
SUBSTITUTE HOUSE BILL 2786

State of Washington 65th Legislature 2018 Regular Session

By House Appropriations (originally sponsored by Representatives Kilduff and Muri)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to membership in the law enforcement officers'
2 and firefighters' retirement system plan 2 for firefighters employed
3 by the department of corrections or the department of social and
4 health services and serving at a prison or civil commitment center
5 located on an island; amending RCW 41.26.030; and adding a new
6 section to chapter 41.26 RCW.

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

8 **Sec. 1.** RCW 41.26.030 and 2017 c 309 s 1 are each amended to
9 read as follows:

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

12 (1) "Accumulated contributions" means the employee's
13 contributions made by a member, including any amount paid under RCW
14 41.50.165(2), plus accrued interest credited thereon.

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

20 (3) "Actuarial valuation" means a mathematical determination of
21 the financial condition of a retirement plan. It includes the

1 computation of the present monetary value of benefits payable to
2 present members, and the present monetary value of future employer
3 and employee contributions, giving effect to mortality among active
4 and retired members and also to the rates of disability, retirement,
5 withdrawal from service, salary and interest earned on investments.

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

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

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

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

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

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

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

39 (i) A natural born child;

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

3 (iii) A posthumous child;

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

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

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

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

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

18 (9) "Disability board" for plan 1 members means either the county
19 disability board or the city disability board established in RCW
20 41.26.110.

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

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

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

31 (13) "Employee" means any law enforcement officer or firefighter
32 as defined in subsections ~~((+16+))~~ (17) and ~~((+18+))~~ (19) of this
33 section.

34 (14)(a) "Employer" for plan 1 members, means the legislative
35 authority of any city, town, county, or district or the elected
36 officials of any municipal corporation that employs any law
37 enforcement officer and/or firefighter, any authorized association of
38 such municipalities, and, except for the purposes of RCW 41.26.150,
39 any labor guild, association, or organization, which represents the
40 firefighters or law enforcement officers of at least seven cities of

1 over 20,000 population and the membership of each local lodge or
2 division of which is composed of at least sixty percent law
3 enforcement officers or firefighters as defined in this chapter.

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

7 (i) The legislative authority of any city, town, county,
8 district, or public corporation established under RCW 35.21.730 to
9 provide emergency medical services as defined in RCW 18.73.030;

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

11 (iii) The governing body of any other general authority law
12 enforcement agency; ((~~or~~))

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

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

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

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

1 the case of a member who hereafter vests pursuant to RCW 41.26.090,
2 the basic salary payable to such member at the time of vesting.

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

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

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

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

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

30 (17) "Firefighter" means:

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

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

37 (c) Supervisory firefighter personnel;

38 (d) Any full time executive secretary of an association of fire
39 protection districts authorized under RCW 52.12.031. The provisions

1 of this subsection (~~(16)~~) (17)(d) shall not apply to plan 2
2 members;

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

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

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

17 (h) Any person who is employed on a full-time, fully compensated
18 basis by an employer as an emergency medical technician that meets
19 the requirements of RCW 18.71.200 or 18.73.030(12), and whose duties
20 include providing emergency medical services as defined in RCW
21 18.73.030.

22 (~~(17)~~) (18) "General authority law enforcement agency" means
23 any agency, department, or division of a municipal corporation,
24 political subdivision, or other unit of local government of this
25 state, and any agency, department, or division of state government,
26 having as its primary function the detection and apprehension of
27 persons committing infractions or violating the traffic or criminal
28 laws in general, but not including the Washington state patrol. Such
29 an agency, department, or division is distinguished from a limited
30 authority law enforcement agency having as one of its functions the
31 apprehension or detection of persons committing infractions or
32 violating the traffic or criminal laws relating to limited subject
33 areas, including but not limited to, the state departments of natural
34 resources and social and health services, the state gambling
35 commission, the state lottery commission, the state parks and
36 recreation commission, the state utilities and transportation
37 commission, the state liquor and cannabis board, and the state
38 department of corrections. A general authority law enforcement agency
39 under this chapter does not include a government contractor.

1 (~~(18)~~) (19) "Law enforcement officer" beginning January 1,
2 1994, means any person who is commissioned and employed by an
3 employer on a full time, fully compensated basis to enforce the
4 criminal laws of the state of Washington generally, with the
5 following qualifications:

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

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

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

22 (d) The term "law enforcement officer" also includes the
23 executive secretary of a labor guild, association or organization
24 (which is an employer under subsection (14) of this section) if that
25 individual has five years previous membership in the retirement
26 system established in chapter 41.20 RCW. The provisions of this
27 subsection (~~(18)~~) (19)(d) shall not apply to plan 2 members; and

28 (e) The term "law enforcement officer" also includes a person
29 employed on or after January 1, 1993, as a public safety officer or
30 director of public safety, so long as the job duties substantially
31 involve only either police or fire duties, or both, and no other
32 duties in a city or town with a population of less than ten thousand.
33 The provisions of this subsection (~~(18)~~) (19)(e) shall not apply to
34 any public safety officer or director of public safety who is
35 receiving a retirement allowance under this chapter as of May 12,
36 1993.

