

Nothing in this title (~~(shall apply)~~) other than section 2 of this 1981 act, applies to wine or beer manufactured in any home for consumption therein, and not for sale.

**NEW SECTION.** Sec. 2. There is added to chapter 66.28 RCW a new section to read as follows:

(1) An adult member of a household may remove family wine from the home for exhibition or use at organized wine tastings or competitions, subject to the following conditions:

(a) The quantity removed by a producer for these purposes is limited to a quantity not exceeding one gallon;

(b) Family wine is not removed for sale or for the use of any person other than the producer. This subparagraph does not preclude any necessary tasting of the wine when the exhibition or wine tasting includes judging the merits of the wine by judges who have been selected by the organization sponsoring the affair; and

(c) When the display contest or judging purpose has been served, any remaining portion of the sample is returned to the family premises from which removed.

(2) As used in this section, "family wine" means wine manufactured in the home for consumption therein, and not for sale.

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## CHAPTER 256

[Engrossed Senate Bill No. 3931]

### DEFERRED COMPENSATION PLANS—FEDERAL LAW CONFORMANCE

AN ACT Relating to deferred compensation plans; amending section 1, chapter 264, Laws of 1971 ex. sess. as last amended by section 2, chapter 274, Laws of 1975 1st ex. sess. and RCW 41.04.250; amending section 1, chapter 274, Laws of 1975 1st ex. sess. as amended by section 84, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 41.04.260; amending section 3, chapter 209, Laws of 1969 ex. sess. as last amended by section 2, chapter 249, Laws of 1979 ex. sess. and RCW 41.26.030; amending section 1, chapter 80, Laws of 1947 as last amended by section 5, chapter 249, Laws of 1979 ex. sess. and RCW 41.32-.010; amending section 1, chapter 274, Laws of 1947 as last amended by section 7, chapter 249, Laws of 1979 ex. sess. and RCW 41.40.010; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Section 1. 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.

Sec. 2. Section 1, chapter 264, Laws of 1971 ex. sess. as last amended by section 2, chapter 274, Laws of 1975 1st ex. sess. and RCW 41.04.250 are each amended to read as follows:

"Employee" as used in this section and RCW 41.04.260 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.

The state, through the committee for deferred compensation created in RCW 41.04.260, and any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body is authorized to((:

~~(1) Enter into an agreement with any life insurance company, bank trustee, or custodian authorized to do business in the state of Washington to provide qualified pension plans under the provisions of 26 U.S.C., section 401(a), as amended by Public Law 89-809, 80 Stat. 1577, 1578 as now or hereafter amended, or to provide deferred annuities for all officials and employees of said public entities deemed to be eligible by the agency of the United States government having jurisdiction of the matter under the provisions of 26 U.S.C., section 403(b), as amended by Public Law 87-370, 75 Stat. 796 and as now or hereafter amended, such pension or annuities to be in lieu of a portion of salary or wages. Such pension plans or tax deferred annuity benefits shall be available to those employees who elect to participate in said agreement and who agree to take a reduction in salary in the equivalent amount of the contribution required to be made by the public entity for and on behalf of such employee. The funds derived from such reductions in salary shall be deposited and accounted for in an appropriately designated account maintained by the public employer of such employee and any official authorized to disburse such funds is empowered to remit these designated funds to the insurer, custodian, or trustee in accordance with the salary reduction agreement between the public entity and the employee.~~

~~(2)) contract with an employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the ((appropriate internal revenue service exclusion allowance for such plans, and shall promptly with the consent of the employee,)) amount allowable under 26 U.S.C. Sec. 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, or fixed and/or variable~~

annuity contracts(~~(, for the purpose of funding a deferred compensation program for the employee, from any life underwriter or registered representative duly licensed by this state who represents an))~~ from any insurance company or any investment company licensed to contract business in this state. The committee can provide such plans as it deems are in the interests of state employees. ((In no event shall the total payments made for the purchase of said life insurance contract, or fixed and/or variable annuity contract and the employee's nondeferred income for any year exceed the total annual salary, or compensation under the existing salary schedule or classification plan applicable to such employee in such year.)) In addition to the types of investments described in this section, the committee may invest the deferred portion of an employee's income, without limitation as to amount, in any of the class of investments described in RCW 43.84.150 as in effect on January 1, 1981. Any income deferred under such a plan 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(~~(, but any sum so deducted shall not be included in the computation of any taxes withheld on behalf of any such employee))~~).

