Original

No. 35568-0

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JAMES A. DENSLEY, Appellant,

v.

DEPARTMENT OF RETIREMENT SYSTEMS, Respondent,

and

THE ATTORNEY GENERAL FOR THE STATE OF WASHINGTON, Defendant and Intervenor.

BRIEF OF APPELLANT

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A. INTRODUCTION

This matter is before the court as a judicial review of the Department of Retirement Systems' administrative adjudication denying the award of military service credits towards James Densley's PERS 1 retirement. In September 1970, appellant James Densley enrolled in the Advanced Reserve Officer Training Course (ROTC) while he was an undergraduate student at the University of Washington. By doing so he became obligated to serve in the United States Army after graduation, first a period of active duty, then service in either the Army Reserves or the National Guard. In accordance with this obligation, 2nd Lt. Densley performed active duty from the period of August 7, 1972, through November 7, 1972, at Fort Eustis, Virginia. Returning to his home of record in Tacoma, Washington, he became a member of the Washington Army National Guard. From November 1972, until April 1976, Lt. Densley served in the armed forces by attending monthly weekend drills and three annual active summer camps as a member of the Washington National Guard. *A table showing the service in the armed forces covered by the appeal is attached as Appendix A.* 1st Lt. Densley transferred to another reserve component, the Army Reserves, in April 1976. As a member of the Army Reserves he continued to serve in the armed forces,

including activation during Operation Desert Shield/Desert Storm, as well as schooling, drills, physical examinations, and further annual training. Lt. Col. Densley remained a member of the Army Reserves until his mandatory retirement in May 2000.

In May 1977, James Densley became a deputy prosecuting attorney for Pierce County and remained one until his retirement in December, 2005. DPA Densley was covered by the Public Employees Retirement System Plan 1 (PERS 1), administered by the Respondent, Department of Retirement Systems (DRS). PERS 1 provides two types of military service credits for its members, non-interruptive credit for prior service for service in the armed forces, and interruptive credit for service while a member of the PERS plan. DRS has denied the award of non-interruptive military service credits for the period between November 1972, and September 1976. DRS's denial is the basis for the appeal. James Densley exhausted his administrative remedies with the decision of the DRS's Presiding Officer entered on July 28, 2005, and, after reconsideration, corrected on September 6, 2005. Judicial review was held before Honorable Judge K. Nelson, Pierce County Superior Court, with an order entered October 23, 2006, which sustained the Presiding Officer's decision.

B. ASSIGNMENTS OF ERROR

1. The Superior Court, conducting a judicial review of an administrative adjudication, erred by order entered October 23, 2006, by sustaining the Presiding Officer's decision.

2. The Presiding Officer erred by entering the summary judgment order entered July 28, 2005, and corrected September 6, 2005, denying military service retirement benefits to James Densley.

3. DRS has failed to comply with its own regulations and court rules in the progress of this request for military service credits.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

No. 1. Did the administrative record before the court provide adequate support for the decision of the presiding officer?

No. 2. May the presiding officer ignore the plain words of a statute and consider legislative history to interpret a statute which is not ambiguous?

No. 3. May the presiding officer rely upon inadmissible evidence to support a summary judgment?

No. 4. Is military service with the National Guard federal service when performed under the provisions of 10 USC 12602, 32 USC 502 and 503 and the orders of the United States Secretary of the Army?

No. 5. In the event that the interruptive military service test of RCW 41.40.170 (1) is also the test for RCW 41.40.170 (3) non-interruptive military service, should the presiding officer have considered other state and federal statutory provisions which liberalize the RCW 41.40.170 (1) test for interruptive military service credits?

No. 6. Does a statute in effect at the time the military service was performed, which equated state active duty with active duty in the United States Army for purposes of employment and reemployment, provide a vested right?

No. 7. Is it improper discrimination for DRS to authorize military service credits for military service performed with the Army Reserves but not the same type military service with the Army National Guard?

No. 8. Is travel time to and from a distant location of employment required by an employer within the course of employment?

No. 9. Was it error for Presiding Officer to disregard the federal source of a soldier's obligation to perform military service in declaring such service to be state service?

No 10. Is the application of the quarter month service rule provided in RCW 41.40.010 retroactive?

No. 11 Is the failure of DRS's Petitions Examiner to follow the requirements of notice, opportunity to be heard, confrontation of evidence and due process provided in WAC 415-04-040 basis for reversal?

No. 12. Is DRS's mishandling, failure to protect, and publication of the appellant's personal identifying information in violation of GR 15 and GR 31 basis for reversal?

C. STATEMENT OF CASE

FACTUAL BACKGROUND

At the time the petition was filed, James Densley was an employee of Pierce County, a municipal sub-division of the State of Washington and was a member of the Public Employees Retirement System Plan I. He was employed by Pierce County for over 28 years prior to his retirement on December 31, 2005. (AR 003, 203-204)

Prior to his employment with Pierce County, James Densley served in the armed forces of the United States. In 1970 he enrolled in the advanced ROTC program while a student at the University of Washington. By doing so he obligated himself to military service. The service included active duty followed by participation in the Ready Reserves (either National Guard or Army Reserve) as set out in the Statement

Acknowledging Obligation for Service, September 28, 1970, (AR 178) and again in a pre-commissioning letter from the Department of the Army dated January 12, 1972. (AR 179) He was commissioned a second lieutenant under the provisions of Title 10 United States Code in the United States Army Reserves from the University of Washington Army ROTC on June 10, 1972. (AR 181) He was called to active duty at Fort Eustis, Virginia, for 90 days for the period of August 7, 1972, until November 7, 1972. (AR 182) He performed this duty as well as ten days of travel time between his home of record in Tacoma, Washington, and Fort Eustis, Virginia. (AR 183) As part of his orders to active duty, Petitioner was directed to perform reserve military service in the Ready Reserves. (AR 182)

After release from duty he joined the Washington Army National Guard on November 14, 1972, (AR 184 and 185) in accordance to his military service obligation. He attended 41 monthly weekend drills and three annual 15-day summer training camps with the National Guard during the period from November 1972, until April 1976. (AR 186 and AR 187) (*appendix C and D)* The annual training was under the provisions of 32 USC 503, and the weekend drills under 32 USC 502. (AR 153 and AR 163)

While participating with the Washington National Guard, he was promoted to the rank of First Lieutenant in the Army Reserves under the provisions of United States Code Title 10. (AR 198) His salary for duty for this period was from the United States Government, rather than the State of Washington. (AR 188-197) He was transferred from the Washington Army National Guard component of the reserves to the Army Reserves component of the Ready Reserves on April 1, 1976. (AR 200) Additionally he attended one physical evaluation under orders in September 1976. (AR 201)

Later, during his employment with Pierce County, James Densley continued serving in the Active Army and Army Reserves until being placed in the retired reserve component on May 31, 2000. (AR 187, Chronological Statement of Retirement Points dated 13 June 2003) This duty included performing 90 days of active service during Desert Shield/Desert Storm, 460 days of inactive duty, 327 days of extension courses and approximately 507 days of active duty. (AR 187 and AR 175, James Densley's declaration) The Presiding Officer erred in her decision at paragraph 47 (AR 019) in finding that the only interruptive duty was during employment was that performed during Desert Shield/Desert Storm. AR 187 also shows that the federal government awarded federal

retirement point credit toward the military service performed while a member of the Washington National Guard.

Petitioner James Densley is a veteran as defined by RCW 41.04.005. (AR 013) He performed active federal military duty with the United States Army during the Viet Nam era (AR 183) and again during Operation Desert Shield/Desert Storm. (AR 202)

FACTS RELATING TO PROCEDURAL ISSUES

The administrative process commenced on May 7, 2004, when James Densley requested by email to DRS the military service credits discussed herein. (AR 311) After a series of emails and letters between the petitioner and DRS, the DRS Plan Administrator denied the military service credits on December 3, 2004. (AR 312)

James Densley then filed a petition for review of the denial with the Petition Examiner on December 17, 2004. While the Petition Examiner was considering the matter several issues arose about which error is claimed. Neither the Department nor the Attorney General appeared as interested parties within twenty days as provided by WAC 415-04-040 (b)(ii). James Densley requested a default by a letter dated February 1, 2005, (AR 304) and by a separate letter later the same date. (AR 305) Again, on March 3, 2005, in a formal motion, (AR 307-309) he

renewed his motion for a default based upon the failure to appear by the Department or the Attorney General and the failure of the Petition Examiner to render a decision within in the 60-day timeline provided by WAC 415-04-040. Furthermore, in the second letter of February 1, 2005, (AR 305) James Densley pointed out that the Petition Examiner had apparently gathered and considered evidence from the Department not in the record, as well as engaged in ex-parte communications with the Attorney General. The Petition Examiner did not provide to James Densley the contents of any communications from the Department or from the Attorney General, nor did she allow him an opportunity to respond to these communications.

The Petition Examiner issued her Statement of Facts, Provisions of Law, And Decision on March 25, 2005. (AR 310) The untimely decision included evidence not properly produced as part of the record, including that James Densley had earlier successfully requested to be enrolled in PERS 1 based upon his date of employment.

