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SENATE BILL 6738

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State of Washington

54th Legislature

1996 Regular Session

By Senators Roach, Owen and Fraser

Read first time 01/30/96. Referred to Committee on Ways & Means.

1 AN ACT Relating to the choice of retirement systems by department  
2 of fish and wildlife enforcement officers; reenacting and amending RCW  
3 41.26.030; and adding a new section to chapter 41.40 RCW.

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

5 **Sec. 1.** RCW 41.26.030 and 1994 c 264 s 14 and 1994 c 197 s 5 are  
6 each reenacted and amended to read as follows:

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

9 (1) "Retirement system" means the "Washington law enforcement  
10 officers' and fire fighters' retirement system" provided herein.

11 (2)(a) "Employer" for plan I members, means the legislative  
12 authority of any city, town, county, or district or the elected  
13 officials of any municipal corporation that employs any law enforcement  
14 officer and/or fire fighter, any authorized association of such  
15 municipalities, and, except for the purposes of RCW 41.26.150, any  
16 labor guild, association, or organization, which represents the fire  
17 fighters or law enforcement officers of at least seven cities of over  
18 20,000 population and the membership of each local lodge or division of

1 which is composed of at least sixty percent law enforcement officers or  
2 fire fighters as defined in this chapter.

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

6 (i) The legislative authority of any city, town, county, or  
7 district;

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

9 (iii) The department of fish and wildlife; or

10 (iv) The governing body of any other general authority law  
11 enforcement agency.

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

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

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

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

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

37 (e) The term "law enforcement officer" also includes a person  
38 employed on or after January 1, 1993, as a public safety officer or  
39 director of public safety, so long as the job duties substantially

1 involve only either police or fire duties, or both, and no other duties  
2 in a city or town with a population of less than ten thousand. The  
3 provisions of this subsection (3)(e) shall not apply to any public  
4 safety officer or director of public safety who is receiving a  
5 retirement allowance under this chapter as of May 12, 1993; and

6 (f) "Law enforcement officer" also includes a person employed on or  
7 after January 1, 1997, as a department of fish and wildlife enforcement  
8 officer. For this purpose a department of fish and wildlife  
9 enforcement officer means a fisheries patrol officer or an ex officio  
10 fisheries patrol officer as defined in RCW 75.08.011 (5) and (6) or a  
11 wildlife agent or an ex officio wildlife agent as defined in RCW  
12 77.08.010 (5) and (6).

13 (4) "Fire fighter" means:

14 (a) Any person who is serving on a full time, fully compensated  
15 basis as a member of a fire department of an employer and who is  
16 serving in a position which requires passing a civil service  
17 examination for fire fighter, and who is actively employed as such;

18 (b) Anyone who is actively employed as a full time fire fighter  
19 where the fire department does not have a civil service examination;

20 (c) Supervisory fire fighter personnel;

21 (d) Any full time executive secretary of an association of fire  
22 protection districts authorized under RCW 52.12.031. The provisions of  
23 this subsection (4)(d) shall not apply to plan II members;

24 (e) The executive secretary of a labor guild, association or  
25 organization (which is an employer under RCW 41.26.030(2) as now or  
26 hereafter amended), if such individual has five years previous  
27 membership in a retirement system established in chapter 41.16 or 41.18  
28 RCW. The provisions of this subsection (4)(e) shall not apply to plan  
29 II members;

30 (f) Any person who is serving on a full time, fully compensated  
31 basis for an employer, as a fire dispatcher, in a department in which,  
32 on March 1, 1970, a dispatcher was required to have passed a civil  
33 service examination for fire fighter; and

34 (g) Any person who on March 1, 1970, was employed on a full time,  
35 fully compensated basis by an employer, and who on May 21, 1971, was  
36 making retirement contributions under the provisions of chapter 41.16  
37 or 41.18 RCW.

38 (5) "Department" means the department of retirement systems created  
39 in chapter 41.50 RCW.

1 (6) "Surviving spouse" means the surviving widow or widower of a  
2 member. "Surviving spouse" shall not include the divorced spouse of a  
3 member except as provided in RCW 41.26.162.

