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HOUSE BILL 1319

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Conway, Fromhold, Crouse, Simpson, Upthegrove and Campbell; by request of Select Committee on Pension Policy

Read first time 01/20/2005. Referred to Committee on Appropriations.

1 AN ACT Relating to survivor benefits for ex spouses in the law  
2 enforcement officers' and fire fighters' retirement system, plan 1; and  
3 amending RCW 41.26.160, 41.26.161, and 41.26.162.

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

5 **Sec. 1.** RCW 41.26.160 and 2002 c 158 s 1 are each amended to read  
6 as follows:

7 (1) In the event of the duty connected death of any member who is  
8 in active service, or who has vested under the provisions of RCW  
9 41.26.090 with twenty or more service credit years of service, or who  
10 is on duty connected disability leave or retired for duty connected  
11 disability, the surviving spouse shall become entitled, subject to RCW  
12 41.26.162(~~(+2)~~), to receive a monthly allowance equal to fifty percent  
13 of the final average salary at the date of death if active, or the  
14 amount of retirement allowance the vested member would have received at  
15 age fifty, or the amount of the retirement allowance such retired  
16 member was receiving at the time of death if retired for duty connected  
17 disability. The amount of this allowance will be increased five  
18 percent of final average salary for each child as defined in RCW  
19 41.26.030(7), subject to a maximum combined allowance of sixty percent

1 of final average salary: PROVIDED, That if the child or children is or  
2 are in the care of a legal guardian, payment of the increase  
3 attributable to each child will be made to the child's legal guardian  
4 or, in the absence of a legal guardian and if the member has created a  
5 trust for the benefit of the child or children, payment of the increase  
6 attributable to each child will be made to the trust.

7 (2) If at the time of the duty connected death of a vested member  
8 with twenty or more service credit years of service as provided in  
9 subsection (1) of this section or a member retired for duty connected  
10 disability, the surviving spouse has not been lawfully married to such  
11 member for one year prior to retirement or separation from service if  
12 a vested member, the surviving spouse shall not be eligible to receive  
13 the benefits under this section: PROVIDED, That if a member dies as a  
14 result of a disability incurred in the line of duty, then if he or she  
15 was married at the time he or she was disabled, the surviving spouse  
16 shall be eligible to receive the benefits under this section.

17 (3) If there be no surviving spouse eligible to receive benefits at  
18 the time of such member's duty connected death, then the child or  
19 children of such member shall receive a monthly allowance equal to  
20 thirty percent of final average salary for one child and an additional  
21 ten percent for each additional child subject to a maximum combined  
22 payment, under this subsection, of sixty percent of final average  
23 salary. When there cease to be any eligible children as defined in RCW  
24 41.26.030(7), there shall be paid to the legal heirs of the member the  
25 excess, if any, of accumulated contributions of the member at the time  
26 of death over all payments made to survivors on his or her behalf under  
27 this chapter: PROVIDED, That payments under this subsection to  
28 children shall be prorated equally among the children, if more than  
29 one. If the member has created a trust for the benefit of the child or  
30 children, the payment shall be made to the trust.

31 (4) In the event that there is no surviving spouse eligible to  
32 receive benefits under this section, and that there be no child or  
33 children eligible to receive benefits under this section, then the  
34 accumulated contributions shall be paid to the estate of the member.

35 (5) If a surviving spouse receiving benefits under this section  
36 remarries after June 13, 2002, the surviving spouse shall continue to  
37 receive the benefits under this section.

1 (6) If a surviving spouse receiving benefits under the provisions  
2 of this section thereafter dies and there are children as defined in  
3 RCW 41.26.030(7), payment to the spouse shall cease and the child or  
4 children shall receive the benefits as provided in subsection (3) of  
5 this section.

6 (7) The payment provided by this section shall become due the day  
7 following the date of death and payments shall be retroactive to that  
8 date.

9 **Sec. 2.** RCW 41.26.161 and 2002 c 158 s 2 are each amended to read  
10 as follows:

11 (1) In the event of the nonduty connected death of any member who  
12 is in active service, or who has vested under the provisions of RCW  
13 41.26.090 with twenty or more service credit years of service, or who  
14 is on disability leave or retired, whether for nonduty connected  
15 disability or service, the surviving spouse shall become entitled,  
16 subject to RCW 41.26.162(~~((2))~~), to receive a monthly allowance equal  
17 to fifty percent of the final average salary at the date of death if  
18 active, or the amount of retirement allowance the vested member would  
19 have received at age fifty, or the amount of the retirement allowance  
20 such retired member was receiving at the time of death if retired for  
21 service or nonduty connected disability. The amount of this allowance  
22 will be increased five percent of final average salary for each child  
23 as defined in RCW 41.26.030(7), subject to a maximum combined allowance  
24 of sixty percent of final average salary: PROVIDED, That if the child  
25 or children is or are in the care of a legal guardian, payment of the  
26 increase attributable to each child will be made to the child's legal  
27 guardian or, in the absence of a legal guardian and if the member has  
28 created a trust for the benefit of the child or children, payment of  
29 the increase attributable to each child will be made to the trust.