Consequently the Notice of Appeal of the Petition Examiner's decision was filed on April 5, 2005. (AR 286). This petition raised and preserved the issues pointed out above. On May 18, 2005, James Densley made a motion for a summary judgment. (AR 170-227) The Department,

appearing through the Attorney General, made its own motion for summary judgment on June 10, 2005. (AR 041-169) James Densley filed his reply memorandum on July 7, 2005. (AR 023-040) The Presiding Officer entered her original Decision and Order on Summary Judgment Motions on July 28, 2005, denying James Densley's motion and granting that of the Department. (AR 250-270) James Densley filed his motion for reconsideration on August 3, 2005. (AR 236-249) In this motion he pointed out, inter alia, that the original order relied upon a non-existent statute and facts not supported by the evidence. The Presiding Officer acknowledged the error, yet still denied the motion for reconsideration on September 6, 2005.(AR 228-230) Thereafter, also on September 6, 2005, the Presiding Officer entered her Corrected Decision and Order on Motions for Summary Judgment. (AR 001-022) This order was an exhaustion of the administrative process.

In a timely manner James Densley appealed to the Superior Court the administrative decision and order and the proceedings leading to its entry. (CP 125-201) DRS filed a copy of the administrative record with the court on October 27, 2005. This original record contained approximately 12 documents previously submitted by the Attorney General which contained personal identifiers of James Densley, such as

his social security number and date of birth. The affidavits of Patti Lee (CP 28-29) and of the Presiding Officer (CP 34-35) detail how this information was left in the file and not redacted prior to publication with the court. On December 16, 2005, after various motions and cross motions and hearing thereon, the court sealed the file and allowed the Department to substitute documents. (CP 38-42) The court imposed $400 in terms against DRS. DRS filed a substitute administrative record on December 28, 2005.

A second amended petition was filed on June 26, 2006. (CP 43-59) This second amended petition included the additional claim for relief that the Attorney General provide legal representation to James Densley under the provisions of RCW 73.16.061 (Discrimination in pension award based upon state military service). *A copy of this statute is attached as Appendix E.* On September 6, 2006, an agreed stipulation was entered (CP113-115) which dismissed the Attorney General as a party on the basis that the military service was not state service as provided by RCW 38.08.040 and, thus, the Attorney General did not have an obligation to represent James Densley.

D. SUMMARY OF ARGUMENT

The plain words of RCW 41.40.170 (3) which authorize PERS 1 military service credits for interruptive service, *service in the armed forces*, should be followed. It was improper for DRS to resort to legislative history to apply a different test, *active federal service.* It was error to rely upon inadmissible and unauthenticated material produced by the Department. In the event that resort to active federal service test was proper, the three annual training periods between 1973 and 1975 are in fact active federal service. In the event that the military service, nonetheless, is considered state active duty, the version of state law then in effect provided that state active duty was to be treated as active service in the United States Army for purposes of employment and re-employment.

The misconduct of the Petition Examiner in obtaining and relying upon evidence contrary to the Department's own regulations and the disclosure of personal identifiers by the Department contrary to court rules are also additional bases for reversal of the decision.

The quarter-month rule of calculating PERS 1 service credits should be applied retroactively for military service.

E. ARGUMENT

ASSIGNMENTS OF ERROR 1

The superior court, conducting a judicial review of an administrative adjudication, erred by order entered October 23, 2006, by sustaining the presiding officer's decision.

No. 1. Did the administrative record before the court provide adequate support for the decision of the presiding officer?

The statute pertaining to judicial review of administrative decisions is found at RCW 34.05.570, *attached as Appendix F.* The review standard was summarized in NOR-PAC Enterprises, INC. v. Department of Licensing, 129 Wn.App. 556 at 563, 119 P.3 889 (2005),

> The Washington Administrative Procedure Act (APA) governs our review. See RCW 34.05.510 (APA establishes the exclusive means of judicial review of agency action except in three situations not applicable here). We sit in the same position as the superior court and review the agency's decision, applying the standards in the APA directly to the agency record. Eidson v. Dep't of Licensing, 108 Wn. App 712, 718, 32 P.3d 1039 (2001) (citing Postema v. Pollution Control Hearings Bd., 142 Wn. 2d 68, 77, 11 P.3d 726 (2000)). We will grant relief from an agency order if we determine that the agency has erroneously interpreted or applied the law. Former RCW 34.05.570(3)(d) (1995). In reviewing an agency's interpretation or application of the law, we apply the error of law standard and may substitute our interpretation of the law for the agency's. Postema, 142 Wn.2d at 77.

A recent decision from Division I, Netversant Wireless, v. Wa. St. Labor & Ind.,133 Wn. App. 813, 821-822, ____P3d_____, (2006) stated:

> When reviewing an administrative decision, courts act in a limited appellate capacity. Under RCW 34.05.570(3), we reverse an administrative decision only if it (1) was based on an error of law, (2) is not supported by substantial evidence, or (3) is arbitrary or capricious. Agency action is arbitrary or capricious if it is willful and unreasoning and without regard to the facts or circumstances. Appellate courts apply these standards directly to the administrative agency's decision. We review Board findings of fact for substantial evidence and must determine whether those findings support its conclusions of law. Substantial evidence is evidence which would persuade a fair-minded, rational person of the truth of the finding.

The court has found regarding matters involving pensions: "Pension legislation is liberally construed to favor beneficiaries." Grabicki v. Department of Retirement Systems, 81 Wn. App. 745 at 750 , 916 P.2d 452 (1996).

RCW 41.40.170 (3) gives a simple test of whether a PERS 1 member is entitled to military service credit.

1. Has the member completed 25 years creditable service in PERS Plan 1;
2. Does the member must meet the definition of "Veteran" under RCW 41.04.005; and
3. Was the military service in the Armed Forces?

The administrative record provided substantial evidence that each of these elements was met.

James Densley completed over 28 years of creditable service, (AR 004 Fact for consideration 8). James Densley is a veteran as defined by RCW 41.04.005, (AR 013 Consideration 33) James Densley's service was with the armed forces. (AR 003 Consideration 4) *RCW 41.40.170 is attached as Appendix B.*

Hence, the administrative record does not provide evidence to support the decision denying military service credits, rather it supports James Densley's contention that he is entitled to such credits.

ASSIGNMENTS OF ERROR 2.

The presiding officer erred by entering the summary judgment order entered July 28, 2005, and corrected September 6, 2005, denying military service retirement benefits to James Densley.

No. 2. May the Presiding Officer ignore the plain words of a statute and consider legislative history to interpret a statute which is not ambiguous?

A key issue in this case is whether RCW 41..40.170 (3) contains an additional test that the service in the armed forces must be served solely under Title 10 United States Code and not under Title 32 United States Code as claimed by the Department. The Presiding Officer reached an erroneous interpretation of the plain words of the statute, RCW 41.40.170 **(3)** "*service in the armed forces,*" by improperly equating them with the

term "*active federal service*" as found in RCW 41.40.170 **(1)**. The decision of the Presiding Officer at AR 009 - 012 goes through a strained nuance of legislative history to arrive at the conclusion that the test for interruptive military service credits "active federal service" means the exact precise same thing as a completely different test for non-interruptive "service in the armed forces."

The process for legislative interpretation was summarized in NOR-PAC Enterprises, INC. v. Department of Licensing, 129 Wn.App. 556 at 564, 119 P.3 889 (2005)

> In interpreting a statute, we must give effect to legislative intent. Review begins with the plain language of the statute. Tiger Oil Corp. **v.** Dep't of Licensing, 88 Wn App 295, 930, 946 P.2d 1235 (1997) (citing Lacey Nursing Ctr., Inc. **v.** Dep't of Revenue, 128 Wn.2d 40, 53, 905 P.2d 338 (1995)). Where a statute is unambiguous, we determine legislative intent from the statutory language alone. Tiger Oil, 88 Wn. App. at 930 (citing Waste Mgmt. of Seattle, Inc. **v.** Wash. Util. & Transp. Comm'n, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994); In re Matter of Eaton, 110 Wn.2d 892, 898, 757 P.2d 961 (1988)). Whether we accord deference to an agency's construction of the statute depends on whether the statute is ambiguous. Where an agency is charged with the administration and enforcement of a statute, we give the agency's interpretation of an ambiguous statute great weight in determining legislative intent. Tiger Oil, 88 Wn. App. at 931 (citing City of Pasco **v.** Pub. Employment Relations Comm'n, 119 Wn. 2d 504, 507, 833 P.2d 381 (1992)). But absent ambiguity, there is no need for the agency's expertise in construing the statute and we do not defer to an agency determination that conflicts with the statute. Tiger Oil, 88 Wn. App. at 931.

Likewise, in Dipietro v. Dept. of L&I, Wn.App. , P.3d , Docket Number: 33990-1(2006) the court stated:

> We interpret statutes to carry out the Legislature's intent. If a statute is clear on its face, we derive its meaning from the language of the statute. A statute is not ambiguous simply because different interpretations are conceivable. Nor is an undefined term in a statute ambiguous if the term has a broad or well-accepted ordinary meaning. (internal cites omitted)"

The legislature has expressed its understanding that the term "armed forces" means not only active federal service but also service in the reserve components, including the Washington National Guard. The following are just some examples:

(1) RCW 59.18.200 (1)(b) "Any tenant who is a member of the armed forces, including the national guard and armed forces reserves . . . ."

(2) RCW 50.04.320 (4)(a) "Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the state of Washington, for performance of duty . . . . "

The Department's statutory construction violates the guidance contained in AGO 2001 number 7: "We cannot, through statutory construction, read into a statute words that are not there". Henley v. Henley, 95 Wn. App. 91, 98, 974 P.2d 362 (1999) (quoting Coughlin v. City of Seattle, 18 Wn. App. 285, 289, 567 P.2d 262 (1977)); see also State v. Chester, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997)." This AGO

makes it clear that the Department can not take the phrase from paragraph (1) of RCW 41.40.170, "active federal service," and insert in into paragraph (3) where it is not found.

