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NO. 64362-2-I

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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WASHINGTON STATE DEPARTMENT OF RETIREMENT SYSTEMS  
and KING COUNTY,

Appellants,

v.

WILLIAM F. SERRES  
and an Ancillary Class of Similarly Situated Persons,

Respondents.

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**REPLY BRIEF OF APPELLANT  
DEPARTMENT OF RETIREMENT SYSTEMS**

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2010 NOV 27 11:41 AM

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. STATEMENT OF THE CASE .....2

    A. Through the *Roberts-Duncan* Settlement Agreement, Class Members Released Their Wage Claims in Consideration of the Settlement Awards .....2

    B. The *Roberts-Duncan* Settlement Agreement Set Forth a Complex Algorithm for the Calculation of Settlement Awards .....4

III. ARGUMENT .....6

    A. The Error of Law Standard Governs This Court’s Review of the Department’s Final Order .....6

    B. The *Roberts-Duncan* Settlement Awards Were Neither Salary/Wages Nor “Compensation Earnable” .....8

        1. The Department *Agrees* That WAC 415-108-445 Requires It to Consider the Objective “Realities” of the Payment .....8

        2. The Department Did Consider the Objective “Realities” of the Payment .....10

        3. Mr. Serres’ Arguments to the Contrary Must Be Rejected .....12

            a. The Methodology for the Calculation of the Amount of the Awards Does Not Render Them Salary .....12

            b. IRS Decisions Are Not Relevant in Determining the “Nature” of the Awards for Retirement Purposes .....13

c.	The Department’s Conclusion Does Not Render WAC 415-108-457 a “Nullity” .....	14
C.	<i>If the Settlement Award Is “Compensation Earnable” for Mr. Serres, It Is “Compensation Earnable” for Every Other Member of the Roberts-Duncan Settlement Class and Retirement Contributions Are Due Thereon</i> .....	15
1.	In RCW 41.50.130, the Legislature Delegated to the Department Broad Authority to Correct Errors in Its Records .....	16
2.	The PERS Statute Could Not Be Clearer: Contributions Are Required on All “Compensation Earnable” .....	18
3.	Political Subdivisions Are Not Excused From the Obligation to Pay Past Due Contributions.....	20
D.	Mr. Serres May Not Seek Attorneys’ Fees Under the Common Fund Doctrine in Lieu of the Equal Access to Justice Act.....	21
1.	Under RAP 3.1, the Department Has Standing to Appeal the Award of Attorneys’ Fees in This Proceeding .....	22
2.	Under the Facts of This Case, This Court Should Review the Award of Attorneys’ Fees De Novo.....	23
3.	The EAJA Provides the Exclusive Source of Attorneys’ Fees on Judicial Review .....	24
IV.	CONCLUSION .....	25

## TABLE OF AUTHORITIES

### Cases

<i>Alexander v. IRS</i> , 72 F.3d 938 (1st Cir. 1995).....	13, 14
<i>Bowles v. Dep't of Ret. Sys.</i> , 121 Wn.2d 52, 847 P.2d 440 (1993).....	25
<i>City of Pasco v. Dep't of Ret. Sys.</i> , 110 Wn. App. 582, 42 P.3d 992 (2002).....	16, 17, 18
<i>Delagrave v. Empl. Sec. Dep't</i> , 127 Wn. App. 596, 111 P.3d 879 (2005).....	23, 24, 25
<i>Densley v. Dep't of Ret. Sys.</i> , 162 Wn.2d 210, 173 P.3d 885 (2007).....	20
<i>Evans &amp; Sons, Inc. v. City of Yakima</i> , 136 Wn. App. 471, 149 P.3d 691 (2006).....	1
<i>Franklin Cy. v. Sellers</i> , 97 Wn.2d 317, 646 P.2d 113 (1982).....	7, 12
<i>Grabicki v. Dep't of Ret. Sys.</i> , 81 Wn. App. 745, 916 P.2d 452 (1996).....	8
<i>Jackson v. Fenix Underground, Inc.</i> , 142 Wn. App. 141, 173 P.3d 977 (2007).....	1, 10, 15
<i>Leischner v. Alldridge</i> , 114 Wn.2d 753, 790 P.2d 1234 (1990).....	24
<i>Licciardi v. Kropp Forge Div. Employees' Ret. Plan</i> , 990 F.2d 979 (7th Cir. 1993) .....	14
<i>Pennsylvania Life Ins. Co. v. Empl. Sec. Dep't</i> , 97 Wn.2d 412, 645 P.2d 693 (1982).....	23, 24, 25

<i>Trotzer v. Vig</i> , 149 Wn. App. 594, 203 P.3d 1056 (2009).....	1
<i>Wachovia SBA Lending v. Kraft</i> , 138 Wn. App. 854, 158 P.3d 1271 (2007).....	24

**Statutes**

Former RCW 41.40.370 (1950).....	20
Former RCW 41.40.370(3) (1964).....	21
RCW 34.05.470 .....	7
RCW 4.84.340-.360 .....	23, 24, 25
RCW 41.04.445 .....	19
RCW 41.34.020(4)(c).....	19
RCW 41.34.040 .....	19
RCW 41.34.040(1).....	19
RCW 41.40 .....	18
RCW 41.40.010 .....	8
RCW 41.40.010(8).....	1, 8
RCW 41.40.020 .....	8
RCW 41.40.042 .....	19
RCW 41.40.048 .....	20
RCW 41.40.048(2).....	19
RCW 41.40.048(3).....	20, 21
RCW 41.40.330 .....	19

RCW 41.40.330(1).....	18
RCW 41.45.050(1).....	19
RCW 41.45.060 .....	19
RCW 41.45.061 .....	19
RCW 41.45.061(4).....	19
RCW 41.45.062(3).....	19
RCW 41.45.062(5).....	19
RCW 41.45.067 .....	19
RCW 41.45.067(3).....	19
RCW 41.45.070 .....	19
RCW 41.50.125 .....	16
RCW 41.50.130 .....	16, 17, 19
RCW 41.50.130(4).....	20
RCW 49.48.030 .....	3
RCW 49.52.050 .....	3

**Other Authorities**

<i>Black's Law Dictionary</i> 1364 (8th ed. 2004).....	9
<i>Black's Law Dictionary</i> 1610 (8th ed. 2004) .....	9
<i>Webster's II New Riverside Dictionary</i> 1032 (3d ed. 1994).....	9

**Rules**

RAP 3.1.....	22
--------------	----

**Regulations**

WAC 415-108-445..... 1, 8, 9, 10  
WAC 415-108-457..... 14

**Constitutional Provisions**

Const. art. VIII, § 5 ..... 9  
Const. art. VIII, § 7 ..... 9

## I. INTRODUCTION

Like all settlement agreements, the *Roberts-Duncan* Settlement Agreement was a contract—a contract between King County and certain of its employees (the Settlement Class Members).<sup>1</sup> As a contract, the agreement involved a quid pro quo.<sup>2</sup> In consideration for King County’s payment of the specified settlement awards, the employees agreed to release and did release their claims for back compensation. Conversely, in consideration for the employees’ release of claims, King County agreed to pay and did pay the settlement class members a monetary award. The central issue in this case is whether these contractual payments were “compensation earnable” within the meaning of the PERS statute.

Under RCW 41.40.010(8), “compensation earnable” is “salaries or wages earned . . . for personal services.” Whether a payment from an employer to an employee is “compensation earnable” depends on the “nature of” or “reason for” the payment. WAC 415-108-445. This rule makes clear that the “nature of” the payment is its objective character—neither the name given the payment nor any other subjective factor surrounding the payment affects its essential nature. If the payment is

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<sup>1</sup> See, e.g., *Jackson v. Fenix Underground, Inc.*, 142 Wn. App. 141, 146, 173 P.3d 977 (2007) (“[t]here is no dispute that settlement agreements are contracts”). See also *Evans & Sons, Inc. v. City of Yakima*, 136 Wn. App. 471, 477, 149 P.3d 691 (2006).

<sup>2</sup> See, e.g., *Trotzer v. Vig*, 149 Wn. App. 594, 605-06, 203 P.3d 1056 (2009) (settlement agreements are contracts, and one element of every contract is consideration).

made by an employer in consideration for a member's service to the employer, its "nature" may bring it within the definition of "compensation earnable." Conversely, if the payment is not made in consideration for a member's service, it cannot be "compensation earnable."

The Department's Presiding Officer concluded that the employees' receipt of funds in exchange for their release of claims *was not tantamount to* a receipt of funds in exchange for personal service. Accordingly, the fundamental nature of the settlement awards did not render them "compensation earnable." Mr. Serres' arguments to the contrary must be rejected.

## II. STATEMENT OF THE CASE

Certain additional facts are set forth herein in support of the Department's Reply.

### A. **Through the *Roberts-Duncan* Settlement Agreement, Class Members Released Their Wage Claims in Consideration of the Settlement Awards**

In March 1997, certain employees of King County filed a Complaint for Back Pay and Declaratory Relief against the County (the *Roberts* action). In the Complaint, the affected employees sought the following relief:

- (A) An order declaring their rights;
- (B) Back pay and prejudgment interest;
- (C) Attorneys' fees and costs;
- (D) Exemplary damages; and

- (E) Such other relief as the Court may deem just or equitable.

CAR 370.

In December 2002, before the *Roberts* action had been resolved, a second group of King County employees filed a Complaint and an Amended Complaint for Wages and for Declaratory and Injunctive Relief against the County (the *Duncan* action). CAR 372-87. In the Amended Complaint, the affected employees sought the following relief:

- 6.1 Declaratory relief holding that the defendant is violating the law by failing or refusing to reclassify the plaintiffs and similarly situated King County employees, promptly place them in the step for the new classification and compensate them at the pay rate of the new classification effective January 1, 1998;
- 6.2 An injunction against further violations and requiring compliance with the law;
- 6.3 Deferred and prospective compensation, in amounts to be determined, plus interest;
- 6.4 Double damages pursuant to RCW 49.52.050;
- 6.5 Attorney fees, litigation expenses, and costs pursuant to RCW 49.48.030 and the common fund doctrine; and
- 6.6 Such other relief as the Court may deem appropriate.

CAR 387.

In October 2003, class counsel for both the *Roberts* and *Duncan* actions entered a settlement agreement with counsel for King County. The Settlement Agreement was a contract, based on an exchange of

consideration between the parties. CAR 395.<sup>3</sup> On the one hand,

16. . . . Plaintiffs . . . completely release[d] and forever discharge[d] King County . . . from any and all . . . claims . . . asserted in the *Roberts* or *Duncan* litigation . . . .

