
HOUSE BILL 2592

State of Washington

64th Legislature

2016 Regular Session

By Representatives Holy, Van De Wege, Hayes, Fitzgibbon, Bergquist, Wilcox, Moeller, Kilduff, Stokesbary, Ryu, Muri, McBride, and Tharinger; by request of Law Enforcement Officers and Fire Fighters' Plan 2 Retirement Board

Read first time 01/15/16. Referred to Committee on Appropriations.

1 AN ACT Relating to benefits for certain retirement system members
2 who die or become disabled in the course of providing emergency
3 management services; amending RCW 41.26.510 and 41.26.470; and
4 reenacting and amending RCW 41.26.520.

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

6 **Sec. 1.** RCW 41.26.510 and 2015 c 78 s 1 are each amended to read
7 as follows:

8 (1) Except as provided in RCW 11.07.010, if a member or a vested
9 member who has not completed at least ten years of service dies, the
10 amount of the accumulated contributions standing to such member's
11 credit in the retirement system at the time of such member's death,
12 less any amount identified as owing to an obligee upon withdrawal of
13 accumulated contributions pursuant to a court order filed under RCW
14 41.50.670, shall be paid to the member's estate, or such person or
15 persons, trust, or organization as the member shall have nominated by
16 written designation duly executed and filed with the department. If
17 there be no such designated person or persons still living at the
18 time of the member's death, such member's accumulated contributions
19 standing to such member's credit in the retirement system, less any
20 amount identified as owing to an obligee upon withdrawal of
21 accumulated contributions pursuant to a court order filed under RCW

1 41.50.670, shall be paid to the member's surviving spouse or domestic
2 partner as if in fact such spouse or domestic partner had been
3 nominated by written designation, or if there be no such surviving
4 spouse or domestic partner, then to such member's legal
5 representatives.

6 (2) Except as provided in subsection (4) of this section, if a
7 member who is killed in the course of employment or a member who is
8 eligible for retirement or a member who has completed at least ten
9 years of service dies, the surviving spouse, domestic partner, or
10 eligible child or children shall elect to receive either:

11 (a) A retirement allowance computed as provided for in RCW
12 41.26.430, actuarially reduced by the amount of any lump sum benefit
13 identified as owing to an obligee upon withdrawal of accumulated
14 contributions pursuant to a court order filed under RCW 41.50.670 and
15 actuarially adjusted to reflect a joint and one hundred percent
16 survivor option under RCW 41.26.460 and if the member was not
17 eligible for normal retirement at the date of death a further
18 reduction as described in RCW 41.26.430; if a surviving spouse or
19 domestic partner who is receiving a retirement allowance dies leaving
20 a child or children of the member under the age of majority, then
21 such child or children shall continue to receive an allowance in an
22 amount equal to that which was being received by the surviving spouse
23 or domestic partner, share and share alike, until such child or
24 children reach the age of majority; if there is no surviving spouse
25 or domestic partner eligible to receive an allowance at the time of
26 the member's death, such member's child or children under the age of
27 majority shall receive an allowance share and share alike calculated
28 as herein provided making the assumption that the ages of the spouse
29 or domestic partner and member were equal at the time of the member's
30 death; or

31 (b)(i) The member's accumulated contributions, less any amount
32 identified as owing to an obligee upon withdrawal of accumulated
33 contributions pursuant to a court order filed under RCW 41.50.670; or

34 (ii) If the member dies on or after July 25, 1993, one hundred
35 fifty percent of the member's accumulated contributions, less any
36 amount identified as owing to an obligee upon withdrawal of
37 accumulated contributions pursuant to a court order filed under RCW
38 41.50.670. Any accumulated contributions attributable to restorations
39 made under RCW 41.50.165(2) shall be refunded at one hundred percent.

1 (3) If a member who is eligible for retirement or a member who
2 has completed at least ten years of service dies after October 1,
3 1977, and is not survived by a spouse, domestic partner, or an
4 eligible child, then the accumulated contributions standing to the
5 member's credit, less any amount identified as owing to an obligee
6 upon withdrawal of accumulated contributions pursuant to a court
7 order filed under RCW 41.50.670, shall be paid:

8 (a) To an estate, a person or persons, trust, or organization as
9 the member shall have nominated by written designation duly executed
10 and filed with the department; or

11 (b) If there is no such designated person or persons still living
12 at the time of the member's death, then to the member's legal
13 representatives.

