

(1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) The average consumer prices for goods and services, commonly known as the cost of living;
- (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
- (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in *RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(2) For employees listed in *RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel

involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

(3) For employees listed in *RCW 41.56.030(7) (e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

(4) For employees listed in RCW 41.56.028:

(a) The panel shall also consider:

(i) A comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities, along the west coast of the United States; and

(ii) The financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) The public's interest in reducing turnover and increasing retention of child care providers;

(ii) The state's interest in promoting, through education and training, a stable child care workforce to provide quality and reliable child care from all providers throughout the state; and

(iii) In addition, for employees exempt from licensing under chapter 74.15 RCW, the state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(5) For employees listed in RCW 74.39A.270:

(a) The panel shall consider:

(i) A comparison of wages, hours, and conditions of employment of publicly reimbursed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States; and

(ii) The financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) A comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States;

(ii) The state's interest in promoting a stable long-term care workforce to provide quality and reliable care to vulnerable elderly and disabled recipients;

(iii) The state's interest in ensuring access to affordable, quality health care for all state citizens; and

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(6) Subsections (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contribu-

tions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW. [2007 c 278 § 1; 1995 c 273 § 2; 1993 c 398 § 3.]

*Reviser's note: RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

Additional notes found at www.leg.wa.gov

41.56.470 Uniformed personnel—Arbitration panel—Rights of parties. During the pendency of the proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his or her rights or position under chapter 131, Laws of 1973. [2012 c 117 § 88; 1973 c 131 § 6.]

Additional notes found at www.leg.wa.gov

41.56.473 Uniformed personnel—Application of chapter to Washington state patrol—Bargaining subjects. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the state with respect to the officers of the Washington state patrol appointed under RCW 43.43.020, except that the state is prohibited from negotiating any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

(2) For the purposes of negotiating wages, wage-related matters, and nonwage matters, the state shall be represented by the governor or the governor's designee who is appointed under chapter 41.80 RCW, and costs of the negotiations under this section shall be reimbursed as provided in RCW 41.80.140.

(3) The governor or the governor's designee shall consult with the chief of the Washington state patrol regarding collective bargaining.

(4) The negotiation of provisions pertaining to wages and wage-related matters in a collective bargaining agreement between the state and the Washington state patrol officers is subject to the following:

(a) The state's bargaining representative must periodically consult with a subcommittee of the joint committee on employment relations created in RCW 41.80.010(5) which shall consist of the four members appointed to the joint committee with leadership positions in the senate and the house of representatives, and the chairs and ranking minority members of the senate transportation committee and the house transportation committee, or their successor committees. The subcommittee must be consulted regarding the appropriations necessary to implement these provisions in a collective bargaining agreement and, on completion of negotiations, must be advised on the elements of these provisions.

(b) Provisions that are entered into before the legislature approves the funds necessary to implement the provisions must be conditioned upon the legislature's subsequent approval of the funds.

(5) The governor shall submit a request for funds necessary to implement the wage and wage-related matters in the collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements may not

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be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of financial management by October 1st before the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of financial management as being feasible financially for the state or reflects the decision of an arbitration panel reached under RCW 41.56.475. [2005 c 438 § 1; 1999 c 217 § 3.]

41.56.475 Uniformed personnel—Application of chapter to Washington state patrol—Mediation and arbitration. In addition to the classes of employees listed in *RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to Washington state patrol officers appointed under RCW 43.43.020 as provided in this section, subject to the following:

(1) Within ten working days after the first Monday in September of every odd-numbered year, the state's bargaining representative and the bargaining representative for the appropriate bargaining unit shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (a) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (b) either party may apply to the commission, the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(2) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW 41.56.473.

(3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the state or the Washington state patrol.

(4) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473. [2008 c 149 § 1; 2005 c 438 § 2; 1999 c 217 § 4; 1993 c 351 § 1; 1988 c 110 § 2; 1987 c 135 § 3.]

***Reviser's note:** RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

Additional notes found at www.leg.wa.gov

41.56.480 Uniformed personnel—Refusal to submit to procedures—Invoking jurisdiction of superior court—Contempt. If the representative of either or both the uniformed personnel and the public employer refuse to submit to the procedures set forth in RCW 41.56.440 and 41.56.450, the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court for the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. A decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose. [1975 1st ex.s. c 296 § 30; 1973 c 131 § 7.]

Additional notes found at www.leg.wa.gov

41.56.490 Uniformed employees—Strikes prohibited—Violations—Contempt of court. The right of uniformed employees to engage in any strike, work slowdown, or stoppage is not granted. An organization recognized as the bargaining representative of uniformed employees subject to this chapter that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 and 41.56.490, or willfully offers resistance to such order, whether by strike or otherwise, is in contempt of court as provided in chapter 7.21 RCW. An employer that willfully disobeys a lawful order of enforcement by a superior court pur-

suant to RCW 41.56.480 or willfully offers resistance to such order is in contempt of court as provided in chapter 7.21 RCW. [1989 c 373 § 24; 1973 c 131 § 8.]

Additional notes found at www.leg.wa.gov

41.56.492 Application of uniformed personnel collective bargaining provisions to employees of public passenger transportation systems—Conditions. In addition to the classes of employees listed in *RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452, 41.56.470, 41.56.480, and 41.56.490 shall also be applicable to the employees of a public passenger transportation system of a metropolitan municipal corporation, county transportation authority, public transportation benefit area, or city public passenger transportation system, subject to the following:

(1) Negotiations between the public employer and the bargaining representative may commence at any time agreed to by the parties. If no agreement has been reached ninety days after commencement of negotiations, either party may demand that the issues in disagreement be submitted to a mediator. The services of the mediator shall be provided by the commission without cost to the parties, but nothing in this section or RCW 41.56.440 shall be construed to prohibit the public employer and the bargaining representative from agreeing to substitute at their own expense some other mediator or mediation procedure; and

(2) If an agreement has not been reached following a reasonable period of negotiations and mediation, and the mediator finds that the parties remain at impasse, either party may demand that the issues in disagreement be submitted to an arbitration panel for a binding and final determination. In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decisions [decision], shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) Compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case; and

(d) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. [1993 c 473 § 1.]

***Reviser's note:** RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

41.56.496 Commercial nuclear plants—Application of chapter to certain employees. (1) In order to assure the uninterrupted and dedicated service of employees employed by employees of operators of certain commercial nuclear plants, the provisions of RCW 41.56.430 through 41.56.470, 41.56.480, and 41.56.490 shall apply to the operating and maintenance employees of a joint operating agency as defined in RCW 43.52.250 who are employed at a commercial nuclear power plant operating under a site certificate

issued under chapter 80.50 RCW, except as provided in subsection (2) of this section.

(2) In making its determination, the arbitration panel shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) A comparison of the wages, benefits, hours of work, and working conditions of the personnel involved in the proceeding with those of like personnel in relevant Washington labor markets. For classifications not found in Washington, the comparison shall be made with similar personnel in the states of California and Arizona, taking into account the relative differences in the cost of living;

(d) Economic indices, fiscal constraints, relative differences in the cost of living, and similar factors determined by the arbitration panel to be pertinent to the case;

(e) Other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, benefits, hours of work, and working conditions. [2009 c 126 § 1.]

41.56.500 School district collective bargaining agreements—Required action districts. All collective bargaining agreements entered into between a school district employer and school district employees under this chapter after June 10, 2010, as well as bargaining agreements existing on June 10, 2010, but renewed or extended after June 10, 2010, shall be consistent with RCW 28A.657.050. [2010 c 235 § 802.]

Finding—2010 c 235: See note following RCW 28A.405.245.

41.56.510 Application of chapter to language access providers—Governor as public employer—Procedure—Intent. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to language access providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of language access providers who, solely for the purposes of collective bargaining, are public employees. The governor or the governor's designee shall represent the public employer for bargaining purposes.

(2) There shall be collective bargaining, as defined in RCW 41.56.030, between the governor and language access providers, except as follows:

(a) A statewide unit of all language access providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060;

(b) The exclusive bargaining representative of language access providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070.

Bargaining authorization cards furnished as the showing of interest in support of any representation petition or motion for intervention filed under this section are exempt from disclosure under chapter 42.56 RCW;

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for language access providers under this section is

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limited solely to: (i) Economic compensation, such as the manner and rate of payments; (ii) professional development and training; (iii) labor-management committees; and (iv) grievance procedures. Retirement benefits are not subject to collective bargaining. By such obligation neither party may be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter;

(d) In addition to the entities listed in the mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480, the provisions apply to the governor or the governor's designee and the exclusive bargaining representative of language access providers, except that:

(i) In addition to the factors to be taken into consideration by an interest arbitration panel under RCW 41.56.465, the panel shall consider the financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement;

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, the decision is not binding on the state;

(e) Language access providers do not have the right to strike.

(3) Language access providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any other purpose. This section applies only to the governance of the collective bargaining relationship between the employer and language access providers as provided in subsections (1) and (2) of this section.

(4) Each party with whom the department of social and health services contracts for language access services and each of their subcontractors shall provide to the department an accurate list of language access providers, as defined in RCW 41.56.030, including their names, addresses, and other contact information, annually by January 30th, except that initially the lists must be provided within thirty days of June 10, 2010. The department shall, upon request, provide a list of all language access providers, including their names, addresses, and other contact information, to a labor union seeking to represent language access providers.

(5) This section does not create or modify:

(a) The department's obligation to comply with the federal statute and regulations; and

(b) The legislature's right to make programmatic modifications to the delivery of state services under chapter 74.04 RCW. The governor may not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection.

(6) Upon meeting the requirements of subsection (7) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement the agreement.

(7) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section may not be submit-

ted by the governor to the legislature unless the request has been:

(a) Submitted to the director of financial management by October 1st prior to the legislative session at which the requests are to be considered, except that, for initial negotiations under this section, the request may not be submitted before July 1, 2011; and

(b) Certified by the director of financial management as financially feasible for the state or reflective of a binding decision of an arbitration panel reached under subsection (2)(d) of this section.

(8) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any collective bargaining agreement must be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

(9) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(10) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in the agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement.

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of language access providers and their exclusive bargaining representative to the extent the activities are authorized by this chapter. [2010 c 296 § 2.]

Conflict with federal requirements—2010 c 296: "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." [2010 c 296 § 9.]

41.56.513 Application of chapter to certain postdoctoral and clinical university employees. In addition to the entities listed in RCW 41.56.020, this chapter applies to postdoctoral and clinical employees as excluded in chapter 41.76 RCW at the University of Washington and at Washington State University. [2012 c 255 § 1.]

41.56.900 Short title—Effective date—1967 ex.s. c 108. RCW 41.56.010 through 41.56.900 and 41.06.150 shall be known as the "Public Employees' Collective Bargaining Act" and shall take effect on July 1, 1967. [1967 ex.s. c 108 § 14.]

41.56.905 Uniformed personnel—Provisions additional—Liberal construction. The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation

of any public employer, the provisions of this chapter shall control. [1983 c 287 § 5; 1973 c 131 § 10.]

Additional notes found at www.leg.wa.gov

41.56.906 Construction of chapter—Certain agreements subject to RCW 28A.400.320. Nothing in this chapter may be construed to grant school district employers or classified school district employees the right to reach agreements that are in conflict with the termination provisions of RCW 28A.400.320. [2009 c 396 § 11.]

41.56.913 Conflict with federal requirements—2006 c 54. 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. [2006 c 54 § 11.]

41.56.914 Short title—2006 c 54. This act may be known and cited as the access to quality family child care act. [2006 c 54 § 12.]

41.56.915 Effective date—2006 c 54. Sections 1 through 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 15, 2006]. [2006 c 54 § 13.]

41.56.950 Retroactive date in collective bargaining agreements allowable, when. Whenever a collective bargaining agreement between a public employer and a bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement including wage increases may accrue beginning with such effective date as established by this section. [1971 ex.s. c 187 § 1.]

Chapter 41.58 RCW PUBLIC EMPLOYMENT LABOR RELATIONS

Sections

41.58.005	Intent—Construction.
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41.58.803	Continuation and savings.
41.58.900	Effective dates—1975-'76 2nd ex.s. c 5.