Coverage of an employee under a ~~((qualified pension plan, contract for a deferred annuity or))~~ deferred compensation plan under this section shall not render such employee ineligible for simultaneous membership and participation in ~~((the))~~ any pension system(~~(s))~~ for public employees ~~((which are provided for by chapters 41.26, 41.32 and 41.40 RCW))~~.

Sec. 3. Section 1, chapter 274, Laws of 1975 1st ex. sess. as amended by section 84, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 41.04.260 are each amended to read as follows:

(1) There is hereby created a committee for deferred compensation to be composed of five members appointed by the governor, one of whom shall be a representative of an employee association or union certified as an exclusive representative of at least one bargaining unit of classified employees, one who shall be a representative of either a credit union, savings and loan association, mutual savings bank or bank, one who ~~((shall be a representative of an))~~ possesses expertise in the area of insurance ((association)) or investment ((company)) of public funds, one who shall be the state attorney general or his designee, and one additional member selected by the governor. The committee shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The ~~((committee shall be trustees of the))~~ deferred compensation revolving fund ~~((which))~~ is hereby created in the state treasury. All expenses of the committee including staffing and administrative expenses shall be paid out of the deferred compensation revolving fund. The amount of compensation deferred ~~((or amounts paid))~~ by employees under agreements entered into under the authority contained in RCW 41.04.250 shall be paid

into the revolving fund and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by this committee. The revolving fund shall be used to carry out the purposes of RCW 41.04.250(~~(- Any county, municipality or other subdivision of the state may elect to participate in any agreements entered into by the committee under RCW 41.04.250)~~), including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state service. Accordingly, the revolving fund 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. All moneys in the revolving fund, all property and rights purchased therewith, and all income attributable thereto, shall remain (until made available to the participating employee or other beneficiary) solely the money, property, and rights of the state (without being restricted to the provision of benefits under the plan) subject only to the claims of the state's general creditors.

(3) The committee may adopt rules necessary to carry out the purposes of RCW 41.04.250 and 41.04.260.

Sec. 4. Section 3, chapter 209, Laws of 1969 ex. sess. as last amended by section 2, chapter 249, Laws of 1979 ex. sess. and RCW 41.26.030 are each amended to read as follows:

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

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2) (a) "Employer" for persons who establish membership in the retirement system on or before September 30, 1977, 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 fire fighter, 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 fire fighters 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 fire fighters as defined in this chapter.

(b) "Employer" for persons who establish membership in the retirement system on or after October 1, 1977, 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 fire fighter.

(3) "Law enforcement officer" means any person who is serving on a full time, fully compensated basis as a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to a county charter, city police officer, or town marshal or deputy marshal, 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; and

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended) if such individual has five years previous membership in the retirement system established in chapter 41.20 RCW: PROVIDED, That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply.

(4) "Fire fighter" 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 fire fighter, or fireman if this title is used by the department, and who is actively employed as such;

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

(c) supervisory fire fighter personnel;

(d) any full time executive secretary of an association of fire protection districts authorized under chapter 52.08 RCW: PROVIDED, That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply;

(e) the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW: PROVIDED, That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply;

(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 fireman or fire fighter; and

(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.

(5) "Retirement board" means the Washington public employees' retirement system board established in chapter 41.40 RCW, including two members of the retirement system and two employer representatives as provided for in RCW 41.26.050. The retirement board shall be called the Washington law enforcement officers' and fire fighters' retirement board and may enter in legal relationships in that name. Any legal relationships entered into in that name prior to the adoption of this 1972 amendatory act are hereby ratified.

(6) "Surviving spouse" means the surviving widow or widower of a member. The word shall not include the divorced spouse of a member.

(7) "Child" or "children" whenever used in this chapter means every natural born child and stepchild where that relationship was in existence prior to the date benefits are payable under this chapter, posthumous child, child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter, and illegitimate child legitimized prior to the date any benefits are payable under this chapter, all while unmarried, and either under the age of eighteen years or mentally or physically handicapped as determined by the retirement board except a handicapped person in the full time care of a state institution. 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.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

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

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) above.

(11) (a) "Beneficiary" for persons who establish membership in the retirement system on or before September 30, 1977, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

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

(12) (a) "Final average salary" for persons who establish membership in the retirement system on or before September 30, 1977, 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 persons who establish membership in the retirement system on or after October 1, 1977, means the monthly average of the member's basic salary for the highest consecutive sixty 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.