14 (4) The retirement allowance of a member:

15 (a) Who is killed in the course of employment, as determined by
16 the director of the department of labor and industries, ((or the
17 retirement allowance of a member))

18 (b) Who has left the employ of an employer due to service in the
19 national guard or military reserves and dies while honorably serving
20 in the national guard or military reserves during a period of war as
21 defined in RCW 41.04.005, or

22 (c) Who has left the employ of an employer due to service in the
23 national guard, military reserves, federal emergency management
24 agency, or national disaster medical system of the United States
25 department of health and human services and dies while performing
26 service in response to a disaster, major emergency, special event,
27 federal exercise, or official training on or after March 22, 2014,

28 is not subject to an actuarial reduction for early retirement as
29 provided in RCW 41.26.430 or an actuarial reduction to reflect a
30 joint and one hundred percent survivor option under RCW 41.26.460.
31 The member's retirement allowance is computed under RCW 41.26.420,
32 except that the member shall be entitled to a minimum retirement
33 allowance equal to ten percent of such member's final average salary.
34 The member shall additionally receive a retirement allowance equal to
35 two percent of such member's average final salary for each year of
36 service beyond five.

37 (5) The retirement allowance paid to the spouse or domestic
38 partner and dependent children of a member who is killed in the
39 course of employment, as set forth in RCW 41.05.011(5), shall include

1 reimbursement for any payments of premium rates to the Washington
2 state health care authority pursuant to RCW 41.05.080.

3 (6) In addition to the benefits provided in subsection (4) of
4 this section, if the surviving spouse or domestic partner of a member
5 who is killed in the course of employment is not eligible to receive
6 industrial insurance payments pursuant to RCW 51.32.050 due to
7 remarriage, the surviving spouse or domestic partner shall receive an
8 amount equal to the benefit they would receive pursuant to RCW
9 51.32.050 but for the remarriage. This subsection applies to
10 surviving spouses and domestic partners whose benefits pursuant to
11 RCW 51.32.050 were suspended or terminated due to remarriage prior to
12 July 24, 2015. The monthly payments to any surviving spouse or
13 domestic partner who received a lump sum payment pursuant to RCW
14 51.32.050 shall be actuarially reduced to reflect the amount of the
15 lump sum payment.

16 **Sec. 2.** RCW 41.26.520 and 2009 c 523 s 8 and 2009 c 205 s 8 are
17 each reenacted and amended to read as follows:

18 (1) A member who is on a paid leave of absence authorized by a
19 member's employer shall continue to receive service credit as
20 provided for under the provisions of RCW 41.26.410 through 41.26.550.

21 (2) A member who receives compensation from an employer while on
22 an authorized leave of absence to serve as an elected official of a
23 labor organization, and whose employer is reimbursed by the labor
24 organization for the compensation paid to the member during the
25 period of absence, may also be considered to be on a paid leave of
26 absence. This subsection shall only apply if the member's leave of
27 absence is authorized by a collective bargaining agreement that
28 provides that the member retains seniority rights with the employer
29 during the period of leave. The basic salary reported for a member
30 who establishes service credit under this subsection may not be
31 greater than the salary paid to the highest paid job class covered by
32 the collective bargaining agreement.

33 (3) Except as specified in subsection (7) of this section, a
34 member shall be eligible to receive a maximum of two years service
35 credit during a member's entire working career for those periods when
36 a member is on an unpaid leave of absence authorized by an employer.
37 Such credit may be obtained only if the member makes the employer,
38 member, and state contributions plus interest as determined by the
39 department for the period of the authorized leave of absence within

1 five years of resumption of service or prior to retirement whichever
2 comes sooner.

3 (4) A law enforcement member may be authorized by an employer to
4 work part time and to go on a part-time leave of absence. During a
5 part-time leave of absence a member is prohibited from any other
6 employment with their employer. A member is eligible to receive
7 credit for any portion of service credit not earned during a month of
8 part-time leave of absence if the member makes the employer, member,
9 and state contributions, plus interest, as determined by the
10 department for the period of the authorized leave within five years
11 of resumption of full-time service or prior to retirement whichever
12 comes sooner. Any service credit purchased for a part-time leave of
13 absence is included in the two-year maximum provided in subsection
14 (3) of this section.

15 (5) If a member fails to meet the time limitations of subsection
16 (3) or (4) of this section, the member may receive a maximum of two
17 years of service credit during a member's working career for those
18 periods when a member is on unpaid leave of absence authorized by an
19 employer. This may be done by paying the amount required under RCW
20 41.50.165(2) prior to retirement.

21 (6) For the purpose of subsection (3) or (4) of this section the
22 contribution shall not include the contribution for the unfunded
23 supplemental present value as required by RCW 41.45.060, 41.45.061,
24 and 41.45.067. The contributions required shall be based on the
25 average of the member's basic salary at both the time the authorized
26 leave of absence was granted and the time the member resumed
27 employment.