41.58.901 Effective date—1975 1st ex.s. c 296 §§ 4, 6, and 8 through 39.

41.58.005 Intent—Construction. (1) It is the intent of the legislature by the adoption of chapter 296, Laws of 1975 1st ex. sess. to provide, in the area of public employment, for the more uniform and impartial (a) adjustment and settlement of complaints, grievances, and disputes arising out of employer-employee relations and, (b) selection and certification of bargaining representatives by transferring jurisdiction of such matters to the public employment relations commission from other boards and commissions. It is further the intent of the legislature, by such transfer, to achieve more efficient and expert administration of public labor relations administration and to thereby ensure the public of quality public services.

(2) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to alter any existing collective bargaining unit or the provisions of any existing bargaining agreement.

(3) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to alter any power or authority regarding the scope of collective bargaining in the employment areas affected by chapter 296, Laws of 1975 1st ex. sess., but chapter 296, Laws of 1975 1st ex. sess. shall be construed as transferring existing jurisdiction and authority to the public employment relations commission.

(4) Nothing contained in chapter 296, Laws of 1975 1st ex. sess. shall be construed to prohibit the consideration or adjustment of complaints or grievances by the public employer. [1975 1st ex.s. c 296 § 1.]

41.58.010 Public employment relations commission—Created—Membership—Terms—Vacancies—Quorum—Report. (1) There is hereby created the public employment relations commission (hereafter called the "commission") to administer the provisions of this chapter. The commission shall consist of three members who shall be citizens appointed by the governor by and with the advice and consent of the senate. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Commission members shall be eligible for reappointment. The governor shall designate one member to serve as chair of the commission. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members shall not be eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission.

(2) In making citizen member appointments initially, and subsequently thereafter, the governor shall be cognizant of the desirability of appointing persons knowledgeable in the area of labor relations in the state.

(3) A vacancy in the commission shall not impair the right of the remaining members to exercise all of the powers of the commission, and two members of the commission shall, at all times, constitute a quorum of the commission.

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(4) The commission shall at the close of each fiscal year make a report in writing to the legislature and to the governor stating the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the commission, and an account of all moneys it has disbursed. [2012 c 117 § 89; 1981 c 338 § 21; 1975-'76 2nd ex.s. c 5 § 1.]

41.58.015 Compensation and travel expenses of members—Executive director—Employees. (1) Each member of the commission shall be compensated in accordance with RCW 43.03.250. Members of the commission shall also be reimbursed for travel expenses incurred in the discharge of their official duties on the same basis as is provided in RCW 43.03.050 and 43.03.060.

(2) The commission shall appoint an executive director whose annual salary shall be determined under the provisions of RCW 43.03.028. The executive director shall perform such duties and have such powers as the commission shall prescribe in order to implement and enforce the provisions of this chapter. In addition to the performance of administrative duties, the commission may delegate to the executive director authority with respect to, but not limited to, representation proceedings, unfair labor practice proceedings, mediation of labor disputes, arbitration of disputes concerning the interpretation or application of a collective bargaining agreement, and, in certain cases, fact-finding or arbitration of disputes concerning the terms of a collective bargaining agreement. Such delegation shall not eliminate a party's right of appeal to the commission. The executive director, with such assistance as may be provided by the attorney general and such additional legal assistance consistent with chapter 43.10 RCW, shall have authority on behalf of the commission, when necessary to carry out or enforce any action or decision of the commission, to petition any court of competent jurisdiction for an order requiring compliance with the action or decision.

(3) The commission shall employ such employees as it may from time to time find necessary for the proper performance of its duties, consistent with the provisions of this chapter.

(4) The payment of all of the expenses of the commission, including travel expenses incurred by the members or employees of the commission under its orders, shall be subject to the provisions of RCW 43.03.050 and 43.03.060. [1984 c 287 § 71; 1979 ex.s. c 146 § 2; 1975-'76 2nd ex.s. c 34 § 91; 1975-'76 2nd ex.s. c 5 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

41.58.020 Powers and duties of commission. (1) It shall be the duty of the commission, in order to prevent or minimize interruptions growing out of labor disputes, to assist employers and employees to settle such disputes through mediation and fact-finding.

(2) The commission, through the director, may proffer its services in any labor dispute arising under a collective bargaining statute administered by the commission, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute

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threatens to cause a substantial disruption to the public welfare.

(3) If the director is not able to bring the parties to agreement by mediation within a reasonable time, the director shall seek to induce the parties to voluntarily seek other means of settling the dispute without resort to strike or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the director shall not be deemed a violation of any duty or obligation imposed by this chapter.

(4) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. The commission is directed to make its mediation and fact-finding services available in the settlement of such grievance disputes only as a last resort. [1993 c 379 § 303; 1975 1st ex.s. c 296 § 4.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Additional notes found at www.leg.wa.gov

41.58.030 Office. The principal office of the commission shall be in the city of Olympia, but it may meet and exercise any or all of its powers at any other place in the state. [1975 1st ex.s. c 296 § 5.]

41.58.040 Duties of employers and employees. In order to prevent or minimize disruptions to the public welfare growing out of labor disputes, employers and employees and their representatives shall:

(1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) Whenever a dispute arises over the terms or application of a collective bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the commission under this chapter for the purpose of aiding in a settlement of the dispute. [1975 1st ex.s. c 296 § 6.]

Additional notes found at www.leg.wa.gov

41.58.050 Rules and regulations. The commission shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as may be necessary to carry out the provisions of this chapter. [2011 1st sp.s. c 16 § 17; 1975 1st ex.s. c 296 § 7.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.060.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

[Title 41 RCW—page 364]

41.58.060 State ferry system, which chapter governs.

For any matter concerning the state ferry system and employee relations, collective bargaining, or labor disputes or stoppages, the provisions of this chapter and chapter 47.64 RCW shall govern. However, if a conflict exists between this chapter and chapter 47.64 RCW, this chapter shall govern. [2011 1st sp.s. c 16 § 18; 1983 c 15 § 22.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: "Sections 16 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011." [2011 1st sp.s. c 16 § 31.]

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: "(1) Consistent with *RCW 41.58.065, the marine employees' commission's powers, duties, and functions are transferred to the public employment relations commission.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the marine employees' commission shall be delivered to the custody of the public employment relations commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the marine employees' commission shall be made available to the public employment relations commission. All funds, credits, or other assets held by the marine employees' commission shall be assigned to the public employment relations commission.

(b) Any appropriations made to the marine employees' commission shall, on July 1, 2011, be transferred and credited to the public employment relations commission.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All pending business before the marine employees' commission shall be continued and acted upon by the public employment relations commission. All existing contracts and obligations shall remain in full force and shall be performed by the public employment relations commission.

(4) The transfer of the powers, duties, and functions of the marine employees' commission shall not affect the validity of any act performed before July 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification." [2011 1st sp.s. c 16 § 23.]

*Reviser's note: RCW 41.58.065 expired June 30, 2013.

41.58.800 Transfer of employees to commission. All employees of the department of labor and industries classified under the provisions of chapter 41.06 RCW, the state civil service law, whose positions are entirely concerned with functions transferred to the commission by chapter 296, Laws of 1975 1st ex. sess. shall be transferred to the jurisdiction of the commission. [1975-'76 2nd ex.s. c 5 § 3.]

41.58.801 Transfer of reports, documents, records, property, etc., funds, appropriations, etc. All reports, documents, surveys, books, records, files, papers, or other writings in the possession of the marine employee commission, the office of the superintendent of public instruction, the state board for community and technical colleges, and the department of labor and industries and pertaining to the functions transferred to the commission by chapter 296, Laws of 1975 1st ex. sess. shall by January 1, 1976, be delivered to the custody of the commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the functions transferred by chapter 296, Laws

of 1975 1st ex. sess. shall by January 1, 1976, be transferred to the commission.

Any appropriation or portion thereof remaining as of January 1, 1976, and which is made to an agency for the purpose of carrying out functions transferred from such agency pursuant to chapter 296, Laws of 1975 1st ex. sess., shall, by January 1, 1976, be transferred and credited to the commission for the purpose of carrying out such functions. This paragraph shall not affect the transfer of moneys prior to January 1, 1976, pursuant to section 67, chapter 269, Laws of 1975 1st ex. sess.

Whenever any question arises as to the transfer of any funds, including unexpended balances within any accounts, books, documents, records, papers, files, equipment, or any other tangible property used or held in the exercise of the performance of the functions transferred under chapter 296, Laws of 1975 1st ex. sess., the director of financial management or his or her successor shall make a determination as to the proper allocation and certify the same to the state agencies concerned. [2012 c 117 § 90; 1979 c 151 § 66; 1975-'76 2nd ex.s. c 5 § 4.]

41.58.802 Procedure for transfer of budgeted fund or equipment. Where transfers of budgeted funds or equipment are required under *this act, the director of financial management shall certify such transfers to the agencies affected, the state auditor and the state treasurer all of whom shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with such certification. [1979 c 151 § 67; 1975-'76 2nd ex.s. c 5 § 5.]

***Reviser's note:** For codification of "this act" [1975-'76 2nd ex.s. c 5], see Codification Tables.

41.58.803 Continuation and savings. On January 1, 1976, all rules and regulations, and all business pending before the agencies or divisions thereof from whom functions are transferred pursuant to chapter 296, Laws of 1975 1st ex. sess. and which pertain to such functions shall be continued and acted upon by the commission. All existing contracts and obligations pertaining to such functions shall remain in full force and effect, but shall be performed by the commission in lieu of the agency from whom the functions are transferred. The transfer of any functions shall not affect the validity of any act performed by such agency or division thereof or any officer or employee thereof prior to the effective date of the transferral of such functions.

Notwithstanding any other provisions of *this act, contracts or agreements are authorized between the commission and other agencies with respect to functions transferred from other agencies pursuant to chapter 296, Laws of 1975 1st ex. sess. Such contract or agreement may provide for an employee or employees of such other agencies or other person or persons to continue to provide services relating to pending business which is transferred to the commission as of January 1, 1976, until such pending business is completed. [1975-'76 2nd ex.s. c 5 § 6.]

***Reviser's note:** For codification of "this act" [1975-'76 2nd ex.s. c 5], see Codification Tables.

(2016 Ed.)

41.58.900 Effective dates—1975-'76 2nd ex.s. c 5. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on September 8, 1975, except for the provisions of sections 6 and 7 which shall be effective on January 1, 1976. [1975-'76 2nd ex.s. c 5 § 9.]

41.58.901 Effective date—1975 1st ex.s. c 296 §§ 4, 6, and 8 through 39. Sections 4, 6, and 8 through 39 of chapter 296, Laws of 1975 1st ex. sess. shall not be effective until January 1, 1976. [1975-'76 2nd ex.s. c 5 § 8.]

Chapter 41.59 RCW

EDUCATIONAL EMPLOYMENT RELATIONS ACT

Sections

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41.59.930	Construction of chapter—Employer's responsibilities and rights preserved.
41.59.935	Construction of chapter—Certain agreements subject to RCW 28A.150.410 and 28A.400.200.
41.59.936	Construction of chapter—Certain agreements subject to RCW 28A.405.470.
41.59.940	Effective date—1975 1st ex.s. c 288.

Reviser's note: Phrase "the commission" is used throughout chapter 41.59 RCW; 1975 1st ex.s. c 288 § 4, wherein the commission was created, was vetoed by the governor; reference to the proviso in RCW 41.59.020(3) below, together with amendments and repeals in 1975-'76 2nd ex.s. c 5 (codified in chapter 41.58 RCW) suggests commission to be that created in RCW 41.58.010.

41.59.010 Purpose. It is the purpose of this chapter to prescribe certain rights and obligations of the educational employees of the school districts of the state of Washington, and to establish procedures governing the relationship between such employees and their employers which are designed to meet the special requirements and needs of public employment in education. [1975 1st ex.s. c 288 § 2.]

