
HOUSE BILL 3190

State of Washington

61st Legislature

2010 Regular Session

By Representatives Kelley, Green, Van De Wege, Simpson, Blake, Ericks, Hurst, Finn, Hinkle, Dammeier, Morrell, and Williams

Read first time 02/18/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to membership in the law enforcement officers' and
2 firefighters' retirement system plan 2 for firefighters employed by the
3 department of corrections at the McNeil Island special commitment
4 center; reenacting and amending RCW 41.26.030; and adding a new section
5 to chapter 41.26 RCW.

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

7 **Sec. 1.** RCW 41.26.030 and 2009 c 523 s 3 are each reenacted and
8 amended to read as follows:

9 As used in this chapter, unless a different meaning is plainly
10 required by the context:

11 (1) "Accumulated contributions" means the employee's contributions
12 made by a member, including any amount paid under RCW 41.50.165(2),
13 plus accrued interest credited thereon.

14 (2) "Actuarial reserve" means a method of financing a pension or
15 retirement plan wherein reserves are accumulated as the liabilities for
16 benefit payments are incurred in order that sufficient funds will be
17 available on the date of retirement of each member to pay the member's
18 future benefits during the period of retirement.

1 (3) "Actuarial valuation" means a mathematical determination of the
2 financial condition of a retirement plan. It includes the computation
3 of the present monetary value of benefits payable to present members,
4 and the present monetary value of future employer and employee
5 contributions, giving effect to mortality among active and retired
6 members and also to the rates of disability, retirement, withdrawal
7 from service, salary and interest earned on investments.

8 (4)(a) "Basic salary" for plan 1 members, means the basic monthly
9 rate of salary or wages, including longevity pay but not including
10 overtime earnings or special salary or wages, upon which pension or
11 retirement benefits will be computed and upon which employer
12 contributions and salary deductions will be based.

13 (b) "Basic salary" for plan 2 members, means salaries or wages
14 earned by a member during a payroll period for personal services,
15 including overtime payments, and shall include wages and salaries
16 deferred under provisions established pursuant to sections 403(b),
17 414(h), and 457 of the United States Internal Revenue Code, but shall
18 exclude lump sum payments for deferred annual sick leave, unused
19 accumulated vacation, unused accumulated annual leave, or any form of
20 severance pay. In any year in which a member serves in the legislature
21 the member shall have the option of having such member's basic salary
22 be the greater of:

23 (i) The basic salary the member would have received had such member
24 not served in the legislature; or

25 (ii) Such member's actual basic salary received for nonlegislative
26 public employment and legislative service combined. Any additional
27 contributions to the retirement system required because basic salary
28 under (b)(i) of this subsection is greater than basic salary under
29 (b)(ii) of this subsection shall be paid by the member for both member
30 and employer contributions.

31 (5)(a) "Beneficiary" for plan 1 members, means any person in
32 receipt of a retirement allowance, disability allowance, death benefit,
33 or any other benefit described herein.

34 (b) "Beneficiary" for plan 2 members, means any person in receipt
35 of a retirement allowance or other benefit provided by this chapter
36 resulting from service rendered to an employer by another person.

37 (6)(a) "Child" or "children" means an unmarried person who is under

1 the age of eighteen or mentally or physically disabled as determined by
2 the department, except a person who is disabled and in the full time
3 care of a state institution, who is:

4 (i) A natural born child;

5 (ii) A stepchild where that relationship was in existence prior to
6 the date benefits are payable under this chapter;

7 (iii) A posthumous child;

8 (iv) A child legally adopted or made a legal ward of a member prior
9 to the date benefits are payable under this chapter; or

10 (v) An illegitimate child legitimized prior to the date any
11 benefits are payable under this chapter.

12 (b) A person shall also be deemed to be a child up to and including
13 the age of twenty years and eleven months while attending any high
14 school, college, or vocational or other educational institution
15 accredited, licensed, or approved by the state, in which it is located,
16 including the summer vacation months and all other normal and regular
17 vacation periods at the particular educational institution after which
18 the child returns to school.

19 (7) "Department" means the department of retirement systems created
20 in chapter 41.50 RCW.

21 (8) "Director" means the director of the department.

22 (9) "Disability board" for plan 1 members means either the county
23 disability board or the city disability board established in RCW
24 41.26.110.