Rules of statutory construction guidance are also contained in AGO 1988 Number 16: "Second, where the Legislature employs certain language in one part of a statute and different language in another part, a difference in legislative intent is indicated. United Parcel Serv., Inc. v. Department of Rev., 102 Wn.2d 355, 687 P.2d 186 (1984)." In RCW 41.40.170 the legislature used the term "active federal service" one place and "service in the armed forces" in another. This AGO guidance makes it clear that it is wrong to substitute terms to reach the conclusion sought by the Department.

"Statutory construction as expressed in Attorney General opinions should be given considerable weight. (cites omitted) Additionally, an Attorney General opinion constitutes notice to the Legislature of the Department's interpretation of the law. (cites omitted)" Grabicki v. Department of Retirement Systems, 81 Wn. App. 745, 754,916 P.2d 452 (1996)

Likewise, Volume 2A Sutherland Statutory Construction (6th ed.) Section 46:06 provides similar guidance: "Yet when the legislature uses

certain language in one part of the statute and different language in another, the court assumes different meanings were intended. In like manner, where the legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded."

The legislative test for military service credits in RCW 41.40.170 (3) can not be said to be ambiguous. As set out above, it is a simple three step analysis looking at 25 years of service, veteran status and prior service in the armed forces. There is no finding or conclusion by the Presiding Officer that RCW 41.40.170 (3) is ambiguous.

Nonetheless, the Presiding Officer improperly engaged in reliance upon the legislative history of RCW 41.40.170 to reach her conclusions. For example, see First Class Cartage v. Fife Serv. And Towing, 121 Wn. App. 257, 266 89 P.3rd 226 (2004):

> If the statute is unambiguous, we do not construe its language to discern intent. (cites omitted) A statute is ambiguous if it can reasonably be interpreted in two or more ways, but it is not ambiguous simply because different interpretations are *conceivable.* (emphasis in original) Fraternal Order of Eagles, 148 Wn.2d at 239 -40 (citing State v. Keller, 143 Wn.2d 267,276, 19 P.3d 1030 (2001), *cert. Denied* 534 U.S. 1130 (2002)).

Furthermore, "(b)ut absent ambiguity, there is no need for the agency's expertise in construing the statute and we do not defer to an agency determination that conflicts with the statute." NOR-PAC

Enterprises v. Dept. of Licensing, *(supra)*.

The Department failed to comply with the United States Supreme Court's decision of Bedroc Limited, LLC v. United States, 541 U.S. 176 (2004). The court 183, ruled,

> The **preeminent** canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.' Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253-254 (1992). Thus, our inquiry begins with the statutory text, and ends there as well if the text is unambiguous. Lamie v. United States Trustee, 540 U.S. at 526 (2004) (other cites omitted). (emphasis added)

The Presiding Officer ignored the Washington State Supreme Court decision in Washington v. Roggenkamp, 153 Wn. 2d 614, 106 P.3d 196, (2005) which reemphasized the rules of statutory construction. The court ruled at 621: "If the language is unambiguous, a reviewing court is to rely solely on the statutory language."

In the event there was ambiguity case law is instructive: "Where there is ambiguity regarding the application of pension statutes, the statutes are to be construed in favor of the persons for whose benefit they were intended." Kellum v. Department of Retirement Systems, 61 Wn. App. 288, 294, 810 P. 2d 523 (1991).

No. 3. May the presiding officer rely upon inadmissible evidence to support a summary judgment?

The standard for review of a summary judgment order is set out in First Class Cartage, Ltd. v. Fife Service and Towing, Inc., 121 Wn. App. 257, 261, 89 P.3d 226 (2004):

> When reviewing an order of summary judgment, we engage in the same inquiry as the trial court. Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). Like the trial court, we consider all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party. If the moving party submits adequate affidavits, the burden shifts to the nonmoving party to set forth specific facts sufficiently rebutting the moving party's contentions and disclosing the existence of a material issue of fact.. The court should grant a summary judgment motion only if, from all the evidence, reasonable persons could reach but one conclusion. (Internal cites omited)

Volume 2A Sutherland Statutory Construction (6th ed.) Section 45:02 states, "(a) basic rule of statutory construction is that the clear and express language of a statute cannot be abrogated by statement in congressional debates during a bill's enactment." Over the Petitioner's objection (AR 024), the Presiding Officer relied upon the Department's "evidence" which was as remote and unreliable as alleged hearsay letters between lobbyists. This acceptance of and reliance upon such material does not comply with the rules of evidence, violates the procedural evidentiary rules of the APA at RCW 34.05.452, *attached as Appendix G,* and is grounds for reversal under RCW 34.05.570(3)(c), *unlawful*

procedure or decision-making process. The Department's motion for summary judgment was supported only by bare attachments to a memorandum (AR 041-169), without supporting declaration or affidavit, see CR 56, (e). The attachments contained no indicia of reliability or authenticity.

For example, the Department's unauthenticated Exhibit 1 (AR 069) is allegedly from a mystery person named "Dick" relating the alleged second-hand hearsay statements of other non-sworn persons named Norm Schut and Ned Shera. "Dick" and Norm do not appear to be members of the legislature. Likewise, the letter of February 21, 1972, (AR 072) and the memo of February 18, 1972, (AR 073) which the Department claims to be from Norm Schut, appear to identify him as lobbyist of a labor union rather than a legislator.

The letter of February 7, 1972, from James Riggs to Norm Schut appears to be from one non-legislator to another (AR 079 -080). How this alleged exchange of alleged correspondence between lobbyists can be considered the intent of the legislature is dumbfounding. Likewise, the memorandum dated February 5, 1972, (AR 081-086) from Mr. Schut to Members of the House, even if accurate, can not be considered an expression of the legislature's intent, just that of a lobbyist. The

materials supplied by the Department do not support a summary judgment in favor of the Department, and it was error for the Presiding Officer to base her decision on them.

No. 4. Is military service with the National Guard federal service when performed under the provisions of 10 USC 12602, 32 USC 502 and 503 and the orders of the United States Secretary of the Army?

Assuming for argument's sake that the requirement of *active federal service* applies to the non-interruptive military service, Lt. Densley's military service in the Washington National Guard during the three annual summer camps was active federal military service as defined by 10 U.S.C. 101 (d)(3). His orders to training (AR153 and AR163) were issued under the express authority of 32 USC 503.

Since RWC 41.40.170(1) uses the term active **service** rather than the term active duty, it is important to further review what is meant by active service under federal law as it is not defined in RCW 41.40.170.

10 USC 101 provides definitions:

> (c)(3) The term "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.
>
> (d)(3) The term **"active service" means** service on active duty or **full-time National Guard duty.**
>
> (d)(5) The term **"full-time National Guard duty" means training** or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National

> Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia **under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States** or for which the member has waived pay from the United States.

Title 10 United States Code contains further provisions detailing the federal service nature of some National Guard service:

> 10 USC 12602 (a) **For the purposes of laws providing benefits** for members of the Army National Guard of the United States and their dependents and beneficiaries -
> (1) military training, duty, or other service performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in **Federal service** as a Reserve of the Army;
> (2) full-time National Guard duty performed by a member of the Army National Guard of the United States shall be considered active duty in **Federal service** as a Reserve of the Army; and
> (3) inactive-duty training performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in **Federal service** as a Reserve of the Army.

What is to be gleaned from this series of definitions is that the term "federal active service" is a term that means more than "active duty." Federal active service includes both active duty and full-time National Guard duty. Annual training served under the authority of 32 USC 503 is full-time National Guard duty and hence is active federal service.

Weekend drills are inactive federal service. Only military service by National Guard members ordered solely by the state governor (i.e. state duty) is not covered under the definitions of active federal service. Moreover, this federal service definition including National Guard service again is found in 20 CFR 1002.57, *infra*.

Perpich v. Department of Defense, 496 U.S 334 (1990) analyzes the types of duties performed by National Guard members. It provides the analogy that a member of the National Guard has three hats in his or her closet, wearing but one at a time. These hats are federal service, state service or civilian activities. Applying this analogy to the stipulation by which the Attorney General was dismissed from this case (CP 1133-115) provides that the Lt. Densley's military duty with the National Guard was not state service. It wasn't a civilian activity either. Thus, looking at the three-hat analogy of Perpich leaves only the Federal hat being worn while the duty was performed.

The weekend drills were performed pursuant to 32 USC 502 and paid for by the federal government. (AR 188-197) Although these days of service were inactive duty training, they were still under federal authority.

No. 5. In the event that the interruptive military service test of RCW 41.40.170 (1) is also the test for RCW 41.40.170 (3) non-interruptive military service, should the presiding officer have considered other

state and federal statutory provisions which liberalize the RCW 41.40.170 (1) test for interruptive military service credits?

Since the Presiding Officer determined that the test for interruptive military service is also the same test to be applied to non-interruptive military service credits, it is worthwhile then to review the other statements of legislative intent on interruptive military service credits. *See* Department of Ecology v. Campbell & Gwinn, LCC, 146Wn. 2d 1, 11-12 (2002) the plain meaning of a statute is "derived from what the Legislature has said . . . in the statue and related statues which disclose legislative intent about the provision in question." Various State and Federal laws have expanded the types of service qualifying for interruptive military service retirement benefits beyond the strict confines of "active federal service." As a result of these other statutes, interruptive service credits covered by RCW 41.40.170 (1) actually means service in the uniformed services including weekend drills, and both state and federal service; and, the requirement for veteran status has been eliminated.

