
SENATE BILL 5468

State of Washington

68th Legislature

2023 Regular Session

By Senators Van De Wege, Holy, Conway, Lovick, Nguyen, Randall, and Valdez

Read first time 01/19/23. Referred to Committee on Ways & Means.

1 AN ACT Relating to ensuring that firefighters who accept
2 promotional firefighter positions within a fire department remain
3 members of the law enforcement officers' and firefighters' retirement
4 system; and amending RCW 41.26.030.

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

6 **Sec. 1.** RCW 41.26.030 and 2021 c 12 s 2 are each amended to read
7 as follows:

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

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

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

18 (3) "Actuarial valuation" means a mathematical determination of
19 the financial condition of a retirement plan. It includes the
20 computation of the present monetary value of benefits payable to
21 present members, and the present monetary value of future employer

1 and employee contributions, giving effect to mortality among active
2 and retired members and also to the rates of disability, retirement,
3 withdrawal from service, salary and interest earned on investments.

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

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

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

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

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

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

33 (6) (a) "Child" or "children" means an unmarried person who is
34 under the age of eighteen or mentally or physically disabled as
35 determined by the department, except a person who is disabled and in
36 the full time care of a state institution, who is:

37 (i) A natural born child;

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

40 (iii) A posthumous child;

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

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

5 (b) A person shall also be deemed to be a child up to and
6 including the age of twenty years and eleven months while attending
7 any high school, college, or vocational or other educational
8 institution accredited, licensed, or approved by the state, in which
9 it is located, including the summer vacation months and all other
10 normal and regular vacation periods at the particular educational
11 institution after which the child returns to school.

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

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

15 (9) "Disability board" for plan 1 members means either the county
16 disability board or the city disability board established in RCW
17 41.26.110.

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

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

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

28 (13) "Employee" means any law enforcement officer or firefighter
29 as defined in subsections (17) and (19) of this section.

30 (14)(a) "Employer" for plan 1 members, means the legislative
31 authority of any city, town, county, district, or regional fire
32 protection service authority or the elected officials of any
33 municipal corporation that employs any law enforcement officer and/or
34 firefighter, any authorized association of such municipalities, and,
35 except for the purposes of RCW 41.26.150, any labor guild,
36 association, or organization, which represents the firefighters or
37 law enforcement officers of at least seven cities of over 20,000
38 population and the membership of each local lodge or division of
39 which is composed of at least sixty percent law enforcement officers
40 or firefighters as defined in this chapter.

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

4 (i) The legislative authority of any city, town, county,
5 district, public corporation, or regional fire protection service
6 authority established under RCW 35.21.730 to provide emergency
7 medical services as defined in RCW 18.73.030;

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

9 (iii) The governing body of any other general authority law
10 enforcement agency;

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

13 (v) The department of social and health services or the
14 department of corrections when employing firefighters serving at a
15 prison or civil commitment center on an island.

16 (c) Except as otherwise specifically provided in this chapter,
17 "employer" does not include a government contractor. For purposes of
18 this subsection, a "government contractor" is any entity, including a
19 partnership, limited liability company, for-profit or nonprofit
20 corporation, or person, that provides services pursuant to a contract
21 with an "employer." The determination whether an employer-employee
22 relationship has been established is not based on the relationship
23 between a government contractor and an "employer," but is based
24 solely on the relationship between a government contractor's employee
25 and an "employer" under this chapter.

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

1 (b) "Final average salary" for plan 2 members, means the monthly
2 average of the member's basic salary for the highest consecutive
3 sixty service credit months of service prior to such member's
4 retirement, termination, or death. Periods constituting authorized
5 unpaid leaves of absence may not be used in the calculation of final
6 average salary.

7 (c) In calculating final average salary under (a) or (b) of this
8 subsection, the department of retirement systems shall include:

9 (i) Any compensation forgone by a member employed by a state
10 agency or institution during the 2009-2011 fiscal biennium as a
11 result of reduced work hours, mandatory or voluntary leave without
12 pay, temporary reduction in pay implemented prior to December 11,
13 2010, or temporary layoffs if the reduced compensation is an integral
14 part of the employer's expenditure reduction efforts, as certified by
15 the employer;

16 (ii) Any compensation forgone by a member employed by the state
17 or a local government employer during the 2011-2013 fiscal biennium
18 as a result of reduced work hours, mandatory leave without pay,
19 temporary layoffs, or reductions to current pay if the reduced
20 compensation is an integral part of the employer's expenditure
21 reduction efforts, as certified by the employer. Reductions to
22 current pay shall not include elimination of previously agreed upon
23 future salary increases; and

24 (iii) Any compensation forgone by a member employed by the state
25 or a local government employer during the 2019-2021 and 2021-2023
26 fiscal biennia as a result of reduced work hours, mandatory leave
27 without pay, temporary layoffs, furloughs, reductions to current pay,
28 or other similar measures resulting from the COVID-19 budgetary
29 crisis, if the reduced compensation is an integral part of the
30 employer's expenditure reduction efforts, as certified by the
31 employer. Reductions to current pay shall not include elimination of
32 previously agreed upon future salary increases.

33 (16) "Fire department" includes a fire station operated by the
34 department of social and health services or the department of
35 corrections when employing firefighters serving a prison or civil
36 commitment center on an island.