28 (7) A member who leaves the employ of an employer to enter the
29 uniformed services of the United States shall be entitled to
30 retirement system service credit for up to five years of military
31 service. This subsection shall be administered in a manner consistent
32 with the requirements of the federal uniformed services employment
33 and reemployment rights act.

34 (a) The member qualifies for service credit under this subsection
35 if:

36 (i) Within ninety days of the member's honorable discharge from
37 the uniformed services of the United States, the member applies for
38 reemployment with the employer who employed the member immediately
39 prior to the member entering the uniformed services; and

1 (ii) The member makes the employee contributions required under
2 RCW 41.45.060, 41.45.061, and 41.45.067 within five years of
3 resumption of service or prior to retirement, whichever comes sooner;
4 or

5 (iii) Prior to retirement and not within ninety days of the
6 member's honorable discharge or five years of resumption of service
7 the member pays the amount required under RCW 41.50.165(2); or

8 (iv) Prior to retirement the member provides to the director
9 proof that the member's interruptive military service was during a
10 period of war as defined in RCW 41.04.005. Any member who made
11 payments for service credit for interruptive military service during
12 a period of war as defined in RCW 41.04.005 may, prior to retirement
13 and on a form provided by the department, request a refund of the
14 funds standing to his or her credit for up to five years of such
15 service, and this amount shall be paid to him or her. Members with
16 one or more periods of interruptive military service credit during a
17 period of war may receive no more than five years of free retirement
18 system service credit under this subsection.

19 (b) Upon receipt of member contributions under (a)(ii), (d)(iii),
20 or (e)(iii) of this subsection, or adequate proof under (a)(iv),
21 (d)(iv), or (e)(iv) of this subsection, the department shall
22 establish the member's service credit and shall bill the employer and
23 the state for their respective contributions required under RCW
24 41.26.450 for the period of military service, plus interest as
25 determined by the department.

26 (c) The contributions required under (a)(ii), (d)(iii), or
27 (e)(iii) of this subsection shall be based on the compensation the
28 member would have earned if not on leave, or if that cannot be
29 estimated with reasonable certainty, the compensation reported for
30 the member in the year prior to when the member went on military
31 leave.

32 (d) The surviving spouse, domestic partner, or eligible child or
33 children of a member who left the employ of an employer to enter the
34 uniformed services of the United States and died while serving in the
35 uniformed services may, on behalf of the deceased member, apply for
36 retirement system service credit under this subsection up to the date
37 of the member's death in the uniformed services. The department shall
38 establish the deceased member's service credit if the surviving
39 spouse or eligible child or children:

1 (i) Provides to the director proof of the member's death while
2 serving in the uniformed services;

3 (ii) Provides to the director proof of the member's honorable
4 service in the uniformed services prior to the date of death; and

5 (iii) Pays the employee contributions required under chapter
6 41.45 RCW within five years of the date of death or prior to the
7 distribution of any benefit, whichever comes first; or

8 (iv) Prior to the distribution of any benefit, provides to the
9 director proof that the member's interruptive military service was
10 during a period of war as defined in RCW 41.04.005. If the deceased
11 member made payments for service credit for interruptive military
12 service during a period of war as defined in RCW 41.04.005, the
13 surviving spouse or eligible child or children may, prior to the
14 distribution of any benefit and on a form provided by the department,
15 request a refund of the funds standing to the deceased member's
16 credit for up to five years of such service, and this amount shall be
17 paid to the surviving spouse or children. Members with one or more
18 periods of interruptive military service during a period of war may
19 receive no more than five years of free retirement system service
20 credit under this subsection.

21 (e) A member who leaves the employ of an employer to enter the
22 uniformed services of the United States and becomes totally
23 incapacitated for continued employment by an employer while serving
24 in the uniformed services is entitled to retirement system service
25 credit under this subsection up to the date of discharge from the
26 uniformed services if:

27 (i) The member obtains a determination from the director that he
28 or she is totally incapacitated for continued employment due to
29 conditions or events that occurred while serving in the uniformed
30 services;

31 (ii) The member provides to the director proof of honorable
32 discharge from the uniformed services; and

33 (iii) The member pays the employee contributions required under
34 chapter 41.45 RCW within five years of the director's determination
35 of total disability or prior to the distribution of any benefit,
36 whichever comes first; or

37 (iv) Prior to retirement the member provides to the director
38 proof that the member's interruptive military service was during a
39 period of war as defined in RCW 41.04.005. Any member who made
40 payments for service credit for interruptive military service during

1 a period of war as defined in RCW 41.04.005 may, prior to retirement
2 and on a form provided by the department, request a refund of the
3 funds standing to his or her credit for up to five years of such
4 service, and this amount shall be paid to him or her. Members with
5 one or more periods of interruptive military service credit during a
6 period of war may receive no more than five years of free retirement
7 system service credit under this subsection.