CAR 397. Accordingly, the *Roberts* claims (A. through E. above) and the *Duncan* claims (6.1 through 6.6 above) were all released. CAR 55 (Final Order, FOF 9). In consideration of the Plaintiffs' release of claims, King County agreed to "pay a total of \$18.5 million which, together with the other relief provided in [the] Agreement, [was] in full and final settlement of [the] lawsuit." CAR 399. "The Settlement Agreement consistently recorded the County's disclaimer of any liability, and its denial that any of the claims forming the basis of the lawsuits were valid." CAR 55 (Final Order, FOF 9).<sup>4</sup>

**B. The *Roberts-Duncan* Settlement Agreement Set Forth a Complex Algorithm for the Calculation of Settlement Awards**

Of the settlement amount, \$6 million was allocated for monetary awards to the *Roberts* subclass, and \$8 million was allocated for awards to the *Duncan* subclass. CAR 55 (Final Order, FOF 8). For the *Duncan* subclass, the Settlement Agreement contained different algorithms to compute the awards for

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<sup>3</sup> The Settlement Agreement provided, "13. All terms in the Agreement are contractual and there are no further terms outside the Agreement except as referenced in the Agreement." CAR 395.

<sup>4</sup> The parties stipulated that this "settlement amount [was] a compromised figure which consider[ed] attorney fees and other factors." CAR 268.

- (i) current employees who, on or before September 1, 2003, had completed King County's "class comp" process, resulting in a higher pay rate;
- (ii) current employees who had not completed the "class comp" process on or before September 2003; and
- (iii) former employees who had terminated employment and *would never* complete the "class comp" process.

CAR 56 (FOFs 11-14). Each member of group (i) received a monetary award equivalent to the increased amount [s]he would actually have received had his/her new pay rate been in effect since January 1998.

CAR 56 (Final Order, FOF 12). (The *average* increase in the pay rate for employees in this group (i) was approximately 2.41%.)

However, new pay rates had not been computed for individuals in groups (ii) and (iii) by the time the Settlement Agreement was executed. Pursuant to the agreement, members of these groups received awards based on the *group (i) average*, i.e., they received amounts equivalent to 2.41% of their own pay rates for the relevant periods. CAR 56 (Final Order, FOFs 13-14). Put differently, the amount of their settlement awards was based partly on their own payroll data and partly on *other people's* data.

Mr. Serres was a member of group (iii): he retired in 2001 and never completed the class comp process through which his new pay rate would have been determined. CAR 59 (Final Order, FOF 30). As a member of group (iii), the gross amount of Mr. Serres' distribution check

was calculated by multiplying 2.41% [i.e., *the group (i) average*] times his documented earnings for the relevant period.<sup>5</sup> This was not the percent increase he would have received had he personally been “class-comped.”

### III. ARGUMENT

#### A. The Error of Law Standard Governs This Court’s Review of the Department’s Final Order

Although both the Department’s and Mr. Serres’ briefs state that the error of law standard governs this proceeding, Mr. Serres’ brief has introduced some unclarity about the applicable standard. Mr. Serres states, “DRS suggests that the major issue in this case is whether the decision of its Presiding Officer . . . is supported by substantial evidence.”<sup>6</sup> Brief of Respondent William F. Serres, at 17, *Serres v. Dep’t of Ret. Sys.*, No. 64362-2-I (Washington Court of Appeals, Division I, October 4, 2010) (Serres Br.). He then purportedly devotes section A.4. of his brief

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<sup>5</sup> Mr. Serres’ award was further reduced because he was in the cohort of 2001 retirees. Under the Settlement Agreement, it was uncertain that the settlement amounts would stretch to pay all class members. Therefore, retired members were paid in reverse chronological order (2002 retirees, 2001 retirees, etc.). Although the 2002 retirees received 100% of their calculated amounts, the 2001 retirees received only 76.68% of the amount otherwise provided by the algorithms. Those who retired in 2000 or before received nothing. CAR 59 (Final Order, FOFs 30, 32).

<sup>6</sup> The Department has reviewed its brief and is uncertain about how Mr. Serres reached this (erroneous) conclusion. Significantly, Mr. Serres did not challenge any of the Presiding Officer’s findings of fact under the substantial evidence standard. Nor did he claim in his Petition for Review that the final order was not based on “substantial evidence.” CP 288-99.

to a discussion of the “substantial evidence” standard.<sup>7</sup> Serres Br. at 28-32.

To the extent that this has created any confusion, the Department simply reiterates that the APA error of law standard governs this Court’s review. As Mr. Serres has indicated, the “raw” material facts are undisputed. Serres Br. at 21-22.

- (i) Members of the *Roberts* and *Duncan* subclasses entered a written settlement agreement with King County, settling all issues raised in both the *Roberts* and *Duncan* actions.
- (ii) Through this Settlement Agreement, Plaintiffs released all their claims in consideration for King County’s payment of \$18.5 million in money awards and fees.
- (iii) The Settlement Agreement contained a complex algorithm for the determination of the amount of the settlement awards. Through this algorithm, some class members received amounts equal to the “back compensation” they claimed they were due. *Some class members (including Mr. Serres) received amounts based on an average of the increase claimed to be due to other members.*

The Court must apply the law to these undisputed facts, giving appropriate deference to the Department’s interpretation of the law it administers.<sup>8</sup>

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<sup>7</sup> Although the heading for section A.4. refers to the “substantial evidence standard,” the discussion in the section seems to move back and forth between the “substantial evidence standard” and the “error of law standard.”

<sup>8</sup> Mr. Serres argues that the Department’s order is not entitled to deference because the Presiding Officer changed her decision on reconsideration. Serres Br. at 19. Mr. Serres has cited no case law to support this proposition. See RCW 34.05.470 (APA expressly contemplates motions for reconsideration).

Throughout the administrative proceeding, the Department staff steadfastly maintained that the settlement awards were *not* “compensation earnable.” After careful reconsideration, the Presiding Officer recognized the validity of the staff’s analysis and confirmed the staff’s analysis as the agency position.

If anything, the fact that this case has presented a difficult question of law to both the hearing officer and the superior court judge makes it nearly impossible to conclude that the Presiding Officer’s conclusion was “incorrect.” See *Franklin Cy. v.*

**B. The *Roberts-Duncan* Settlement Awards Were Neither Salary/Wages Nor “Compensation Earnable”**

Mr. Serres argues that the objective “reality” is that the *Roberts-Duncan* settlement awards were paid “for services rendered,” and are, therefore, “compensation earnable” within the meaning of both RCW 41.40.010 and WAC 415-108-445. Serres Br. at 24-25. He argues that the Presiding Officer erred by basing her analysis on the subjective intent underlying the payments rather than on their objective nature. Serres Br. at 25. Mr. Serres’ characterization of the Presiding Officer’s reasoning and conclusion is flawed.

**1. The Department *Agrees* That WAC 415-108-445 Requires It to Consider the Objective “Realities” of the Payment**

For purposes of this appeal, RCW 41.40.010(8) defines “compensation earnable” as “salary or wages earned . . . for personal services.” The statute does not define “salary” or “wages.” In the absence of a statutory definition, both the Department and Mr. Serres appropriately referenced the dictionary definition of the term. *Webster’s II New Riverside Dictionary* defines “salary” as remuneration for the services of

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*Sellers*, 97 Wn.2d 317, 325, 646 P.2d 113 (1982) (court must not find an error of law unless the agency’s interpretation was “incorrect”). In light of the difficulty of the question, this Court should defer to the Department’s technical expertise in implementing the retirement statute. *Grabicki v. Dep’t of Ret. Sys.*, 81 Wn. App. 745, 752, 916 P.2d 452 (1996) (courts have consistently deemed the Department to have expertise in the specialized field of retirement law). See also RCW 41.40.020 (DRS’ authority to interpret and implement the retirement statute).

an employee. Brief of Appellant Department of Retirement Systems, at 24, *Serres v. Dep't of Ret. Sys.*, No. 64362-2-I (Washington Court of Appeals, Division I, August 6, 2010) (DRS Br.) (citing *Webster's II New Riverside Dictionary* 1032 (3d ed. 1994)). *Black's Law Dictionary* defines "salary" as "compensation for services;" it similarly defines "wages" as "payment for labor or services." *Serres Br.* at 20 (citing *Black's Law Dictionary* 1364, 1610 (8th ed. 2004)). If a payment is *not* remuneration for services, it simply cannot be "salary" or "wage."

WAC 415-108-445 provides that (if a specific payment from an employer to an employee is not explicitly analyzed elsewhere in the Department's rules) the Department will look closely at the "nature of" and "reason for" the payment to determine whether it is salary and/or wage. *Nothing* in the language of the rule suggests that the "nature of" a payment or the "reason for" the payment are subjective criteria. To the contrary, to determine the "nature of" and "reason for" a payment is to determine (i) whether the payment is remuneration for services or (ii) whether it is a quid pro quo for something else.<sup>9</sup> This is an objective determination.

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<sup>9</sup> Presumably a payment from a public employer to an employee is a quid pro quo for something, because neither the State nor its political subdivisions may make a gift of public funds. Const. art. VIII, §§ 5,7.

The example in WAC 415-108-445 models this objective analysis. In the example, the Department scrutinizes the nature of “longevity pay” and concludes that it is not remuneration for an employee’s services; rather, it is a quid pro quo for the employee’s decision to remain in employment with an employer for a number of years. As such, it is not “compensation earnable.” WAC 415-108-445.

**2. The Department Did Consider the Objective “Realities” of the Payment**

Mr. Serres argues that the Presiding Officer considered King County’s subjective intent rather than the objective “reality” in concluding that the settlement awards were not a quid pro quo for personal services. Serres Br. at 25, 29-30. To the contrary, the Presiding Officer’s conclusion was based on the objective nature of the awards.

In essence, the nature of the awards was determined by the fact of the Settlement Agreement. A similar question regarding the “nature” of a settlement came before this Court in *Jackson v. Fenix Underground, Inc.*, 142 Wn. App. 141, 173 P.3d 977 (2007). Plaintiff Jackson had brought a lawsuit against Fenix Underground, alleging tortious conduct. Jackson and Fenix Underground entered a settlement agreement, in which

- (i) Fenix admitted liability for tortious conduct; agreed to the entry of a \$275,000 judgment against it; and assigned its rights against its insurer to Jackson; and

- (ii) Jackson agreed not to execute on the judgment against Fenix.

The Court entered the contemplated “agreed judgment.”

Subsequently, the insurer challenged the “nature” of the judgment, and this Court was required to determine whether the judgment was “founded on a written contract” or “founded on the underlying tortious conduct.”<sup>10</sup> The Court held that the judgment was founded on a written contract (i.e., the settlement agreement), not the underlying tortious conduct that had given rise to the agreement. The “nature” of the judgment had been created by the parties by and through their contract.