41.59.020 Definitions. As used in this chapter:

(1) The term "employee organization" means any organization, union, association, agency, committee, council, or group of any kind in which employees participate, and which exists for the purpose, in whole or in part, of collective bargaining with employers.

(2) The term "collective bargaining" or "bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times in light of the time limitations of the budget-making process, and to bargain in good faith in an effort to reach agreement with respect to the wages, hours, and terms and conditions of employment: PROVIDED, That prior law, practice or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which item(s) are mandatory subjects for bargaining and which item(s) are nonmandatory.

(3) The term "commission" means the public employment relations commission established by RCW 41.58.010.

(4) The terms "employee" and "educational employee" means any certificated employee of a school district, except:

(a) The chief executive officer of the employer.

(b) The chief administrative officers of the employer, which shall mean the superintendent of the district, deputy superintendents, administrative assistants to the superintendent, assistant superintendents, and business manager. Title variation from all positions enumerated in this subsection (b) may be appealed to the commission for determination of inclusion in, or exclusion from, the term "educational employee".

(c) Confidential employees, which shall mean:

(i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(ii) Any person who assists and acts in a confidential capacity to such person.

(d) Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

(e) Unless included within a bargaining unit pursuant to RCW 41.59.080, principals and assistant principals in school districts.

(5) The term "employer" means any school district.

(6) The term "exclusive bargaining representative" means any employee organization which has:

(a) Been selected or designated pursuant to the provisions of this chapter as the representative of the employees in an appropriate collective bargaining unit; or

(b) Prior to January 1, 1976, been recognized under a predecessor statute as the representative of the employees in an appropriate collective bargaining or negotiations unit.

(7) The term "person" means one or more individuals, organizations, unions, associations, partnerships, corporations, boards, committees, commissions, agencies, or other entities, or their representatives.

(8) The term "nonsupervisory employee" means all educational employees other than principals, assistant principals and supervisors. [1989 c 11 § 11; 1975 1st ex.s. c 288 § 3.]

Additional notes found at www.leg.wa.gov

41.59.031 Application of chapter to charter schools.

This chapter applies to any charter school established under chapter 28A.710 RCW. Any bargaining unit or units established at the charter school must be limited to employees working in the charter school and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. Any charter school established under chapter 28A.710 RCW is a separate employer from any school district, including the school district in which it is located. [2016 c 241 § 138. Prior: 2013 c 2 § 308 (Initiative Measure No. 1240, approved November 6, 2012).]

Application of chapter 241, Laws of 2016—Effective date—2016 c 241: See RCW 28A.710.900 and 28A.710.901.

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

41.59.060 Employee rights enumerated—Fees and dues, deduction from pay.

(1) Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and shall also have the right to refrain from any or all of such activities except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter.

(2) The exclusive bargaining representative shall have the right to have deducted from the salary of employees, upon receipt of an appropriate authorization form which shall not be irrevocable for a period of more than one year, an amount equal to the fees and dues required for membership. Such fees and dues shall be deducted monthly from the pay of all appropriate employees by the employer and transmitted as provided for by agreement between the employer and the exclusive bargaining representative, unless an automatic payroll deduction service is established pursuant to law, at which time such fees and dues shall be transmitted as therein provided. If an agency shop provision is agreed to and becomes effective pursuant to RCW 41.59.100, except as provided in that section, the agency fee equal to the fees and dues

required of membership in the exclusive bargaining representative shall be deducted from the salary of employees in the bargaining unit. [1975 1st ex.s. c 288 § 7.]

41.59.070 Election to ascertain exclusive bargaining representative, when—Run-off election—Decertification election. (1) Any employee organization may file a request with the commission for recognition as the exclusive representative. Such request shall allege that a majority of the employees in an appropriate collective bargaining unit wish to be represented for the purpose of collective bargaining by such organization, shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate, shall be supported by credible evidence demonstrating that at least thirty percent of the employees in the appropriate unit desire the organization requesting recognition as their exclusive representative, and shall indicate the name, address, and telephone number of any other interested employee organization, if known to the requesting organization.

(2) The commission shall determine the exclusive representative by conducting an election by secret ballot, except under the following circumstances:

(a) In instances where a serious unfair labor practice has been committed which interfered with the election process and precluded the holding of a fair election, the commission shall determine the exclusive bargaining representative by an examination of organization membership rolls or a comparison of signatures on organization bargaining authorization cards.

(b) In instances where there is then in effect a lawful written collective bargaining agreement between the employer and another employee organization covering any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained unless it shall be filed within the time limits prescribed in subsection (3) of this section for decertification or a new recognition election.

(c) In instances where within the previous twelve months another employee organization has been lawfully recognized or certified as the exclusive bargaining representative of any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained.

(d) In instances where the commission has within the previous twelve months conducted a secret ballot election involving any employees included in the unit described in the request for recognition in which a majority of the valid ballots cast chose not to be represented by any employee organization, the request for recognition shall not be entertained.

(3) Whenever the commission conducts an election to ascertain the exclusive bargaining representative, the ballot shall contain the name of the proposed bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the educational employees within the unit, together with a choice for any educational employee to designate that he or she does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority of the valid ballots cast by the educational employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall con-

tain the two choices which receive the largest and second largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date of the agreement or any renewals or extensions thereof as long as such renewals and extensions do not exceed three years; and if the exclusive bargaining representative is removed as a result of such procedure, the then existing collective bargaining agreement shall be terminable by the new exclusive bargaining representative so selected within sixty days after its certification or terminated on its expiration date, whichever is sooner, or if no exclusive bargaining representative is so selected, then the agreement shall be deemed to be terminated at its expiration date or as of such third anniversary date, whichever is sooner.

(4) Within the time limits prescribed in subsection (3) of this section, a petition may be filed signed by at least thirty percent of the employees of a collective bargaining unit, then represented by an exclusive bargaining representative, alleging that a majority of the employees in that unit do not wish to be represented by an employee organization, requesting that the exclusive bargaining representative be decertified, and indicating the name, address and telephone number of the exclusive bargaining representative and any other interested employee organization, if known. Upon the verification of the signatures on the petition, the commission shall conduct an election by secret ballot as prescribed by subsection (3) of this section. [1975 1st ex.s. c 288 § 8.]

41.59.080 Determination of bargaining unit—Standards. The commission, upon proper application for certification as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any employee organization within the time limits specified in RCW 41.59.070(3), and after hearing upon reasonable notice, shall determine the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of

such employees indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and nonsupervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies; and

(7) Notwithstanding the definition of collective bargaining, a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts; and

(8) The bargaining unit of certificated employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.193 RCW must be limited to the employees working as education providers to juveniles in each adult correctional facility maintained by the department of corrections and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. [1998 c 244 § 11; 1975 1st ex.s. c 288 § 9.]

Additional notes found at www.leg.wa.gov

41.59.090 Certification of exclusive bargaining representative—Scope of representation. The employee organization which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent all the employees within the unit without regard to membership in that bargaining representative: PROVIDED, That any employee at any time may present his or her grievance to the employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, as long as such representative has been given an opportunity to be present at that adjustment and to make its views known, and as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect. [2012 c 117 § 91; 1975 1st ex.s. c 288 § 10.]

41.59.100 Union security provisions—Scope—Agency shop provision, collection of dues or fees. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a mem-

ber. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. [1975 1st ex.s. c 288 § 11.]

41.59.105 School district collective bargaining agreements—Required action districts. All collective bargaining agreements entered into between a school district employer and school district employees under this chapter after June 10, 2010, as well as bargaining agreements existing on June 10, 2010, but renewed or extended after June 10, 2010, shall be consistent with RCW 28A.657.050. [2010 c 235 § 803.]

Finding—2010 c 235: See note following RCW 28A.405.245.

41.59.106 Rights of employees and bargaining representatives of school districts dissolved due to financial insolvency. Notwithstanding any other provision of this chapter, employees and bargaining representatives of school districts that are dissolved due to financial insolvency shall have resort to collective bargaining, including grievance arbitration and other processes, only to the extent provided by RCW 28A.315.229. [2012 c 186 § 24.]

Effective date—2012 c 186: See note following RCW 28A.315.025.

Rule-making authority—2012 c 186: See RCW 28A.315.902.

41.59.110 Commission, rules and regulations of—Federal precedents as standard. (1) The commission shall promulgate, revise, or rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as it may deem necessary and appropriate to administer the provisions of this chapter, in conformity with the intent and purpose of this chapter, and consistent with the best standards of labor-management relations.

(2) The rules, precedents, and practices of the national labor relations board, provided they are consistent with this chapter, shall be considered by the commission in its interpretation of this chapter, and prior to adoption of any aforesaid commission rules and regulations. [1975 1st ex.s. c 288 § 12.]

41.59.120 Resolving impasses in collective bargaining—Mediation—Fact-finding with recommendations—Other. (1) Either an employer or an exclusive bargaining representative may declare that an impasse has been reached between them in collective bargaining and may request the commission to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the commission determines that its assistance is needed, not later than five days after the receipt of a request therefor, it shall appoint a mediator in accordance with rules and regulations for such appointment prescribed by the commission. The mediator shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, and shall take

such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The mediator, without the consent of both parties, shall not make findings of fact or recommend terms of settlement. The services of the mediator, including, if any, per diem expenses, shall be provided by the commission without cost to the parties. Nothing in this subsection (1) shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure, and in the event of such agreement, the commission shall not appoint its own mediator unless failure to do so would be inconsistent with the effectuation of the purposes and policy of this chapter.

(2) If the mediator is unable to effect settlement of the controversy within ten days after his or her appointment, either party, by written notification to the other, may request that their differences be submitted to fact-finding with recommendations, except that the time for mediation may be extended by mutual agreement between the parties. Within five days after receipt of the aforesaid written request for fact-finding, the parties shall select a person to serve as fact finder and obtain a commitment from that person to serve. If they are unable to agree upon a fact finder or to obtain such a commitment within that time, either party may request the commission to designate a fact finder. The commission, within five days after receipt of such request, shall designate a fact finder in accordance with rules and regulations for such designation prescribed by the commission. The fact finder so designated shall not be the same person who was appointed mediator pursuant to subsection (1) of this section without the consent of both parties.

The fact finder, within five days after his or her appointment, shall meet with the parties or their representatives, or both, either jointly or separately, and make inquiries and investigations, hold hearings, and take such other steps as he or she may deem appropriate. For the purpose of such hearings, investigations and inquiries, the fact finder shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. If the dispute is not settled within ten days after his or her appointment, the fact finder shall make findings of fact and recommend terms of settlement within thirty days after his or her appointment, which recommendations shall be advisory only.

(3) Such recommendations, together with the findings of fact, shall be submitted in writing to the parties and the commission privately before they are made public. Either the commission, the fact finder, the employer, or the exclusive bargaining representative may make such findings and recommendations public if the dispute is not settled within five days after their receipt from the fact finder.

(4) The costs for the services of the fact finder, including, if any, per diem expenses and actual and necessary travel and subsistence expenses, and any other incurred costs, shall be borne by the commission without cost to the parties.

(5) Nothing in this section shall be construed to prohibit an employer and an exclusive bargaining representative from agreeing to substitute, at their own expense, their own procedure for resolving impasses in collective bargaining for that provided in this section or from agreeing to utilize for the purposes of this section any other governmental or other agency or person in lieu of the commission.

(6) Any fact finder designated by an employer and an exclusive representative or the commission for the purposes of this section shall be deemed an agent of the state.

(7) This section does not apply to negotiations and mediations conducted under RCW 28A.657.050. [2012 c 117 § 92; 2010 c 235 § 804; 1975 1st ex.s. c 288 § 13.]

Finding—2010 c 235: See note following RCW 28A.405.245.

41.59.130 Binding arbitration procedures authorized. An employer and an exclusive bargaining representative who enter into a collective bargaining agreement may include in such agreement procedures for binding arbitration of such disputes as may arise involving the interpretation or application of such agreement. [1975 1st ex.s. c 288 § 14.]

41.59.140 Unfair labor practices for employer, employee organization, enumerated. (1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules and regulations made by the commission pursuant to RCW 41.59.110, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, but nothing contained in this subsection shall prevent an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 41.59.100;

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under *this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It shall be an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed in RCW 41.59.060: PROVIDED, That this paragraph shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, provided it is the representative of its employees subject to RCW 41.59.090.