Washington State has adopted legislation over the years which expand the types of military interruptive service qualifying for pension credits. The Washington Legislature enacted RCW 73.16.055 in 2001. It states in part:

1)(a) In the case of a right provided **under any state law governing**

pension benefits for state employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.
(b) A person reemployed under this chapter shall be treated as not having incurred a break in service with the state because of the person's period of service in the uniformed services.
(c) **Each period served by a person in the <u>uniformed services</u>** shall, upon reemployment under this chapter, be deemed to constitute service with the state for the purpose of determining the nonforfeitability of the person's accrued benefits and **for the purpose of determining the accrual of benefits under the plan.** (emphasis added)

Thus, under the protections set out by RCW 73.16.055, the test for interruptive service credits is not "active federal service"; rather it is actually "service in the uniformed services" a term defined at RCW 73.16.031 (12) :

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

RCW 73.16.031(16) defines uniformed services:

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

Not only does Washington State law compel this conclusion that "service in the uniformed services" is the test for interruptive credits, the federal USERRA law does, too. The Federal law also specifically supersedes restrictive state laws:

> 38 USC § 4302:
> Relation to other law and plans or agreements
> (a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.
> (b) **This chapter supersedes any State law** (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter **that reduces, limits, or eliminates** in any **manner any right or benefit provided by this chapter,** including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit. (emphasis added)

38 USC 4318(2)(A) continues by specifically addressing the pension test for interruptive duty to be "service in the uniformed services . . . ."

Pursuant to these federal statutes Title 20 of the Code of Federal Regulations further amplifies the tremendous impact of these terms. This CFR was adopted in December of 2005. Specifically, 20 CFR 1002.57:

> **§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"**

The National Guard has a dual status. It is a Reserve component of

the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. **Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.** (emphasis added)

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

The conclusion reached by the Presiding Officer in her decision at paragraph 30 (AR 012-013), which states that the qualifying orders to military duty must be under the authority of Title 10 USC erroneously ignores specifically preemptive federal legislation which provides that federal service includes National Guard duty performed under the authority of Title 32 USC.

No. 6. Does a statute in effect at the time the military service was performed which equated state active duty with active duty in the United States Army for purposes of employment and reemployment provide a vested right?

Assuming for the sake of argument that the service between 1972 and 1976 was state active duty, then reference is made to

the version of RCW 38.24.060 in effect at the time. That statute provided:

> All members of the organized militia who are called to state active duty shall, upon return from such active duty, have the same rights of employment or reemployment as they would have if called to active duty in the United States Army.

The Presiding Officer erred paragraph 49 of her decision (AR 019) when she declared RCW 38.24.060 to be "an anomalous provision" unworthy of DRS's compliance. She further erred at paragraph 53 (AR 020) when she declared that DRS need "not recognize chapter 38.24 RCW as a source of binding legal authority affecting how military service, particularly military service pre-dating PERS-covered employment, is credited in PERS." Her reliance upon subsequent amendments to the statute to render it inapplicable to service performed during the earlier version are in complete contrast to Strong v. Department of Retirement Systems, 61 Wn. App. 457, 810 P.2d 974 (1991). There the court agreed with DRS's *then* practice of applying the definition of service which existed at the time the military service was performed, regardless of when the member seeks retirement service credit for that service. At page 461 the court stated, "military service should be credited as of the time it was performed." Likewise, Bates v. City of Richland; 112 Wn. App. 919, 927;51 P.3d 816 (2002) ruled :

In Washington, pension rights are contractual rights that vest at the

> beginning of the employment relationship. (internal cites omitted) Pension rights vesting from the inception of employment become property rights and may not be divested unless the changes are equitable to the employee or are necessary to maintain the flexibility and integrity of the pension system.

No. 7. Is it improper discrimination for DRS to authorize military service credits for military service performed with the Army Reserves but not the same type military service with the Army National Guard?

James Densley's active service and inactive service has been documented by Chronological Statement of Retirement Points dated 13 June 2003 (AR 187). This service includes federal active duty, National Guard duty and Army Reserve duty. The federal government credits National Guard annual training and inactive duty same as that with the army reserve. DRS erroneously does not.

While DRS credits Army Reserve summer camps for PERS 1 as qualifying military service, see the DRS Web page (AR 248), it denies credit for the same types of annual training performed by members of the Washington National Guard. (decision paragraph 35, AR 014) The uniforms are the same, both say "U.S. Army" on the front, the pay checks both come from the U.S. Army, the equipment is the same, the mission is the same.

Both RCW 38.40.040 and 110 prohibit and criminalize employment related discrimination based upon membership in the militia.

(*These statutes are attached at Appendix H*) Yet what the Department and the Presiding Officer have done is to base their decision on improper discrimination based upon Lt. Densley's membership in the National Guard. For example, under the reasoning of the Department if Lt. Densley were to have joined an Army Reserve unit rather than a National Guard unit upon his release from duty at Ft. Eustis, VA, in 1972, and perform the same drills and annual training he would have been entitled to credit for the annual training attendance. Support for this discrimination can not be found in RCW 41.40.170 (3).

It is also arbitrary and capricious of the Department and the Presiding Officer to engage in such discrimination that has no rational basis. RCW 34.05.570 (3)(i). Applying the Netversant, *supra,* test to the current case, to wit: an "agency action is arbitrary or capricious if it is willful and unreasoning and without regard to the facts or circumstances," it is clear that the Department is arbitrary and capricious in its claim that for service in the armed forces to be federal duty it must be performed under the authority of only Title 10 USC and not under the authority of yet another federal law, Title 32 USC.

No. 8. Is travel time to and from a distant location of employment required by an employer within the course of employment?

On July 12, 1972, 2nd Lt. Densley was ordered to active duty at Ft. Eustis, Virginia, for three months, then to return to his home of record in Tacoma, Washington. (AR 300) 2nd Lt. Densley's DD 214 reflects that he performed three months duty and 10 days travel time (AR 183). He returned to Tacoma on November 12, 1972. Also in November 1972, he performed a weekend drill with his Tacoma, Washington National Guard Unit (AR 187). His service totals 14 days in the month of November 1972 (seven days active duty, five travel and two drill).

The Presiding Officer failed to consider the five days travel time in between November 8 and 12, 1972, despite these days being part of 2nd Lt. Densley's discharge papers (DD 214) (AR 183) and being briefed by both the Attorney General (AR 053) and the James Densley. (AR 241) This failure by the Presiding Officer to consider the travel time violates RCW 35.05.570 (3)(f): *The agency has not decided all issues requiring resolution by the agency.*

Washington courts have held that employees who travel to and from distant locations for their employers are employed during the travel period, Shelton v Azar, 90 Wn. App. 923; 954 P.2d 352 (1998). See at 933, "When employees are required by their employers to travel to distant jobsites, courts generally hold that they are within the course of their

employment throughout the trip . .. ." See also at 936, "Like the employee in Wright, Reed was required to travel to a specific out-of-town location to fulfill the terms of his employment. He, therefore, was exposed to greater risks than an employee required only to travel in an ordinary commute from home. That Reed expected to remain in Washington for two months did not significantly alter that risk. He, therefore, was acting in the course of his employment." In Craft v. United States, 542 F.2d 1250, 1255 (5th Cir. 1977) the court held that a soldier was within the scope of his employment when the army bore the expenses of travel which were necessary in the military service. The court also held that it is controlling that at the time of this collision, Capt. Wescott was performing a specific duty which had been assigned to him to travel to Fort Sam Houston. Likewise, for 2nd Lt. Densley, the orders placing him on active duty required him to travel to a specific distant out-of-town location, Ft Eustis, Virginia, to fulfill the terms of the orders. Reference to the orders to active duty (AR300) show that travel by privately owned vehicle was specifically authorized. Travel payment was provided at the line titled "Acct clas: Tvl 2132070 32-52 P3246-2100 S99999." This time of travel should be considered part of the employment and added to the other service performed that month. Hence, appellant should be awarded a full

month military service credit for the month of November 1972.

No. 9. Was it error for Presiding Officer to disregard the federal source of a soldier's obligation to perform military service in declaring such service to be state service?

The source of Lt. Densley's obligation to attend the weekend drills and the annual summer training with the National Guard was his enrollment in the ROTC program at the University of Washington. Three documents informed him of his federal duty to serve in a reserve component after commissioning as a Title 10 USC officer. (AR 178, 179 and 182) The choice between Army Reserve or Army National Guard was up to 2nd Lt. Densley. Specifically the pre-commissioning letter dated 19 January 1972, AR 179-180, states, "Once assigned to a ARNG (army national guard) or USAR (United States Army Reserve) unit, you will be required to participate in all scheduled training assemblies, normally one weekend each month, and not less than 14 days annual active duty for training, unless excused by proper authority." Special instruction (c) of the orders to active duty issued under the direction of the Secretary of the Army required the same reserve service obligation. (AR 300) The Presiding Officer erred in her decision at Paragraph 36, (AR 014), when she arbitrarily disregarded the source of the obligation to serve in the National Guard. James Densley was serving under orders of his Title 10

USC commission when he participated in the National Guard. James Densley's obligation to participate was different than that a person walking off the street to join the National Guard. Again applying the Netversant, *supra,* test to the current case, to wit: an "agency action is arbitrary or capricious if it is willful and unreasoning and without regard to the facts or circumstances," it is clear that the Department is arbitrary and capricious by disregarding the circumstances relating to federal orders directing participation in the National Guard.