Similarly here, the “nature” of the settlement payments was created by the parties when they executed their contractual settlement agreement. In their agreement, (i) the plaintiffs agreed to release (and did release) *all* claims in the *Roberts* and *Duncan* lawsuits and (ii) the County agreed to pay (and did pay) a cash settlement to the class members. CAR 055 (Final Order, FOF 9). To analyze the “nature of” and “reason for” the cash settlement, the Department was required to make an objective determination regarding whether the awards were a quid pro quo for the employees’ services, or whether they were a quid pro quo for something else. It simply cannot be said that the Presiding Officer was *incorrect* when she determined that the payments were consideration for the

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<sup>10</sup> The nature of the judgment was relevant to the applicable interest rate.

plaintiffs' release of claims, not a quid pro quo for their services. CAR 64 (Final Order, COL 9) (the reason for the payments was to settle the lawsuit).<sup>11</sup> See *Franklin Cy. v. Sellers*, 97 Wn.2d 317, 325, 646 P.2d 113 (1982). Accordingly, the Department did not err when it concluded that the awards were not "compensation earnable."

**3. Mr. Serres' Arguments to the Contrary Must Be Rejected**

**a. The Methodology for the Calculation of the Amount of the Awards Does Not Render Them Salary**

Mr. Serres relies heavily on the fact that the settlement awards were calculated with reference to class members' payroll records. He argues that the fact that the amount of an individual's settlement award varied with the amount of his past service and past rate of pay implies that the settlement awards were necessarily remuneration for service. Serres Br. at 27. This inference is a non-sequitur.<sup>12</sup>

"Compensation earnable" is a payment from an employer to an employee "*for personal service.*" The Presiding Officer did not deem the

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<sup>11</sup> The fact that both parties intended the Settlement Agreement to terminate the lawsuit does not deprive the settlement awards of their objective nature as contractual consideration. Nor does the language used in the Final Order ("the County made these payments . . . to settle [employees'] claims short of full litigation") imply that the Presiding Officer was referring to a "subjective" reason for the payments (as opposed to an objective reason). See CAR 64 (Final Order, COL 9).

<sup>12</sup> Regardless how the settlement awards were calculated, the parties stipulated that the settlement amounts were "compromised figure[s] which consider[ed] attorney fees and other factors." CAR 268.

methodology through which the amount of the awards was calculated to be determinative of the *reason* for which they were paid. That is, the fact that payroll records were used in the calculation of the awards simply did not compel a conclusion that the amounts were remuneration *for personal service*. CAR 64 (Final Order, COL 8). They were not.

Moreover, although the settlement awards of some class members were based entirely on their own payroll data, the settlement awards of other members were based partly on their own payroll data and partly on percent increases earned by *other people*. CAR 56 (Final Order, FOFs 13-14). In particular, Mr. Serres (the sole petitioner on judicial review and the sole representative of the ancillary class) received an award based on *other people's* calculated increases.

**b. IRS Decisions Are Not Relevant in Determining the “Nature” of the Awards for Retirement Purposes**

Citing *Alexander v. IRS*, 72 F.3d 938 (1st Cir. 1995), Mr. Serres argues that the classification of amounts received in settlement of litigation must be determined by the nature and basis of the action settled. Serres Br. at 26-27. Mr. Serres has read the IRS line of cases too broadly.

In *Alexander*, the ultimate legal issue was whether particular settlement awards were taxable. To resolve that question, the court concluded that, *for federal tax purposes*, the settlement awards should be

deemed to have the same nature as the compromised claim. Thus, if a wage claim was compromised, the settlement awards should be taxed as wages.

Nothing in *Alexander* suggests that if a settlement award is *treated* as wages under federal law for federal tax purposes, then it must also be treated as wages under state law for all other purposes. To the contrary, *Licciardi v. Kropp Forge Division Employees' Retirement Plan*, 990 F.2d 979 (7th Cir. 1993), makes clear that even though a settlement award is treated as wages for federal tax purposes, it does not thereby *become* “wages” for all other purposes. Rather the award must be analyzed under the rules, regulations, and provisions that govern that other purpose.

Here, as in *Licciardi*, the fact that the *Roberts-Duncan* settlement awards were deemed to be “wages” for federal tax purposes does not mean that they must be characterized as wages for retirement purposes. The nature of the payments *for retirement purposes* can only be determined by the State laws and regulations governing the retirement systems.

**c. The Department's Conclusion Does Not Render WAC 415-108-457 a “Nullity”**

Finally, Mr. Serres argues that the Department's interpretation would render WAC 415-108-457 a “nullity.” He reasons that the settlement of a claim for back wages will *never* qualify as “salary” under

the rule because the settling employer will always deny liability, i.e., will always deny that it actually owes additional salary.<sup>13</sup> Serres' Br. at 30.

Even if Mr. Serres were correct that most wage claims will be settled with a denial of liability, this does not render the rule a "nullity." It is nonetheless possible that an occasional employer and employee will settle a wage claim with the employer's acknowledging that it owes some or all of the amount claimed. In such case, the settlement amount would likely be "compensation earnable" within the meaning of the rule.

However, nothing in the statute even remotely suggests that the legislature intended the settlement of all wage claims to result in additional "compensation earnable" for settling employees.<sup>14</sup> Through the rule, the Department properly discriminates between settlement awards that are and are not "compensation earnable."

**C. If the Settlement Award Is "Compensation Earnable" for Mr. Serres, It Is "Compensation Earnable" for Every Other Member of the *Roberts-Duncan* Settlement Class and Retirement Contributions Are Due Thereon**

Had the Department determined that the *Roberts-Duncan* settlement awards were "compensation earnable" at the outset, retirement

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<sup>13</sup> Mr. Serres has offered no evidence that, in settling a claim for back wages, an employer will *always* deny liability for back salary. In fact, settling parties do not "always deny liability." *See, e.g., Fenix Underground*, 142 Wn. App. at 143 (defendant acknowledged liability in settlement agreement).

<sup>14</sup> In various places, Mr. Serres argues that the Department's interpretation of the statute would frustrate the legislature's intent. *See, e.g., Serres Brief* at 30. However, nothing in the record contains any indication of the legislature's intent vis-à-vis the characterization of settlement awards for retirement purposes.

contributions would have been collected immediately, i.e., in 2005 at the time the awards were paid. Employee and employer contributions would have been collected from and on behalf of all 2,000 settlement class members, *both* the 100 and the 1,900. If this Court decides that the Department's original determination was in error (not conceded), then amounts that were not collected then must be collected now. Certainly the legislature did not intend the Department (and the PERS trust funds) to forego these contributions simply because the case has been tied up in litigation since the Department's original determination was made. *See* RCW 41.50.125 (including Findings—1994 c 177) (Appendix A). The PERS statutes requiring regular contributions, coupled with RCW 41.50.130, provide the necessary authority for this correction.

**1. In RCW 41.50.130, the Legislature Delegated to the Department Broad Authority to Correct Errors in Its Records**

Citing *City of Pasco v. Department of Retirement Systems*, 110 Wn. App. 582, 42 P.3d 992 (2002), the one Washington appellate case interpreting RCW 41.50.130, Mr. Serres argues that the Washington courts have limited the broad authority granted in RCW 41.50.130 to the authority to correct *only* those errors “that cause members or beneficiaries to receive more or fewer benefits than those to which they are entitled.” Serres Br. at 39 (citing *City of Pasco*, 110 Wn. App at 589). Mr. Serres

has read too much into the cited language.

In *City of Pasco*, the issue before the court was the Department's authority to correct an error in its plan membership records more than 20 years after the plan membership had arguably been established. Although the change in plan membership would have increased the member's benefits, the court's decision did not *rest* on whether the correction would increase or decrease the member's benefits.

Accordingly, nothing in the opinion suggests that the court intended to narrow the scope of RCW 41.50.130 when it stated that "RCW 41.50.130 . . . unambiguously gives the Department . . . authority to correct errors . . . *that cause members . . . to receive more or fewer benefits than those to which they are entitled . . .*" *City of Pasco*, 110 Wn. App at 589-90. To the contrary, the italicized language simply indicates that the Department was authorized to correct its records under the particular facts at bar.

The remainder of the language in the case affirms the Department's broad authority. The court said, "[RCW 41.50.130] does *not* limit correctable errors to reporting [errors] or other specific types of errors." *City of Pasco*, 110 Wn. App. at 589 (emphasis added). "There is *no* qualifying or limiting language before the word 'errors' in the statute." *Id.* (emphasis added). Pursuant to RCW 41.50.130 and *City of Pasco*, not

only would the Department be authorized to correct its records (if Mr. Serres' settlement award were "compensation earnable"), it would be obligated to do so. *See City of Pasco*, 110 Wn. App. at 596-97. *See also* DRS Br. at 37-38.

**2. The PERS Statute Could Not Be Clearer: Contributions Are Required on All "Compensation Earnable"**

Notwithstanding express statutory language that requires retirement contributions on *all* "compensation earnable," Mr. Serres argues that if retirement contributions are not made in the normal course of business, then they need not be made at all, absent additional statutory authority empowering the Department to collect them retroactively. Serres Br. at 40-41. This argument is also flawed.

For each of the PERS plans, the PERS statute (RCW 41.40) requires *both* member and employer contributions to the plan. In each case, the required contributions are a percentage of the member's "compensation earnable."

With regard to *employee* (or member) contributions, the statutory provisions for each of the three plans require contributions as follows:

- (i) "Each employee who is a member of [PERS Plan 1] *shall* contribute six percent of his or her total compensation earnable." RCW 41.40.330(1) (emphasis added).
- (ii) "The *required* contribution rate for members of [PERS Plan 2] shall be set at the same rate as the employer combined

plan 2 and plan 3 rate.” RCW 41.45.061(4) (emphasis added). Plan 2 “[m]embers’ contributions *required by* . . . RCW 41.45.061 *shall be* deducted from the members’ compensation [earnable] each payroll period.” RCW 41.45.067(3) (emphasis added).

- (iii) “A [PERS Plan 3] member *shall* contribute from his or her compensation [earnable] according to one of the following rate structures in addition to the *mandatory* minimum five percent.” RCW 41.34.040(1) (emphasis added). *See also* RCW 41.34.020(4)(c).

PERS members are deemed to agree to the foregoing employee contributions as a condition of employment. RCW 41.40.042.<sup>15</sup>

Similarly, PERS *employers* are required to make employer contributions on the total “compensation earnable” of their employees.

Indeed,

[e]mployers of members of [PERS] . . . *shall* make contributions to the[] system[] based on the rates established in RCW 41.45.060 and 41.45.070 . . . .

[T]he amount to be collected as the employer’s contribution *shall* be computed by applying the applicable rates . . . to the total compensation earnable of employer’s members . . . .

RCW 41.45.050(1), RCW 41.40.048(2) respectively (emphasis added).