(3) The expressing of any views, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of *this chapter, if such expression contains no threat of

reprisal or force or promise of benefit. [2012 c 117 § 93; 1975 1st ex.s. c 288 § 15.]

*Reviser's note: Session law [1975 1st ex.s. c 288 § 15] language here reads "this act" or "this 1975 act"; for codification of 1975 1st ex.s. c 288, see Codification Tables.

41.59.150 Commission to prevent unfair labor practices—Scope. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, equity or otherwise.

(2) If the commission determines that any person has engaged in or is engaging in any such unfair labor practices as defined in RCW 41.59.140, then the commission shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and/or the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or wherein the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [1983 c 58 § 3; 1975 1st ex.s. c 288 § 16.]

41.59.160 Applicability of administrative procedure act provisions to commission action. Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules and regulations adopted in accordance therewith, and the right of judicial review provided by chapter 34.05 RCW shall be applicable to all such actions and rules and regulations. [1975 1st ex.s. c 288 § 17.]

41.59.170 Effective date of certain agreements—Increased benefits during agreement authorized, when. (1) Whenever a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and an employee organization representing the same employees, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with such effective date as established by this subsection, and may also accrue beginning with the effective date of any individual employee contracts affected thereby.

(2) Any collective bargaining agreement may provide for the increase of any wages, salaries and other benefits during the term of such agreement or the term of any individual employee contracts concerned, in the event that the employer receives by increased appropriation or from other sources, additional moneys for such purposes. [1975 1st ex.s. c 288 § 18.]

[Title 41 RCW—page 370]

41.59.180 Employees in specialized job category—Exclusion. Notwithstanding the definition of "employee" in RCW 41.59.020, the commission may exclude from the coverage of chapter 288, Laws of 1975 1st ex. sess. any specialized job category of an employer where a majority of the persons employed in that job category consists of classified employees. At such time as a majority of such employees are certificated, the job category may be considered an appropriate unit under chapter 288, Laws of 1975 1st ex. sess. [1997 c 13 § 14; 1975 1st ex.s. c 288 § 23.]

41.59.900 Short title. This chapter may be cited as the educational employment relations act. [1975 1st ex.s. c 288 § 1.]

41.59.910 Construction of chapter—Effect on existing agreements—Collective bargaining agreement prevails where conflict. This chapter shall supersede existing statutes not expressly repealed to the extent that there is a conflict between a provision of this chapter and those other statutes. Except as otherwise expressly provided herein, nothing in this chapter shall be construed to annul, modify or preclude the renewal or continuation of any lawful agreement entered into prior to January 1, 1976 between an employer and an employee organization covering wages, hours, and terms and conditions of employment. Where there is a conflict between any collective bargaining agreement and any resolution, rule, policy or regulation of the employer or its agents, the terms of the collective bargaining agreement shall prevail. [1975 1st ex.s. c 288 § 19.]

41.59.920 Construction of chapter—Employee's rights preserved. Except as otherwise expressly provided herein, nothing contained in this chapter shall be construed to deny or otherwise abridge any rights, privileges or benefits granted by law to employees. [1975 1st ex.s. c 288 § 20.]

41.59.930 Construction of chapter—Employer's responsibilities and rights preserved. Nothing in this chapter shall be construed to interfere with the responsibilities and rights of the employer as specified by federal and state law, including the employer's responsibilities to students, the public, and other constituent elements of the institution. [1975 1st ex.s. c 288 § 24.]

41.59.935 Construction of chapter—Certain agreements subject to RCW 28A.150.410 and 28A.400.200. Nothing in this chapter shall be construed to grant employers or employees the right to reach agreements regarding salary or compensation increases in excess of those authorized in accordance with RCW 28A.150.410 and 28A.400.200. [1990 c 33 § 571; (1997 c 431 § 22 expired June 30, 1999); 1987 1st ex.s. c 2 § 206; 1981 c 16 § 3.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Intent—Severability—Effective dates—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Additional notes found at www.leg.wa.gov

41.59.936 Construction of chapter—Certain agreements subject to RCW 28A.405.470. Nothing in this chapter may be construed to grant employers or employees the

right to reach agreements that are in conflict with the termination provisions of RCW 28A.405.470. [2009 c 396 § 10.]

41.59.940 Effective date—1975 1st ex.s. c 288. Except for RCW 41.59.040, 41.59.050, 41.59.110 and 41.59.160 which shall take effect ninety days following enactment hereof, this chapter and RCW *28A.150.060 and 28A.405.100 as amended by chapter 288, Laws of 1975 1st ex. sess. shall take effect on January 1, 1976. Where the term "effective date of this chapter" is used elsewhere in this chapter it shall mean January 1, 1976. [1990 c 33 § 572; 1975 1st ex.s. c 288 § 26.]

Reviser's note: *(1) RCW 28A.150.060 was repealed by 2009 c 548 § 710, effective September 1, 2011.

(2) Engrossed Substitute Senate Bill No. 2500, which is chapter 288, Laws of 1975 1st ex. sess., was passed by the senate May 28, 1975, passed by the house of representatives June 2, 1975, and approved by the governor July 2, 1975, with the exception of section 4 thereof, which was vetoed by the governor; it includes the repeal of chapter 28A.72 RCW in section 28 thereof.

(3) RCW 41.59.040 and 41.59.050 were repealed by 1979 ex.s. c 146 § 3.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Chapter 41.60 RCW

STATE EMPLOYEES' SUGGESTION AWARDS AND INCENTIVE PAY

Sections

41.60.010	Definitions.
41.60.015	Productivity board created—Also known as employee involvement and recognition board—Members—Terms—Compensation.
41.60.020	Employee suggestion program—Rules for administration of chapter.
41.60.030	Employee suggestion program—Determination of award.
41.60.041	Employee suggestion program—Amount and payment of award—Transfer of funds to general fund.
41.60.050	Appropriations for administrative costs.
41.60.080	Employee suggestion program—Contests to encourage participation.
41.60.100	Employee teamwork incentive program—Applications.
41.60.110	Employee teamwork incentive program—Evaluation of savings.
41.60.120	Employee teamwork incentive program—Awards.
41.60.140	Incentive pay or awards not included in retirement calculations.
41.60.150	Recognition awards.
41.60.160	Persons ineligible for awards.
41.60.911	Effective dates—1987 c 387.

41.60.010 Definitions.

- As used in this chapter:
- (1) "Board" means the productivity board.
 - (2) "Delegated authority" means authority delegated to an agency head by the board to design and implement an agency unique employee suggestion program for the agency.
 - (3) "Board designee" means an agency head with delegated authority from the board.
 - (4) "Employee suggestion program" means the programs developed by the board under RCW 41.60.020.
 - (5) "Statewide employee suggestion program" means an employee suggestion program administered by the productivity board.
 - (6) "Agency unique suggestion program" means an employee suggestion program designed and administered by an agency head with delegated authority.

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(7) "Teamwork incentive program" means the program developed by the board under RCW 41.60.100 through 41.60.120.

(8) "State employees" means present employees in state agencies and institutions of higher education except for elected officials, directors of such agencies and institutions, and their confidential secretaries and administrative assistants and others specifically ruled ineligible by the rules of the productivity board. [1999 c 50 § 1; 1993 c 467 § 1; 1987 c 387 § 1; 1983 c 54 § 1; 1982 c 167 § 6; 1977 ex.s. c 169 § 103; 1969 ex.s. c 152 § 3; 1965 ex.s. c 142 § 1.]

Additional notes found at www.leg.wa.gov

41.60.015 Productivity board created—Also known as employee involvement and recognition board—Members—Terms—Compensation. (1) There is hereby created the productivity board, which may also be known as the employee involvement and recognition board. The board shall administer the employee suggestion program and the teamwork incentive program under this chapter.

(2) The board shall be composed of:

- (a) The secretary of state who shall act as chairperson;
- (b) The director of financial management or the director's designee;
- (c) The director of enterprise services or the director's designee;

(d) Three persons with experience in administering incentives such as those used by industry, with the lieutenant governor, secretary of state, and speaker of the house of representatives each appointing one person. The secretary of state's appointee shall be a representative of an employee organization certified as an exclusive representative of at least one bargaining unit of classified employees; and

(e) Two persons representing state agencies and institutions with employees subject to chapter 41.06 RCW, and one person representing those subject to *chapter 28B.16 RCW, both appointed by the secretary of state.

Members under subsection (2)(d) and (e) of this section shall be appointed to serve three-year terms.

Members of the board appointed pursuant to subsection (2)(d) of this section may be compensated in accordance with RCW 43.03.240. Any board member who is not a state employee may be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 43 § 443; 2011 1st sp.s. c 21 § 30; 2000 c 139 § 1; 1999 c 50 § 2; 1993 c 467 § 2; 1987 c 387 § 2; 1985 c 114 § 1; 1984 c 287 § 72; 1983 c 54 § 2; 1982 c 167 § 1.]

Reviser's note: *(1) Chapter 28B.16 RCW was repealed by 1993 c 281, with the exception of RCW 28B.16.015 and 28B.16.240, which was recodified as RCW 41.06.382. For exemptions to higher education personnel law see chapter 41.06 RCW. RCW 28B.16.015 and 41.06.382 were subsequently repealed by 2002 c 354 § 403, effective July 1, 2005.

(2) This section was amended by 2011 1st sp.s. c 21 § 30 and by 2011 1st sp.s. c 43 § 443, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

41.60.020 Employee suggestion program—Rules for administration of chapter. (1) The board shall formulate, establish, and maintain a statewide employee suggestion program and adopt rules to allow for agency unique suggestion programs. Employee suggestion programs are developed to encourage and reward meritorious suggestions by state employees that will promote efficiency and economy in the performance of any function of state government: PROVIDED, That the program shall include provisions for the processing of suggestions having multiagency impact and post-implementation auditing of suggestions for fiscal accountability.

(2) The board shall adopt rules necessary or appropriate for the proper administration and for the accomplishment of the purposes of this chapter. These rules shall include the adoption of a payment award schedule that establishes the criteria for determining the amounts of any financial or other awards under this chapter. [1999 c 50 § 3; 1995 c 181 § 1; 1993 c 467 § 3; 1982 c 167 § 7; 1975-'76 2nd ex.s. c 122 § 1; 1969 ex.s. c 152 § 4; 1965 ex.s. c 142 § 2.]

Additional notes found at www.leg.wa.gov

41.60.030 Employee suggestion program—Determination of award. The board, or [the] board's designee, shall make the final determination as to whether an employee suggestion award will be made and shall determine the nature and extent of the award based on the payment award scale.

No employee suggestion award may normally be made to an employee for a suggestion which is within the scope of the employee's regularly assigned responsibilities. [1999 c 50 § 4; 1982 c 167 § 8; 1965 ex.s. c 142 § 3.]

Additional notes found at www.leg.wa.gov

41.60.041 Employee suggestion program—Amount and payment of award—Transfer of funds to general fund. (1) Cash awards for suggestions generating net savings, revenue, or both to the state shall be determined by the board, or the board's designee, based on the payment award scale. No award may be granted in excess of ten thousand dollars. Savings, revenue, or both, shall be calculated for the first year of implementation.

(2) The board shall establish guidelines for making cash awards for suggestions for which benefits to the state are intangible or for which benefits cannot be calculated.

(3) Funds for the awards shall be drawn from the appropriation of the agency benefiting from the employee's suggestion. If the suggestion reduces costs to a nonappropriated fund or reduces costs paid without appropriation from a nonappropriated portion of an appropriated fund, an award may be paid from the benefiting fund or account without appropriation.

(4) Awards may be paid to state employees for suggestions which generate new or additional money for the general fund or any other funds of the state. The director of financial management shall distribute moneys appropriated for this purpose with the concurrence of the productivity board. Transfers shall be made from other funds of the state to the general fund, in amounts equal to award payments made by the general fund, for suggestions generating new or additional money for those other funds. [1999 c 50 § 5; 1989 c 56 § 1; 1987 c 387 § 3; 1985 c 114 § 2; 1982 c 167 § 9.]