8 (f) The surviving spouse, domestic partner, or eligible child or
9 children of a member who left the employ of an employer to enter the
10 uniformed services of the United States, federal emergency management
11 agency, or national disaster medical system of the United States
12 department of health and human services and died while performing
13 service in response to a disaster, major emergency, special event,
14 federal exercise, or official training on or after March 22, 2014,
15 may, on behalf of the deceased member, apply for retirement system
16 service credit under this subsection up to the date of the member's
17 death in such service. The department shall establish the deceased
18 member's service credit if the surviving spouse or eligible child or
19 children provides to the director proof of the member's death while
20 in such service.

21 (g) A member who leaves the employ of an employer to enter the
22 uniformed services of the United States, federal emergency management
23 agency, or national disaster medical system of the United States
24 department of health and human services and becomes totally
25 incapacitated for continued employment by an employer while providing
26 such service is entitled to retirement system service credit under
27 this subsection up to the date of separation from such service if the
28 member obtains a determination from the director that he or she is
29 totally incapacitated for continued employment due to conditions or
30 events that occurred while performing such service.

31 (8) A member receiving benefits under Title 51 RCW who is not
32 receiving benefits under this chapter shall be deemed to be on
33 unpaid, authorized leave of absence.

34 **Sec. 3.** RCW 41.26.470 and 2013 c 287 s 2 are each amended to
35 read as follows:

36 (1) A member of the retirement system who becomes totally
37 incapacitated for continued employment by an employer as determined
38 by the director shall be eligible to receive an allowance under the
39 provisions of RCW 41.26.410 through 41.26.550. Such member shall

1 receive a monthly disability allowance computed as provided for in
2 RCW 41.26.420 and shall have such allowance actuarially reduced to
3 reflect the difference in the number of years between age at
4 disability and the attainment of age fifty-three, except under
5 subsection (7) of this section.

6 (2) Any member who receives an allowance under the provisions of
7 this section shall be subject to such comprehensive medical
8 examinations as required by the department. If such medical
9 examinations reveal that such a member has recovered from the
10 incapacitating disability and the member is no longer entitled to
11 benefits under Title 51 RCW, the retirement allowance shall be
12 canceled and the member shall be restored to duty in the same civil
13 service rank, if any, held by the member at the time of retirement
14 or, if unable to perform the duties of the rank, then, at the
15 member's request, in such other like or lesser rank as may be or
16 become open and available, the duties of which the member is then
17 able to perform. In no event shall a member previously drawing a
18 disability allowance be returned or be restored to duty at a salary
19 or rate of pay less than the current salary attached to the rank or
20 position held by the member at the date of the retirement for
21 disability. If the department determines that the member is able to
22 return to service, the member is entitled to notice and a hearing.
23 Both the notice and the hearing shall comply with the requirements of
24 chapter 34.05 RCW, the administrative procedure act.

25 (3) Those members subject to this chapter who became disabled in
26 the line of duty on or after July 23, 1989, and who receive benefits
27 under RCW 41.04.500 through 41.04.530 or similar benefits under RCW
28 41.04.535 shall receive or continue to receive service credit subject
29 to the following:

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

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

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

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

39 (e) State contributions shall be as provided in RCW 41.45.060 and
40 41.45.067.

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

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

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

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

20 (b) If a recipient of a monthly retirement allowance under this
21 section died before April 27, 1989, and before the total of the
22 retirement allowance paid to the recipient equaled the amount of his
23 or her accumulated contributions at the date of retirement, then the
24 department shall pay the balance of the accumulated contributions to
25 the member's surviving spouse or, if there is no surviving spouse,
26 then in equal shares to the member's children. If there is no
27 surviving spouse or children, the department shall retain the
28 contributions.

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

35 (6) A member who becomes disabled in the line of duty, and who
36 ceases to be an employee of an employer except by service or
37 disability retirement, may request a refund of one hundred fifty
38 percent of the member's accumulated contributions. Any accumulated
39 contributions attributable to restorations made under RCW

1 41.50.165(2) shall be refunded at one hundred percent. A person in
2 receipt of this benefit is a retiree.