(13) (a) "Basic salary" for persons who establish membership in the retirement system on or before September 30, 1977, 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 persons who establish membership in the retirement system on or after October 1, 1977, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, as reported by the employer on the wage and tax statement submitted to the federal internal revenue service, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b) 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: **PROVIDED**, That in any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

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

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

(14) (a) "Service" for persons who establish membership in the retirement system on or before September 30, 1977, means all periods of employment for an employer as a fire fighter 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 months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. In addition to the foregoing, for members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall include (i) 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 (ii) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act: **PROVIDED**, That if such member's prior service is not creditable due to the withdrawal of his contributions plus accrued interest thereon from a prior pension system, such member shall be credited with such prior service, as a law enforcement officer or fire fighter, by paying to the Washington law enforcement officers' and fire fighters' retirement system, on or before March 1, 1975, an amount which is equal to that which was withdrawn from the prior system by such member, as a law enforcement officer or fire fighter: **PROVIDED FURTHER**, That if such member's prior service is not creditable because, although employed in a position covered by a prior pension act, such member had not yet become a member of the pension system governed by such act, such member shall be credited with such prior service as a law enforcement officer or fire fighter, by paying to the Washington law enforcement officers' and fire fighters' retirement system, on or before



March 1, 1975, an amount which is equal to the employer's contributions which would have been required under the prior act when such service was rendered if the member had been a member of such system during such period: AND PROVIDED FURTHER, That where a member is employed by two employers at the same time, he shall only be credited with service to one such employer for any month during which he rendered such dual service.

(b) "Service" for persons who establish membership in the retirement system on or after October 1, 1977, 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.

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.

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

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member plus accrued interest credited thereon.

(16) "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.

(17) "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.

(18) "Disability board" means either the county disability board or the city disability board established in RCW 41.26.110 for persons who establish membership in the retirement system on or before September 30, 1977.

(19) "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 persons who

establish membership in the retirement system on or before September 30, 1977.

(20) "Disability retirement" for persons who establish membership in the retirement system on or before September 30, 1977, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

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

(22) "Medical services" for persons who establish membership in the retirement system on or before September 30, 1977, 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 osteopath 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 he is injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his 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.

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

(24) "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.

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

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

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

(28) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

Sec. 5. Section 1, chapter 80, Laws of 1947 as last amended by section 5, chapter 249, Laws of 1979 ex. sess. and RCW 41.32.010 are each amended to read as follows:

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

(1) (a) "Accumulated contributions" for persons who establish membership in the retirement system on or before September 30, 1977, means the sum of all regular annuity contributions with regular interest thereon.

(b) "Accumulated contributions" for persons who establish membership in the retirement system on or after October 1, 1977, means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.

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

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

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

(5) "Annuity reserve fund" means the fund to which all accumulated contributions are transferred upon retirement.

(6) (a) "Beneficiary" for persons who establish membership in the retirement system on or before September 30, 1977, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for persons who establish membership in the retirement system on or after October 1, 1977, 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) "Contract" means any agreement for service and compensation between a member and an employer.

(8) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to persons who establish membership in the retirement system on or before September 30, 1977.

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

(10) "Disability allowance" means monthly payments during disability. This subsection shall apply only to persons who establish membership in the retirement system on or before September 30, 1977.

(11) (a) "Earnable compensation" for persons who establish membership in the retirement system on or before September 30, 1977, means 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: PROVIDED, That 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: PROVIDED FURTHER, That 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.

(b) "Earnable compensation" for persons who establish membership in the retirement system on or after October 1, 1977, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, as reported by the employer on the wage and tax statement submitted to the federal internal revenue service, and shall include

wages and salaries deferred under provisions established pursuant to sections 403(b) 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: PROVIDED, That 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: PROVIDED FURTHER, That 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:

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

(ii) 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 subparagraph (i) of this subsection is greater than compensation earnable under subparagraph (ii) of this subsection shall be paid by the member for both member and employer contributions.

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

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

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

(15) "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.

(16) "Member" means any teacher included in the membership of the retirement system. 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 annuity fund.

(17) "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 only receive one month's service credit during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to persons who establish membership in the retirement system on or before September 30, 1977.

(18) "Pension" means the moneys payable per year during life from the pension fund.