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Additional notes found at www.leg.wa.gov

41.60.050 Appropriations for administrative costs. The legislature shall appropriate from the personnel service fund for the payment of administrative costs of the productivity board. However, during the 2013-2015 and 2015-2017 fiscal biennia, the operations of the productivity board shall be suspended. [2015 3rd sp.s. c 4 § 952; 2013 2nd sp.s. c 4 § 970. Prior: 2011 1st sp.s. c 50 § 937; 2011 1st sp.s. c 43 § 473; 1991 sp.s. c 16 § 918; 1987 c 387 § 4; 1985 c 114 § 3; 1983 c 54 § 3; 1982 c 167 § 11; 1975-'76 2nd ex.s. c 122 § 3; 1969 ex.s. c 152 § 6; 1965 ex.s. c 142 § 5.]

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Personnel service fund: RCW 41.06.280.

Additional notes found at www.leg.wa.gov

41.60.080 Employee suggestion program—Contests to encourage participation. The board and agency heads may design and initiate contests between agencies and between agency suggestion evaluators to encourage participation in the suggestion program at management levels. Any tokens of recognition offered during these contests shall be nonmonetary and shall not be considered an award, or subject to RCW 41.60.030. [1999 c 50 § 6; 1982 c 167 § 12; 1975-'76 2nd ex.s. c 122 § 5.]

Additional notes found at www.leg.wa.gov

41.60.100 Employee teamwork incentive program—Applications. (1) With the exception of agencies of the legislative and judicial branches, any organizational unit composed of employees in any agency or group of agencies of state government with the ability to identify costs, revenues, or both may apply to the board to participate in the teamwork incentive program as a team. The application shall have the approval of the heads of the agency or agencies within which the team is located.

(2) Applications shall be in the form specified by the board and contain such information as the board requires. This may include, but is not limited to, quantitative measures which establish a database of program output or performance expectations, or both. This database is used to evaluate savings in accordance with RCW 41.60.110. [1999 c 50 § 7; 1993 c 467 § 4; 1989 c 56 § 2; 1987 c 387 § 5; 1985 c 114 § 4; 1982 c 167 § 2.]

Additional notes found at www.leg.wa.gov

41.60.110 Employee teamwork incentive program—Evaluation of savings. To qualify for a teamwork incentive program award for its employees, a team must identify the net savings, revenue, or both, accomplished during the project period. The calculations of net savings, revenue, or both, are not final until approved by the agency head, who may modify the team's calculations. The board may by rule establish criteria to be used in calculating net savings, revenue, or

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both. [1999 c 50 § 8; 1993 c 467 § 5; 1989 c 56 § 3; 1987 c 387 § 6; 1985 c 114 § 5; 1982 c 167 § 3.]

Additional notes found at www.leg.wa.gov

41.60.120 Employee teamwork incentive program—

Awards. The agency head may recommend an award amount to the board. The board shall make the final determination as to whether an award will be made in accordance with applicable rules governing the teamwork incentive program. Awards will be based on the payment award scale. Funds for the teamwork incentive award shall be drawn from the agencies in which the unit is located or from the benefiting fund or account without appropriation when additional revenue is generated to the fund or account.

Awards may be paid to teams for process changes which generate new or additional money for the general fund or any other funds of the state. The director of the office of financial management shall distribute moneys appropriated for this purpose with the concurrence of the productivity board. Transfers shall be made from other funds of the state to the general fund in amounts equal to award payments made by the general fund, for innovations generating new or additional money for those other funds. [1999 c 50 § 9; 1993 c 467 § 6; 1989 c 56 § 4; 1987 c 387 § 7; 1985 c 114 § 6; 1982 c 167 § 4.]

Additional notes found at www.leg.wa.gov

41.60.140 Incentive pay or awards not included in retirement calculations. Incentive pay or awards provided under this chapter shall not be included for the purpose of computing a retirement allowance under any public retirement system of this state. [1982 c 167 § 10.]

Additional notes found at www.leg.wa.gov

41.60.150 Recognition awards. Other than suggestion awards and incentive pay unit awards, agencies shall have the authority to recognize employees, either individually or as a class, for accomplishments including outstanding achievements, safety performance, longevity, outstanding public service, or service as employee suggestion evaluators and implementors. Recognition awards may not exceed two hundred dollars in value per award. Such awards may include, but not be limited to, cash or such items as pen and desk sets, plaques, pins, framed certificates, clocks, and calculators. Award costs shall be paid by the agency giving the award. From February 15, 2010, through June 30, 2013, recognition awards may not be given in the form of cash or cash equivalents such as gift certificates or gift cards. [2011 1st sp.s. c 39 § 9; 2010 c 1 § 6; 2000 c 139 § 2; 1999 c 50 § 10; 1989 c 56 § 5; 1985 c 114 § 7.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Effective date—2010 c 1: See note following RCW 41.06.070.

Additional notes found at www.leg.wa.gov

41.60.160 Persons ineligible for awards. No award may be made under this chapter to any elected state official or state agency director. [1993 c 467 § 7; 1987 c 387 § 8.]

Additional notes found at www.leg.wa.gov

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41.60.911 Effective dates—1987 c 387. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987, except section 10 of this act which shall take effect immediately. [1987 c 387 § 11.]

Chapter 41.68 RCW

REPARATIONS TO STATE EMPLOYEES TERMINATED DURING WORLD WAR II

Sections

41.68.010	Legislative finding.
41.68.020	Eligibility for reparation.
41.68.030	Submittal of claim.
41.68.040	Determination of eligibility.
41.68.050	Payment of reparation.
41.68.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Redress authorized for municipal employees dismissed during World War II: RCW 41.04.580.

41.68.010 Legislative finding. The dismissal or termination of various state employees during World War II resulted from the promulgation of federal Executive Order 9066 which was based mainly on fear and suspicion rather than on factual justification. It is fair and just that reparations be made to those employees who were terminated from state employment during the wartime years because of these circumstances. The legislature therefore finds that equity and fairness will be served by authorizing the filing of claims with the state for salary losses suffered by the state employees directly affected, and by authorizing the payment thereof, subject to the provisions of this chapter. [1983 1st ex.s. c 15 § 1.]

41.68.020 Eligibility for reparation. Any state employee or the living surviving spouse of a state employee who, due to the promulgation of federal Executive Order 9066, was dismissed, terminated from a temporary position, or rejected during the person's probationary period, or who voluntarily resigned in lieu of dismissal from state government employment, and who incurred salary losses as a result thereof, is eligible to file a claim with the state for the reparation of those losses. [1983 1st ex.s. c 15 § 2.]

41.68.030 Submittal of claim. A claim under this chapter may be submitted to the department of enterprise services for the reparation of salary losses suffered during the years 1942 through 1947. The claim shall be supported by appropriate verification, such as the person's name at the time of the dismissal, the name of the employing department, and a social security number, or by evidence of official action of termination. The claimant shall also provide an address to which the department shall mail notification of its determination regarding the claimant's eligibility. [2011 1st sp.s. c 43 § 474; 1983 1st ex.s. c 15 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.68.040 Determination of eligibility. (1) The department of enterprise services shall determine the eligibility of a claimant to receive reparations authorized by this chapter.

The department shall then notify the claimant by mail of its determination regarding the claimant's eligibility.

(2) The department may adopt rules that will assist in the fair determination of eligibility and the processing of claims. The department, however, has no obligation to directly notify any person of possible eligibility for reparation of salary losses under this chapter. [2011 1st sp.s. c 43 § 475; 1983 1st ex.s. c 15 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.68.050 Payment of reparation. A claimant under this chapter who is determined eligible by the department of enterprise services shall receive two thousand five hundred dollars each year for two years. All claims which the department determines are eligible for reparation shall be immediately forwarded to the state treasurer, who shall issue warrants in the appropriate amounts upon demand and verification of identity. If a claimant dies after filing a claim but before receiving full payment, payments shall be made to the claimant's estate upon demand and verification of identity. [2011 1st sp.s. c 43 § 476; 1983 1st ex.s. c 15 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 103.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 41.72 RCW

LAW ENFORCEMENT MEDAL OF HONOR

Sections

- 41.72.010 Law enforcement medal of honor established.
- 41.72.020 Law enforcement medal of honor committee established—Membership—Establishment of qualifications for award.
- 41.72.030 Law enforcement medal of honor awarded—When.
- 41.72.040 Law enforcement medal of honor may be awarded posthumously.
- 41.72.050 Law enforcement medal of honor—Design.

41.72.010 Law enforcement medal of honor established. There is established a decoration of the state law enforcement medal of honor with accompanying ribbons and appurtenances for award by the governor in the name of the state to any law enforcement officer who has been seriously injured or killed while in the performance of duty, or who has been distinguished by exceptionally meritorious conduct,

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upon nomination of the governor's state law enforcement medal of honor committee. [1994 c 89 § 1.]

41.72.020 Law enforcement medal of honor committee established—Membership—Establishment of qualifications for award. There is created the state law enforcement medal of honor committee for nominating candidates for the award of the state law enforcement medal of honor. The committee membership consists of a representative from the governor's office, the Washington state law enforcement association, the Washington state council of police officers, the Washington association of sheriffs and police chiefs, and the Washington state troopers association. The attorney general shall serve as chair of the committee and shall designate a secretary for the committee. The committee shall meet not less than semiannually to consider candidates for nomination. The committee shall adopt rules establishing the qualifications for the state law enforcement medal of honor, the protocol governing the decoration, and the appurtenances necessary to the implementation of this chapter. [1994 c 89 § 2.]

41.72.030 Law enforcement medal of honor awarded—When. The state law enforcement medal of honor shall be awarded to recipients during the national law enforcement recognition week. The governor may delegate the awarding of the medal to the lieutenant governor or the attorney general. [1994 c 89 § 3.]

41.72.040 Law enforcement medal of honor may be awarded posthumously. The state law enforcement medal of honor may be awarded posthumously to be presented to the representative of the deceased as may be deemed appropriate by the governor or the designees specified in RCW 41.72.030. [1994 c 89 § 4.]

41.72.050 Law enforcement medal of honor—Design. The decoration of the state law enforcement medal of honor shall be bronze and shall consist of a police shield overlaid by a sheriff's star with the seal of the state of Washington in the center and the words "law enforcement medal of honor" within the design and suspended from a ring attached by either a navy blue ribbon with a gold edge or a green ribbon with a gold edge. Such color choice shall be the recipient's. The reverse of the decoration shall be inscribed with the words "For exceptionally honorable and meritorious conduct in performing services as a law enforcement officer." [1994 c 89 § 5.]

Chapter 41.76 RCW

PUBLIC FOUR-YEAR INSTITUTIONS OF HIGHER EDUCATION—FACULTY LABOR RELATIONS

Sections

- 41.76.001 Findings—Declarations—Intent.
- 41.76.005 Definitions.
- 41.76.010 Scope of bargaining.
- 41.76.015 Exclusive bargaining representatives—Duty of representation.
- 41.76.020 Exclusive bargaining representatives—Procedures for certification—Challenges—Elections.
- 41.76.025 Bargaining unit determination—Hearings.
- 41.76.030 Settlement of unresolved matters—Role of commission—Mediation—Other procedures authorized.
- 41.76.035 Provisions relating to compensation—Restrictions.

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41.76.040	Procedures for grievance arbitration—Subpoenas—Commission—Superior courts.
41.76.045	Exclusive bargaining representative—Union security provisions—Dues and fees.
41.76.050	Unfair labor practices.
41.76.055	Commission to prevent unfair labor practices—Scope—Remedies.
41.76.060	Rule making.
41.76.065	Strikes and lockouts prohibited—Violations—Remedies.
41.76.070	Certain contracts or agreements—Chapter 34.05 RCW does not apply.
41.76.075	Retroactive accrual of benefits and salaries.
41.76.080	Existing agreements not affected.
41.76.085	Limitations on application of chapter.
41.76.902	Effective date—2002 c 356.