37 (~~(19)~~) (20) "Medical services" for plan 1 members, shall
38 include the following as minimum services to be provided. Reasonable
39 charges for these services shall be paid in accordance with RCW
40 41.26.150.

1 (a) Hospital expenses: These are the charges made by a hospital,
2 in its own behalf, for
3 (i) Board and room not to exceed semiprivate room rate unless
4 private room is required by the attending physician due to the
5 condition of the patient.
6 (ii) Necessary hospital services, other than board and room,
7 furnished by the hospital.
8 (b) Other medical expenses: The following charges are considered
9 "other medical expenses," provided that they have not been considered
10 as "hospital expenses".
11 (i) The fees of the following:
12 (A) A physician or surgeon licensed under the provisions of
13 chapter 18.71 RCW;
14 (B) An osteopathic physician and surgeon licensed under the
15 provisions of chapter 18.57 RCW;
16 (C) A chiropractor licensed under the provisions of chapter 18.25
17 RCW.
18 (ii) The charges of a registered graduate nurse other than a
19 nurse who ordinarily resides in the member's home, or is a member of
20 the family of either the member or the member's spouse.
21 (iii) The charges for the following medical services and
22 supplies:
23 (A) Drugs and medicines upon a physician's prescription;
24 (B) Diagnostic X-ray and laboratory examinations;
25 (C) X-ray, radium, and radioactive isotopes therapy;
26 (D) Anesthesia and oxygen;
27 (E) Rental of iron lung and other durable medical and surgical
28 equipment;
29 (F) Artificial limbs and eyes, and casts, splints, and trusses;
30 (G) Professional ambulance service when used to transport the
31 member to or from a hospital when injured by an accident or stricken
32 by a disease;
33 (H) Dental charges incurred by a member who sustains an
34 accidental injury to his or her teeth and who commences treatment by
35 a legally licensed dentist within ninety days after the accident;
36 (I) Nursing home confinement or hospital extended care facility;
37 (J) Physical therapy by a registered physical therapist;
38 (K) Blood transfusions, including the cost of blood and blood
39 plasma not replaced by voluntary donors;

1 (L) An optometrist licensed under the provisions of chapter 18.53
2 RCW.

3 ~~((+20+))~~ (21) "Member" means any firefighter, law enforcement
4 officer, or other person as would apply under subsections ~~((+16+))~~
5 (17) or ~~((+18+))~~ (19) of this section whose membership is transferred
6 to the Washington law enforcement officers' and firefighters'
7 retirement system on or after March 1, 1970, and every law
8 enforcement officer and firefighter who is employed in that capacity
9 on or after such date.

10 ~~((+21+))~~ (22) "Plan 1" means the law enforcement officers' and
11 firefighters' retirement system, plan 1 providing the benefits and
12 funding provisions covering persons who first became members of the
13 system prior to October 1, 1977.

14 ~~((+22+))~~ (23) "Plan 2" means the law enforcement officers' and
15 firefighters' retirement system, plan 2 providing the benefits and
16 funding provisions covering persons who first became members of the
17 system on and after October 1, 1977.

18 ~~((+23+))~~ (24) "Position" means the employment held at any
19 particular time, which may or may not be the same as civil service
20 rank.

21 ~~((+24+))~~ (25) "Regular interest" means such rate as the director
22 may determine.

23 ~~((+25+))~~ (26) "Retiree" for persons who establish membership in
24 the retirement system on or after October 1, 1977, means any member
25 in receipt of a retirement allowance or other benefit provided by
26 this chapter resulting from service rendered to an employer by such
27 member.

28 ~~((+26+))~~ (27) "Retirement fund" means the "Washington law
29 enforcement officers' and firefighters' retirement system fund" as
30 provided for herein.

31 ~~((+27+))~~ (28) "Retirement system" means the "Washington law
32 enforcement officers' and firefighters' retirement system" provided
33 herein.