When not collected in the normal course of business, these contributions must nonetheless be collected. Indeed, RCW 41.50.130 provides,

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<sup>15</sup> *See also* RCW 41.45.067; RCW 41.45.062(3) and (5) (indicating that the Department must “charge” and “collect” employee contributions); RCW 41.04.445 (indicating that employers *shall* pick up those member contributions that are *required by* RCW 41.40.330, RCW 41.45.061, RCW 41.45.067, and RCW 41.34.040).

[O]bligations 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.

RCW 41.50.130(4). Not only does the Department have the authority to collect past due contributions, it has authority to charge interest thereon.<sup>16</sup>

### **3. Political Subdivisions Are Not Excused From the Obligation to Pay Past Due Contributions**

Mr. Serres cites RCW 41.40.048(3) for the proposition that, although the Department may charge *some* employers for past due contributions, it may not charge political subdivisions.<sup>17</sup> Serres Br. at 40. Contrary to Mr. Serres' suggestion, RCW 41.40.048(3) does not negate the general statutory obligation of *all* employers to pay overdue retirement contributions.

The obligation of PERS employers to pay contributions on “compensation earnable” has existed in statute since at least 1949. Former RCW 41.40.370 (1950), *recodified as* RCW 41.40.048 (Laws of 1991, ch. 35, § 10). In 1963, as part of a bill “providing *billing procedure* as to

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<sup>16</sup> Mr. Serres' brief has introduced some unclarity regarding the issue before this Court. Serres Br. at 41. Contrary to the impression created, the procedural aspects of the collection of contributions from members are *not* before this Court. If this Court holds that retirement contributions are due, the Department will collect these amounts pursuant to the retirement statute.

<sup>17</sup> Mr. Serres did not make this argument in the proceedings below. Further, Mr. Serres' citation to *Densley v. Department of Retirement Systems*, 162 Wn.2d 210, 217, 173 P.3d 885 (2007), is misleading. Serres Br. at 40. The pinpoint cite states *only* that King County is a political subdivision. The *Densley* case raised no issue regarding whether political subdivisions may be required to pay past due retirement contributions.

employer's state employees' retirement system contributions," the legislature added subsection (3).<sup>18</sup> Pursuant to this amendment, former RCW 41.40.370(3) (1964) provided additional billing procedures applicable to state agency PERS employers (*as opposed to political subdivision employers*). Subsequently recodified as RCW 41.40.048(3), this language makes clear that *if* employer contributions are overdue from a *state agency*, then the payments may be made out of the employer's current biennial budget even though the obligation arose in a prior biennium. The language simply does not stand for the proposition that political subdivisions cannot be charged for overdue retirement contributions.

In summary, if the *Roberts-Duncan* settlement award was "compensation earnable" for Mr. Serres (not conceded), then the settlement awards are "compensation earnable" for the entire settlement class, and retirement contributions are absolutely due thereon.

**D. Mr. Serres May Not Seek Attorneys' Fees Under the Common Fund Doctrine in Lieu of the Equal Access to Justice Act**

If this Court concludes that the *Roberts-Duncan* settlement awards are not "compensation earnable," no attorneys' fees will be due to

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<sup>18</sup> Attached are copies of the House and Senate Journals from the 38th legislative session, showing the description of House Bill 100 in the legislature. Appendix B.

Mr. Serres under *any* theory. Only if this Court concludes that the awards are “compensation earnable,” will it reach the issue of fees.

**1. Under RAP 3.1, the Department Has Standing to Appeal the Award of Attorneys’ Fees in This Proceeding**

Mr. Serres argues that the Department has no standing as an “aggrieved party” to seek review of the superior court’s award of attorneys’ fees under RAP 3.1. Serres Br. at 42. To the contrary, the Department is an “aggrieved party” within the meaning of the rule.

The Department acknowledges that, pursuant to the superior court’s award of fees, pension funds would pass first to the ancillary class and only then from the ancillary class to their attorney. Put differently, under the fiction created by the theory of a common fund recovery, these attorneys’ fees would be paid “by class members” not directly by the pension trust funds.

However, regardless whether or not the Department has such a “direct” pecuniary interest in the reversal of the superior court’s decision, it certainly has a pecuniary interest. As Mr. Serres himself acknowledges, a “limit on fees [in cases in which an ancillary class has been certified in a judicial review proceeding] would discourage [such] actions.” Serres Br. at 46. The Department certainly has a pecuniary interest in limiting its defense costs in cases such as this, in which legal issues implicating many

members can be fully and fairly resolved through a straight-forward judicial review of the issue as it applies to a single member.<sup>19</sup>

Unless an agency has standing to raise this issue under facts similar to those existing in this case, the Department can envision no opportunity for state agencies to bring this question to the courts for resolution.<sup>20</sup>

**2. Under the Facts of This Case, This Court Should Review the Award of Attorneys' Fees De Novo**

Mr. Serres argues that this Court should review the trial court's award of attorneys' fees under an abuse of discretion standard. Although in many cases attorneys' fees are properly reviewed under this standard, this case is different.

In those cases which apply the abuse of discretion standard, the source of the authority for the award of fees has been established, and the court must simply determine whether the trial court abused its discretion within the acknowledged authority. In contrast, the issue before this Court is the source of the authority itself, i.e., whether the statutory authority in the Equal Access to Justice Act (EAJA, RCW 4.84.340-.360) preempts the

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<sup>19</sup> See CP 1066-67 (description of additional work required to defend this class action).

<sup>20</sup> In *Pennsylvania Life Insurance Co. v. Employment Security Department*, 97 Wn.2d 412, 645 P.2d 693 (1982), common fund fees were apparently awarded against an agency and the agency appealed. See also *Delagrave v. Empl. Sec. Dep't*, 127 Wn. App. 596, 111 P.3d 879 (2005). Neither case was dismissed on the grounds that the agency lacked standing.

award of fees under an alternate “recognized ground in equity.” This is a question of law reviewable de novo. *Wachovia SBA Lending v. Kraft*, 138 Wn. App. 854, 858-59, 158 P.3d 1271 (2007).

**3. The EAJA Provides the Exclusive Source of Attorneys’ Fees on Judicial Review**

To the Department’s knowledge, no Washington court has specifically analyzed the interrelationship between the EAJA and common fund attorneys’ fees. Although Mr. Serres summarily asserts that in “passing the EAJA . . . the legislature did not comprehensively regulate the award of fees in administrative review procedures,” his brief does not squarely address the legal precedent to the contrary, holding that availability of attorney fees under an applicable statute *does* preempt the award of fees on equitable grounds. Serres Br. at 45.

The three Washington cases cited by the Department all analyze the availability of common fund fees in the face of a statute that governs the award of attorneys’ fees in the proceeding.<sup>21</sup> All conclude that

[i]f the merits of the litigation fall within a statutory scheme which prohibits the award of attorney fees, or allows such an award under narrow circumstances, a party cannot enlarge those circumstances by reference to the common fund doctrine or other equitable powers of the trial court.

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<sup>21</sup> *Pennsylvania Life*, 97 Wn.2d at 412; *Leischner v. Alldridge*, 114 Wn.2d 753, 790 P.2d 1234 (1990); and *Delagrave*, 127 Wn. App. at 596.

*Delagrave*, 127 Wn. App. at 606. Specifically, with regard to administrative review,

[u]nless a party can show that he is entitled to attorney fees under the law which gives the right of review . . . , there is no authority in the court to award such fees pursuant to equitable or other doctrines.

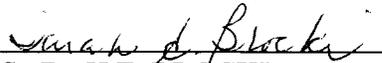
*Pennsylvania Life*, 97 Wn.2d at 417. Although Mr. Serres has attempted to distinguish these cases on their facts, the noted factual differences do not change the fundamental legal analysis.<sup>22</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Department respectfully requests this Court to affirm its Final Order.

RESPECTFULLY SUBMITTED this 3rd day of November, 2010.

ROBERT M. MCKENNA  
Attorney General

  
SARAH E. BLOCKI  
WSBA No. 25273  
Assistant Attorney General  
Attorneys for Department of  
Retirement Systems

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<sup>22</sup> Mr. Serres' reliance on *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52, 847 P.2d 440 (1993), is also misplaced. Serres Br. at 45. *Bowles* began as an original class action in superior court. There was never an administrative review or a judicial review conducted under the Administrative Procedure Act. Further, the EAJA has not been enacted at the time *Bowles* was decided. The *Bowles* court simply made clear that class action law regarding original class actions applied to original class actions involving retirement benefits.

RCW 41.50.125: Interest on contributions — Department may charge.

RCW 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.]

Notes:

**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.]

HOUSE JOURNAL  
OF THE  
Thirty-Eighth Legislature  
OF THE  
STATE OF WASHINGTON

AT  
Olympia, the State Capital

Convened January 14, 1963

Adjourned Sine Die March 14, 1963



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WILLIAM S. DAY, *Speaker*  
MISS ELLA WINTLER, *Speaker Pro Tempore*  
S. R. HOLCOMB, *Chief Clerk*  
SIDNEY R. SNYDER, *Assistant Chief Clerk*  
LUCILE ROHRBECK, *Assistant to Chief Clerk*  
REGINA HOOVER, *Minute Clerk*

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STATE PRINTING PLANT  OLYMPIA, WASHINGTON

APPENDIX B

## TENTH DAY

## MORNING SESSION

HOUSE OF REPRESENTATIVES,  
OLYMPIA, WASH., Wednesday, January 23, 1963.

The Speaker called the House to order at 11:00 a. m.  
The Clerk called the roll. Representative Smith was absent.  
The flag was escorted to the rostrum by a Sergeant at Arms color guard.  
Prayer was offered by the Reverend Arthur Anderson of the Gloria Dei Lutheran Church of Olympia.  
The reading clerk proceeded to read the journal of the proceedings of the previous day. On motion of Mr. Gorton further reading was dispensed with and the journal was ordered to stand approved.

## MESSAGE FROM THE SENATE

Senate Chamber,  
Olympia, Wash., January 22, 1963.

## MR. SPEAKER:

The Senate has passed: Senate Joint Memorial No. 4, and the same is herewith transmitted.  
WARD BOWDEN, Secretary.

## INTRODUCTION AND FIRST READING OF BILLS, MEMORIALS, AND RESOLUTIONS

The following were introduced, read first time by title, and acted upon as indicated:

**House Bill No. 93**, by Representatives Ahlquist, Jolly, and McDougall:

An Act relating to irrigation districts; providing for compensation for directors; and amending section 39, page 692, Laws of 1889-1890 as last amended by section 1, chapter 189, Laws of 1951, and RCW 87.03.460.

Ordered printed and referred to Committee on Water Resources and Pollution Control.

