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HOUSE BILL 1271

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Simpson, Curtis, Conway, Hinkle, Morrell, Moeller, Green, O'Brien, P. Sullivan, Kenney, McDonald, Campbell, Chase, B. Sullivan, Ormsby, Kilmer, McCoy, Jarrett, Serben and Strow; by request of LEOFF Plan 2 Retirement Board

Read first time 01/19/2005. Referred to Committee on Appropriations.

1 AN ACT Relating to receiving a disability allowance under the law  
2 enforcement officers' and fire fighters' retirement system, plan 2;  
3 amending RCW 41.26.470; and declaring an emergency.

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

5 **Sec. 1.** RCW 41.26.470 and 2004 c 4 s 1 are each amended to read as  
6 follows:

7 (1) A member of the retirement system who becomes totally  
8 incapacitated for continued employment by an employer as determined by  
9 the director shall be eligible to receive an allowance under the  
10 provisions of RCW 41.26.410 through 41.26.550. Such member shall  
11 receive a monthly disability allowance computed as provided for in RCW  
12 41.26.420 and shall have such allowance actuarially reduced to reflect  
13 the difference in the number of years between age at disability and the  
14 attainment of age fifty-three, except under subsection (7) of this  
15 section.

16 (2) Any member who receives an allowance under the provisions of  
17 this section shall be subject to such comprehensive medical  
18 examinations as required by the department. If such medical  
19 examinations reveal that such a member has recovered from the

1 incapacitating disability and the member is no longer entitled to  
2 benefits under Title 51 RCW, the retirement allowance shall be canceled  
3 and the member shall be restored to duty in the same civil service  
4 rank, if any, held by the member at the time of retirement or, if  
5 unable to perform the duties of the rank, then, at the member's  
6 request, in such other like or lesser rank as may be or become open and  
7 available, the duties of which the member is then able to perform. In  
8 no event shall a member previously drawing a disability allowance be  
9 returned or be restored to duty at a salary or rate of pay less than  
10 the current salary attached to the rank or position held by the member  
11 at the date of the retirement for disability. If the department  
12 determines that the member is able to return to service, the member is  
13 entitled to notice and a hearing. Both the notice and the hearing  
14 shall comply with the requirements of chapter 34.05 RCW, the  
15 Administrative Procedure Act.

16 (3) Those members subject to this chapter who became disabled in  
17 the line of duty on or after July 23, 1989, and who receive benefits  
18 under RCW 41.04.500 through 41.04.530 or similar benefits under RCW  
19 41.04.535 shall receive or continue to receive service credit subject  
20 to the following:

21 (a) No member may receive more than one month's service credit in  
22 a calendar month.

23 (b) No service credit under this section may be allowed after a  
24 member separates or is separated without leave of absence.

25 (c) Employer contributions shall be paid by the employer at the  
26 rate in effect for the period of the service credited.

27 (d) Employee contributions shall be collected by the employer and  
28 paid to the department at the rate in effect for the period of service  
29 credited.

30 (e) State contributions shall be as provided in RCW 41.45.060 and  
31 41.45.067.

32 (f) Contributions shall be based on the regular compensation which  
33 the member would have received had the disability not occurred.

34 (g) The service and compensation credit under this section shall be  
35 granted for a period not to exceed six consecutive months.

36 (h) Should the legislature revoke the service credit authorized  
37 under this section or repeal this section, no affected employee is  
38 entitled to receive the credit as a matter of contractual right.

1 (4)(a) If the recipient of a monthly retirement allowance under  
2 this section dies before the total of the retirement allowance paid to  
3 the recipient equals the amount of the accumulated contributions at the  
4 date of retirement, then the balance shall be paid to the member's  
5 estate, or such person or persons, trust, or organization as the  
6 recipient has nominated by written designation duly executed and filed  
7 with the director, or, if there is no such designated person or persons  
8 still living at the time of the recipient's death, then to the  
9 surviving spouse, or, if there is neither such designated person or  
10 persons still living at the time of his or her death nor a surviving  
11 spouse, then to his or her legal representative.

12 (b) If a recipient of a monthly retirement allowance under this  
13 section died before April 27, 1989, and before the total of the  
14 retirement allowance paid to the recipient equaled the amount of his or  
15 her accumulated contributions at the date of retirement, then the  
16 department shall pay the balance of the accumulated contributions to  
17 the member's surviving spouse or, if there is no surviving spouse, then  
18 in equal shares to the member's children. If there is no surviving  
19 spouse or children, the department shall retain the contributions.

20 (5) Should the disability retirement allowance of any disability  
21 beneficiary be canceled for any cause other than reentrance into  
22 service or retirement for service, he or she shall be paid the excess,  
23 if any, of the accumulated contributions at the time of retirement over  
24 all payments made on his or her behalf under this chapter.

25 (6) A member who becomes disabled in the line of duty, and who  
26 ceases to be an employee of an employer except by service or disability  
27 retirement, may request a refund of one hundred fifty percent of the  
28 member's accumulated contributions. Any accumulated contributions  
29 attributable to restorations made under RCW 41.50.165(2) shall be  
30 refunded at one hundred percent. A person in receipt of this benefit  
31 is a retiree.

32 (7)(a) A member who becomes disabled in the line of duty shall be  
33 entitled to receive a minimum retirement allowance equal to ten percent  
34 of such member's final average salary. The member shall additionally  
35 receive a retirement allowance equal to two percent of such member's  
36 average final salary for each year of service beyond five(~~, and shall~~  
37 ~~have the allowance actuarially reduced to reflect the difference in the~~  
38 ~~number of years between age at disability and the attainment of age~~

1 ~~fifty-three~~)). An additional benefit shall not result in a total  
2 monthly benefit greater than that provided in subsection (1) of this  
3 section.

4 (b) A member who is totally disabled in the line of duty is  
5 entitled to receive a retirement allowance equal to seventy percent of  
6 such member's final average salary. A member shall be considered  
7 totally disabled if he or she is unable to perform any substantial  
8 gainful activity due to a physical or mental condition that may be  
9 expected to result in death or that has lasted or is expected to last  
10 at least twelve months. Substantial gainful activity is defined as  
11 average earnings of no more than eight hundred ten dollars a month in  
12 2004 adjusted annually for inflation as determined by the director.

13 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and takes effect  
16 immediately.

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