

FINAL BILL REPORT

ESHB 1211

C 365 L 91
Synopsis As Enacted

Brief Description: Revising retirement benefits.

By House Committee on Judiciary (originally sponsored by Representatives Belcher, Hine, Silver, G. Fisher, Fraser, Winsley, Padden and Phillips).

House Committee on Judiciary
House Committee on Appropriations
Senate Committee on Ways & Means

Background: When a married couple gets divorced, vested retirement benefits are divided according to community property rules. Until 1987, the Department of Retirement Systems (DRS) was responsible for dividing the retirement benefits according to dissolution decrees or other court orders. DRS was required under various retirement acts to make direct payments to the nonmember spouse (obligee) according to the property division in the divorce decree.

In addition to making community property divisions, the court can order spousal maintenance based upon equitable principles.

In 1987, the Legislature passed a bill that was intended to clarify the department's responsibilities when making direct payments of property divisions. The bill was also passed to create a collection mechanism for obligees whose ex-spouses were not paying court ordered spousal maintenance. The bill created a mechanism call the "mandatory benefits assignment order" (MBAO). That mechanism places responsibility upon the obligee to obtain a court order requiring the department to make specified payments to the obligee from the obligor's nonexempt disposable benefits. The obligee cannot obtain an order until the member spouse (obligor) is 15 days delinquent in an amount of \$100 or more. DRS cannot withhold more than 50 percent of the obligor's periodic retirement benefits. The 50 percent cap provisions refer to the garnishment statutes, but the garnishment statutes do not cross-reference the MBAO provisions. If an obligor is subject to two or more MBAOs, DRS must apportion the nonexempt disposable benefits among the obligees equally. Obligees must substantially comply with a statutory MBAO form. DRS may collect administrative fees for processing

the MBAOs. DRS is not liable to the obligor for wrongful withholding if DRS complies with the court order.

The 1987 law eliminated direct payment of a community property division. As a result, obligees no longer automatically receive the benefits they had received automatically under the prior direct benefit scheme.

The law requires DRS to notify the obligee if the obligor requests a lump sum withdrawal of accumulated contributions. The law does not provide a mechanism to legally prevent DRS from disbursing those sums to the obligor, even if the obligor intends to subvert the court order by withdrawing all the retirement benefits.

Plan I of PERS, TRS, and LEOFF, and Plan II of these systems for members with less than 10 years of service provide that death benefits go first to a named beneficiary, then to a surviving spouse or minor child, and failing either of those, to the member's legal representatives. Plan II of these retirement systems makes no provisions for the disposition of accumulated contributions if a member with more than 10 years of service is not survived by a spouse or minor child.

A full-time teacher who is determined by DRS to be permanently disabled, has the option of then 1) receiving all of the teacher's accumulated contributions in a lump sum, or 2) accepting a retirement allowance based on age or service if eligible, or 3) accepting a retirement allowance based on disability if the teacher has been in service five or more years.

The fire fighter retirement system has a definition of "surviving spouse" that means the surviving widow or widower of a member. The term excludes the divorced spouse of a member. The definition is no longer necessary for members who establish membership in the retirement system after September 30, 1977.

Summary: The Department of Retirement Systems (DRS) is required to make direct payments of court ordered community property divisions of retirement benefits to the ex-spouses (obligees) of the retirement system members (obligors). The obligee spouse may still obtain a mandatory assignment of benefits order (MBAO) to enforce collection of delinquent spousal maintenance. The provisions governing each mechanism are separated to reduce confusion. When a dissolution action is pending, a potential obligee may obtain an order restraining DRS from disbursing funds to the obligor until a court rules on the appropriate distribution between the parties.

Mandatory Assignment of Benefits Orders (MBAO) amendments:
In calculating an obligor's disposable benefits, DRS may not consider any withholding that is elective to the obligor. The term "disposable benefits" is amended accordingly. DRS may withhold elective withholdings after deducting the amount due the obligee under the MBAO. The 50 percent cap on withdrawing funds to satisfy the MBAO is clarified to distinguish it from garnishments. The garnishment statute is amended to reflect that garnishments for spousal maintenance have a 50 percent cap. If the obligor's retirement benefits are subject to two or more MBAOs, DRS must apportion the various amounts proportionately. Any obligee may seek a court order reapportioning the division upon notice to all parties. The court order form in the statute must be used. Obligees may no longer just substantially follow the form. Any funds DRS collects from the fee for processing MBAOs will be placed in DRS' expense account. If DRS complies with a court order, DRS will not be liable to the obligee for wrongful withholding.

Direct Payment of Community Property Divisions of Retirement Benefits: The court may not order DRS to pay more than 75 percent of the periodic retirement benefits to the obligee. DRS must notify obligees who obtained divorce decrees after the 1987 act's effective date, but before this act's effective date, that obligees may receive direct payment of retirement benefits if their court orders comply or are modified to comply with this act's requirements. Obligees must obtain court orders that comply with specific language necessary for DRS to adequately administer the orders or DRS will not have to comply with the orders. DRS may collect up to a \$75 setup fee and may charge \$6 for subsequent disbursements. The obligor and obligee will share the fee equally. Money collected will be deposited in DRS' expense fund. Benefits cease upon the obligor's death except that the obligee may obtain a lump sum death benefit. If allowed under federal confidentiality laws, DRS must provide the obligee spouse with timely information about the account so the obligee can comply with federal tax requirements. Several technical and procedural sections and definitions are created to enable DRS to effectively administer the act. DRS will not be liable to the obligor or obligee for wrongful withholding if DRS complies with the court order. The provisions apply to divorces, legal separations, and annulments.

The accumulated contributions of a member with more than 10 years of service in PERS, TRS, or LEOFF Plan II go to the member's named beneficiary or the member's legal representatives if the member is not survived by a spouse or minor child.

Disabled teacher's options for retirement benefits: The provisions that govern when a disabled teacher has the option of receiving retirement benefits is extended to all teachers employed under an annual contract, not just full-time teachers. That provision applies prospectively. In addition, teachers who were under an annual half-time contract during September 1, 1986 through August 31, 1987 are also eligible for those options. That provision applies retroactively.

Definition of surviving spouse: The definition of "surviving spouse" in the fire fighters' retirement system is amended to mean persons or ex-spouses who established membership in the retirement system on or before September 30, 1977 if the couple was married for at least 30 years, the divorce decree is currently in effect, and the decree or order was entered after the member's retirement and prior to December 31, 1979. The amendment applies retroactively.

Votes on Final Passage:

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| House | 93 | 5 | |
| Senate | 47 | 0 | (Senate amended) |
| House | 94 | 0 | (House concurred) |

Effective: July 28, 1991