**House Bill No. 94**, by Representatives Beierlein, Wang, and Bozarth (by Highway Interim Committee request):

An Act relating to the training of motor vehicle operators; prescribing certain penalty assessments for the financing thereof; creating a driver education account in the general fund of the state treasury; amending sections 46.20.030, 46.20.070, and 46.68.040, chapter 12, Laws of 1961 and RCW 46.20.030, 46.20.070, and 46.68.040; and amending section 46.20.110, chapter 12, Laws of 1961 as amended by section 1, chapter 214, Laws of 1961 and RCW 46.20.110.

Ordered printed and referred to Committee on Highways.

**House Bill No. 95**, by Representatives Beierlein, Evans, and Leland (by Highway Interim Committee request):

An Act relating to motor vehicle operators; adding new sections to chapter 46.20 RCW; and repealing section 46.20.280, chapter 12, Laws of 1961 and RCW 46.20.290.

Ordered printed and referred to Committee on Highways.

**House Bill No. 96**, by Representatives Canfield, Henry, and Clark:

An Act relating to public highways; establishing secondary state highway 3T; and adding a new section to chapter 13, Laws of 1961 and to chapter 47.20 RCW.

Ordered printed and referred to Committee on Highways.

**House Bill No. 97**, by Representatives McCaffree, Andersen (James A.), and Brouillet:

An Act relating to real estate sales taxes; and amending section 7, chapter 11, Laws of 1951 first extraordinary session as last amended by section 1, chapter 132, Laws of 1955 and RCW 28.45.010.

Ordered printed and referred to Committee on Ways and Means.

**House Bill No. 98**, by Representatives Kirk, Bergh, and Ackley:

An Act relating to filing of plats and the payment, assessment and collection of taxes upon the property platted; and amending section 2, chapter 129, Laws of 1893 as last amended by section 1, chapter 200, Laws of 1909 and RCW 58.08.040; and declaring an emergency.

Ordered printed and referred to Committee on Ways and Means.

**House Bill No. 99**, by Representatives Uhlman, Garrett, and Evans:

An Act relating to port districts; providing that port district commissioners in countywide districts shall be elected at large; amending section 3, chapter 17, Laws of 1959 and RCW 53.12.010; amending section 4, chapter 17, Laws of 1959 as amended by section 1, chapter 175, Laws of 1959, and RCW 53.12.020; amending section 9, chapter 175, Laws of 1959 and RCW 53.12.035; amending section 7, chapter 17, Laws of 1959 as amended by section 2, chapter 175, Laws of 1959, and RCW 53.12.040; amending section 10, chapter 175, Laws of 1959 and RCW 53.12.055; amending section 10, chapter 17, Laws of 1959 as amended by section 3, chapter 175, Laws of 1959, and RCW 53.12.120; amending section 11, chapter 17, Laws of 1959 and RCW 53.12.130; amending section 2, chapter 113, Laws of 1925, extraordinary session, as amended by section 2, chapter 45, Laws of 1941 and RCW 53.12.220; and repealing section 3, chapter 68, Laws of 1951 and RCW 53.12.173.

Ordered printed and referred to Committee on Local Government.

**House Bill No. 100**, by Representatives King, Conner, and Canfield (by Legislative Budget Committee request):

An Act relating to payment of employer's contribution to the state employees' retirement system; and amending section 38, chapter 274, Laws of 1947 as last amended by section 12, chapter 291, Laws of 1961, and RCW 41.40.370.

Ordered printed and referred to Committee on Ways and Means.

## FIRST READING OF SENATE JOINT MEMORIAL

The following was read first time by title and acted upon as indicated:

**Senate Joint Memorial No. 4**, by Senators Rasmussen, Lennart, McCutcheon, Riley, Hallauer, Kupka, Peterson, Petrich, DeGarmo, Keefe, Donohue, Cooney, Stender, Talley, Knoblauch, Durkan, Dore, Bailey, Cowen, McCormack, Morgan, Sandison, Charette, Herrmann, Freise, Woodall, England, Rickdall, Moriarty, Jr., Chytil, Foster, and Greive:

Memorializing Congress to increase income tax personal exemption from six hundred dollars to one thousand dollars.

Referred to Committee on Ways and Means.

Mr. Schaefer:

"Mr. Leland, don't you feel that we are kind of misrepresenting this bill to the people if we don't put the appropriation on it that it needs? Don't you think that should be done at the present time and the money expended out of the appropriation now? If you put through the legislation now and then two years from now ask for the money, I think the legislature in the future will be lead to believe that we didn't feel this legislation was of sufficient importance to warrant any money this session. Don't you think it ought to be one big package?"

Mr. Leland:

"I think I have also answered this in that we hope to pass this bill as it is without additional appropriation as a policy desirable for this state. Since it is a continuing program that wouldn't be completed in one biennium, I think it is more or less splitting hairs to talk about appropriations other than the outline I have already given about going before the Appropriations Committee and seeking a specific line item. As a matter of fact, if we pass this bill and embark upon this program, ten years represents a crash program and it will be before the Appropriations Committee from session to session. They may decide to slow it down. For all intents and purposes, this program would have to come before this body every two years anyway, so I don't think there is anything in the way of misrepresentation. Quite the contrary. This is one program that would be reviewed constantly every two years by the legislature."

#### YIELDING TO QUESTION

Mr. Klein:

"Mr. Speaker, I wonder if Dr. Adams would yield to a question?"

The Speaker:

"Will you yield to question, Dr. Adams?"

Mr. Adams:

"I will try."

Mr. Klein:

"Dr. Adams, it seems to me that in House Bill 79 we are trying to provide a reservoir of information of geological data and so forth that is very much related to the preceding bill that we considered, House Bill 12 on second reading. I note in House Bill 12 that a provision for sending reports to the state office where they can serve the very purpose you are trying to achieve in House Bill 79 is being deleted. Isn't this inconsistent? Wouldn't it be well now at this time in House Bill 79 to beef up what has been the law for so many years but apparently has not been carried out to provide this information to our state geologist here?"

Mr. Adams:

"Mr. Speaker, I would like to defer to my colleague, Mr. Johnston, who is much more familiar with the previous bill you mentioned."

The Speaker:

"Before you answer, Mr. Johnston, I would like to remind the House that we have an amendment on the desk that we are supposed to be discussing, not the bill. However, you may answer the question, Mr. Johnston."

Mr. Johnston:

"Mr. Speaker, ladies and gentlemen of the House, I was wondering how far we had wandered off the amendment. I wasn't sure we knew what we were talking about. However, Mr. Klein has raised a point that is entitled to be explained, because in House Bill 12 we are merely eliminating a provision in our location laws that required us to dig what they call a discovery hole on the surface and substitute for that geophysical and geochemical discovery processes. Now the antiquated hole-digging philosophy of locating a claim, of course, has passed away a long time ago. It is looked down on and the government doesn't recognize it any more. Now, Mr. Klein was concerned about the question of making these geophysical reports to the county and to the state departments, which is a good question. When we considered this matter we were surprised to find that those reports were not being filed with the

state. The departments said they hadn't received them and didn't want them and no one had asked for them. I said I couldn't understand that and the answer they gave was to the effect that one who is conducting a geophysical and geological survey on his own account looking for a discovery or for a geological location isn't likely to give that information to the public. They don't give it out because it costs them money, and they consider it confidential. They just file stereotyped reports that have no meaning at all. Now, this bill we are talking about is an entirely different matter, a well planned geological and topographical survey of the entire mineral area and watersheds of the state of Washington and has to do with attracting new industry here and these reports will be a vital part of the assets of this state to bring new industry here."

The Speaker declared the question before the House to be adoption of the committee amendment on page 2, section 4.

The motion was carried and the amendment was adopted.

#### MOTION

Mr. Witherbee moved that House Bill No. 79 as amended be rereferred to the Committee on Ways and Means.

Debate ensued, Representatives Witherbee, Canfield, King, Flanagan, and O'Brien speaking in favor of the motion, and Representatives Leland and Adams speaking in opposition to the motion.

Mr. Moos demanded the previous question, and the demand was sustained. The motion was carried, and the bill was rereferred to the Committee on Ways and Means.

#### SPEAKER'S PRIVILEGE

The Speaker observed in the south gallery sixty-six students, teachers, and chaperones from the Highland Junior High School in Bellevue, including Mike Jerry, grandson of the Chief Clerk of the House, Mr. Holcomb, and asked them to stand and be recognized.

House Bill No. 93, by Representatives Ahlquist, Jolly, and McDougall:

Increasing per diem for directors of irrigation districts from ten dollars to twenty-five dollars.

The bill was read the second time by sections and passed to Committee on Rules and Order for third reading.

House Bill No. 100, by Representatives King, Conner, and Canfield (by Legislative Budget Committee request):

Providing billing procedure as to employer's state employees' retirement system contributions.

The bill was read the second time by sections and passed to Committee on Rules and Order for third reading.

House Bill No. 105, by Representatives Leland, Garrett, and Taylor:

Generalizing municipal purchase by conditional rules.

The bill was read the second time by sections.

Mr. Leland moved the adoption of the following amendment:

On page 1, line 7, after "town" and before "or" insert "or metropolitan park district"

#### YIELDING TO QUESTION

Mr. Litchman:

"Mr. Speaker, would Mr. Hawley yield to question?"

The Speaker:

"Will you yield to question, Mr. Hawley?"

in an evening, it is within the discretion of the irrigation district directors to set their per diem down to \$8.00 or \$10.00 a meeting."

Further debate ensued, Representative Canfield speaking in favor of passage of the bill.

The Clerk called the roll on the final passage of House Bill No. 93, and the bill passed the House by the following vote: Yeas, 87; nays, 7; absent or not voting, 5.

Those voting yea were: Representatives Ackley, Adams, Ahlquist, Anderson (James A.), Anderson (Eric O.), Backstrom, Beck, Berentson, Bergh, Bigley, Bozarth, Brachtenbach, Braun, Brouillet, Burtch, Canfield, Chatalas, Clark, Comfort, Copeland, DeJarnatt, Earley, Eberle, Eldridge, Evans, Flanagan, Folsom, Gallagher, Garrett, Gleason, Goldsworthy, Gorton, Grant, Harris, Haussler, Hawley, Henry, Herr, Hood, Huntley, Hurley, Johnston, Jolly, Juelling, King, Kink, Kirk, Klein, Leland, Lind, Litchman, Lybecker, Lynch, Mast, May, McCaffree, McCormick, McDougall, McElroy, Miles, Moon, Moos, Morphis, Morrissey, Mundy, Newschwander, O'Brien, O'Connell, Odell, O'Donnell, Olsen, Perry, Pritchard, Reese, Rosenberg, Savage, Sawyer, Schaefer, Siler, Swayze, Taylor, Uhlman, Wedekind, Wintler, Witherbee, Young, Mr. Speaker—87.

Those voting nay were: Representatives Beierlein, Dootson, Hadley, Lewis, McFadden, Metcalf, Rogers—7.

Those absent or not voting were: Representatives Campbell, Conner, Mahaffey, Smith, Wang—5.