34 ~~((+28+))~~ (29)(a) "Service" for plan 1 members, means all periods
35 of employment for an employer as a firefighter or law enforcement
36 officer, for which compensation is paid, together with periods of
37 suspension not exceeding thirty days in duration. For the purposes of
38 this chapter service shall also include service in the armed forces
39 of the United States as provided in RCW 41.26.190. Credit shall be
40 allowed for all service credit months of service rendered by a member

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

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

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

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

31 Members of the retirement system who are elected or appointed to
32 a state elective position may elect to continue to be members of this
33 retirement system.

34 Service credit years of service shall be determined by dividing
35 the total number of service credit months of service by twelve. Any
36 fraction of a service credit year of service as so determined shall
37 be taken into account in the computation of such retirement allowance
38 or benefits.

39 If a member receives basic salary from two or more employers
40 during any calendar month, the individual shall receive one service

1 credit month's service credit during any calendar month in which
2 multiple service for ninety or more hours is rendered; or one-half
3 service credit month's service credit during any calendar month in
4 which multiple service for at least seventy hours but less than
5 ninety hours is rendered; or one-quarter service credit month during
6 any calendar month in which multiple service for less than seventy
7 hours is rendered.

8 ~~((+29))~~ (30) "Service credit month" means a full service credit
9 month or an accumulation of partial service credit months that are
10 equal to one.

11 ~~((+30))~~ (31) "Service credit year" means an accumulation of
12 months of service credit which is equal to one when divided by
13 twelve.

14 ~~((+31))~~ (32) "State actuary" or "actuary" means the person
15 appointed pursuant to RCW 44.44.010(2).

16 ~~((+32))~~ (33) "State elective position" means any position held
17 by any person elected or appointed to statewide office or elected or
18 appointed as a member of the legislature.

19 ~~((+33))~~ (34) "Surviving spouse" means the surviving widow or
20 widower of a member. "Surviving spouse" shall not include the
21 divorced spouse of a member except as provided in RCW 41.26.162.

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

24 (1) A member of plan 2 or plan 3 who was a member of the public
25 employees' retirement system while employed by the department of
26 social and health services or the department of corrections as a
27 firefighter serving at a prison or civil commitment center on an
28 island has the following options:

29 (a) Remain a member of the public employees' retirement system;

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

35 (c) Make an election no later than one year from the effective
36 date of this section, filed in writing with the department of
37 retirement systems, to transfer service credit previously earned as a
38 firefighter for the department of corrections or the department of
39 social and health services in the public employees' retirement system

1 plan 2 or plan 3 to the law enforcement officers' and firefighters'
2 retirement system plan 2 as defined in RCW 41.26.030.

3 (2)(a) A member who elects to transfer service credit under
4 subsection (1)(c) of this section shall make the payments required by
5 this subsection prior to having service credit earned as a
6 firefighter for the department of corrections or the department of
7 social and health service under the public employees' retirement
8 system plan 2 or plan 3 transferred to the law enforcement officers'
9 and firefighters' retirement system plan 2.

10 (b)(i) A member of plan 2 who elects to transfer service credit
11 under this subsection shall pay, for the applicable period of
12 service, the difference between the contributions the employee paid
13 to the public employees' retirement system plan 2 and the
14 contributions that would have been paid by the employee had the
15 employee been a member of the law enforcement officers' and
16 firefighters' retirement system plan 2.

17 (ii) A member of plan 3 who elects to transfer service credit
18 under this subsection shall pay, for the applicable period of
19 service, the amount of the contributions that would have been paid by
20 the employee had the employee been a member of the law enforcement
21 officers' and firefighters' plan 2. That payment may be made in whole
22 or in part as a rollover from the plan 3 member's individual member
23 account.

24 (iii) The payments in (b)(i) and (ii) of this subsection must be
25 made no later than five years from the effective date of the election
26 made under subsection (1)(c) of this section and must be made prior
27 to retirement, except under (d) of this subsection.

28 (c) Upon completion of the payment required in (b) of this
29 subsection, the department shall transfer from the public employees'
30 retirement system plan 2 or plan 3 to the law enforcement officers'
31 and firefighters' retirement system plan 2:

32 (i) All of the employee's applicable accumulated contributions
33 plus interest and an equal amount of employer contributions; and

34 (ii) All service credit earned as a firefighter for the
35 department of corrections or the department of social and health
36 services as a firefighter serving at a prison or civil commitment
37 center on an island as though that service was rendered as a member
38 of the law enforcement officers' and firefighters' retirement system
39 plan 2.

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

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

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

12 (A) Pay the bill in full;

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

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

19 (e) Upon transfer of service credit, contributions, and interest
20 under this subsection, the employee is permanently excluded from
21 membership in the public employees' retirement system for all service
22 transfers related to their time served as a firefighter for the
23 department of corrections or the department of social and health
24 services serving at a prison or civil commitment center located on an
25 island under the public employees' retirement system.

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