4 (7)(a) "Child" or "children" means an unmarried person who is under  
5 the age of eighteen or mentally or physically handicapped as determined  
6 by the department, except a handicapped person in the full time care of  
7 a state institution, who is:

8 (i) A natural born child;

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

11 (iii) A posthumous child;

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

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

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

23 (8) "Member" means any fire fighter, law enforcement officer, or  
24 other person as would apply under subsections (3) or (4) of this  
25 section whose membership is transferred to the Washington law  
26 enforcement officers' and fire fighters' retirement system on or after  
27 March 1, 1970, and every law enforcement officer and fire fighter who  
28 is employed in that capacity on or after such date.

29 (9) "Retirement fund" means the "Washington law enforcement  
30 officers' and fire fighters' retirement system fund" as provided for  
31 herein.

32 (10) "Employee" means any law enforcement officer or fire fighter  
33 as defined in subsections (3) and (4) of this section.

34 (11)(a) "Beneficiary" for plan I members, means any person in  
35 receipt of a retirement allowance, disability allowance, death benefit,  
36 or any other benefit described herein.

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

1 (12)(a) "Final average salary" for plan I members, means (i) for a  
2 member holding the same position or rank for a minimum of twelve months  
3 preceding the date of retirement, the basic salary attached to such  
4 same position or rank at time of retirement; (ii) for any other member,  
5 including a civil service member who has not served a minimum of twelve  
6 months in the same position or rank preceding the date of retirement,  
7 the average of the greatest basic salaries payable to such member  
8 during any consecutive twenty-four month period within such member's  
9 last ten years of service for which service credit is allowed, computed  
10 by dividing the total basic salaries payable to such member during the  
11 selected twenty-four month period by twenty-four; (iii) in the case of  
12 disability of any member, the basic salary payable to such member at  
13 the time of disability retirement; (iv) in the case of a member who  
14 hereafter vests pursuant to RCW 41.26.090, the basic salary payable to  
15 such member at the time of vesting.

16 (b) "Final average salary" for plan II members, means the monthly  
17 average of the member's basic salary for the highest consecutive sixty  
18 service credit months of service prior to such member's retirement,  
19 termination, or death. Periods constituting authorized unpaid leaves  
20 of absence may not be used in the calculation of final average salary.

21 (13)(a) "Basic salary" for plan I members, means the basic monthly  
22 rate of salary or wages, including longevity pay but not including  
23 overtime earnings or special salary or wages, upon which pension or  
24 retirement benefits will be computed and upon which employer  
25 contributions and salary deductions will be based.

26 (b) "Basic salary" for plan II members, means salaries or wages  
27 earned by a member during a payroll period for personal services,  
28 including overtime payments, and shall include wages and salaries  
29 deferred under provisions established pursuant to sections 403(b),  
30 414(h), and 457 of the United States Internal Revenue Code, but shall  
31 exclude lump sum payments for deferred annual sick leave, unused  
32 accumulated vacation, unused accumulated annual leave, or any form of  
33 severance pay. In any year in which a member serves in the legislature  
34 the member shall have the option of having such member's basic salary  
35 be the greater of:

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

38 (ii) Such member's actual basic salary received for nonlegislative  
39 public employment and legislative service combined. Any additional

1 contributions to the retirement system required because basic salary  
2 under (b)(i) of this subsection is greater than basic salary under  
3 (b)(ii) of this subsection shall be paid by the member for both member  
4 and employer contributions.

5 (14)(a) "Service" for plan I members, means all periods of  
6 employment for an employer as a fire fighter or law enforcement  
7 officer, for which compensation is paid, together with periods of  
8 suspension not exceeding thirty days in duration. For the purposes of  
9 this chapter service shall also include service in the armed forces of  
10 the United States as provided in RCW 41.26.190. Credit shall be  
11 allowed for all service credit months of service rendered by a member  
12 from and after the member's initial commencement of employment as a  
13 fire fighter or law enforcement officer, during which the member worked  
14 for seventy or more hours, or was on disability leave or disability  
15 retirement. Only service credit months of service shall be counted in  
16 the computation of any retirement allowance or other benefit provided  
17 for in this chapter.

