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SENATE BILL 5142

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State of Washington

57th Legislature

2001 Regular Session

By Senators Winsley, Long, Fraser, Franklin, Honeyford, Carlson and Kohl-Welles; by request of Joint Committee on Pension Policy

Read first time 01/12/2001. Referred to Committee on Ways & Means.

1 AN ACT Relating to continuing law enforcement officers' and  
2 fire fighters' plan 1 split benefit payments to ex spouses of  
3 members pursuant to preretirement divorce orders made after July  
4 1, 2002; and amending RCW 41.26.162, 41.50.670, and 41.50.700.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 41.26.162 and 1991 sp.s. c 12 s 2 are each amended to  
7 read as follows:

8 (1)(a) An ex spouse of a law enforcement officers' and fire  
9 fighters' retirement system retiree shall qualify as surviving  
10 spouse under RCW 41.26.160 if the ex spouse:

11 ((~~a~~)) (i) Has been provided benefits under any currently  
12 effective court decree of dissolution or legal separation or in  
13 any court order or court-approved property settlement agreement  
14 incident to any court decree of dissolution or legal separation  
15 entered after the member's retirement and prior to December 31,  
16 1979; and

17 ((~~b~~)) (ii) Was married to the retiree for at least thirty  
18 years, including at least twenty years prior to the member's  
19 retirement or separation from service if a vested member.

1       (~~(2)~~) (b) If two or more persons are eligible for a surviving  
2 spouse benefit under this subsection, benefits shall be divided  
3 between the surviving spouses based on the percentage of total  
4 service credit the member accrued during each marriage.

5       (~~(3)~~) (c) This subsection shall apply retroactively.

6       (2)(a) An ex spouse of a law enforcement officers' and fire  
7 fighters' retirement system plan 1 retiree who:

8       (i) Divorced the member before separation from service;

9       (ii) Entered into the court order or court-approved property  
10 settlement agreement incident to the divorce of the member and ex  
11 spouse after July 1, 2002; and

12       (iii) Is awarded a portion of the member's benefits for the  
13 life of the ex spouse;

14 may continue to receive that portion of the member's benefit after  
15 the member's death as if the member was still alive if specified  
16 in the court order or court-approved property settlement.

17       (b) This subsection shall not apply retroactively.

18       **Sec. 2.** RCW 41.50.670 and 1998 c 341 s 513 are each amended to  
19 read as follows:

20       (1) Nothing in this chapter regarding mandatory assignment of  
21 benefits to enforce a spousal maintenance obligation shall abridge  
22 the right of an obligee to direct payments of retirement benefits  
23 to satisfy a property division obligation ordered pursuant to a  
24 court decree of dissolution or legal separation or any court order  
25 or court-approved property settlement agreement incident to any  
26 court decree of dissolution or legal separation as provided in RCW  
27 2.10.180, 2.12.090, 41.04.310, 41.04.320, 41.04.330, 41.26.053,  
28 41.26.162, 41.32.052, 41.35.100, 41.34.070(~~(3)~~) (4), 41.40.052,  
29 43.43.310, or 26.09.138, as those statutes existed before July 1,  
30 1987, and as those statutes exist on and after July 28, 1991. The  
31 department shall pay benefits under this chapter in a lump sum or  
32 as a portion of periodic retirement payments as expressly provided  
33 by the dissolution order. A dissolution order may not order the  
34 department to pay a periodic retirement payment or lump sum unless  
35 that payment is specifically authorized under the provisions of  
36 chapter 2.10, 2.12, 41.26, 41.32, 41.35, 41.34, 41.40, or 43.43  
37 RCW, as applicable.

1 (2) The department shall pay directly to an obligee the amount  
2 of periodic retirement payments or lump sum payment, as  
3 appropriate, specified in the dissolution order if the dissolution  
4 order filed with the department pursuant to subsection (1) of this  
5 section includes a provision that states in the following form:

6 If . . . . . (the obligor) receives periodic retirement payments  
7 as defined in RCW 41.50.500, the department of retirement systems  
8 shall pay to . . . . . (the obligee) . . . . . dollars from such  
9 payments or . . . percent of such payments. If the obligor's debt  
10 is expressed as a percentage of his or her periodic retirement  
11 payment and the obligee does not have a survivorship interest in  
12 the obligor's benefit, the amount received by the obligee shall be  
13 the percentage of the periodic retirement payment that the obligor  
14 would have received had he or she selected a standard allowance.

15 If . . . . . (the obligor) requests or has requested a withdrawal  
16 of accumulated contributions as defined in RCW 41.50.500, or  
17 becomes eligible for a lump sum death benefit, the department of  
18 retirement systems shall pay to . . . . . (the obligee) . . . . .  
19 dollars plus interest at the rate paid by the department of  
20 retirement systems on member contributions. Such interest to  
21 accrue from the date of this order's entry with the court of  
22 record.

23 (3) This section does not require a member to select a standard  
24 allowance upon retirement nor does it require the department to  
25 recalculate the amount of a retiree's periodic retirement payment  
26 based on a change in survivor option.

27 (4) A court order under this section may not order the  
28 department to pay more than seventy-five percent of an obligor's  
29 periodic retirement payment to an obligee.

30 (5) Persons whose court decrees were entered between July 1,  
31 1987, and July 28, 1991, shall also be entitled to receive direct  
32 payments of retirement benefits to satisfy court-ordered property  
33 divisions if the dissolution orders comply or are modified to  
34 comply with this section and RCW 41.50.680 through 41.50.720 and,  
35 as applicable, RCW 2.10.180, 2.12.090, 41.26.053, 41.32.052,  
36 41.35.100, 41.34.070, 41.40.052, 43.43.310, and 26.09.138.

37 (6) The obligee must file a copy of the dissolution order with

1 the department within ninety days of that order's entry with the  
2 court of record.

3 (7) A division of benefits pursuant to a dissolution order  
4 under this section shall be based upon the obligor's gross benefit  
5 prior to any deductions. If the department is required to  
6 withhold a portion of the member's benefit pursuant to 26 U.S.C.  
7 Sec. 3402 and the sum of that amount plus the amount owed to the  
8 obligee exceeds the total benefit, the department shall satisfy  
9 the withholding requirements under 26 U.S.C. Sec. 3402 and then  
10 pay the remainder to the obligee. The provisions of this  
11 subsection do not apply to amounts withheld pursuant to 26 U.S.C.  
12 Sec. 3402(i).

13 **Sec. 3.** RCW 41.50.700 and 1991 c 365 s 16 are each amended to read  
14 as follows:

15 (1) Except as provided in subsection (3) of this section, the  
16 department's obligation to provide direct payment of a property  
17 division obligation to an obligee under RCW 41.50.670 shall cease  
18 upon the death of the obligee or upon the death of the obligor,  
19 whichever comes first. However, if an obligor dies and is  
20 eligible for a lump sum death benefit, the department shall be  
21 obligated to provide direct payment to the obligee of all or a  
22 portion of the withdrawal of accumulated contributions pursuant to  
23 a court order that complies with RCW 41.50.670.

24 (2) The direct payment of a property division obligation to an  
25 obligee under RCW 41.50.670 shall be paid as a deduction from the  
26 member's periodic retirement payment. An obligee may not direct  
27 the department to withhold any funds from such payment.

28 (3) The department's obligation to provide direct payment  
29 continues for the life of an ex spouse from a preretirement  
30 divorce meeting the criteria of RCW 41.26.162(2).

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