41.76.001 Findings—Declarations—Intent. The legislature finds and declares that:

(1) The people of the state of Washington have a fundamental interest in developing harmonious and cooperative labor relations within the public four-year institutions of higher education.

(2) Teachers in the public school system and instructors in the community colleges in the state have been granted the opportunity to bargain collectively. It is desirable to expand the jurisdiction of the public employment relations commission to cover faculty in the state's public four-year institutions of higher education.

(3) It is the purpose of this chapter to provide the means by which relations between the boards of regents and trustees of the public four-year institutions of higher education of the state of Washington and their faculty may assure that the responsibilities and authorities granted to these institutions are carried out in an atmosphere that permits the fullest participation by faculty in determining the conditions of employment which affect them. It is the intent of the legislature to accomplish this purpose by providing a uniform structure for recognizing the right of faculty of the public four-year institutions of higher education to engage in collective bargaining as provided in this chapter, if they should so choose.

(4) It is the further purpose of this chapter to provide orderly and clearly defined procedures for collective bargaining and dispute resolution, and to define and prohibit certain practices that are contrary to the public interest. [2002 c 356 § 1.]

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

(1) "Faculty governance system" means the internal organization that serves as the faculty advisory body and is charged with the responsibility for recommending policies, regulations, and rules for the college or university.

(2) "Grievance arbitration" means a method to resolve disputes arising out of interpretations or application of the terms of an agreement under which the parties to a controversy must accept the decision of an impartial person or persons.

(3) "Collective bargaining" and "bargaining" mean the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times to bargain in good faith in an effort to reach agreement with respect to wages, hours, and other terms and conditions of employment. A written contract incorporating any agreements reached must be executed if

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requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which items are mandatory subjects for bargaining, subject to RCW 41.76.010.

(4) "Commission" means the public employment relations commission established pursuant to RCW 41.58.010.

(5) "Faculty" means employees who, at a public four-year institution of higher education, are designated with faculty status or who perform faculty duties as defined through policies established by the faculty governance system, excluding casual or temporary employees, administrators, confidential employees, graduate student employees, post-doctoral and clinical employees, and employees subject to chapter 41.06 or 41.56 RCW.

(6) "Employee organization" means any organization that includes as its members faculty of the employer and that has as one of its purposes representation of faculty under this chapter. A faculty governance system is not an employee organization as defined in this subsection.

(7) "Employer" means the board of regents or the board of trustees of a public four-year institution of higher education.

(8) "Exclusive bargaining representative" means any employee organization that has been determined by the commission to represent all of the faculty members of the bargaining unit as required in RCW 41.76.015.

(9) "Administrator" means deans, associate and assistant deans, vice-provosts, vice-presidents, the provost, chancellors, vice-chancellors, the president, and faculty members who exercise managerial or supervisory authority over other faculty members.

(10) "Confidential employee" means (a) a person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of a collective bargaining agreement, if the role of the person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and (b) a person who assists and acts in a confidential capacity to a person in (a) of this subsection.

(11) "Bargaining unit" includes all faculty members of all campuses of each of the colleges and universities. Only one bargaining unit is allowable for faculty of each employer, and that unit must contain all faculty members from all schools, colleges, and campuses of the employer.

(12) "Public four-year institutions of higher education" means the University of Washington, Washington State University, Eastern Washington University, Western Washington University, Central Washington University, and The Evergreen State College. [2002 c 356 § 3.]

41.76.010 Scope of bargaining. (1) Prohibited subjects of bargaining include but are not limited to the following:

(a) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the employer, except for the terms and condi-

tions of employment of faculty members who may be affected by such service, activity, or program.

(b) The amount of any fees that are not a term or condition of employment.

(c) Admission requirements for students, conditions for the award of certificates and degrees, and the content, methods, supervision, and evaluation of courses, curricula, and research programs.

(2) Permissive subjects of bargaining include, but are not limited to, criteria and standards to be used for the appointment, promotion, evaluation, and tenure of faculty.

(3) Nothing in this section shall be construed to limit the right of the employer to consult with any employee on any matter outside the scope of bargaining. [2002 c 356 § 4.]

41.76.015 Exclusive bargaining representatives—Duty of representation. The employee organization which has been determined by the commission to be the exclusive bargaining representative of a bargaining unit shall be required to represent all the faculty members within the bargaining unit without regard to membership in that employee organization: PROVIDED, That any faculty member may at any time present his or her complaints or concerns to the employer and have such complaints or concerns adjusted without intervention of the exclusive bargaining representative, as long as the exclusive bargaining representative has been given an opportunity to be present at the adjustment and to make its views known, and as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect. [2002 c 356 § 6.]

41.76.020 Exclusive bargaining representatives—Procedures for certification—Challenges—Elections. The commission shall certify exclusive bargaining representatives in accordance with the procedures specified in this section.

(1) No question concerning representation may be raised within one year following issuance of a certification under this section.

(2) If there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement: PROVIDED, That in the event a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for more than three years, then a question concerning representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date or any subsequent anniversary date of the agreement; and if the exclusive bargaining representative is removed as the result of such procedure, the collective bargaining agreement shall be deemed to be terminated as of the date of the certification or the anniversary date following the filing of the petition, whichever is later.

(3) An employee organization seeking certification as exclusive bargaining representative of a bargaining unit, or faculty members seeking decertification of their exclusive bargaining representative, must make a confidential showing to the commission of credible evidence demonstrating that at least thirty percent of the faculty in the bargaining unit are in support of the petition. The petition must indicate the name,

address, and telephone number of any employee organization known to claim an interest in the bargaining unit.

(4) A petition filed by an employer must be supported by credible evidence demonstrating the good faith basis on which the employer claims the existence of a question concerning the representation of its faculty.

(5) Any employee organization which makes a confidential showing to the commission of credible evidence demonstrating that it has the support of at least ten percent of the faculty in the bargaining unit involved is entitled to intervene in proceedings under this section and to have its name listed as a choice on the ballot in an election conducted by the commission.

(6) The commission shall determine any question concerning representation by conducting a secret ballot election among the faculty members in the bargaining unit, except under the following circumstances:

(a) If only one employee organization is seeking certification as exclusive bargaining representative of a bargaining unit for which there is no incumbent exclusive bargaining representative, the commission may, upon the concurrence of the employer and the employee organization, determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer; or

(b) If the commission determines that a serious unfair labor practice has been committed which interfered with the election process and precludes the holding of a fair election, the commission may determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(7) The representation election ballot must contain a choice for each employee organization qualifying under subsection (3) or (5) of this section, together with a choice for no representation. The representation election shall be determined by the majority of the valid ballots cast. If there are three or more choices on the ballot and none of the three or more choices receives a majority of the valid ballots cast, a runoff election shall be conducted between the two choices receiving the highest and second highest numbers of votes.

(8) The commission shall certify as the exclusive bargaining representative the employee organization that has been determined to represent a majority of faculty members in a bargaining unit. [2002 c 356 § 7.]

41.76.025 Bargaining unit determination—Hearings. In any dispute concerning membership in the bargaining unit or the allocation of employees or positions to a bargaining unit, the commission, after a hearing or hearings, shall determine the dispute. [2002 c 356 § 8.]

41.76.030 Settlement of unresolved matters—Role of commission—Mediation—Other procedures authorized. (1) The commission shall conduct mediation activities upon the request of either party as a means of assisting in the settlement of unresolved matters considered under this chapter.

(2) If any matter being jointly considered by the exclusive bargaining representative and the board of regents or trustees is not settled by the means provided in this chapter, either party may request the assistance and advice of the commission. Nothing in this section prohibits an employer and an employee organization from agreeing to substitute, at their own expense, some other impasse procedure or other means of resolving matters considered under this chapter. [2002 c 356 § 9.]

41.76.035 Provisions relating to compensation—Restrictions. (1) Except as provided in subsection (2) of this section, provisions of collective bargaining agreements relating to compensation shall not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(2) An employer may provide additional compensation to faculty that exceeds that provided by the legislature. [2002 c 356 § 10.]

41.76.040 Procedures for grievance arbitration—Subpoenas—Commission—Superior courts. A collective bargaining agreement negotiated under this chapter may include procedures for final and binding grievance arbitration of the disputes arising about the interpretation or application of the agreement.

(1) The parties to a collective bargaining agreement may agree on one or more permanent umpires to serve as arbitrator, or may agree on any impartial person to serve as arbitrator, or may agree to select arbitrators from any source available to them, including federal and private agencies, in addition to the staff and dispute resolution panel maintained by the commission.

(2) An arbitrator may require any person to attend as a witness, and to bring with him or her any book, record, document, or other evidence. Subpoenas shall issue and be signed by the arbitrator and shall be served in the same manner as subpoenas to testify before a court of record in this state. The fees for such attendance shall be paid by the party requesting issuance of the subpoena and shall be the same as the fees of witnesses in the superior court. If any person so summoned to testify refuses or neglects to obey such subpoena, upon petition authorized by the arbitrator, the superior court may compel the attendance of such person before the arbitrator, or punish the person for contempt in the same manner provided for the attendance of witnesses or the punishment of them in the courts of this state.

(3) The arbitrator shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party and for good cause, may postpone the hearing to a time not extending beyond a date fixed by the collective bargaining agreement for making the award. The arbitrator has the power to administer oaths. The arbitration award shall be in writing and signed by the arbitrator or a majority of the members of the arbitration panel. The arbitra-

tor shall, promptly upon its rendition, serve a true copy of the award on each of the parties or their attorneys.

(4) If a party to a collective bargaining agreement negotiated under this chapter refuses to submit a grievance for arbitration, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court for any county in which the labor dispute exists, and such court has jurisdiction to issue an order compelling arbitration. The commission, on its own motion, may invoke the jurisdiction of the superior court where a strike or lockout is in existence. Arbitration shall be ordered if the grievance states a claim which on its face is covered by the collective bargaining agreement, and doubts as to the coverage of the arbitration clause shall be resolved in favor of arbitration. Disputes concerning compliance with grievance procedures shall be reserved for determination by the arbitrator.

(5) If a party to a collective bargaining agreement negotiated under this chapter refuses to comply with the award of an arbitrator determining a grievance arising under such collective bargaining agreement, the other party to the collective bargaining agreement, or any affected employee, may invoke the jurisdiction of the superior court for any county in which the labor dispute exists, and such court has jurisdiction to issue an order enforcing the arbitration award. The commission, on its own motion, may invoke the jurisdiction of the superior court where a strike or lockout is in existence. The court shall not substitute its judgment for that of the arbitrator and shall enforce any arbitration award which is based on the collective bargaining agreement, except that an arbitration award shall not be enforced and a new arbitration proceeding may be ordered:

(a) If the arbitration award was procured by corruption, fraud, or undue means;

(b) If there was evident partiality or corruption in the arbitrator or arbitrators;

(c) If the arbitrator or arbitrators were guilty of misconduct, in refusing to postpone a hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced; or

(d) If the arbitrator or arbitrators have exceeded their powers, or so imperfectly executed them that a final and definite award on the subject matter was not made, in which event the court also has discretion to remand the matter to the arbitrator or arbitrators who issued the defective award. [2002 c 356 § 11.]

41.76.045 Exclusive bargaining representative—Union security provisions—Dues and fees. (1) Upon filing with the employer the voluntary written authorization of a bargaining unit faculty member under this chapter, the employee organization which is the exclusive bargaining representative of the bargaining unit shall have the right to have deducted from the salary of the bargaining unit faculty member the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. Such employee authorization shall not be irrevocable for a period of more than one year. Such dues and fees shall be deducted from the pay of all faculty members who have given authorization for such deduction, and shall be transmitted by the employer to the

employee organization or to the depository designated by the employee organization.

(2) A collective bargaining agreement may include union security provisions, but not a closed shop. If an agency shop or other union security provision is agreed to, the employer shall enforce any such provision by deductions from the salary of bargaining unit faculty members affected thereby and shall transmit such funds to the employee organization or to the depository designated by the employee organization.

(3) A faculty member who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such faculty member is a member shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the faculty member and the employee organization to which such faculty member would otherwise pay the dues and fees. The faculty member shall furnish written proof that such payments have been made. If the faculty member and the employee organization do not reach agreement on such matter, the dispute shall be submitted to the commission for determination. [2002 c 356 § 12.]