18 (i) For members retiring after May 21, 1971 who were employed under  
19 the coverage of a prior pension act before March 1, 1970, "service"  
20 shall also include (A) such military service not exceeding five years  
21 as was creditable to the member as of March 1, 1970, under the member's  
22 particular prior pension act, and (B) such other periods of service as  
23 were then creditable to a particular member under the provisions of RCW  
24 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit  
25 be allowed for any service rendered prior to March 1, 1970, where the  
26 member at the time of rendition of such service was employed in a  
27 position covered by a prior pension act, unless such service, at the  
28 time credit is claimed therefor, is also creditable under the  
29 provisions of such prior act.

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

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

1 one or more employers for which basic salary is earned for less than  
2 seventy hours shall constitute a one-quarter service credit month.

3 Members of the retirement system who are elected or appointed to a  
4 state elective position may elect to continue to be members of this  
5 retirement system.

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

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

20 (15) "Accumulated contributions" means the employee's contributions  
21 made by a member, including any amount paid under RCW 41.50.165(2),  
22 plus accrued interest credited thereon.

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

28 (17) "Actuarial valuation" means a mathematical determination of  
29 the financial condition of a retirement plan. It includes the  
30 computation of the present monetary value of benefits payable to  
31 present members, and the present monetary value of future employer and  
32 employee contributions, giving effect to mortality among active and  
33 retired members and also to the rates of disability, retirement,  
34 withdrawal from service, salary and interest earned on investments.

35 (18) "Disability board" for plan I members means either the county  
36 disability board or the city disability board established in RCW  
37 41.26.110.

38 (19) "Disability leave" means the period of six months or any  
39 portion thereof during which a member is on leave at an allowance equal

1 to the member's full salary prior to the commencement of disability  
2 retirement. The definition contained in this subsection shall apply  
3 only to plan I members.

4 (20) "Disability retirement" for plan I members, means the period  
5 following termination of a member's disability leave, during which the  
6 member is in receipt of a disability retirement allowance.

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

9 (22) "Medical services" for plan I members, shall include the  
10 following as minimum services to be provided. Reasonable charges for  
11 these services shall be paid in accordance with RCW 41.26.150.

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

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

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

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

22 (i) The fees of the following:

23 (A) A physician or surgeon licensed under the provisions of chapter  
24 18.71 RCW;

25 (B) An (~~osteopath~~ [~~osteopathic~~ ~~physician~~ and ~~surgeon~~])  
26 osteopathic physician and surgeon licensed under the provisions of  
27 chapter 18.57 RCW;

28 (C) A chiropractor licensed under the provisions of chapter 18.25  
29 RCW.

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

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

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

35 (B) Diagnostic x-ray and laboratory examinations;

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

37 (D) Anesthesia and oxygen;

38 (E) Rental of iron lung and other durable medical and surgical  
39 equipment;



1 (F) Artificial limbs and eyes, and casts, splints, and trusses;  
2 (G) Professional ambulance service when used to transport the  
3 member to or from a hospital when injured by an accident or stricken by  
4 a disease;

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

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

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

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

12 (L) An optometrist licensed under the provisions of chapter 18.53  
13 RCW.

14 (23) "Regular interest" means such rate as the director may  
15 determine.

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

20 (25) "Director" means the director of the department.

21 (26) "State actuary" or "actuary" means the person appointed  
22 pursuant to RCW 44.44.010(2).

23 (27) "State elective position" means any position held by any  
24 person elected or appointed to state-wide office or elected or  
25 appointed as a member of the legislature.

26 (28) "Plan I" means the law enforcement officers' and fire  
27 fighters' retirement system, plan I providing the benefits and funding  
28 provisions covering persons who first became members of the system  
29 prior to October 1, 1977.

30 (29) "Plan II" means the law enforcement officers' and fire  
31 fighters' retirement system, plan II providing the benefits and funding  
32 provisions covering persons who first became members of the system on  
33 and after October 1, 1977.