25 (10) "Disability leave" means the period of six months or any
26 portion thereof during which a member is on leave at an allowance equal
27 to the member's full salary prior to the commencement of disability
28 retirement. The definition contained in this subsection shall apply
29 only to plan 1 members.

30 (11) "Disability retirement" for plan 1 members, means the period
31 following termination of a member's disability leave, during which the
32 member is in receipt of a disability retirement allowance.

33 (12) "Domestic partners" means two adults who have registered as
34 domestic partners under RCW 26.60.020.

35 (13) "Employee" means any law enforcement officer or firefighter as
36 defined in subsections (16) and (18) of this section.

37 (14)(a) "Employer" for plan 1 members, means the legislative
38 authority of any city, town, county, or district or the elected

1 officials of any municipal corporation that employs any law enforcement
2 officer and/or firefighter, any authorized association of such
3 municipalities, and, except for the purposes of RCW 41.26.150, any
4 labor guild, association, or organization, which represents the
5 firefighters or law enforcement officers of at least seven cities of
6 over 20,000 population and the membership of each local lodge or
7 division of which is composed of at least sixty percent law enforcement
8 officers or firefighters as defined in this chapter.

9 (b) "Employer" for plan 2 members, means the following entities to
10 the extent that the entity employs any law enforcement officer and/or
11 firefighter:

12 (i) The legislative authority of any city, town, county, or
13 district;

14 (ii) The elected officials of any municipal corporation;

15 (iii) The governing body of any other general authority law
16 enforcement agency; (~~(iv)~~)

17 (iv) A four-year institution of higher education having a fully
18 operational fire department as of January 1, 1996; or

19 (v) The Washington state department of corrections for purposes of
20 firefighters employed by the department on McNeil Island.

21 (15)(a) "Final average salary" for plan 1 members, means (i) for a
22 member holding the same position or rank for a minimum of twelve months
23 preceding the date of retirement, the basic salary attached to such
24 same position or rank at time of retirement; (ii) for any other member,
25 including a civil service member who has not served a minimum of twelve
26 months in the same position or rank preceding the date of retirement,
27 the average of the greatest basic salaries payable to such member
28 during any consecutive twenty-four month period within such member's
29 last ten years of service for which service credit is allowed, computed
30 by dividing the total basic salaries payable to such member during the
31 selected twenty-four month period by twenty-four; (iii) in the case of
32 disability of any member, the basic salary payable to such member at
33 the time of disability retirement; (iv) in the case of a member who
34 hereafter vests pursuant to RCW 41.26.090, the basic salary payable to
35 such member at the time of vesting.

36 (b) "Final average salary" for plan 2 members, means the monthly
37 average of the member's basic salary for the highest consecutive sixty

1 service credit months of service prior to such member's retirement,
2 termination, or death. Periods constituting authorized unpaid leaves
3 of absence may not be used in the calculation of final average salary.

4 (16) "Firefighter" means:

5 (a) Any person who is serving on a full time, fully compensated
6 basis as a member of a fire department of an employer and who is
7 serving in a position which requires passing a civil service
8 examination for firefighter, and who is actively employed as such;

9 (b) Anyone who is actively employed as a full time firefighter
10 where the fire department does not have a civil service examination;

11 (c) Supervisory firefighter personnel;

12 (d) Any full time executive secretary of an association of fire
13 protection districts authorized under RCW 52.12.031. The provisions of
14 this subsection (16)(d) shall not apply to plan 2 members;

15 (e) The executive secretary of a labor guild, association or
16 organization (which is an employer under (~~RCW 41.26.030(14) as now or~~
17 ~~hereafter amended~~)) subsection (14) of this section, if such
18 individual has five years previous membership in a retirement system
19 established in chapter 41.16 or 41.18 RCW. The provisions of this
20 subsection (16)(e) shall not apply to plan 2 members;

21 (f) Any person who is serving on a full time, fully compensated
22 basis for an employer, as a fire dispatcher, in a department in which,
23 on March 1, 1970, a dispatcher was required to have passed a civil
24 service examination for firefighter;

25 (g) Any person who on March 1, 1970, was employed on a full time,
26 fully compensated basis by an employer, and who on May 21, 1971, was
27 making retirement contributions under the provisions of chapter 41.16
28 or 41.18 RCW; and

29 (h) Any person who is employed on a full-time, fully compensated
30 basis by an employer as an emergency medical technician.