No. 10. Is the application of the quarter month service rule provided in RCW 41.40.010 retroactive?

Of the periods covered in the request for military service credits 41 months were of weekend unit drill assemblies. (*see appendix A*) Prior to 1991 DRS authorized a full month's credit for ten or more days service per month and no credit for less than ten days. That year RCW 41.40.010 (9) was amended to authorize quarter-month's credit for service under 70 hours per month. In 1993 RCW 41.40.010 (9) was enacted and reenacted by Chapter 95, Laws of 1993. Section 9 of the bill provided for retroactive application of the quarter-month rule to interruptive military service under RCW 41.40.170. *See Appendix I.*

Use of the rules at the time of retirement are provided in RCW 41.40.185: "Upon retirement from service, as provided for in RCW

41.40.180 or RCW 41.40.210, a member shall be eligible for a service retirement allowance **computed on the basis of the law in effect at the time of retirement**, (emphasis added) together with such post-retirement pension increases as may from time to time be expressly authorized by the legislature." The quarter month accrual computation was in effect in 2005 when James Densley retired. Compare, however, Strong v. DRS, *supra.*

Furthermore, in 1991 the legislature codified its intent and policy regarding retirement benefits in RCW 41.50.005 (2) "Persons hired into eligible positions shall accrue service credit for all service rendered." This is a remedy designed to correct the prior harsh rule that a person working up to 70 hours in a month would accrue no service credit by authorizing the quarter-month accrual rule.

Retroactive application of statutory provisions have also been allowed by the courts for remedial statutes, State v. T.K., 139 Wn. 2d 320, 332, 987 P.2d 63 (1999). Veteran protection can be said to be a remedial interest of the state. First, as described in the Perpich decision, *supra,* since the founding of the United States there has been a realization that a large standing army is not favored. Rather the United States has chosen to rely upon the citizen/soldier members National Guard and Reserves to augment a smaller standing army. Furthermore,

the National Guards of the various states are the governors' armies to assist in such state activities as forest fire fighting and flood relief in addition to being part of the federal reserve components in national defense. Both State and Federal laws have been enacted to assist members of the reserves to meet this need for a robust reserve component. Some of the state laws are designed to assist ongoing membership in the guard and reserve, such as the state providing military leave to public employees to perform National Guard and Reserve service, preventing discrimination based upon membership, providing for employment and reemployment rights and providing for PERS pension coverage during interruptive service, RCW 41.40.170 (1).

Likewise, there are laws recognizing prior military service. These laws show the state's awareness that prior military service often places a veteran at multiple disadvantages in the civilian work place over the draft-dodger or other person who avoided military service. For example, there are remedial veterans' preferences given in public employment and in public works, see RCW 41.04 and RCW 73.16.010. The veteran often loses several years of high pay by serving in the military and loses the ability to start his or her career at a younger age. In the forum of retirement for PERS 1-covered public employees, there is an implicit

recognition that the veteran who starts public employment is often forced to start work to an older age in order to obtain a similar retirement as the person avoiding military service who was able to collect on his or her 30 year pension at a younger age. This goal of recognizing and remedying the sacrifices of the veteran by granting military service credits for prior service allows for retirement at about the same age for both groups of people is what is provided by RCW 41.40.170 (3).

The policies are similar yet serve different goals. One is to encourage current participation in the reserve component and the other is to provide a remedy for past participation in the military. Thus, it is quite logical why the legislature may choose to impose two different tests for eligibility for the two different benefits provided in RCW 41.40.170. The remedial nature of these veterans' protections is also the reason the quarter-month service credit should be given retroactive application.

ASSIGNMENTS OF ERROR 3

DRS has failed to comply with its own regulations and court rules in the handling of this request for military service credits.

No. 11 Is the failure of DRS's Petitions Examiner to follow the requirements of notice, opportunity to be heard, confrontation of evidence and due process provided in WAC 415-04-040 basis for reversal?

James Densley received a telephonic voice message from the Department's Petition Examiner on February 1, 2005. He memorialized the telephone call by a letter to the Petition Examiner and the Department. (AR 305) The contents of the phone call from the Department's Petition Examiner and of her decision (AR 310) show a reliance upon information not in the record. Error was committed by failure to comply with WAC 415.40.040 by seeking additional evidence from the Department and the Attorney General, who declined to appear as interested parties, and then failing to disclose their responses to James Densley. This violation of the Department's own regulations is grounds for reversal under RCW 34.05.570 (3)(c): "The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure."

Had the DRS's Petition Examiner chosen to follow the prescribed procedure contained in the Department's own WAC 415-40-040 (2) (b), she would have followed these steps:

> (b) If the petition examiner determines that **you do** (emphasis in original) have a sufficient stake in the outcome, the petition examiner:
>
> (i) Will notify interested parties, such as the member, current or former employer(s), designated beneficiaries, former spouse or the **department,** (emphasis added) that you filed a petition;
>
> (ii) Will request that the interested parties submit any written response to the petition no later than twenty days from the date

of receipt of the notice;

Had the DRS's Petition Examiner again chosen to follow the applicable procedure contained in WAC 415-40-040 (4)(a), she would have followed these steps:

> (4) The petition examiner will forward a copy of an interested party's response to you.
> (a) You will have ten days to reply.

Rather than following the Department's own WAC requiring the Department and the Attorney General to appear as interested parties if they have any input and submit any responses in writing which would be forwarded to Mr. Densley for reply, she encouraged the Department and the Attorney General to provide secret evidence and responses without appearing as interested parties. Continuing with the violations of established procedures she failed to forward their responses and give James Densley the right to reply. Finally, in violation of the DRS's due process the Department's Petition Examiner relied upon the secret responses in rendering her untimely decision. Furthermore, such ex-parte communications violate the appearance of fairness doctrine as set out in RCW 42.36.060. *Attached as appendix J*

No. 12. Is DRS's mishandling, failure to protect and publication of the appellant's personal identifying information in violation of GR 15 and GR 31 basis for reversal?

Again reference is made to the ground for reversal provided by RCW 34.05.570 (3)(c): "The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure." The failure to follow a prescribed procedure is the mishandling, failure to protect and publication of James Densley's personal identifiers.

DRS filed the administrative record with the court on October 27, 2005. This record contained approximately 12 documents previously filed by the Attorney General which contained personal identifiers of James Densley, such as his social security number and date of birth. The affidavits of Patti Lee (CP 28-29)and of the Presiding Officer (CP34-35) detail how this information was left in the file and not redacted prior to filing with the court as the Department claims it normally does. Such filing also violated GR 15 and GR 31, which are designed to prohibit the filing in court of such sensitive information.

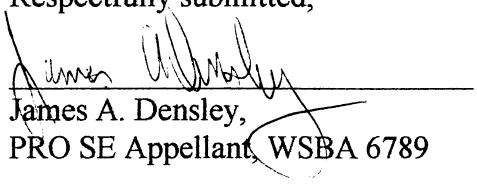
F. CONCLUSION

The military service performed by James Densley should be credited to his PERS 1 retirement. He should be authorized four full months credit and 41 quarter months credit.

The decisions of the Superior Court and Presiding Officer denying such credit should be reversed.

DATED : January 16, 2007

Respectfully submitted,



James A. Densley,
PRO SE Appellant, WSBA 6789

Appellant has over twenty-five years service under the PERS 1 system for work performed in the Pierce County Prosecuting Attorney's Office from May, 1977, to the present, see exhibit 25.

A table showing the months and years of the military service sought by this petition follows:

YEAR	1972	1973	1974	1975	1976
JAN		2 Drill	2 Drill	2 Drill	2 Drill
FEB		2 Drill	2 Drill	2 Drill	2 Drill
MAR		2 Drill	2 Drill	2 Drill	2 Drill
APR		2 Drill	2 Drill	2 Drill	
MAY		2 Drill	2 Drill	2 Drill	
JUN		2 Drill	2 Drill	2 Drill	
		15 AD	15 AD		
JUL		2 Drill	2 Drill	2 Drill	
				13 AD	
AUG		2 Drill	2 Drill	2 Drill	
				2 AD	
SEP		2 Drill	2 Drill	2 Drill	1 IDT
OCT		2 Drill	2 Drill	2 Drill	
NOV	7 AD/	2 Drill	2 Drill	2 Drill	
	5 Travel				
	2 Drill				
DEC	2 Drill	2 Drill	2 Drill	2 Drill	

APP A

RCW 41.40.170
Credit for military service.

(1) A member who has served or shall serve on active federal service in the military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter the armed service: PROVIDED, That in no instance, described in this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005.

(4)(a) A member, after completing twenty-five years of creditable service, who would have otherwise become eligible for a retirement benefit as defined under this chapter while serving honorably in the armed forces as referenced in RCW 41.04.005, shall, upon application to the department, be eligible to receive credit for this service without returning to covered employment.

(b) Service credit granted under (a) of this subsection applies only to veterans as defined in RCW 41.40.005.

(5) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services; and

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death.

(6) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services; and

(b) The member provides to the director proof of honorable discharge from the uniformed services.