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

36 (31) "Service credit month" means a full service credit month or an  
37 accumulation of partial service credit months that are equal to one.

38 (32) "General authority law enforcement agency" means any agency,  
39 department, or division of a municipal corporation, political

1 subdivision, or other unit of local government of this state, and any  
2 agency, department, or division of state government, having as its  
3 primary function the detection and apprehension of persons committing  
4 infractions or violating the traffic or criminal laws in general, but  
5 not including the Washington state patrol. Such an agency, department,  
6 or division is distinguished from a limited authority law enforcement  
7 agency having as one of its functions the apprehension or detection of  
8 persons committing infractions or violating the traffic or criminal  
9 laws relating to limited subject areas, including but not limited to,  
10 the state departments of natural resources, fish and wildlife, and  
11 social and health services, the state gambling commission, the state  
12 lottery commission, the state parks and recreation commission, the  
13 state utilities and transportation commission, the state liquor control  
14 board, and the state department of corrections.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.40 RCW  
16 to read as follows:

17 (1) An employee who was a member on or before January 1, 1997, and,  
18 on January 1, 1997, is employed by the department of fish and wildlife  
19 as a law enforcement officer as defined in RCW 41.26.030, has the  
20 following options:

21 (a) The employee may remain a member of the retirement system,  
22 notwithstanding the definition of law enforcement officer under RCW  
23 41.26.030; or

24 (b) The member may make an irrevocable choice, filed in writing  
25 with the department no later than January 1, 1998, to transfer to the  
26 law enforcement officers' and fire fighters' retirement system plan II  
27 as defined in RCW 41.26.030. An employee transferring membership under  
28 this subsection (1)(b) shall be a dual member as provided in RCW  
29 41.54.010.

30 (2)(a) If the department determines that transfers of service  
31 credit and accumulated contributions between the state's retirement  
32 systems are permitted by federal law without the employee or the  
33 retirement system fund incurring adverse income tax liability as a  
34 result of the transfer, an employee who transferred membership under  
35 subsection (1)(b) of this section may choose to transfer service credit  
36 as a law enforcement officer previously earned under the retirement  
37 system, to the law enforcement officers' and fire fighters' retirement  
38 system plan II, by making an irrevocable choice filed in writing with

1 the department within one year of the department's announcement of the  
2 ability to make such a transfer.

3 (b) Any law enforcement officer choosing to transfer under this  
4 subsection shall have transferred from the retirement system to the law  
5 enforcement officers' and fire fighters' retirement system plan II:  
6 (i) All the employee's applicable accumulated contributions and  
7 employer contributions attributed to such employee; and (ii) all  
8 applicable months of service, as defined in RCW 41.26.030(14)(b),  
9 credited to the employee under this chapter, as though such service was  
10 rendered as a member of the law enforcement officers' and fire  
11 fighters' retirement system.

12 (c) For the applicable period of service, the employee shall pay  
13 the difference between the contributions such employee paid to the  
14 retirement system, and the contributions which would have been paid by  
15 the employee had the employee been a member of the law enforcement  
16 officers' and fire fighters' retirement system, plus interest as  
17 determined by the director.

18 (d) For the applicable period of service, the employer shall pay  
19 the difference between the employer contributions paid to the  
20 retirement system, and the combined employer and state contributions  
21 which would have been payable to the law enforcement officers' and fire  
22 fighters' retirement system, plus interest as determined by the  
23 director. The amount of interest determined by the director to be paid  
24 by the employer shall be sufficient to ensure that the contribution  
25 level of current members of the law enforcement officers' and fire  
26 fighters' retirement system will not increase due to this transfer.  
27 For the purpose of this subsection (2)(d), the state contribution shall  
28 not include the contribution related to the amortization of the costs  
29 of the law enforcement officers' and fire fighters' retirement system  
30 plan I as required by chapter 41.45 RCW.

31 (e) An individual who transfers service credit and contributions  
32 under this subsection shall be permanently excluded from the retirement  
33 system for all service as a law enforcement officer.

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