30 (2) If at the time of the death of a vested member with twenty or  
31 more service credit years of service as provided in subsection (1) of  
32 this section or a member retired for service or disability, the  
33 surviving spouse has not been lawfully married to such member for one  
34 year prior to retirement or separation from service if a vested member,  
35 the surviving spouse shall not be eligible to receive the benefits  
36 under this section.

1 (3) If there be no surviving spouse eligible to receive benefits at  
2 the time of such member's death, then the child or children of such  
3 member shall receive a monthly allowance equal to thirty percent of  
4 final average salary for one child and an additional ten percent for  
5 each additional child subject to a maximum combined payment, under this  
6 subsection, of sixty percent of final average salary. When there cease  
7 to be any eligible children as defined in RCW 41.26.030(7), there shall  
8 be paid to the legal heirs of the member the excess, if any, of  
9 accumulated contributions of the member at the time of death over all  
10 payments made to survivors on his or her behalf under this chapter:  
11 PROVIDED, That payments under this subsection to children shall be  
12 prorated equally among the children, if more than one. If the member  
13 has created a trust for the benefit of the child or children, the  
14 payment shall be made to the trust.

15 (4) In the event that there is no surviving spouse eligible to  
16 receive benefits under this section, and that there be no child or  
17 children eligible to receive benefits under this section, then the  
18 accumulated contributions shall be paid to the estate of said member.

19 (5) If a surviving spouse receiving benefits under this section  
20 remarries after June 13, 2002, the surviving spouse shall continue to  
21 receive the benefits under this section.

22 (6) If a surviving spouse receiving benefits under the provisions  
23 of this section thereafter dies and there are children as defined in  
24 RCW 41.26.030(7), payment to the spouse shall cease and the child or  
25 children shall receive the benefits as provided in subsection (3) of  
26 this section.

27 (7) The payment provided by this section shall become due the day  
28 following the date of death and payments shall be retroactive to that  
29 date.

30 **Sec. 3.** RCW 41.26.162 and 2002 c 158 s 3 are each amended to read  
31 as follows:

32 (1)((~~a~~)) An ex spouse of a law enforcement officers' and fire  
33 fighters' retirement system retiree shall qualify as surviving spouse  
34 under RCW 41.26.160 or 41.26.161 if the ex spouse(~~(~~

35 ~~i~~)) has been provided benefits under any currently effective  
36 court decree of dissolution or legal separation or in any court order

1 or court-approved property settlement agreement incident to any court  
2 decree of dissolution or legal separation (~~entered after the member's~~  
3 ~~retirement and prior to December 31, 1979; and~~

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

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

11 ~~(c) This subsection shall apply retroactively.~~

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

14 ~~(i) Divorces the member before separation from service; and~~

15 ~~(ii) Entered into the court order or court approved property~~  
16 ~~settlement agreement incident to the divorce of the member and ex~~  
17 ~~spouse after July 1, 2003;~~

18 ~~may be awarded a portion of the member's benefit and a portion of any~~  
19 ~~spousal survivor's benefit pursuant to RCW 41.26.160 or 41.26.161 after~~  
20 ~~the member's death if specified in the court order or court approved~~  
21 ~~property settlement.~~

22 ~~(b) This subsection shall not apply retroactively.~~

23 ~~(3)(a) An ex spouse of a law enforcement officers' and fire~~  
24 ~~fighters' retirement system plan 1 member with at least thirty years of~~  
25 ~~service who:~~

26 ~~(i) Divorced the member after being married to the member for at~~  
27 ~~least twenty five years; and~~

28 ~~(ii) Entered into a court order or court approved property~~  
29 ~~settlement agreement incident to the divorce that awarded a portion of~~  
30 ~~the member's benefits to the ex spouse after June 13, 2002;)). Such an~~  
31 ~~ex spouse shall continue to receive ((that)) the court-awarded portion~~  
32 ~~of the member's benefit after the member's death as if the member was~~  
33 ~~still alive.~~

34 ~~((b) This subsection shall apply only to a divorce entered into~~  
35 ~~after January 1, 1997. However, no payments shall be made to an ex~~  
36 ~~spouse of a deceased member qualifying under this subsection for any~~  
37 ~~period prior to June 13, 2002.))~~

1       (2) An ex spouse whose benefit resumes as a result of this act  
2 shall receive an initial payment equivalent to that portion of the  
3 member's benefit received prior to its suspension. The benefit will  
4 not be adjusted under RCW 41.26.240 for the period the allowance was  
5 suspended.

6       (3) This act shall not result in the payment of benefits for the  
7 period during which benefits were suspended.

8       (4) This section shall apply retroactively.

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