[2005 c 247 § 2; 2005 c 64 § 1; 2002 c 27 § 2; 1991 c 35 § 78; 1981 c 294 § 12; 1973 1st ex.s. c 190 § 14; 1972 ex.s. c 151 § 3; 1969 c 128 § 7; 1967 c 127 § 8; 1963 c 174 § 10; 1953 c 200 § 9; 1949 c 240 § 12; 1947 c 274 § 18; Rem. Supp. 1949 § 11072-18.]

Notes:

Reviser's note: This section was amended by 2005 c 64 § 1 and by 2005 c 247 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability – Effective date – 2005 c 247: See notes following RCW 41.04.005.

Intent – 1991 c 35: See note following RCW 41.26.005.

Severability – 1981 c 294: See note following RCW 41.26.115.

Severability – 1973 1st ex.s. c 190: See note following RCW 41.40.010.

Severability – 1969 c 128: See note following RCW 41.40.010.

APPENDIX B

Jun 17 04 10:44a DCSPER 2535128941

APPENDIX C

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NATIONAL GUARD BUREAU

RETIREMENT CREDITS RECORD

Retirement Year: 10 Jun - 9 Jun

SERIAL NO. [redacted]

GRADE (in pencil) 2LT

STATE Washington

NAME (Last, first, middle initial) DENSLEY, JAMES A.

(1) DRILL, PERIOD OF EQUIVALENT INSTRUCTION OR APPROPRIATE DUTY — INCLUSIVE DATES	POINTS	(2) MEMBER OF NATIONAL GUARD — INCLUSIVE DATES	POINTS	(3) EXTENSION COURSES COMPLETED OR MISCELLANEOUS DUTIES PERFORMED — DATE	DATE PERFORMED	TOTAL HOURS	POINTS	(4) TOTAL POINTS INACTIVE DUTY	(5) ACTIVE DUTY OR ACTIVE DUTY TRAINING — INCLUSIVE DATES	POINTS	(6) TOTAL POINTS	(7) VERIFIED BY
10Jun72-9Jun73	32	10Jun72-9Jun73	15					47	2Jun73-9Jun73	8	55	[illegible]
									10Jun73-16Jun73	7		
10Jun73-9Jun74	44	10Jun73-9Jun74	15					59	8-9 Jun 74	2	68	[illegible]
10Jun74-14Aug74	0							0	10Jun74-22Jun74	13	13	[illegible]
15Aug74-9Jun75	47	15Aug74-9Jun75	15					62			62	[illegible]
10Jun75-1Apr76	42	10Jun75-1Apr76	12					54	19Jul75-2Aug75	15	69	[illegible]

Dy to Seperated and trf to USARP St Louis, MO 63132 Eff 1 Apr 76 Para 3 SO 82 TAGO Wash dtd 6 Apr 76

"I CERTIFY THIS IS A COPY OF THE ORIGINAL"
Lisa L Jones 03 Jun 04
LISA JONES, SPC, WAARNG

TSJ EX 8

U.S. ARMY RESERVE PERSONNEL COMMAND

1 RESERVE WAY
ST. LOUIS, MO 63132-5200

CHRONOLOGICAL STATEMENT OF RETIREMENT POINTS

'LY TO
.N: ARPC-PS

12 JUN 2003

ARPC-PS
DENSLEY JAMES ALBERT

10

PO BOX 272
FOX ISLAND WA 98333

Points shown below are a recapitulation of retirement credits as received by this Command. If there are errors or omissions, please return a copy of the detail points listing (on reverse) with your request for correction. Include copies of pay vouchers, record of attendance and correspondence course completions to substantiate your request for correction.

REASON FOR ISSUANCE	SOCIAL SECURITY NUMBER	DATE OF BIRTH	CURRENT GRADE	PEBD
ANNUAL STATEMENT	[redacted]	[redacted]	LTC	19720610

1. BEGINNING DATE YR	MO	DAY	2. ENDING DATE YR	MO	DAY	3. MILITARY PERSONNEL CLASS	4. STATUS OR COMPONENT	5. INACTIVE DUTY POINTS	6. EXTENSION COURSE POINTS	7. MEMBER-SHIP POINTS	8. ACTIVE DUTY POINTS	9. QUALIFYING FOR RETIREMENT YRS	MOS	DAYS	10. TOTAL POINTS CREDITABLE
2000	05	31	2000	05	31	COM	RET	000	000	00	0000	00	00	00	0000
1999	06	10	2000	05	30	COM	USAR	049	000	15	0032	00	11	21	0096
1998	06	10	1999	06	09	COM	USAR	047	000	15	0032	01	00	00	0094
1997	06	10	1998	06	09	COM	USAR	030	000	15	0054	01	00	00	0099
1996	06	10	1997	06	09	COM	USAR	056	000	15	0022	01	00	00	0093
1995	06	10	1996	06	09	COM	USAR	052	000	15	0000	01	00	00	0060
994	06	10	1995	06	09	COM	USAR	040	015	15	0026	01	00	00	0086
993	06	10	1994	06	09	COM	USAR	041	000	15	0013	01	00	00	0069
1992	06	10	1993	06	09	COM	USAR	030	033	15	0013	01	00	00	0073
1991	06	10	1992	06	09	COM	USAR	021	012	15	0014	01	00	00	0062
1990	06	10	1991	06	09	COM	USAR	000	000	15	0098	01	00	00	0113
1989	06	10	1990	06	09	COM	USAR	000	036	15	0013	01	00	00	0064
1988	06	10	1989	06	09	COM	USAR	000	043	15	0027	01	00	00	0085
1987	06	10	1988	06	09	COM	USAR	000	064	15	0013	01	00	00	0073
1986	06	10	1987	06	09	COM	USAR	000	028	15	0014	01	00	00	0057
1985	06	10	1986	06	09	COM	USAR	008	000	15	0006	00	00	00	0029
1984	06	10	1985	06	09	COM	USAR	003	009	15	0025	01	00	00	0052
1983	06	10	1984	06	09	COM	USAR	000	042	15	0026	01	00	00	0083
1982	06	10	1983	06	09	COM	USAR	000	032	15	0012	01	00	00	0059
1981	06	10	1982	06	09	COM	USAR	014	013	15	0012	01	00	00	0054
1980	06	10	1981	06	09	COM	USAR	014	000	15	0025	01	00	00	0054
1979	06	10	1980	06	09	COM	USAR	004	000	15	0000	00	00	00	0019
1978	06	10	1979	06	09	COM	USAR	048	000	15	0015	01	00	00	0075
1977	06	10	1978	06	09	COM	USAR	003	000	15	0015	00	00	00	0033
1976	06	10	1977	06	09	COM	USAR	000	000	15	0000	00	00	00	0015
1975	06	10	1976	06	09	COM	USAR	042	000	15	0015	01	00	00	0072
1974	06	10	1975	06	09	COM	ARNG	047	000	15	0013	01	00	00	0073
1973	06	10	1974	06	09	COM	ARNG	044	000	15	0009	01	00	00	0068
1972	06	10	1973	06	09	COM	ARNG	032	000	15	0101	01	00	00	0148
											TOTAL	23	11	21	1958

APPENDIX D

TSJ
EX 9

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Troop Program Unit members must see their Unit Administrator for corrections through RLAS.

For information on retirement points, 20-year letters, and RC-SBP see our Web Page at http://www.2xcitizen.usar.army.mil

ARPC Form 249-2-E, Feb 01 (Prior editions are obsolete.)

RCW 73.16.061

Enforcement of provisions.

(1) In case any employer, his or her successor or successors fails or refuses to comply with the provisions of RCW 73.16.031 through 73.16.061 and 73.16.090, the attorney general shall bring action in the superior court in the county in which the employer is located or does business to obtain an order to specifically require such employer to comply with the provisions of this chapter, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful act if:

(a) The service in question was state duty not covered by the uniformed services employment and reemployment rights act of 1994, P.L. 103-353 (38 U.S.C. Sec. 4301 et seq.); and

(b) The employer support for guard and reserve ombudsman, or his or her designee, has inquired in the matter and has been unable to resolve it.

(2) If the conditions in subsection (1)(a) and (b) of this section are met, any such person who does not desire the services of the attorney general may, by private counsel, bring such action.

[2001 c 133 § 10; 1953 c 212 § 6.]

Notes:

Effective date – 2001 c 133: See note following RCW 73.16.005.

APPENDIX E

RCW 34.05.570
Judicial review.

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts

APPENDIX F 1

and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

[2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

Notes:

Findings – Short title – Intent – 1995 c 403: See note following RCW 34.05.328.

Part headings not law – Severability – 1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date – 1989 c 175: See note following RCW 34.05.010.

APPENDIX F2

RCW 34.05.452

Rules of evidence — Cross-examination.

(1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

(3) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(5) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[1988 c 288 § 415; 1959 c 234 § 10. Formerly RCW 34.04.100.]

APPENDIX G

RCW 38.40.040

Interference with employment — Penalty.

A person, who either alone, or with another, wilfully deprives a member of the organized militia of Washington of his or her employment or prevents such member being employed, or obstructs or annoys said member or his or her employer in their trade, business or employment, because he or she is such member, or dissuades any person from enlisting in said organized militia by threat or injury to him or her in their employment, trade or business, in case he or she shall so enlist, shall be guilty of a gross misdemeanor and on conviction thereof shall be fined in a sum not exceeding five hundred dollars, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

[1989 c 19 § 48; 1943 c 130 § 46; Rem. Supp. 1943 § 8603-46. Prior: 1917 c 107 § 41; 1909 c 134 § 67; 1895 c 108 § 104, part.]