31 (17) "General authority law enforcement agency" means any agency,
32 department, or division of a municipal corporation, political
33 subdivision, or other unit of local government of this state, and any
34 agency, department, or division of state government, having as its
35 primary function the detection and apprehension of persons committing
36 infractions or violating the traffic or criminal laws in general, but
37 not including the Washington state patrol. Such an agency, department,
38 or division is distinguished from a limited authority law enforcement

1 agency having as one of its functions the apprehension or detection of
2 persons committing infractions or violating the traffic or criminal
3 laws relating to limited subject areas, including but not limited to,
4 the state departments of natural resources and social and health
5 services, the state gambling commission, the state lottery commission,
6 the state parks and recreation commission, the state utilities and
7 transportation commission, the state liquor control board, and the
8 state department of corrections.

9 (18) "Law enforcement officer" beginning January 1, 1994, means any
10 person who is commissioned and employed by an employer on a full time,
11 fully compensated basis to enforce the criminal laws of the state of
12 Washington generally, with the following qualifications:

13 (a) No person who is serving in a position that is basically
14 clerical or secretarial in nature, and who is not commissioned shall be
15 considered a law enforcement officer;

16 (b) Only those deputy sheriffs, including those serving under a
17 different title pursuant to county charter, who have successfully
18 completed a civil service examination for deputy sheriff or the
19 equivalent position, where a different title is used, and those persons
20 serving in unclassified positions authorized by RCW 41.14.070 except a
21 private secretary will be considered law enforcement officers;

22 (c) Only such full time commissioned law enforcement personnel as
23 have been appointed to offices, positions, or ranks in the police
24 department which have been specifically created or otherwise expressly
25 provided for and designated by city charter provision or by ordinance
26 enacted by the legislative body of the city shall be considered city
27 police officers;

28 (d) The term "law enforcement officer" also includes the executive
29 secretary of a labor guild, association or organization (which is an
30 employer under (~~RCW 41.26.030(14)~~) subsection (14) of this section)
31 if that individual has five years previous membership in the retirement
32 system established in chapter 41.20 RCW. The provisions of this
33 subsection (18)(d) shall not apply to plan 2 members; and

34 (e) The term "law enforcement officer" also includes a person
35 employed on or after January 1, 1993, as a public safety officer or
36 director of public safety, so long as the job duties substantially
37 involve only either police or fire duties, or both, and no other duties
38 in a city or town with a population of less than ten thousand. The

1 provisions of this subsection (18)(e) shall not apply to any public
2 safety officer or director of public safety who is receiving a
3 retirement allowance under this chapter as of May 12, 1993.

4 (19) "Medical services" for plan 1 members, shall include the
5 following as minimum services to be provided. Reasonable charges for
6 these services shall be paid in accordance with RCW 41.26.150.

7 (a) Hospital expenses: These are the charges made by a hospital,
8 in its own behalf, for

9 (i) Board and room not to exceed semiprivate room rate unless
10 private room is required by the attending physician due to the
11 condition of the patient.

12 (ii) Necessary hospital services, other than board and room,
13 furnished by the hospital.

14 (b) Other medical expenses: The following charges are considered
15 "other medical expenses", provided that they have not been considered
16 as "hospital expenses".

17 (i) The fees of the following:

18 (A) A physician or surgeon licensed under the provisions of chapter
19 18.71 RCW;

20 (B) An osteopathic physician and surgeon licensed under the
21 provisions of chapter 18.57 RCW;

22 (C) A chiropractor licensed under the provisions of chapter 18.25
23 RCW.

24 (ii) The charges of a registered graduate nurse other than a nurse
25 who ordinarily resides in the member's home, or is a member of the
26 family of either the member or the member's spouse.

27 (iii) The charges for the following medical services and supplies:

28 (A) Drugs and medicines upon a physician's prescription;

29 (B) Diagnostic X-ray and laboratory examinations;

30 (C) X-ray, radium, and radioactive isotopes therapy;

31 (D) Anesthesia and oxygen;

32 (E) Rental of iron lung and other durable medical and surgical
33 equipment;

34 (F) Artificial limbs and eyes, and casts, splints, and trusses;

35 (G) Professional ambulance service when used to transport the
36 member to or from a hospital when injured by an accident or stricken by
37 a disease;

1 (H) Dental charges incurred by a member who sustains an accidental
2 injury to his or her teeth and who commences treatment by a legally
3 licensed dentist within ninety days after the accident;

4 (I) Nursing home confinement or hospital extended care facility;

5 (J) Physical therapy by a registered physical therapist;

6 (K) Blood transfusions, including the cost of blood and blood
7 plasma not replaced by voluntary donors;

8 (L) An optometrist licensed under the provisions of chapter 18.53
9 RCW.