3 (7) A member who becomes disabled in the line of duty shall be
4 entitled to receive a minimum retirement allowance equal to ten
5 percent of such member's final average salary. The member shall
6 additionally receive a retirement allowance equal to two percent of
7 such member's average final salary for each year of service beyond
8 five.

9 (8) A member who became disabled in the line of duty before
10 January 1, 2001, and is receiving an allowance under RCW 41.26.430 or
11 subsection (1) of this section shall be entitled to receive a minimum
12 retirement allowance equal to ten percent of such member's final
13 average salary. The member shall additionally receive a retirement
14 allowance equal to two percent of such member's average final salary
15 for each year of service beyond five, and shall have the allowance
16 actuarially reduced to reflect the difference in the number of years
17 between age at disability and the attainment of age fifty-three. An
18 additional benefit shall not result in a total monthly benefit
19 greater than that provided in subsection (1) of this section.

20 (9) A member who is totally disabled in the line of duty is
21 entitled to receive a retirement allowance equal to seventy percent
22 of the member's final average salary. The allowance provided under
23 this subsection shall be offset by:

24 (a) Temporary disability wage-replacement benefits or permanent
25 total disability benefits provided to the member under Title 51 RCW;
26 and

27 (b) Federal social security disability benefits, if any;
28 so that such an allowance does not result in the member receiving
29 combined benefits that exceed one hundred percent of the member's
30 final average salary. However, the offsets shall not in any case
31 reduce the allowance provided under this subsection below the
32 member's accrued retirement allowance.

33 A member is considered totally disabled if he or she is unable to
34 perform any substantial gainful activity due to a physical or mental
35 condition that may be expected to result in death or that has lasted
36 or is expected to last at least twelve months. Substantial gainful
37 activity is defined as average earnings in excess of eight hundred
38 sixty dollars a month in 2006 adjusted annually as determined by the
39 director based on federal social security disability standards. The
40 department may require a person in receipt of an allowance under this

1 subsection to provide any financial records that are necessary to
2 determine continued eligibility for such an allowance. A person in
3 receipt of an allowance under this subsection whose earnings exceed
4 the threshold for substantial gainful activity shall have their
5 benefit converted to a line-of-duty disability retirement allowance
6 as provided in subsection (7) of this section.

7 Any person in receipt of an allowance under the provisions of
8 this section is subject to comprehensive medical examinations as may
9 be required by the department under subsection (2) of this section in
10 order to determine continued eligibility for such an allowance.

11 (10)(a) In addition to the retirement allowance provided in
12 subsection (9) of this section, the retirement allowance of a member
13 who is totally disabled in the line of duty shall include
14 reimbursement for any payments made by the member after June 10,
15 2010, for premiums on employer-provided medical insurance, insurance
16 authorized by the consolidated omnibus budget reconciliation act of
17 1985 (COBRA), medicare part A (hospital insurance), and medicare part
18 B (medical insurance). A member who is entitled to medicare must
19 enroll and maintain enrollment in both medicare part A and medicare
20 part B in order to remain eligible for the reimbursement provided in
21 this subsection. The legislature reserves the right to amend or
22 repeal the benefits provided in this subsection in the future and no
23 member or beneficiary has a contractual right to receive any
24 distribution not granted prior to that time.

25 (b) The retirement allowance of a member who is not eligible for
26 reimbursement provided in (a) of this subsection shall include
27 reimbursement for any payments made after June 30, 2013, for premiums
28 on other medical insurance. However, in no instance shall the
29 reimbursement exceed the amount reimbursed for premiums authorized by
30 the consolidated omnibus budget reconciliation act of 1985 (COBRA).

31 (11) A member who has left the employ of an employer due to
32 service in the national guard, military reserves, federal emergency
33 management agency, or national disaster medical system of the United
34 States department of health and human services and who becomes
35 totally incapacitated for continued employment by an employer as
36 determined by the director while performing service in response to a
37 disaster, major emergency, special event, federal exercise, or
38 official training on or after March 22, 2014, shall be eligible to
39 receive an allowance under the provisions of RCW 41.26.410 through
40 41.26.550. Such member shall receive a monthly disability allowance

1 computed as provided for in RCW 41.26.420 except such allowance is
2 not subject to an actuarial reduction for early retirement as
3 provided in RCW 41.26.430. The member's retirement allowance is
4 computed under RCW 41.26.420, except that the member shall be
5 entitled to a minimum retirement allowance equal to ten percent of
6 such member's final average salary. The member shall additionally
7 receive a retirement allowance equal to two percent of such member's
8 average final salary for each year of service beyond five.

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