37 (17) "Firefighter" means:

38 (a) Any person who is serving on a full time, fully compensated
39 basis as a member of a fire department of an employer and who is

1 serving in a position which requires passing a civil service
2 examination for firefighter, and who is actively employed as such;

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

5 (c) Supervisory firefighter personnel;

6 (d) Any person who is serving on a full-time, fully compensated
7 basis as an employee of a fire department and who is serving in a
8 position that requires an experienced firefighter;

9 (e) Any full time executive secretary of an association of fire
10 protection districts authorized under RCW 52.12.031. The provisions
11 of this subsection (17) ~~((d))~~ (e) shall not apply to plan 2 members;

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

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

22 ~~((g))~~ (h) Any person who on March 1, 1970, was employed on a
23 full time, fully compensated basis by an employer, and who on May 21,
24 1971, was making retirement contributions under the provisions of
25 chapter 41.16 or 41.18 RCW; and

26 ~~((h))~~ (i) Any person who is employed on a full-time, fully
27 compensated basis by an employer as an emergency medical technician
28 that meets the requirements of RCW 18.71.200 or 18.73.030 ~~((12))~~
29 (13), and whose duties include providing emergency medical services
30 as defined in RCW 18.73.030.

31 (18) "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,
38 department, or division is distinguished from a limited authority law
39 enforcement agency having as one of its functions the apprehension or
40 detection of persons committing infractions or violating the traffic

1 or criminal laws relating to limited subject areas, including but not
2 limited to, the state departments of natural resources and social and
3 health services, the state gambling commission, the state lottery
4 commission, the state parks and recreation commission, the state
5 utilities and transportation commission, the state liquor and
6 cannabis board, and the state department of corrections. A general
7 authority law enforcement agency under this chapter does not include
8 a government contractor.

9 (19) "Law enforcement officer" beginning January 1, 1994, means
10 any person who is commissioned and employed by an employer on a full
11 time, fully compensated basis to enforce the criminal laws of the
12 state of 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
15 be 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
20 persons serving in unclassified positions authorized by RCW 41.14.070
21 except a private secretary will be considered law enforcement
22 officers;

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

29 (d) The term "law enforcement officer" also includes the
30 executive secretary of a labor guild, association or organization
31 (which is an employer under subsection (14) of this section) if that
32 individual has five years previous membership in the retirement
33 system established in chapter 41.20 RCW. The provisions of this
34 subsection (19)(d) shall not apply to plan 2 members; and

35 (e) The term "law enforcement officer" also includes a person
36 employed on or after January 1, 1993, as a public safety officer or
37 director of public safety, so long as the job duties substantially
38 involve only either police or fire duties, or both, and no other
39 duties in a city or town with a population of less than ten thousand.
40 The provisions of this subsection (19)(e) shall not apply to any

1 public safety officer or director of public safety who is receiving a
2 retirement allowance under this chapter as of May 12, 1993.

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

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

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

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

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

16 (i) The fees of the following:

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

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

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

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

26 (iii) The charges for the following medical services and
27 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
37 by a disease;

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

- 1 (I) Nursing home confinement or hospital extended care facility;
2 (J) Physical therapy by a registered physical therapist;
3 (K) Blood transfusions, including the cost of blood and blood
4 plasma not replaced by voluntary donors;
5 (L) An optometrist licensed under the provisions of chapter 18.53
6 RCW.

7 (21) "Member" means any firefighter, law enforcement officer, or
8 other person as would apply under subsection (17) or (19) of this
9 section whose membership is transferred to the Washington law
10 enforcement officers' and firefighters' retirement system on or after
11 March 1, 1970, and every law enforcement officer and firefighter who
12 is employed in that capacity on or after such date.

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

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

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

23 (25) "Regular interest" means such rate as the director may
24 determine.

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

30 (27) "Retirement fund" means the "Washington law enforcement
31 officers' and firefighters' retirement system fund" as provided for
32 herein.

33 (28) "Retirement system" means the "Washington law enforcement
34 officers' and firefighters' retirement system" provided herein.

35 (29)(a) "Service" for plan 1 members, means all periods of
36 employment for an employer as a firefighter or law enforcement
37 officer, for which compensation is paid, together with periods of
38 suspension not exceeding thirty days in duration. For the purposes of
39 this chapter service shall also include service in the armed forces
40 of the United States as provided in RCW 41.26.190. Credit shall be

1 allowed for all service credit months of service rendered by a member
2 from and after the member's initial commencement of employment as a
3 firefighter or law enforcement officer, during which the member
4 worked for seventy or more hours, or was on disability leave or
5 disability retirement. Only service credit months of service shall be
6 counted in the computation of any retirement allowance or other
7 benefit provided for in this chapter.

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

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

23 (iii) Reduction efforts such as furloughs, reduced work hours,
24 mandatory leave without pay, temporary layoffs, or other similar
25 situations as contemplated by subsection (15)(c)(iii) of this section
26 do not result in a reduction in service credit that otherwise would
27 have been earned for that month of work, and the member shall receive
28 the full service credit for the hours that were scheduled to be
29 worked before the reduction.

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

1 (ii) Members of the retirement system who are elected or
2 appointed to a state elective position may elect to continue to be
3 members of this retirement system.

4 (iii) Service credit years of service shall be determined by
5 dividing the total number of service credit months of service by
6 twelve. Any fraction of a service credit year of service as so
7 determined shall be taken into account in the computation of such
8 retirement allowance or benefits.

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

18 (v) Reduction efforts such as furloughs, reduced work hours,
19 mandatory leave without pay, temporary layoffs, or other similar
20 situations as contemplated by subsection (15)(c)(iii) of this section
21 do not result in a reduction in service credit that otherwise would
22 have been earned for that month of work, and the member shall receive
23 the full service credit for the hours that were scheduled to be
24 worked before the reduction.

25 (30) "Service credit month" means a full service credit month or
26 an accumulation of partial service credit months that are equal to
27 one.

28 (31) "Service credit year" means an accumulation of months of
29 service credit which is equal to one when divided by twelve.

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

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

35 (34) "Surviving spouse" means the surviving widow or widower of a
36 member. "Surviving spouse" shall not include the divorced spouse of a
37 member except as provided in RCW 41.26.162.

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