APPENDIX H1

RCW 38.40.110

Employment or membership in other organizations — Discrimination prohibited — Penalty — Civil cause of action.

No club, society, association, corporation, employer, or organization shall by any constitution, rule, bylaws, resolution, vote or regulation, or otherwise, discriminate against or refuse to hire, employ, or reemploy any member of the organized militia of Washington because of his or her membership in said organized militia. Any person or persons, club, society, association, employer, corporation, or organization, violating or aiding, abetting, or assisting in the violation of any provision of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding one hundred dollars and in addition thereto shall forfeit the right to do business for a period of thirty days. Any person who has been discriminated against in violation of this section shall have a civil cause of action for damages.

[1991 c 43 § 9; 1989 c 19 § 52; 1943 c 130 § 47; Rem. Supp. 1943 § 8603-47. Prior: 1917 c 107 § 42; 1909 c 134 § 68.]

APPENDIX H2

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1670
Chapter 95, Laws of **1993**
53rd Legislature
1993 Regular Session
SERVICE CREDIT FOR **PUBLIC EMPLOYEES** FOR PERIODS OF PAID LEAVE
EFFECTIVE DATE: 4/21/93
Passed by the House March 13, **1993**
Yeas 96 Nays 0
BRIAN EBERSOLE
Speaker of the
House of Representatives
Passed by the Senate April 8, **1993**
Yeas 47 Nays 0
CERTIFICATE
I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 1670 as passed by the House of Representatives and the Senate on the dates hereon set forth.
R. LORRAINE WOJAHN
President of the Senate
ALAN THOMPSON
Chief Clerk
Approved April 21, **1993**
FILED
April 21, **1993** - 2:29 p.m.
MIKE LOWRY
Governor of the State of Washington
Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 1670

State of Washington 53rd Legislature **1993** Regular Session
By House Committee on Appropriations (originally sponsored by Representatives Sommers, Heavey, Locke, King, Jacobsen, Vance, Wineberry, Mielke, Linville, Lisk, J. Kohl, Wolfe, Basich, Orr, Valle, Veloria, Anderson, G. Cole, Dorn, Jones, R. Fisher, Holm, Ogden and Kremen)
Read first time 03/08/93.
AN ACT Relating to providing **service** credit for periods of paid leave; amending RCW 41.40.710, 41.26.520, and 41.32.810; reenacting and amending RCW 41.32.010 and 41.40.010; adding a new section to chapter 41.40 RCW; adding a new section to chapter 41.26 RCW; adding a new section to chapter 41.32 RCW; creating a new section; repealing RCW 41.32.034 and 41.32.355; repealing 1992 c 3 s 4 (uncodified); and declaring an emergency.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
NEW SECTION. Sec. 1. A new section is added to chapter 41.40 RCW under the subchapter heading "Plan I" to read as follows:
(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive **service** credit as provided under the provisions of RCW 41.40.145 through 41.40.363.
(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes **service** credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.
Sec. 2. RCW 41.40.710 and 1992 c 119 s 3 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive **service** credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.
(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes **service** credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.
(3) Except as specified in subsection (((3))) (4) of this section, a member shall be eligible to receive a maximum of two years **service** credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the plan II employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of **service** or prior to **retirement** whichever comes sooner. The contributions required shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.
(((3))) (4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to **retirement** system **service** credit for up to four years of **military service**.
(a) The member qualifies for **service** credit under this subsection if:
(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and
(ii) The member makes the employee contributions required under RCW 41.40.650 plus interest as determined by the department within five years of resumption of **service** or prior to **retirement**, whichever comes sooner.
(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer for its contribution required under RCW 41.40.650 for the period of **military service**, plus interest as determined by the department.
(c) The contributions required shall be based on the average of the member's compensation earnable at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.
NEW SECTION. Sec. 3. A new section is added to chapter 41.26 RCW under the subchapter heading "Plan I" to read as follows:
(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive **service** credit as provided under the provisions of RCW 41.26.080 through 41.26.3903.
(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes **service** credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.
Sec. 4. RCW 41.26.520 and 1992 c 119 s 1 are each amended to read as follows:
(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive **service** credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.
(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes **service** credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.
(3) Except as specified in subsection (((3))) (4) of this section, a member shall be eligible to receive a maximum of two years **service** credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave

of absence within five years of resumption of **service** or prior to **retirement** whichever comes sooner: PROVIDED, That for the purpose of this subsection the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.26.450. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

(((3))) (4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to **retirement** system **service** credit for up to four years of **military service**.

(a) The member qualifies for **service** credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.26.450 plus interest as determined by the department within five years of resumption of **service** or prior to **retirement**, whichever comes sooner.

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of **military service**, plus interest as determined by the department.

(c) The contributions required shall be based on the average of the member's basic salary at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.

(((4))) (5) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence.

NEW SECTION. Sec. 5. A new section is added to chapter 41.32 RCW under the subchapter heading "Plan I" to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive **service** credit as provided under the provisions of RCW 41.32.240 through 41.32.575.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes **service** credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

Sec. 6. RCW 41.32.810 and 1992 c 119 s 2 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive **service** credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes **service** credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (((3))) (4) of this section, a member shall be eligible to receive a maximum of two years **service** credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of **service** or prior to **retirement** whichever comes sooner: PROVIDED, That for the purpose of this subsection the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.32.775. The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(((3))) (4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to **retirement** system **service** credit for up to four years of **military service**.

(a) The member qualifies for **service** credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and
(ii) The member makes the employee contributions required under RCW 41.32.775 plus interest as determined by the department within five years of resumption of **service** or prior to **retirement**, whichever comes sooner.
(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall bill the employer for its contribution required under RCW 41.32.775 for the period of **military service**, plus interest as determined by the department.
(c) The contributions required shall be based on the average of the member's earnable compensation at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment.
Sec. 7. RCW 41.32.010 and 1992 c 212 s 1 and 1992 c 3 s 3 are each reenacted and amended to read as follows:
As used in this chapter, unless a different meaning is plainly required by the context:
(1)(a) "Accumulated contributions" for plan I members, means the sum of all regular annuity contributions with regular interest thereon.
(b) "Accumulated contributions" for plan II members, means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.
(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.
(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.
(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.
(5)(a) "Beneficiary" for plan I members, means any person in receipt of a **retirement** allowance or other benefit provided by this chapter.
(b) "Beneficiary" for plan II members, means any person in receipt of a **retirement** allowance or other benefit provided by this chapter resulting from **service** rendered to an employer by another person.
(6) "Contract" means any agreement for **service** and compensation between a member and an employer.
(7) "Creditable **service**" means membership **service** plus prior **service** for which credit is allowable. This subsection shall apply only to plan I members.
(8) "Dependent" means receiving one-half or more of support from a member.
(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan I members.
(10)(a) "Earnable compensation" for plan I members, means:
(i) All salaries and wages paid by an employer to an employee member of the **retirement** system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.
(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent **service** credit.
(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of **service** shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative **service** was rendered during those two years.
(ii) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives **service** credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of **retirement** benefits and only as necessary to insure that members who receive fractional **service** credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time **service** credit.

(((iii) For members who receive **service** credit pursuant to RCW 41.32.034 or 41.32.355 for a period of authorized leave from a school district, the earnable compensation allowable for calculation of the member's average final compensation shall be the salary the member would have been paid by the district for the position the member occupied immediately prior to taking leave, as established in the district's collective bargaining agreement for nonsupervisory certificated **employees**.
(iv) For members who receive **service** credit pursuant to RCW 41.32.034 or 41.32.355 for a period of authorized leave from a community or technical college district, the earnable compensation allowable for calculation of average final compensation for periods of **service** authorized under this chapter shall be the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.))
(b) "Earnable compensation" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.
(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent **service** credit.
(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:
(A) The earnable compensation the member would have received had such member not served in the legislature; or
(B) Such member's actual earnable compensation received for teaching and legislative **service** combined. Any additional contributions to the **retirement** system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.
(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.
(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.
(13) "Former state fund" means the state **retirement** fund in operation for teachers under chapter 187, Laws of 1923, as amended.
(14) "Local fund" means any of the local **retirement** funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.
(15) "Member" means any teacher included in the membership of the **retirement** system. Also, any other employee of the **public** schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.
(16) "Membership **service**" means **service** rendered subsequent to the first day of eligibility of a person to membership in the **retirement** system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one **service** credit month during any calendar month in which multiple **service** is rendered. The provisions of this subsection shall apply only to plan I members.
(17) "Pension" means the moneys payable per year during life from the pension reserve.
(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.
(19) "Prior **service**" means **service** rendered prior to the first date of eligibility to membership in the **retirement** system for which credit is allowable. The provisions of this subsection shall apply only to plan I members.
(20) "Prior **service** contributions" means contributions made by a member to secure credit for prior **service**. The provisions of this subsection shall apply only to plan I members.
(21) "**Public** school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.
(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan I members.
(23) "Regular interest" means such rate as the director may determine.