10 (20) "Member" means any firefighter, law enforcement officer, or
11 other person as would apply under subsection((s)) (16) or (18) of this
12 section whose membership is transferred to the Washington law
13 enforcement officers' and firefighters' retirement system on or after
14 March 1, 1970, and every law enforcement officer and firefighter who is
15 employed in that capacity on or after such date.

16 (21) "Plan 1" means the law enforcement officers' and firefighters'
17 retirement system, plan 1 providing the benefits and funding provisions
18 covering persons who first became members of the system prior to
19 October 1, 1977.

20 (22) "Plan 2" means the law enforcement officers' and firefighters'
21 retirement system, plan 2 providing the benefits and funding provisions
22 covering persons who first became members of the system on and after
23 October 1, 1977.

24 (23) "Position" means the employment held at any particular time,
25 which may or may not be the same as civil service rank.

26 (24) "Regular interest" means such rate as the director may
27 determine.

28 (25) "Retiree" for persons who establish membership in the
29 retirement system on or after October 1, 1977, means any member in
30 receipt of a retirement allowance or other benefit provided by this
31 chapter resulting from service rendered to an employer by such member.

32 (26) "Retirement fund" means the "Washington law enforcement
33 officers' and firefighters' retirement system fund" as provided for
34 herein.

35 (27) "Retirement system" means the "Washington law enforcement
36 officers' and firefighters' retirement system" provided herein.

37 (28)(a) "Service" for plan 1 members, means all periods of
38 employment for an employer as a firefighter or law enforcement officer,

1 for which compensation is paid, together with periods of suspension not
2 exceeding thirty days in duration. For the purposes of this chapter
3 service shall also include service in the armed forces of the United
4 States as provided in RCW 41.26.190. Credit shall be allowed for all
5 service credit months of service rendered by a member from and after
6 the member's initial commencement of employment as a firefighter or law
7 enforcement officer, during which the member worked for seventy or more
8 hours, or was on disability leave or disability retirement. Only
9 service credit months of service shall be counted in the computation of
10 any retirement allowance or other benefit provided for in this chapter.

11 (i) For members retiring after May 21, 1971 who were employed under
12 the coverage of a prior pension act before March 1, 1970, "service"
13 shall also include (A) such military service not exceeding five years
14 as was creditable to the member as of March 1, 1970, under the member's
15 particular prior pension act, and (B) such other periods of service as
16 were then creditable to a particular member under the provisions of RCW
17 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit
18 be allowed for any service rendered prior to March 1, 1970, where the
19 member at the time of rendition of such service was employed in a
20 position covered by a prior pension act, unless such service, at the
21 time credit is claimed therefor, is also creditable under the
22 provisions of such prior act.

23 (ii) A member who is employed by two employers at the same time
24 shall only be credited with service to one such employer for any month
25 during which the member rendered such dual service.

26 (b) "Service" for plan 2 members, means periods of employment by a
27 member for one or more employers for which basic salary is earned for
28 ninety or more hours per calendar month which shall constitute a
29 service credit month. Periods of employment by a member for one or
30 more employers for which basic salary is earned for at least seventy
31 hours but less than ninety hours per calendar month shall constitute
32 one-half service credit month. Periods of employment by a member for
33 one or more employers for which basic salary is earned for less than
34 seventy hours shall constitute a one-quarter service credit month.

35 Members of the retirement system who are elected or appointed to a
36 state elective position may elect to continue to be members of this
37 retirement system.

1 Service credit years of service shall be determined by dividing the
2 total number of service credit months of service by twelve. Any
3 fraction of a service credit year of service as so determined shall be
4 taken into account in the computation of such retirement allowance or
5 benefits.

6 If a member receives basic salary from two or more employers during
7 any calendar month, the individual shall receive one service credit
8 month's service credit during any calendar month in which multiple
9 service for ninety or more hours is rendered; or one-half service
10 credit month's service credit during any calendar month in which
11 multiple service for at least seventy hours but less than ninety hours
12 is rendered; or one-quarter service credit month during any calendar
13 month in which multiple service for less than seventy hours is
14 rendered.

15 (29) "Service credit month" means a full service credit month or an
16 accumulation of partial service credit months that are equal to one.