House Bill No. 93, having received the constitutional majority, was declared passed.

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

**House Bill No. 100**, by Representatives King, Conner, and Canfield (by Legislative Budget Committee request):

Providing billing procedure as to employer's state employees' retirement system contributions.

On motion of Mr. Gorton, the rules were suspended, the second reading considered the third, and House Bill No. 100 was placed on final passage.

Debate ensued, Representative Canfield speaking in favor of passage of the bill.

The Clerk called the roll on the final passage of House Bill No. 100, and the bill passed the House by the following vote: Yeas, 92; nays, 0; absent or not voting, 7.

Those voting yea were: Representatives Ackley, Adams, Ahlquist, Anderson (James A.), Anderson (Eric O.), Backstrom, Beck, Beierlein, Berentson, Bergh, Bigley, Bozarth, Brachtenbach, Braun, Brouillet, Burtch, Canfield, Chatalas, Comfort, Copeland, DeJarnatt, Dootson, Earley, Eberle, Eldridge, Evans, Flanagan, Folsom, Gallagher, Garrett, Gleason, Goldsworthy, Gorton, Grant, Hadley, Harris, Haussler, Hawley, Henry, Hood, Huntley, Hurley, Johnston, Jolly, Juelling, King, Kink, Kirk, Klein, Leland, Lewis, Lind, Litchman, Lybecker, Lynch, Mast, May, McCaffree, McCormick, McDougall, McElroy, McFadden, Metcalf, Miles, Moon, Moos, Morphis, Morrissey, Mundy, Newschwander, O'Brien, O'Connell, Odell, O'Donnell, Olsen, Perry, Pritchard, Reese, Rogers, Rosenberg, Savage, Sawyer, Schaefer, Siler, Swayze, Taylor, Uhlman, Wedekind, Wintler, Witherbee, Young, Mr. Speaker—92.

Those absent or not voting were: Representatives Campbell, Clark, Conner, Herr, Mahaffey, Smith, Wang—7.

House Bill No. 100, having received the constitutional majority, was declared passed.

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

#### SPEAKER'S PRIVILEGE

The Speaker observed in the south gallery eighty junior and senior students from the Ferndale High School, accompanied by Mr. Randall, Mr. Gates, Mr. Stone, and Mrs. Mandich, and asked them to stand and be recognized.

**Engrossed House Bill No. 105**, by Representatives Leland, Garrett, and Taylor:

Generalizing municipal purchase by conditional rules.

On motion of Mr. Gorton, the rules were suspended, the second reading considered the third, and Engrossed House Bill No. 105 was placed on final passage.

Debate ensued, Representative Leland speaking in favor of passage of the bill.

The Clerk called the roll on the final passage of Engrossed House Bill No. 105, and the bill passed the House by the following vote: Yeas, 93; nays, 0; absent or not voting, 6.

Those voting yea were: Representatives Ackley, Adams, Ahlquist, Anderson (James A.), Anderson (Eric O.), Beck, Beierlein, Berentson, Bergh, Bigley, Bozarth, Brachtenbach, Braun, Brouillet, Burtch, Canfield, Chatalas, Comfort, Conner, Copeland, DeJarnatt, Dootson, Earley, Eberle, Eldridge, Evans, Flanagan, Folsom, Gallagher, Garrett, Gleason, Goldsworthy, Gorton, Grant, Hadley, Harris, Haussler, Hawley, Henry, Herr, Hood, Huntley, Hurley, Jolly, Juelling, King, Kink, Kirk, Klein, Leland, Lewis, Lind, Litchman, Lybecker, Lynch, Mahaffey, Mast, May, McCaffree, McCormick, McDougall, McElroy, McFadden, Metcalf, Miles, Moon, Moos, Morphis, Morrissey, Mundy, Newschwander, O'Brien, O'Connell, Odell, O'Donnell, Olsen, Perry, Pritchard, Reese, Rogers, Rosenberg, Savage, Sawyer, Schaefer, Siler, Swayze, Taylor, Uhlman, Wedekind, Wintler, Witherbee, Young, Mr. Speaker—93.

Those absent or not voting were: Representatives Backstrom, Campbell, Clark, Johnston, Smith, Wang—6.

Engrossed House Bill No. 105, having received the constitutional majority, was declared passed.

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

**Engrossed House Bill No. 153**, by Representatives Juelling, Newschwander, and Gallagher:

Removing publication of court petition requirement in lowering of lake water proceedings.

On motion of Mr. Gorton, the rules were suspended, the second reading considered the third, and Engrossed House Bill No. 153 was placed on final passage.

SENATE JOURNAL  
OF THE  
Thirty-Eighth Legislature  
OF THE  
STATE OF WASHINGTON  
AT  
Olympia, the State Capital

Convened January 14, 1963  
Adjourned Sine Die March 14, 1963



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JOHN A. CHERBERG, *President of the Senate*  
EDWARD F. RILEY, *President Pro Tempore*  
DR. DAVID C. COWEN, *Temporary President*

WARD BOWDEN, *Secretary of the Senate*  
CHARLES L. R. JOHNSON, SR., *Sergeant at Arms of the Senate*  
DONALD ROSS WILSON, *Assistant Secretary*  
PATRICIA SCOTT MARTIN, *Minute Clerk*  
FLORENCE KENDERESI, *Journal Clerk*  
DOROTHY B. GREBLEY, *Journal Typist*

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STATE PRINTING PLANT  
OLYMPIA, WASH.

APPENDIX B

1937 as amended by section 2, chapter 108, Laws of 1957 and RCW 23.00.030; amending section 5, chapter 70, Laws of 1937 as amended by section 3, chapter 198, Laws of 1957 and RCW 23.60.030; and amending section 10, chapter 70, Laws 1937 and RCW 23.00.100.

Referred to Committee on Ways and Means.

**Senate Bill No. 480**, by Senator Rasmussen:

An Act relating to hairdressing and beauty culture; providing for an increase in license fees; defining powers of the examining committee; regulating the training of students in beauty schools; amending section 5, chapter 180, Laws of 1951 as last amended by section 4, chapter 324, Laws of 1959 and RCW 18.18.090; amending section 3, chapter 168, Laws of 1953 and RCW 18.18.106; amending section 7, chapter 180, Laws of 1951 as last amended by section 5, chapter 324, Laws of 1959 and RCW 18.18.140; and amending section 9, chapter 180, Laws of 1951 as amended by section 10, chapter 52, Laws of 1957 and RCW 18.18.210.

Referred to Committee on Commerce, Manufacturing and Licenses.

On motion of Senator Rasmussen, there being no objection, the rules were suspended and the name of Senator Morgan was permitted as an additional sponsor to Senate Bill No. 480.

On motion of Senator Kupka, there being no objection, the rules were suspended and the name of Senator Thompson, Jr. was permitted as an additional sponsor to Senate Bill No. 480.

**Senate Bill No. 481**, by Senators Morgan, Keefe and Woodall:

An Act relating to institutions; providing for certain improvements at Rainier School; making an appropriation and providing for the reimbursement thereof through monthly payments by parents and/or guardians of residents in state residential institutions for the mentally deficient.

Referred to Committee on Public Institutions.

#### FIRST READING OF HOUSE BILLS

The following were read first time by title and acted upon as indicated:

**Engrossed House Bill No. 12**, by Representatives Johnston and Rosenberg: An Act relating to mining; amending section 2, chapter 45, Laws of 1899 as amended by section 1, chapter 12, Laws of 1949 and RCW 78.08.060; and amending section 1, chapter 114, Laws of 1959, and RCW 78.08.072.

Referred to Committee on Commerce, Manufacturing and Licenses.

**House Bill No. 93**, by Representatives Ahlquist, Jolly and McDougall:

An Act relating to irrigation districts; providing for compensation for directors; and amending section 39, page 692, Laws of 1889-1890 as last amended by section 1, chapter 189, Laws of 1951, and RCW 87.03.460.

Referred to Committee on Cities, Towns and Counties.

**House Bill No. 100**, by Representatives King, Conner and Canfield (by Legislative Budget Committee request):

An Act relating to payment of employer's contribution to the state employees' retirement system; and amending section 38, chapter 274, Laws of 1947 as last amended by section 12, chapter 291, Laws of 1961, and RCW 41.40.370.

Referred to Committee on Ways and Means.

**Engrossed House Bill No. 105**, by Representatives Leland, Garrett and Taylor:

An Act relating to purchasing by cities, towns, metropolitan park districts, counties and library districts; and amending section 1, chapter 158, Laws of 1961 and RCW 39.30.010.

Referred to Committee on Cities, Towns and Counties.

**Engrossed House Bill No. 153**, by Representatives Juelling, Newschwander and Gallagher:

An Act relating to water rights; and amending section 4, chapter 107, Laws of 1939, as last amended by section 2, chapter 258, Laws of 1959, and RCW 90.24.030.

Referred to Committee on Natural Resources.

**House Bill No. 158**, by Representatives Eldridge, Mundy and Pritchard:

An Act relating to drainage and diking districts; and adding a new section to chapter 102, Laws of 1935, and to chapter 85.07 RCW.

Referred to Committee on Cities, Towns and Counties.

**Engrossed House Bill No. 181**, by Representatives Reese, Brouillet and McCormick:

An Act relating to school district elections; and adding new sections to chapter 28.58 RCW.

Referred to Committee on Education.

**House Bill No. 242**, by Representatives Bigley, Lewis and Wedekind (by Departmental request):

An Act relating to licensing of log patrol activities; and amending section 3, chapter 116, Laws of 1947, as last amended by section 3, chapter 182, Laws of 1957 and RCW 76.40.030.

Referred to Committee on Natural Resources.

#### MOTIONS

On motion of Senator McCutcheon, the Senate reverted to the first order of business for the purpose of receiving a motion.

On motion of Senator McCutcheon, the Committee on Public Utilities was relieved of further consideration of Senate Bill No. 322.

On motion of Senator McCutcheon, Senate Bill No. 322 was referred to the Committee on Ways and Means.

There being no objection, the Senate advanced to the seventh order of business.

#### SECOND READING OF BILLS

**Senate Bill No. 285**, by Senators Cowen, Sandison and Ryder:

Providing additional state school of architecture.

The bill was read the second time by sections.

On motion of Senator Sandison, the rules were suspended, Senate Bill No. 285 was advanced to third reading, the second reading considered the third, and the bill was placed on final passage.

#### ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 285, and the bill passed the Senate by the following vote: Yeas, 43; nays, 0; absent or not voting, 6.

## House Bill No. 100:

Senate Chamber,  
Olympia, Wash., February 27, 1963.

Providing billing procedure as to employer's state employees' retirement system contributions (reported by Committee on Ways and Means):

MAJORITY recommends that it do pass.