41.76.050 Unfair labor practices. (1) It is an unfair labor practice for an employer to:

(a) Interfere with, restrain, or coerce faculty members in the exercise of the rights guaranteed by this chapter;

(b) Dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer is not prohibited from permitting faculty members to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) Encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

(d) Discharge or discriminate otherwise against a faculty member because that faculty member has filed charges or given testimony under this chapter;

(e) Refuse to bargain collectively with the exclusive bargaining representative of its faculty.

(2) It is an unfair labor practice for an employee organization to:

(a) Restrain or coerce a faculty member in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection does not impair the rights of (i) an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or (ii) to the rights of an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) Cause or attempt to cause an employer to discriminate against a faculty member in violation of subsection (1)(c) of this section;

(c) Discriminate against a faculty member because that faculty member has filed charges or given testimony under this chapter;

(d) Refuse to bargain collectively with an employer.

(3) The expressing of any view, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [2002 c 356 § 13.]

41.76.055 Commission to prevent unfair labor practices—Scope—Remedies. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.76.050: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, equity or otherwise.

(2) If the commission determines that any person has engaged in or is engaging in any such unfair labor practice as defined in RCW 41.76.050, then the commission shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and/or the reinstatement of faculty members.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or wherein the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [2002 c 356 § 14.]

41.76.060 Rule making. The commission is authorized from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as may be necessary to carry out the provisions of this chapter. [2002 c 356 § 15.]

41.76.065 Strikes and lockouts prohibited—Violations—Remedies. The right of faculty to engage in any strike is prohibited. The right of a board of regents or trustees to engage in any lockout is prohibited. Should either a strike or lockout occur, the representative of the faculty or board of regents or trustees may invoke the jurisdiction of the superior court in the county in which the labor dispute exists, and such court has jurisdiction to issue an appropriate order against either or both parties. In fashioning an order, the court shall take into consideration not only the elements necessary for injunctive relief but also the purpose and goals of this chapter and any mitigating factors such as the commission of an unfair labor practice by either party. [2002 c 356 § 16.]

41.76.070 Certain contracts or agreements—Chapter 34.05 RCW does not apply. Contracts or agreements, or any provision thereof, entered into between boards of regents or trustees and exclusive bargaining representatives pursuant to this chapter are not affected by or subject to chapter 34.05 RCW. [2002 c 356 § 17.]

41.76.075 Retroactive accrual of benefits and salaries. Whenever a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of the collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with the effective date as established by this section. [2002 c 356 § 19.]

41.76.080 Existing agreements not affected. Nothing in this chapter shall be construed to annul, modify, or preclude the renewal or continuation of any lawful agreement entered into before October 1, 2002, between an employer and an employee organization covering wages, hours, and terms and conditions of employment. [2002 c 356 § 20.]

41.76.085 Limitations on application of chapter. Except as otherwise expressly provided in this chapter, this chapter shall not be construed to deny or otherwise abridge any rights, privileges, or benefits granted by law to employees. This chapter shall not be construed to interfere with the responsibilities and rights of the board of regents or board of trustees as specified by federal and state law. [2002 c 356 § 21.]

41.76.902 Effective date—2002 c 356. This act takes effect October 1, 2002. [2002 c 356 § 23.]

Chapter 41.80 RCW

STATE COLLECTIVE BARGAINING

Sections

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41.80.001 Application of chapter. Collective bargaining negotiations under this chapter shall commence no later than July 1, 2004. A collective bargaining agreement entered into under this chapter shall not be effective prior to July 1, 2005. However, any collective bargaining agreement entered

into before July 1, 2004, covering employees affected by this section and RCW 41.80.010 through 41.80.130, that expires after July 1, 2004, shall, unless a superseding agreement complying with this section and RCW 41.80.010 through 41.80.130 is negotiated by the parties, remain in full force during its duration, but the agreement may not be renewed or extended beyond July 1, 2005, or until superseded by a collective bargaining agreement entered into under this section and RCW 41.80.010 through 41.80.130, whichever is later. The duration of any collective bargaining agreement under this chapter shall not exceed one fiscal biennium. [2002 c 354 § 301.]

41.80.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any agency as defined in RCW 41.06.020 and covered by chapter 41.06 RCW.

(2) "Collective bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times and to bargain in good faith in an effort to reach agreement with respect to the subjects of bargaining specified under RCW 41.80.020. The obligation to bargain does not compel either party to agree to a proposal or to make a concession, except as otherwise provided in this chapter.

(3) "Commission" means the public employment relations commission.

(4) "Confidential employee" means an employee who, in the regular course of his or her duties, assists in a confidential capacity persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies, or who assists or aids a manager. "Confidential employee" also includes employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.

(5) "Director" means the director of the public employment relations commission.

(6) "Employee" means any employee, including employees whose work has ceased in connection with the pursuit of lawful activities protected by this chapter, covered by chapter 41.06 RCW, except:

(a) Employees covered for collective bargaining by chapter 41.56 RCW;

(b) Confidential employees;

(c) Members of the Washington management service;

(d) Internal auditors in any agency; or

(e) Any employee of the commission, the office of financial management, or the office of risk management within the department of enterprise services.

(7) "Employee organization" means any organization, union, or association in which employees participate and that exists for the purpose, in whole or in part, of collective bargaining with employers.

(8) "Employer" means the state of Washington.

(9) "Exclusive bargaining representative" means any employee organization that has been certified under this

chapter as the representative of the employees in an appropriate bargaining unit.

(10) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(11) "Labor dispute" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment with respect to the subjects of bargaining provided in this chapter, regardless of whether the disputants stand in the proximate relation of employer and employee.

(12) "Manager" means "manager" as defined in RCW 41.06.022.

(13) "Supervisor" means an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust employee grievances, or effectively to recommend such action, if the exercise of the authority is not of a merely routine nature but requires the consistent exercise of individual judgment. However, no employee who is a member of the Washington management service may be included in a collective bargaining unit established under this section.

(14) "Unfair labor practice" means any unfair labor practice listed in RCW 41.80.110. [2011 1st sp.s. c 43 § 444; 2002 c 354 § 321.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.80.010 Negotiation and ratification of collective bargaining agreements—Funding to implement modification of certain collective bargaining agreements. (1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee, except as provided for institutions of higher education in subsection (4) of this section.

(2)(a) If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education, except when the institution of higher education has elected to exercise its option under subsection (4) of this section to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(c) If five hundred or more employees of an independent state elected official listed in RCW 43.01.010 are organized in a bargaining unit or bargaining units under RCW 41.80.070, the official shall be consulted by the governor or the governor's designee before any agreement is reached under (a) of this subsection concerning supplemental bargaining of agency specific issues affecting the employees in such bargaining unit.

(3) The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 41.80.090.

(4)(a)(i) For the purpose of negotiating agreements for institutions of higher education, the employer shall be the respective governing board of each of the universities, colleges, or community colleges or a designee chosen by the board to negotiate on its behalf.

(ii) A governing board of a university or college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section, except that:

(A) The governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of a university or college that the representative represents; or

(B) If the parties mutually agree, the governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of more than one university or college that the representative represents.

(iii) A governing board of a community college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(b) Prior to entering into negotiations under this chapter, the institutions of higher education or their designees shall consult with the director of the office of financial management regarding financial and budgetary issues that are likely to arise in the impending negotiations.

(c)(i) In the case of bargaining agreements reached between institutions of higher education other than the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of the bargaining agreements, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in (c)(iii) of this subsection.

(ii) In the case of bargaining agreements reached between the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of a bargaining agreement, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in this subsection (4)(c)(ii) and as provided in (c)(iii) of this subsection.

(A) If appropriations of less than ten thousand dollars are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered.

(B) If appropriations of ten thousand dollars or more are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request:

(I) Has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered; and

(II) Has been certified by the director of the office of financial management as being feasible financially for the state.

(C) If the director of the office of financial management does not certify a request under (c)(ii)(B) of this subsection as being feasible financially for the state, the parties shall enter into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the compensation and fringe benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(iii) In the case of a bargaining unit of employees of institutions of higher education in which the exclusive bargaining representative is certified during or after the conclusion of a legislative session, the legislature may act upon the

compensation and fringe benefit provisions of the unit's initial collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(5) There is hereby created a joint committee on employment relations, which consists of two members with leadership positions in the house of representatives, representing each of the two largest caucuses; the chair and ranking minority member of the house appropriations committee, or its successor, representing each of the two largest caucuses; two members with leadership positions in the senate, representing each of the two largest caucuses; and the chair and ranking minority member of the senate ways and means committee, or its successor, representing each of the two largest caucuses. The governor shall periodically consult with the committee regarding appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements, and upon completion of negotiations, advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.

(6) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(7) After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) For the 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee shall be a separate agreement for which the governor may request funds necessary to implement the agreement. The legislature may act upon a 2013-2015 collective bargaining agreement related to employee health care benefits if an agreement is reached and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating appropriations act by the sitting legislature.

(9)(a) For the 2015-2017 fiscal biennium, the governor may request funds to implement:

(i) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the service employees international union healthcare 1199nw, an exclusive bargaining representative, that was necessitated by an emergency situation or an imminent jeopardy determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees.

(ii) Unilaterally implemented modifications to collective bargaining agreements, resulting from the employer being prohibited from negotiating with an exclusive bargaining representative due to a pending representation petition, necessitated by an emergency situation or an imminent jeopardy determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees.

(iii) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the union of physicians of Washington, an exclusive bargaining representative, that was necessitated by an emergency situation or an imminent jeopardy determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees. If the memorandum of understanding submitted to the legislature as part of the governor's budget document is rejected by the legislature, and the parties reach a new memorandum of understanding by June 30, 2016, within the funds, conditions, and limitations provided in section 204, chapter 36, Laws of 2016 1st sp. sess., the new memorandum of understanding shall be considered approved by the legislature and may be retroactive to December 1, 2015.

(iv) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the teamsters union local 117, an exclusive bargaining representative, for salary adjustments for the state employee job classifications of psychiatrist, psychiatric social worker[,] and psychologist.

(b) For the 2015-2017 fiscal biennium, the legislature may act upon the request for funds for modifications to a 2015-2017 collective bargaining agreement under (a)(i), (ii), (iii), and (iv) of this subsection if funds are requested by the governor before final legislative action on the supplemental omnibus appropriations act by the sitting legislature.

(c) The request for funding made under this subsection and any action by the legislature taken pursuant to this subsection is limited to the modifications described in this subsection and may not otherwise affect the original terms of the 2015-2017 collective bargaining agreement.

(d) Subsections [Subsection] (3)(a) and (b) of this section do not apply to requests for funding made pursuant to this subsection. [2016 1st sp.s. c 36 § 923; 2013 2nd sp.s. c 4 § 971. Prior: 2011 1st sp.s. c 50 § 938; 2011 c 344 § 1; 2010 c 104 § 1; 2002 c 354 § 302.]

Effective date—2016 1st sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

41.80.020 Scope of bargaining. (1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

(a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;

(b) Any retirement system or retirement benefit; or

(c) Rules of the director of financial management, the director of enterprise services, or the Washington personnel resources board adopted under RCW 41.06.157.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4). For agreements covering the 2013-2015 fiscal biennium, any agreement between the employer and the coalition regarding the dollar amount expended on behalf of each employee for health care benefits is a separate agreement and shall not be included in the master collective bargaining agreements negotiated by the parties.

(4) The employer and the exclusive bargaining representative shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(5) The employer and the exclusive bargaining representative shall not bargain over matters pertaining to management rights established in RCW 41.80.040.

(6) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

(7) This section does not prohibit bargaining that affects contracts authorized by RCW 41.06.142. [2015 3rd sp.s. c 1 § 318; 2013 2nd sp.s. c 4 § 972. Prior: 2011 1st sp.s. c 50 § 939; 2011 1st sp.s. c 43 § 445; 2010 c 283 § 16; 2002 c 354 § 303.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

41.80.030 Contents of collective bargaining agreements—Execution. (1) The parties to a collective bargaining agreement shall reduce the agreement to writing and both shall execute it.