(24)(a) "**Retirement** allowance" for plan I members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.
(b) "**Retirement** allowance" for plan II members, means monthly payments to a retiree or beneficiary as provided in this chapter.
(25) "**Retirement** system" means the Washington state teachers' retirement system.
(26)(a) "Service" means the time during which a member has been employed by an employer for compensation: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one **service** credit month during any calendar month in which multiple service is rendered.
(b) "Service" for plan II members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:
(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;
(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;
(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:
(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;
(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and
(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.
Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.
When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.
The department shall adopt rules implementing this subsection.
(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.
(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.
(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.
(30) "Average final compensation" for plan II members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).
(31) "Retiree" means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.
(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.
(33) "Director" means the director of the department.
(34) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.
(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).
(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or
(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.
(37)(a) "Eligible position" for plan II members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.
(b) "Eligible position" for plan II on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.
(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.
(d) The elected position of the superintendent of public instruction is an eligible position.
(38) "Plan I" means the teachers' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.
(39) "Plan II" means the teachers' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.
(((40) "Education association" means an association organized to carry out collective bargaining activities, the majority of whose members are employees covered by chapter 41.59 RCW or academic employees covered by chapter 28B.52 RCW.))
Sec. 8. RCW 41.40.010 and 1991 c 343 s 6 and 1991 c 35 s 70 are each reenacted and amended to read as follows:
As used in this chapter, unless a different meaning is plainly required by the context:
(1) "Retirement system" means the public employees' retirement system provided for in this chapter.
(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.
(3) "State treasurer" means the treasurer of the state of Washington.
(4)(a) "Employer" for plan I members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW as now or hereafter amended; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.
(b) "Employer" for plan II members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030.
(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023.
(6) "Original member" of this retirement system means:
(a) Any person who became a member of the system prior to April 1, 1949;
(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;
(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;
(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;
(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;
(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of

retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

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

(8)(a) "Compensation earnable" for plan I members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer: PROVIDED, That retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit: PROVIDED FURTHER, That if a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee.

(b) "Compensation earnable" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay: PROVIDED, That retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit: PROVIDED FURTHER, That in any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

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

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

(9)(a) "Service" for plan I members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system: PROVIDED FURTHER, That an individual shall receive no more than a total of twelve service credit months of service during any calendar year: PROVIDED FURTHER, That where an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(b) "Service" for plan II members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service.

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

Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the teachers' retirement system or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the teachers' retirement system or law enforcement officers' and fire fighters' retirement system.
A member shall receive a total of not more than twelve service credit months of service for such calendar year: PROVIDED, That when an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.
(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.
(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.
(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.
(13) "Membership service" means:
(a) All service rendered, as a member, after October 1, 1947;
(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system: PROVIDED, That an amount equal to the employer and employee contributions which would have been paid to the retirement system on account of such service shall have been paid to the retirement system with interest (as computed by the department) on the employee's portion prior to retirement of such person, by the employee or his employer, except as qualified by RCW 41.40.023: PROVIDED FURTHER, That employer contributions plus employee contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employees' savings fund and be treated as any other contribution made by the employee, with the exception that the contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall be excluded from the calculation of the member's annuity in the event the member selects a benefit with an annuity option;
(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;
(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.
(14)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.
(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.
(15) "Regular interest" means such rate as the director may determine.
(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.
(17)(a) "Average final compensation" for plan I members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.
(b) "Average final compensation" for plan II members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).
(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.
(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.
(21) "Retirement allowance" means the sum of the annuity and the pension.
(22) "Employee" means any person who may become eligible for membership under this chapter, as set forth in RCW 41.40.023.
(23) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.
(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.
(25) "Eligible position" means:
(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;
(b) Any position occupied by an elected official or person appointed directly by the governor for which compensation is paid.
(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.
(27) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.
(28) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.
(29) "Retiree" means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.
(30) "Director" means the director of the department.
(31) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.
(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).
(33) "Plan I" means the public employees' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.
(34) "Plan II" means the public employees' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.
NEW SECTION. Sec. 9. This act applies on a retroactive basis to members for whom compensation and hours were reported under the circumstances described in sections 1 through 6 of this act. This act may also be applied on a retroactive basis to January 1, 1992, to members for whom compensation and hours would have been reported except for chapter 3, Laws of 1992, or explicit instructions from the department of retirement systems.
NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:
(1) RCW 41.32.034 and 1992 c 3 s 1;
(2) RCW 41.32.355 and 1992 c 3 s 2; and
(3) 1992 c 3 s 4 (uncodified).
NEW SECTION. Sec. 11. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.
Passed the House March 13, 1993.
Passed the Senate April 8, 1993.
Approved by the Governor April 21, 1993.
Filed in Office of Secretary of State April 21, 1993.
p. ESHB 1670.SL
ESHB 1670.SL p.

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tag prevents the collapse. */ td p { padding-top: 1pt; padding-bottom: 1pt;} th p { padding-top: 1pt; padding-bottom: 1pt;}

RCW 42.36.060

Quasi-judicial proceedings — Ex parte communications prohibited, exceptions.

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

[1984 c 191 § 1; 1982 c 229 § 6.]

APPENDIX J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JAMES A. DENSLEY, Appellant, v. DEPARTMENT OF RETIREMENT SYSTEMS, and THE ATTORNEY GENERAL FOR THE STATE OF WASHINGTON, Respondents.	)))))))))	**No. 35568-0** **DECLARATION OF SERVICE**

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BY DEPUTY

James Densley declares that on Saturday, January 13, 2007 he served by United Parcel Service his Appeal Brief upon the attorneys of record for the respondents. He deposited said Appeal Brief, shipment charges paid, with the Gig Harbor, Washington UPS Store for shipment pick-up on Monday, January 15 and delivery on Tuesday, January 16, 2007. Copies were shipped to Johnna Craig, Assistant Attorney General, 7141 Clearwater Dr. SW, Olympia, Washington and to Tim Ford, Deputy Solicitor General, 1125 Washington Street, Olympia, Washington. Shipment receipts are attached to this declaration.

I declare that the forgoing is true and signed under the penalties of perjury.

Signed this 13th Day of January, 2007, in Fox Island, Washington.

James A. Densley

James A. Densley

Shipment Receipt: Page #1 of 1

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SHIPPED THROUGH:
THE UPS STORE #0485
GIG HARBOR,WA 98335
(253) 851-5104

SHIPMENT INFORMATION:
UPS Ground Commercial
0.8lbs / 1lbs Billed
Cust Pack: 12x9x1 in

Tracking Number: 1ZX047960375523592
Shipment ID: MM30C3AW0XJXM
Or/Item#: - -
Ref#: - -

DESCRIPTION OF GOODS:
DOCUMENTS

SHIPMENT CHARGES:	
Ground Commercial	$5.84
Service Options	$0.00
Fuel Surcharge	$0.22
Total	$6.06

COMPLETE ONLINE TRACKING:
Enter either of these addresses in your web browser to track:
http://theupsstore.com (select Tracking, enter Shipment ID #)
http://mbe.com (select Tracking, enter Shipment ID #)

SHIPMENT QUESTIONS?
Contact SHIPPED THROUGH above.

Customer Acknowledgement
I acknowledge & accept Terms & Conditions in force for tendering shipments through this location and certify that address, contents and values provided for this shipment are accurate in all respects.

Signature:

ShipmentID: MM30C3AW0XJXM

Powered by iShip(tm)
01/13/2007 02:59 PM Pacific Time

International Shipping Notice - Carriage hereunder may be subject to the rules relating to liability and other terms and/or conditions established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the "Warsaw Convention") and/or the Convention on the Contract for the International Carriage of Goods by Road (the "CMR Convention"). These commodities, technology or software were exported from the U.S. in accordance with the Export Administration Regulations. Diversion contrary to U.S. law prohibited. For shipping check: call 1-800-782-7892 United Parcel Service, Louisville, KY

Shipment Receipt: Page #1 of 1

THIS IS NOT A SHIPPING LABEL. PLEASE SAVE FOR YOUR RECORDS.

SHIP DATE:
Mon, Jan 15, 2007

EXPECTED DELIVERY DATE:
TUES, JAN 16, 2007 EOD

SHIP FROM:
KATHI DENSLEY
1068 PAIUTE TRAIL
Fox Island WA 98333
(253) 549-2502

SHIP TO:
TIM FORD
DEPUTY SOLICITOR GENERAL
1125 WASHINGTON ST
ATTORNEY GENERALS OFFICE
Olympia WA 98504
Business

SHIPPED THROUGH:
THE UPS STORE #0485
GIG HARBOR,WA 98335
(253) 851-5104

SHIPMENT INFORMATION:
UPS Ground Commercial
0.8lbs / 1lbs Billed
Cust Pack: 12x9x1 in

Tracking Number: 1ZX047960308859310
Shipment ID: MM30C3AG1UQ2T
Or/Item#: - -
Ref#: - -

DESCRIPTION OF GOODS:
DOCUMENTS

SHIPMENT CHARGES:	
Ground Commercial	$5.84
Service Options	$0.00
Fuel Surcharge	$0.22
Total	$6.06

COMPLETE ONLINE TRACKING:
Enter either of these addresses in your web browser to track:
http://theupsstore.com (select Tracking, enter Shipment ID #)
http://mbe.com (select Tracking, enter Shipment ID #)

SHIPMENT QUESTIONS?
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Customer Acknowledgement
I acknowledge & accept Terms & Conditions in force for tendering shipments through this location and certify that address, contents and values provided for this shipment are accurate in all respects.

Signature:

ShipmentID: MM30C3AG1UQ2T

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01/13/2007 03:01 PM Pacific Time

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