FRANK W. FOLEY, *Chairman*,  
MARTIN J. DURKAN, *Chairman*,  
Committee on Revenue and Regulatory Agencies,  
FRED H. DORE, *Chairman*,  
Committee on Appropriations.

We concur in this report: R. Frank Atwood, Robert C. Bailey, Joe Chytil, Frank Connor, John L. Cooney, David C. Cowen, Dewey C. Donohue, Jack England, Michael J. Gallagher, Sam C. Guess, Wilbur G. Hallauer, Andy Hess, George W. Kupka, Ernest W. Lennart, August P. Mardesich, Mike McCormack, David E. McMillan, Frances Haddon Morgan, Charles P. Moriarty, Jr., Marshall A. Neill, Ted G. Peterson, John A. Petrich, A. L. Rasmussen, Edward F. Riley, John N. Ryder, Gordon Sandison, Don L. Talley, Albert C. Thompson, Jr., Walter B. Williams, Perry B. Woodall.

Passed to Committee on Rules and Joint Rules for second reading.

## Engrossed House Bill No. 155:

Senate Chamber,  
Olympia, Wash., February 28, 1963.

Implementing constitutional amendment providing for judges pro tempore of the supreme court (reported by Judiciary Committee):

MAJORITY recommends that it do pass as amended and be referred to Committee on Ways and Means.

We concur in this report: R. Frank Atwood, Robert L. Charette, John L. Cooney, Fred H. Dore, Martin J. Durkan, Jack England, Frank W. Foley, F. Stuart Foster, William A. Gisberg, Karl V. Herrmann, Charles P. Moriarty, Jr., Marshall A. Neill, Walter B. Williams.

On motion of Senator Petrich, the committee report was adopted and Engrossed House Bill No. 155 was referred to Committee on Ways and Means.

## SIGNED BY THE PRESIDENT

The President signed: Senate Concurrent Resolution No. 6.

## MOTION

At 3.20 p. m., on motion of Senator Greive, the Senate adjourned until 10:30 a. m., Friday, March 1, 1963.

JOHN A. CHERBERG, *President of the Senate*.

WARD BOWDEN, *Secretary of the Senate*.

## FORTY-SEVENTH DAY

## MORNING SESSION

SENATE CHAMBER,  
OLYMPIA, WASH., Friday, March 1, 1963.

The Senate was called to order at 10:30 a.m. by President Cherberg.

The Secretary called the roll and announced to the President that all Senators were present.

The Color Guard, consisting of Pages Fred Myers, Color Bearer, and Marye Fuller, presented the Colors.

Reverend Arthur Anderson, pastor of the Gloria Dei Lutheran Church of Olympia, offered prayer as follows:

"Our Lord, Thou hast said that they who wait upon Thee shall renew their strength. They shall mount up with wings like eagles. They shall run and not be weary. They shall walk and not faint. In accordance with Thy promise, we do now wait for Thee. Speak, Lord, to each of us during these prayer moments. Give us the hearing, that we may have the tuning of those who are taught. Give us the obedient will, taking heed how we hear, that our people may know length of days and years of life and abundant welfare. Make us constantly and increasingly aware of the praise paid for our godly heritage that out of deep gratitude we may do our utmost to pass it on, not blemished or diminished, but enhanced and enlarged.

"Bless now, we pray Thee, the members of this assembly who by virtue of their office represent both themselves and their fellow citizens. Bless them. Make them a blessing this day, through Jesus Christ our Lord. Amen."

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

The Secretary read:

## REPORTS OF STANDING COMMITTEES

Senate Chamber,

Olympia, Wash., February 28, 1963.

Your Committee on Enrolled, Engrossed Bills, Claims and Auditing, to whom was referred Senate Bill No. 239; also

Senate Bill No. 424; also

Senate Concurrent Resolution No. 4; also

Engrossed Senate Concurrent Resolution No. 6, have compared same with the original bills and resolutions and find them correctly engrossed and re-engrossed.

....., *Chairman*.

We concur in this report: Martin J. Durkan, John A. Petrich, Perry B. Woodall.

Senate Chamber,

Olympia, Wash., February 28, 1963.

MR. PRESIDENT:

Your Committee on Enrolled, Engrossed Bills, Claims and Auditing, to whom was referred Re-Engrossed Senate Concurrent Resolution No. 6, have inspected same, and find it correctly enrolled and certified.

....., *Chairman*.

We concur in this report: Martin J. Durkan, John A. Petrich, Perry B. Woodall.

Senate Bill No. 107:

Senate Chamber,

Olympia, Wash., February 28, 1963.

Permitting certain areas to incorporate as cities of the first class (reported by Committee on Cities, Towns and Counties):

MAJORITY recommends that it do pass.

DON L. TALLEY, *Chairman*.

## ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 320, and the bill passed the Senate by the following vote: Yeas, 41; nays, 3; absent or not voting, 5.

Those voting yea were: Senators Bailey, Chytil, Connor, Cooney, Cowen, DeGarmo, Dore, Durkan, England, Foley, Freise, Gallagher, Gissberg, Greive, Gucss, Hallauer, Hanna, Henry, Herrmann, Hess, Keefe, Knoblauch, Kupka, Lennart, McCormack, McCutcheon, McMillan, Morgan, Moriarty, Jr., Neill, Peterson, Rasmussen, Raugust, Rickdall, Riley, Sandison, Stender, Thompson, Jr., Washington, Williams, Woodall—41.

Those voting nay were: Senators Charette, Donohue, Petrich—3.

Those absent or not voting were: Senators Atwood, Foster, Mardesich, Ryder, Talley—5.

House Bill No. 320, having received the constitutional majority, was declared passed.

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

House Bill No. 100, by Representatives King, Conner and Canfield (by Legislative Budget Committee request):

Providing billing procedure as to employer's state employees' retirement system contributions.

The bill was read the second time by sections.

On motion of Senator Neill, the rules were suspended, House Bill No. 100 was advanced to third reading, the second reading considered the third, and the bill was placed on final passage.

## ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 100, and the bill passed the Senate by the following vote: Yeas, 44; nays, 10; absent or not voting, 5.

Those voting yea were: Senators Atwood, Bailey, Charette, Chytil, Connor, Cooney, Cowen, DeGarmo, Donohue, Dore, England, Foley, Freise, Gallagher, Gissberg, Greive, Gucss, Hallauer, Hanna, Henry, Herrmann, Hess, Keefe, Knoblauch, Kupka, Lennart, McCormack, McCutcheon, McMillan, Morgan, Moriarty, Jr., Neill, Peterson, Petrich, Rasmussen, Raugust, Rickdall, Ryder, Sandison, Stender, Thompson, Jr., Washington, Williams, Woodall—44.

Those absent or not voting were: Senators Durkan, Foster, Mardesich, Riley, Talley—5.

House Bill No. 100, having received the constitutional majority, was declared passed.

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

Substitute House Bill No. 110, by Committee on Local Government:  
Affecting fourth class municipal corporations.

## REPORT OF STANDING COMMITTEE

Substitute House Bill No. 110:

Affecting fourth class municipal corporations (reported by Committee on Cities, Towns and Counties):

Senate Chamber,  
Olympia, Wash., March 6, 1963

MAJORITY recommends that it do pass with the following amendments:

On page 1, section 2, line 27, after "than" strike "three" and insert "[three] six"  
On page 2, line 3, following section 2 insert "Sec. 3. Section 1, chapter 153, Laws of 1951 and RCW 35.03.010 are each amended to read as follows:

Any portion of a county, which portion contains not less than twenty thousand inhabitants [ , living within an area of not more than ten square miles,] and which is not incorporated as a municipal corporation, may become incorporated under the provisions of this chapter, and when so incorporated, shall have the powers conferred, or that may hereafter be conferred, by law upon cities of the first class."

In line 3, of the title, before the period, insert " : and amending Section 1, chapter 153, Laws of 1951 and RCW 35.03.010"

Don L. Talley, Chairman.

We concur in this report: R. Frank Atwood, Joe Chytil, Dewey C. Donohue, Jack England, Michael J. Gallagher, Al Henry, George W. Kupka, Ted G. Peterson, A. L. Rasmussen, Edward F. Riley, Walter B. Williams.

The bill was read the second time by sections.

On motion of Senator McCutcheon, the committee amendments to pages 1 and 2 of the bill were adopted.

Senator Herrmann moved the adoption of the following amendment:

On page 2, line 2 following section 2, add six sections as follows:

Sec. 3. Section 1, chapter 153, Laws of 1951, and RCW 35.03.010 are each amended to read as follows:

Any portion of a county, which portion contains not less than twenty thousand inhabitants [ , living within an area of not more than ten square miles,] and which is not incorporated as a municipal corporation, may become incorporated under the provisions of this chapter, and when so incorporated, shall have the powers conferred, or that may hereafter be conferred, by law upon cities of the first class.

Sec. 4. Section 2, chapter 153, Laws of 1951 (heretofore divided and codified as RCW 35.03.020 and 35.03.030) is divided and amended as set forth in sections 3 and 4 of this act.

Sec. 5. (RCW 35.03.020) A petition shall first be presented under the provisions of this chapter to the board of county commissioners of such county, signed by at least [one] five hundred qualified electors of the county, residents within the limits of such proposed corporation, which petition shall set forth and particularly describe the proposed boundaries of such corporation, and state the number of inhabitants therein as nearly as may be, and shall pray that the same may be incorporated under the provisions of this chapter. Upon presentation of said petition, the board of county commissioners shall ascertain the number of inhabitants residing within said proposed boundaries. If, in the opinion of the board of county commissioners, the population within such proposed boundaries can be ascertained from the figures compiled from the last federal census for said county, such population figures shall be used, otherwise said board of county commissioners shall make an enumeration of all persons residing within said proposed boundaries. If the board of county commissioners shall ascertain that there are twenty thousand or more inhabitants within said proposed boundaries, they shall set a date for hearing on said petition, the same to be published for a period of at least two weeks prior to such hearing in some newspaper published in said county, together with a notice stating the time and place of the meeting at which said petition will be heard. Such hearing may be adjourned from time to time, not to exceed one month in all, and, on the final hearing, the board of county commissioners shall make such changes in the proposed boundaries as they may find to be proper, but may not enlarge the same, nor reduce the same so that the population therein would be less than twenty thousand inhabitants.

Sec. 6. (RCW 35.03.030) The board of county commissioners shall by resolution establish and define the boundaries of such corporation, establish and find the number of inhabitants residing therein [and state the name of the proposed corporation]. Within ninety days after the passage of said resolution the board of county commissioners shall cause an election to be called and held within the boundaries so established, said election to be conducted in the manner required for the calling of a special election in class A and first class counties, for the purpose of determining whether such boundaries so established shall be incorporated into a city of the first class [and the election] and of electing fifteen freeholders, who shall have been residents within said boundaries for a period of at least two years preceding their election and qualified electors of the county, for the purpose of framing a charter

CHAPTER 125.