(2) A collective bargaining agreement shall contain provisions that:

(a) Provide for a grievance procedure that culminates with final and binding arbitration of all disputes arising over the interpretation or application of the collective bargaining agreement and that is valid and enforceable under its terms when entered into in accordance with this chapter; and

(b) Require processing of disciplinary actions or terminations of employment of employees covered by the collective bargaining agreement entirely under the procedures of the collective bargaining agreement. Any employee, when fully reinstated, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, and retirement and federal old age, survivors, and disability insurance act credits, but without back pay for any period of suspension.

(3)(a) If a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and an employee organization representing the same bargaining units, the effective date of the collective bargaining agreement may be the day after the termination of the previous collective bargaining agreement, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with that effective date.

(b) If a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and the exclusive bargaining representative representing different bargaining units, the effective date of the collective bargaining agreement may be the day after the termination date of whichever previous collective bargaining agreement covering one or more of the units terminated first, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with that effective date. [2002 c 354 § 304.]

41.80.040 Management rights—Not subject to bargaining. The employer shall not bargain over rights of management which, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include but not be limited to the following:

(1) The functions and programs of the employer, the use of technology, and the structure of the organization;

(2) The employer's budget and the size of the agency workforce, including determining the financial basis for layoffs;

(3) The right to direct and supervise employees;

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(4) The right to take whatever actions are deemed necessary to carry out the mission of the state and its agencies during emergencies; and

(5) Retirement plans and retirement benefits. [2002 c 354 § 305.]

41.80.050 Rights of employees. Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter. [2002 c 354 § 306.]

41.80.060 Right to strike not granted. Nothing contained in chapter 354, Laws of 2002 permits or grants to any employee the right to strike or refuse to perform his or her official duties. [2002 c 354 § 307.]

41.80.070 Bargaining units—Certification. (1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, unless the unit does not meet the requirements of (a) and (b) of this subsection. The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modifications of existing units, the commission shall consider: The duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation. However, a unit is not appropriate if it includes:

(a) Both supervisors and nonsupervisory employees. A unit that includes only supervisors may be considered appropriate if a majority of the supervisory employees indicates by vote that they desire to be included in such a unit; or

(b) More than one institution of higher education. For the purposes of this section, any branch or regional campus of an institution of higher education is part of that institution of higher education.

(2) The exclusive bargaining representatives certified to represent the bargaining units existing on June 13, 2002, shall continue as the exclusive bargaining representative without the necessity of an election.

(3) If a single employee organization is the exclusive bargaining representative for two or more units, upon petition by the employee organization, the units may be consolidated into a single larger unit if the commission considers the larger unit to be appropriate. If consolidation is appropriate, the commission shall certify the employee organization as the exclusive bargaining representative of the new unit. [2002 c 354 § 308.]

41.80.080 Representation—Elections—Rules. (1) The commission shall determine all questions pertaining to representation and shall administer all elections and be

responsible for the processing and adjudication of all disputes that arise as a consequence of elections. The commission shall adopt rules that provide for at least the following:

- (a) Secret balloting;
- (b) Consulting with employee organizations;
- (c) Access to lists of employees, job classification, work locations, and home mailing addresses;
- (d) Absentee voting;
- (e) Procedures for the greatest possible participation in voting;
- (f) Campaigning on the employer's property during working hours; and
- (g) Election observers.

(2)(a) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit as provided in RCW 41.80.010(2)(a). However, if a master collective bargaining agreement is in effect for the exclusive bargaining representative, it shall apply to the bargaining unit for which the certification has been issued. Nothing in this section requires the parties to engage in new negotiations during the term of that agreement.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education.

(3) The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if:

(a) Fewer than twelve months have elapsed since the last certification or election; or

(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days nor less than ninety calendar days before the expiration of the contract. [2002 c 354 § 309.]

41.80.090 Failure to reach agreement—Third party involvement—Expiration of agreements during negotiation. Should the parties fail to reach agreement in negotiating a collective bargaining agreement, either party may request of the commission the assistance of an impartial third party to mediate the negotiations.

If a collective bargaining agreement previously negotiated under this chapter should expire while negotiations are underway, the terms and conditions specified in the collective bargaining agreement shall remain in effect for a period not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

If resolution is not reached through mediation by one hundred days beyond the expiration date of a contract previously negotiated under this chapter, or one hundred days from the initiation of mediated negotiations if no such con-

tract exists, an independent fact finder shall be appointed by the commission.

The fact finder shall meet with the parties or their representatives, or both, and make inquiries and investigations, hold hearings, and take such other steps as may be appropriate. If the dispute is not settled, the fact finder shall make findings of fact and recommend terms of settlement within thirty days.

Such recommendations, together with the findings of fact, shall be submitted in writing to the parties and the commission privately before they are made public. The commission, the fact finder, the employer, or the exclusive bargaining representative may make such findings and recommendations public if the dispute is not settled within ten working days after their receipt from the fact finder.

Nothing in this section shall be construed to prohibit an employer and an exclusive bargaining representative from agreeing to substitute, at their own expense, their own procedure for resolving impasses in collective bargaining for that provided in this section or from agreeing to utilize for the purposes of this section any other governmental or other agency or person in lieu of the commission.

Costs for mediator services shall be borne by the commission, and costs for fact-finding shall be borne equally by the negotiating parties. [2002 c 354 § 310.]

41.80.100 Union security—Fees and dues—Right of nonassociation.

(1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.

(3) Upon filing with the employer the written authorization of a bargaining unit employee under this chapter, the

employee organization that is the exclusive bargaining representative of the bargaining unit shall have the exclusive right to have deducted from the salary of the employee an amount equal to the fees and dues uniformly required as a condition of acquiring or retaining membership in the employee organization. The fees and dues shall be deducted each pay period from the pay of all employees who have given authorization for the deduction and shall be transmitted by the employer as provided for by agreement between the employer and the employee organization.

(4) Employee organizations that before July 1, 2004, were entitled to the benefits of this section shall continue to be entitled to these benefits. [2002 c 354 § 311.]

41.80.110 Unfair labor practices enumerated. (1) It is an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

(d) To discharge or discriminate otherwise against an employee because that employee has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce an employee in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or to an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To discriminate against an employee because that employee has filed charges or given testimony under this chapter;

(d) To refuse to bargain collectively with an employer.

(3) The expressing of any views, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [2002 c 354 § 312.]

41.80.120 Unfair labor practice procedures—Powers and duties of commission. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a com-

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plaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [2002 c 354 § 313.]

41.80.130 Enforcement of collective bargaining agreements—Arbitrators—Subpoenas—Superior court.

(1) For the purposes of implementing final and binding arbitration under grievance procedures required by RCW 41.80.030, the parties to a collective bargaining agreement may agree on one or more permanent umpires to serve as arbitrator, or may agree on any impartial person to serve as arbitrator, or may agree to select arbitrators from any source available to them, including federal and private agencies, in addition to the staff and list of arbitrators maintained by the commission. If the parties cannot agree to the selection of an arbitrator, the commission shall supply a list of names in accordance with the procedures established by the commission.

(2) An arbitrator may require any person to attend as a witness and to bring with him or her any book, record, document, or other evidence. The fees for such attendance shall be paid by the party requesting issuance of the subpoena and shall be the same as the fees of witnesses in the superior court. Arbitrators may administer oaths. Subpoenas shall issue and be signed by the arbitrator and shall be served in the same manner as subpoenas to testify before a court of record in this state. If any person so summoned to testify refuses or neglects to obey such subpoena, upon petition authorized by the arbitrator, the superior court may compel the attendance of the person before the arbitrator or punish the person for contempt in the same manner provided for the attendance of witnesses or the punishment of them in the courts of this state.

(3) The arbitrator shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party and for good cause, may postpone the hearing to a time not extending beyond the date fixed by the collective bargaining agreement for making the award. The arbitration award shall be in writing and signed by the arbitrator. The arbitrator shall, promptly upon its rendition, serve a true copy of the award on each of the parties or their attorneys of record.

(4) If a party to a collective bargaining agreement negotiated under this chapter refuses to submit a grievance for arbitration, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court of Thurston county or of any county in which the labor dispute exists and such court shall have jurisdiction to issue an order compelling arbitration. Disputes concerning compliance with grievance procedures shall be reserved for determination by the arbitrator. Arbitration shall be ordered if the grievance states a claim that on its face is covered by the collective bargaining agreement. Doubts as to the coverage of the arbitration clause shall be resolved in favor of arbitration.

(5) If a party to a collective bargaining agreement negotiated under this chapter refuses to comply with the award of an arbitrator determining a grievance arising under the collective bargaining agreement, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court of Thurston county or of any county in which the labor dispute exists and such court shall have jurisdiction to issue an order enforcing the arbitration award. [2002 c 354 § 314.]

41.80.140 Office of financial management's labor relations service account—Created. (1) The office of financial management's labor relations service account is created in the custody of the state treasurer to be used as a revolving fund for the payment of labor relations services required for the negotiation of the collective bargaining agreements entered into under this chapter. An amount not to exceed one-tenth of one percent of the approved allotments of salaries and wages for all bargaining unit positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the office of financial management's labor relations service account as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time. Payment for services rendered under this chapter shall be made on a quarterly basis to the state treasurer and deposited into the office of financial management's labor relations service account.

(2) Moneys from the office of financial management's labor relations service account shall be disbursed by the state treasurer by warrants on vouchers authorized by the director of financial management or the director's designee. An appropriation is not required.

(3) During the 2015-2017 fiscal biennium, the legislature may transfer moneys from the office of financial management's labor relations service account to the state general fund such amounts as reflect the excess fund balance of the account. [2016 1st sp.s. c 36 § 924; 2002 c 354 § 322.]

Effective date—2016 1st sp.s. c 36: See note following RCW 18.20.430.

41.80.905 Apportionment of funds. If apportionments of budgeted funds are required because of the transfers directed by *RCW 41.80.901 through 41.80.904, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer.

Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [2002 c 354 § 320.]

***Reviser's note:** RCW 41.80.901 through 41.80.904 were decodified pursuant to 2011 1st sp.s. c 43 § 479.

41.80.907 Short title—2002 c 354. This act may be known and cited as the personnel system reform act of 2002. [2002 c 354 § 101.]

41.80.910 Effective dates—2002 c 354. (1) Sections 203, 204, 213 through 223, 227, 229 through 231, 241, 243, 246, 248, 301 through 307, 309 through 316, 318, 319, and 402 of this act take effect July 1, 2004.

(2) Section 224 of this act takes effect March 15, 2005.

(3) Sections 208, 234 through 238, and 403 of this act take effect July 1, 2005.

(4) Sections 225, 226, 233, and 404 of this act take effect July 1, 2006. [2002 c 354 § 411.]

41.80.911 Review of appropriateness of certain collective bargaining units. (1) By January 1, 2012, the public employment relations commission may review the appropriateness of the collective bargaining units transferred under RCW 43.19.900, 43.19.901, 43.19.902, 43.330.910, and *43.41A.900. The employer or the exclusive bargaining representative may petition the public employment relations commission to review the bargaining units in accordance with this section.

(2) If the commission determines that an existing collective bargaining unit is appropriate pursuant to RCW 41.80.070, the exclusive bargaining representative certified to represent the bargaining unit prior to January 1, 2012, shall continue as the exclusive bargaining representative without the necessity of an election.

(3) If the commission determines that existing collective bargaining units are not appropriate, the commission may modify the units and order an election pursuant to RCW 41.80.080. Certified bargaining representatives will not be required to demonstrate a showing of interest to be included on the ballot.

(4) The commission may require an election pursuant to RCW 41.80.080 if similarly situated employees are represented by more than one employee organization. Certified bargaining representatives will not be required to demonstrate a showing of interest to be included on the ballot. [2011 1st sp.s. c 43 § 1001.]

***Reviser's note:** RCW 43.41A.900 was recodified as RCW 43.105.907 pursuant to 2015 3rd sp.s. c 1 § 221.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.