(19) "Pension fund" means a fund from which all pension obligations are to be paid.

(20) "Pension reserve fund" is a fund in the state treasury in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system.

(21) "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 persons who establish membership in the retirement system on or before September 30, 1977.

(22) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to persons who establish membership in the retirement system on or before September 30, 1977.

(23) "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.

(24) "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 annuity fund. This subsection shall apply only to persons establishing membership in the retirement system on or before September 30, 1977.

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

(26) (a) "Retirement allowance" for persons who establish membership in the retirement system on or before September 30, 1977, means the sum of annuity and pension or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for persons who establish membership in the retirement system on or after October 1, 1977, means monthly payments to a retiree or beneficiary as provided in this chapter.

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

(28) (a) "Service" means the time during which a member has been employed by an employer for compensation: PROVIDED, That where a member 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 is rendered.

(b) "Service" for persons who establish membership in the retirement system on or after October 1, 1977, means periods of employment by a member for one or more employers for which earnable compensation is earned for ninety or more hours per calendar month. Members shall receive twelve months of service for each contract year or school year of employment.

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 service credit for the time spent in a state elective position by making the required member contributions.

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.

Notwithstanding RCW 41.32.240, teachers covered by RCW 41.32.755 through 41.32.825, who render service need not serve for ninety days to obtain membership so long as the required contribution is submitted for such ninety-day period. Where a member did not receive service credit under RCW 41.32.775 through 41.32.825 due to the ninety-day period in RCW 41.32.240 the member may receive service credit for that period so long as the required contribution is submitted for the period. Anyone entering membership on or after October 1, 1977, and prior to July 1, 1979, shall have until June 30, 1980, to make the required contribution in one lump sum.

(29) "Survivors' benefit fund" means the fund from which survivor benefits are paid to dependents of deceased members. This subsection shall apply only to persons establishing membership in the retirement system on or before September 30, 1977.

(30) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity, including state, educational service district, city superintendents and their assistants and certificated employees; and in addition thereto any qualified school librarian, any registered nurse or any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(31) "Average final compensation" for persons who establish membership in the retirement system on or after October 1, 1977, means the member's average earnable compensation of the highest consecutive sixty months of service 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.

(32) "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.

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

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

(35) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

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

(37) "Retirement board" means the board of trustees provided for in RCW 41.32.040.

Sec. 6. Section 1, chapter 274, Laws of 1947 as last amended by section 7, chapter 249, Laws of 1979 ex. sess. and RCW 41.40.010 are each amended to read as follows:

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

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

(2) "Retirement board" means the board provided for in this chapter and chapter 41.26 RCW.

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

(4) (a) "Employer" for persons who establish membership in the retirement system on or before September 30, 1977, 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 as now or hereafter amended; 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 persons who establish membership in the retirement system on or after October 1, 1977, 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.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.120.

(6) "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.

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

(8) (a) "Compensation earnable" for persons who establish membership in the retirement system on or before September 30, 1977, 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: PROVIDED, That 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: PROVIDED FURTHER, That 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.

(b) "Compensation earnable" for persons who establish membership in the retirement system on or after October 1, 1977, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, as reported by the employer on the wage and tax statement submitted to the federal internal revenue service, and shall include

wages and salaries deferred under provisions established pursuant to sections 403(b) and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay: PROVIDED, That 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: PROVIDED FURTHER, That 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:

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

(ii) 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 subparagraph (i) of this subsection is greater than compensation earnable under subparagraph (ii) of this subsection shall be paid by the member for both member and employer contributions.

(9) (a) "Service" for persons who establish membership in the retirement system on or before September 30, 1977, means periods of employment rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Full time work for seventy hours or more in any given calendar month shall constitute one month of service. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits. Members employed by the state school for the blind, or the state school for the deaf shall receive twelve months of service for each contract year or school year of employment commencing on or after June 15, 1979. In addition, each member who is employed by an institution of higher education or a community college shall receive twelve months of service for each academic year of employment commencing on or after June 15, 1979, in which:

(i) the member makes member contributions under this chapter for each month of such academic year, and

(ii) the member is employed in a position which is restricted as to duration by the employer to the academic year. 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: **PROVIDED FURTHER**, That an individual shall receive no more than a total of twelve months of service credit during any calendar year: **PROVIDED FURTHER**, That where an individual is employed by two or more employers the individual shall only receive one months service credit during any calendar month in which multiple service for seventy or more hours is rendered.