17 (30) "Service credit year" means an accumulation of months of
18 service credit which is equal to one when divided by twelve.

19 (31) "State actuary" or "actuary" means the person appointed
20 pursuant to RCW 44.44.010(2).

21 (32) "State elective position" means any position held by any
22 person elected or appointed to statewide office or elected or appointed
23 as a member of the legislature.

24 (33) "Surviving spouse" means the surviving widow or widower of a
25 member. "Surviving spouse" shall not include the divorced spouse of a
26 member except as provided in RCW 41.26.162.

27 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.26 RCW
28 to read as follows:

29 (1) A member of plan 2 who was a member of the public employees'
30 retirement system while employed by the department of corrections
31 providing firefighting services has the following options:

- 32 (a) Remain a member of the public employees' retirement system;
33 (b) Leave any service credit earned as a member of the public
34 employees' retirement system in the public employees' retirement
35 system, and have all future service earned in the law enforcement
36 officers' and firefighters' retirement system plan 2, becoming a dual
37 member under the provisions of chapter 41.54 RCW; or

1 (c) Make an election no later than June 30, 2013, filed in writing
2 with the department of retirement systems, to transfer service credit
3 previously earned as a firefighter for the department of corrections in
4 the public employees' retirement system plan 2 to the law enforcement
5 officers' and firefighters' retirement system plan 2 as defined in RCW
6 41.26.030. Service credit that a member elects to transfer from the
7 public employees' retirement system to the law enforcement officers'
8 and firefighters' retirement system under this section shall be
9 transferred no earlier than five years after the effective date the
10 member elects to transfer except under subsection (2)(d) of this
11 section, and only after the member earns five years of service credit
12 as a firefighter following the effective date the member elects to
13 transfer except under subsection (2) of this section.

14 (2)(a) A member who elects to transfer service credit under
15 subsection (1)(c) of this section shall make the payments required by
16 this subsection prior to having service credit earned as a firefighter
17 for the department of corrections under the public employees'
18 retirement system plan 2 transferred to the law enforcement officers'
19 and firefighters' retirement system plan 2.

20 (b) A member who elects to transfer service credit under this
21 subsection shall pay, for the applicable period of service, the
22 difference between the contributions the employee paid to the public
23 employees' retirement system plan 2 and the contributions that would
24 have been paid by the employee had the employee been a member of the
25 law enforcement officers' and firefighters' retirement system plan 2,
26 plus interest on this difference as determined by the director. This
27 payment must be made no later than five years from the effective date
28 of the election made under subsection (1)(c) of this section and must
29 be made prior to retirement, except under (d) of this subsection.

30 (c) No earlier than five years after the effective date the member
31 elects to transfer service credit under this section and upon
32 completion of the payment required in (b) of this subsection, the
33 department shall transfer from the public employees' retirement system
34 plan 2 to the law enforcement officers' and firefighters' retirement
35 system plan 2: (i) All of the employee's applicable accumulated
36 contributions plus interest and an equal amount of employer
37 contributions; and (ii) all months of service earned as a firefighter

1 for the department of corrections on McNeil Island as though that
2 service was rendered as a member of the law enforcement officers' and
3 firefighters' retirement system plan 2.

4 (d) If a member who elected to transfer pursuant to this section
5 dies or retires for disability prior to five years from their election
6 date, the member's benefit is calculated as follows:

7 (i) All of the applicable service credit, accumulated
8 contributions, and interest is transferred to the law enforcement
9 officers' and firefighters' retirement system plan 2 and used in the
10 calculation of a benefit.

11 (ii) If a member's obligation under (b) of this subsection has not
12 been paid in full at the time of death or disability retirement, the
13 member, or in the case of death the surviving spouse or eligible minor
14 children, have the following options:

15 (A) Pay the bill in full;

16 (B) If a continuing monthly benefit is chosen, have the benefit
17 actuarially reduced to reflect the amount of the unpaid obligation
18 under (b) of this subsection; or

19 (C) Continue to make payment against the obligation under (b) of
20 this subsection, provided that payment in full is made no later than
21 five years from the member's original election date.

22 (e) Upon transfer of service credit, contributions, and interest
23 under this subsection, the employee is permanently excluded from
24 membership in the public employees' retirement system for all service
25 transfers related to their time served as a firefighter for the
26 department of corrections under the public employees' retirement system
27 plan 1 or plan 2.

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