[ H. B. 538. ]

MOTOR VEHICLES—GRADE CROSSINGS.

AN ACT relating to motor vehicles; and amending section 46.60-.320, chapter 12, Laws of 1961 and RCW 46.60.320.

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

RCW 46.60.320 amended.

SECTION 1. Section 46.60.320, chapter 12, Laws of 1961 and RCW 46.60.320 are each amended to read as follows:

Motor vehicles—Rules of the road. Stopping or reducing speed at certain grade crossings.

Any person operating a vehicle carrying passengers for hire or a school bus or a vehicle in which are being transported explosive substances or flammable liquids or any other substance listed as a dangerous article under the regulations of the Interstate Commerce Commission shall bring such vehicle to a full stop within fifty feet, but not less than twenty feet, of any railroad or interurban grade crossing before proceeding across it. Any person operating a vehicle, other than those specifically mentioned above, shall, upon approaching the intersection of any public highway with a railroad or interurban grade crossing, reduce the speed of his vehicle to a rate of speed not to exceed that at which, considering the view along the track in both directions, the vehicle can be brought to a complete stop not less than ten feet from the nearest track in the event of an approaching train. The actual maximum speed permitted on the approach to any highway-railroad grade crossing on a public highway may be controlled by signs posted on the approach thereto, and the state highway commission shall place, as soon as is practicable, approach signs upon state highways, setting the maximum speed allowed at crossings and within one hundred feet on the approach thereto. No stop need be made at any such highway-railroad grade crossing by any person operating any of the

above mentioned vehicles, except a school bus, where a peace officer or a traffic control signal, which is intended exclusively to control traffic at such crossing, by green light, directs traffic to proceed across such crossing.

Passed the House March 14, 1963.

Passed the Senate March 14, 1963.

Approved by the Governor March 25, 1963.

CHAPTER 126.

[ H. B. 100. ]

STATE EMPLOYEES' RETIREMENT—EMPLOYER'S CONTRIBUTION.

AN ACT relating to payment of employer's contribution to the state employees' retirement system; and amending section 38, chapter 274, Laws of 1947 as last amended by section 12, chapter 291, Laws of 1961, and RCW 41.40.370.

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

SECTION 1. Section 38, chapter 274, Laws of 1947, as last amended by section 12, chapter 291, Laws of 1961, and RCW 41.40.370 are each amended to read as follows:

RCW 41.40.370 amended.

(1) The retirement board shall ascertain and report to each employer the amount it shall provide for pension benefits for the ensuing biennium or fiscal year whichever is applicable to the said employer's operations. The amount to be so provided shall be computed by applying the rates of contribution as established by RCW 41.40.361 to an estimate of the total compensation earnable of all the said employer's members during the period for which provision is to be made.

State employees' retirement—Employer's contribution—Computation.

(2) Beginning April 1, 1949, the amount to be collected as the employer's contribution for pension benefits shall be computed by applying the rates es-

State employees' retirement—Employer's contribution—Computation—Billing.

established by RCW 41.40.361 to the total compensation earnable of employer's members as shown on the current payrolls of the said employer. The retirement board shall bill each said employer at the end of each month for the amount due for that month and the same shall be paid as are its other obligations: *Provided*, That the retirement board 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 and shall be based upon the employer's payrolls for that quarter.



(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 retirement board shall bill such employer through the budget director for such employer's contribution. 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. If any such employer shall fail or refuse to honor such a billing, the budget director shall cause the same to be paid from any funds appropriated to the budget director for such purposes.

Passed the House February 14, 1963.

Passed the Senate March 11, 1963.

Approved by the Governor March 25, 1963.

CHAPTER 127.

[ S. B. 24. ]

CITIES AND TOWNS—FALSE ARREST INSURANCE.

AN ACT relating to insurance for certain governmental employees; and amending section 1, chapter 162, Laws of 1947 and RCW 35.23.460.

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

SECTION 1. Section 1, chapter 162, Laws of 1947 and RCW 35.23.460 are each amended to read as follows:

RCW 35.23.460 amended.

Any city of the second or third class or town may contract with an insurance company authorized to do business in this state to provide group insurance for its employees including group false arrest insurance for its law enforcement personnel, and pursuant thereto may use a portion of its revenues to pay an employer's portion of the premium for such insurance, and may make deductions from the payrolls of employees for the amount of the employees' contribution and may apply the amount deducted in payment of the employees' portion of the premium.

Second and third class cities, towns—Group insurance, false arrest insurance.

SEC. 2. Any county may contract with an insurance company authorized to do business in this state to provide group false arrest insurance for its law enforcement personnel and pursuant thereto may use such portion of its revenues to pay the premiums therefor as the county may determine.

Counties—Group false arrest insurance.

Passed the Senate January 29, 1963.

Passed the House March 10, 1963.

Approved by the Governor March 25, 1963.

chapter. Such delegated powers and duties may be exercised by the director in the name of the commission.

Passed the House February 15, 1961.  
 Passed the Senate March 9, 1961.  
 Approved by the Governor March 21, 1961.

CHAPTER 290.  
 [ H. B. 211. ]

REDESIGNATING WASHINGTON PUBLIC SERVICE COMMISSION AS WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION.

AN ACT relating to the Washington public service commission; and adding a new section to chapter 14, Laws of 1961 (House Bill No. 5) and to chapter 80.01 RCW.

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

New section.

SECTION 1. There is added to chapter 14, Laws of 1961 (House Bill No. 5) and to chapter 80.01 RCW a new section to read as follows:

Commission redesignated.

From and after the effective date of this act the Washington public service commission shall be known and designated as the Washington utilities and transportation commission.

Passed the House February 8, 1961.  
 Passed the Senate March 8, 1961.  
 Approved by the Governor March 21, 1961.

CHAPTER 291.  
 [ H. B. 468. ]

STATE EMPLOYEES' RETIREMENT SYSTEM.

AN ACT relating to the state employees' retirement system; amending section 1, chapter 274, Laws of 1947, as last amended by section 1, chapter 231, Laws of 1957, and RCW 41.40.010; amending sections 3, 4, and 7, chapter 274, Laws of 1947, and RCW 41.40.030, 41.40.040, and 41.40.065; amending section 8, chapter 274, Laws of 1947, as last amended by section 1, chapter 220, Laws of 1955, and RCW 41.40.070; amending section 20, chapter 274, Laws of 1947, as last amended by section 11, chapter 200, Laws of 1953, and RCW 41.40.100; amending section 23, chapter 274, Laws of 1947, as last amended by section 12, chapter 200, Laws of 1953, and RCW 41.40.220; amending section 26, chapter 274, Laws of 1947, as amended by section 13, chapter 200, Laws of 1953, and RCW 41.40.250; amending section 28, chapter 274, Laws of 1947, as last amended by section 1, chapter 201, Laws of 1953 and by section 14, chapter 200, Laws of 1953, and RCW 41.40.270; amending section 30, chapter 274, Laws of 1947, as last amended by section 6, chapter 277, Laws of 1955, and RCW 41.40.290; amending section 4, chapter 231, Laws of 1957 and RCW 41.40.361; amending section 36, chapter 274, Laws of 1947, as amended by section 26, chapter 240, Laws of 1949, and RCW 41.40.370; amending section 43, chapter 274, Laws of 1947, as last amended by section 19, chapter 200, Laws of 1953, and RCW 41.40.410; repealing sections 1 and 2, chapter 284, Laws of 1953, and RCW 41.40.085 and 41.40.087; repealing section 1, chapter 202, Laws of 1953, as amended by section 1, chapter 234, Laws of 1955, and RCW 41.32.405 and 41.40.127; repealing section 1, chapter 253, Laws of 1959, and RCW 41.32.496 and 41.40.127; and declaring an emergency.

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

SECTION 1. Section 1, chapter 274, Laws of 1947, as last amended by section 1, chapter 231, Laws of 1957, and RCW 41.40.010 are each amended to read as follows:

RCW 41.40.010 amended.

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

State employees' retirement. Terms defined.

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

contributions shall continue until there remains no unfunded liability.

(5) Any employer admitted to the retirement system after April 1, 1949, shall make an additional contribution at a rate equal to not less than twenty-five percent of the sum of the normal contribution rate and the unfunded liability contribution rate until such time as the sum of such additional contributions equals the amount of contributions which such employer would have been required to contribute between April 1, 1949, and the date of such employer's admission to the retirement system: *Provided*, All additional contributions hereunder and under the provisions of RCW 41.40.160 (2) must be completed within ten years from the date of the employer's admission.

RCW 41.40.370 amended.

SEC. 12. Section 38, chapter 274, Laws of 1947, as amended by section 26, chapter 240, Laws of 1949, and RCW 41.40.370 are each amended to read as follows:

Employer's contribution—  
Computation—  
Billing.

(1) The retirement board shall ascertain and report to each employer the amount it shall provide for pension benefits for the ensuing biennium or fiscal year whichever is applicable to the said employer's operations. The amount to be so provided shall be computed by applying the rates of contribution as established by RCW 41.40.361 to an estimate of the total compensation earnable of all the said employer's members during the period for which provision is to be made.

(2) Beginning April 1, 1949, the amount to be collected as the employer's contribution for pension benefits shall be computed by applying the rates established by RCW 41.40.361 to the total compensation earnable of employer's members as shown on the current payrolls of the said employer. The retirement board shall bill each said employer at the end of each month for the amount due for that

month and the same shall be paid as are its other obligations: *Provided*, That the retirement board 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 and shall be based upon the employer's payrolls for that quarter.

no (3)  
←

SEC. 13. Section 43, chapter 274, Laws of 1947, as last amended by section 19, chapter 200, Laws of 1953, and RCW 41.40.410 are each amended to read as follows:

RCW 41.40.410 amended.

The employees and appointive and elective officials of any political subdivision of the state may become members of the retirement system by the approval of the local legislative authority. Each such political subdivision becoming an employer under the meaning of this chapter shall make contributions to the funds of the retirement system as provided in RCW 41.40.080, 41.40.360 and 41.40.370 and its employees shall contribute to the employees' savings fund at the rate established under the provisions of RCW 41.40.330. For the purpose of administering and interpreting this chapter the board may substitute the names of political subdivisions of the state for the "state" and employees of the subdivisions for "state employees" wherever such terms appear in this chapter. The board may also alter any dates mentioned in this chapter for the purpose of making the provisions of the chapter applicable to the entry of any political subdivisions into the system. Any member transferring employment to another employer which is covered by the retirement system may continue as a member without loss of previously earned pension and annuity benefits. The board shall keep such accounts as are necessary to show the contributions of each political subdivision to the benefit account fund and shall have the power to debit and credit the various ac-

Optional entry of system by political subdivisions.