(b) "Service" for persons who establish membership in the retirement system on or after October 1, 1977, means periods of employment by a member for one or more employers for which compensation earnable is earned for ninety or more hours per calendar month.

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

Members employed by school districts, the state school for the blind, the state school for the deaf, institutions of higher education, or community colleges shall receive twelve months of service for each contract year or school year of employment.

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 teachers' retirement system or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the teachers' retirement system or law enforcement officers' and fire fighters' retirement system.

A member shall receive a total of not more than twelve months of service for such calendar year: **PROVIDED**, That 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.

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

(11) "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: **PROVIDED**, That an amount equal to the employer and employee contributions which would have been paid to the retirement system on account of such service shall have been paid to the retirement system with interest (as computed by the department) on the employee's portion prior to retirement of such person, by the

employee or his employer, except as qualified by RCW 41.40.120: PROVIDED FURTHER, That employer contributions plus employee contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employees' savings fund and be treated as any other contribution made by the employee, with the exception that the 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 be excluded from the calculation of the member's annuity in the event the member selects a benefit with an annuity option;

(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.

(12) (a) "Beneficiary" for persons who establish membership in the retirement system on or before September 30, 1977, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for persons who establish membership in the retirement system on or after October 1, 1977, 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.

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

(14) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.

(15) (a) "Average final compensation" for persons who establish membership in the retirement system on or before September 30, 1977, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service for which service credit is allowed; or if the member has less than two years of service then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for persons who establish membership in the retirement system on or after October 1, 1977, means the member's average compensation earnable of the highest consecutive sixty months of service 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.

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

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

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

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

(20) "Employee" means any person who may become eligible for membership under this chapter, as set forth in RCW 41.40.120.

(21) "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.

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

(23) "Eligible position" means:

(a) Any position which normally requires five or more uninterrupted months of service a year for which regular compensation is paid to the occupant thereof;

(b) Any position occupied by an elected official or person appointed directly by the governor for which compensation is paid.

(24) "Ineligible position" means any position which does not conform with the requirements set forth in subdivision (23).

(25) "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.

(26) "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.

(27) "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.

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

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

(30) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

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

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. 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 immediately.

Passed the Senate April 20, 1981.

Passed the House April 25, 1981.

Approved by the Governor May 18, 1981.

Filed in Office of Secretary of State May 18, 1981.

## CHAPTER 257

[Substitute Senate Bill No. 4090]

### INSTITUTIONS OF HIGHER EDUCATION—TUITION AND FEES—STUDENT LOANS—BOND RETIREMENT

AN ACT Relating to tuition and fees; amending section 2, chapter 279, Laws of 1971 ex. sess. as last amended by section 14, chapter 151, Laws of 1979 and RCW 28B.15.031; amending section 7, chapter 322, Laws of 1977 ex. sess. and RCW 28B.15.070; amending section 28B.15.100, chapter 223, Laws of 1969 ex. sess. as last amended by section 2, chapter 322, Laws of 1977 ex. sess. and RCW 28B.15.100; creating new sections; adding new sections to chapter 223, Laws of 1969 ex. sess. and to chapter 28B.15 RCW; repealing section 1, chapter 322, Laws of 1977 ex. sess. and RCW 28B.15.060; repealing section 8, chapter 322, Laws of 1977 ex. sess. and RCW 28B.15.075; repealing section 3, chapter 322, Laws of 1977 ex. sess. and RCW 28B.15.201; repealing section 4, chapter 322, Laws of 1977 ex. sess. and RCW 28B.15.401; repealing section 28B.15.500, chapter 223, Laws of 1969 ex. sess., section 10, chapter 279, Laws of 1971 ex. sess., section 5, chapter 322, Laws of 1977 ex. sess., section 1, chapter ... [Substitute House Bill No. 520], Laws of 1981 and RCW 28B.15.500; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 279, Laws of 1971 ex. sess. as last amended by section 14, chapter 151, Laws of 1979 and RCW 28B.15.031 are each amended to read as follows:

The term "operating fees" as used in this chapter shall include the fees, other than general tuition fees, charged all students registering at the state's colleges and universities but shall not include fees for short courses, marine station work, experimental station work, correspondence or extension courses, and individual instruction and student deposits or rentals, disciplinary and library fines, which colleges and universities shall have the right to