S-4390.1

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**SUBSTITUTE SENATE BILL 6197**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Holy, Conway, Van De Wege, Fortunato, Hasegawa, Kuderer, Mullet, Nobles, and Valdez; by request of LEOFF Plan 2 Retirement Board)

AN ACT Relating to the law enforcement officers' and firefighters' retirement system plan 2; amending RCW 41.26.048, 41.26.030, 41.26.030, 41.50.130, and 41.26.470; adding a new section to chapter 41.26 RCW; providing effective dates; and providing an expiration date.

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

**Part I**

**Statute of Limitations for Applying for the Special Death Benefit**

**Sec.**  RCW 41.26.048 and 2010 c 261 s 2 are each amended to read as follows:

(1) A two hundred fourteen thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. There is no statute of limitations for this benefit. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(3) The department of labor and industries shall determine eligibility under subsection (2) of this section for the special death benefit for any beneficiaries who were denied the special death benefit for failing to meet the statute of limitations under Title 51 RCW. If the department of labor and industries determines the beneficiary is eligible for the special death benefit the department must provide the beneficiary an option to reelect their pension benefit under RCW 41.26.510(2) and if the member elects an ongoing pension benefit the department must pay the beneficiary retroactive to the date of the member's death.

(4)(a) Beginning July 1, 2010, and every year thereafter, the department shall determine the following information:

(i) The index for the 2008 calendar year, to be known as "index A;"

(ii) The index for the calendar year prior to the date of determination, to be known as "index B;" and

(iii) The ratio obtained when index B is divided by index A.

(b) The value of the ratio obtained shall be the annual adjustment to the original death benefit and shall be applied beginning every July 1st. In no event, however, shall the annual adjustment:

(i) Produce a benefit which is lower than two hundred fourteen thousand dollars;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

(c) For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index — Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

**Part II**

**Definition of Firefighter**

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

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

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

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

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

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

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

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

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

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

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

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

(i) A natural born child;

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

(iii) A posthumous child;

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The elected officials of any municipal corporation;

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

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

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

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

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

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

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

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

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

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

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

(17) "Firefighter" means:

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

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

(c) Supervisory firefighter personnel;

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

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

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

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

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

(i) Personnel serving on a full-time, fully compensated basis as an employee of a fire department in positions that necessitate experience as a firefighter to perform the essential functions of those positions.

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

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

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

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

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

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

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

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

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

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

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

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

(i) The fees of the following:

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

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

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

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

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

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

(B) Diagnostic X-ray and laboratory examinations;

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

(D) Anesthesia and oxygen;

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

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

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

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

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

(J) Physical therapy by a registered physical therapist;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 41.26.030 and 2023 c 77 s 1 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(i) A natural born child;

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

(iii) A posthumous child;

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The elected officials of any municipal corporation;

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

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

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

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

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

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

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

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

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

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

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

(17) "Firefighter" means:

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

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

(c) Supervisory firefighter personnel;

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

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

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

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

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

(i) Personnel serving on a full-time, fully compensated basis as an employee of a fire department in positions that necessitate experience as a firefighter to perform the essential functions of those positions.

(18) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, the government of a federally recognized tribe, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor and cannabis board, and the state department of corrections. A general authority law enforcement agency under this chapter does not include a government contractor.

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

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

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

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

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

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

(f) The term "law enforcement officer" also includes a person who is employed on or after January 1, 2024, on a full-time basis by the government of a federally recognized tribe within the state of Washington that meets the terms and conditions of RCW 41.26.565, is employed in a police department maintained by that tribe, and who is currently certified as a general authority peace officer under chapter 43.101 RCW.

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

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

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

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

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

(i) The fees of the following:

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

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

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

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

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

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

(B) Diagnostic X-ray and laboratory examinations;

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

(D) Anesthesia and oxygen;

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

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

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

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

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

(J) Physical therapy by a registered physical therapist;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  Section 201 of this act expires July 1, 2025.

NEW SECTION. **Sec.**  Section 202 of this act takes effect July 1, 2025.

**Part III**

**Pension Overpayment Responsibility**

**Sec.**  RCW 41.50.130 and 1997 c 254 s 15 are each amended to read as follows:

(1) The director may at any time correct errors appearing in the records of the retirement systems listed in RCW 41.50.030. Should any error in such records result in any member, beneficiary, or other person or entity receiving more or less than he or she would have been entitled to had the records been correct, the director, subject to the conditions set forth in this section, shall adjust the payment in such a manner that the benefit to which such member, beneficiary, or other person or entity was correctly entitled shall be paid in accordance with the following:

(a) In the case of underpayments to a member or beneficiary, the retirement system shall correct all future payments from the point of error detection, and shall compute the additional payment due for the allowable prior period which shall be paid in a lump sum by the appropriate retirement system.

(b) In the case of overpayments to a retiree or other beneficiary, the retirement system shall adjust the payment so that the retiree or beneficiary receives the benefit to which he or she is correctly entitled. The retiree or beneficiary shall either repay the overpayment in a lump sum within ninety days of notification or, if he or she is entitled to a continuing benefit, elect to have that benefit actuarially reduced by an amount equal to the overpayment. The retiree or beneficiary is not responsible for repaying the overpayment if the employer is liable under RCW 41.50.139 or section 302 of this act.

(c) In the case of overpayments to a person or entity other than a member or beneficiary, the overpayment shall constitute a debt from the person or entity to the department, recovery of which shall not be barred by laches or statute of limitations.

(2) Except in the case of actual fraud or overpayments under section 302 of this act, in the case of overpayments to a member or beneficiary, the benefits shall be adjusted to reflect only the amount of overpayments made within three years of discovery of the error, notwithstanding any provision to the contrary in chapter 4.16 RCW.

(3) Except in the case of actual fraud, no monthly benefit shall be reduced by more than fifty percent of the member's or beneficiary's corrected benefit. Any overpayment not recovered due to the inability to actuarially reduce a member's benefit due to: (a) The provisions of this subsection; or (b) the fact that the retiree's monthly retirement allowance is less than the monthly payment required to effectuate an actuarial reduction, shall constitute a claim against the estate of a member, beneficiary, or other person or entity in receipt of an overpayment.

(4) Except as provided in subsection (2) of this section, obligations of employers or members until paid to the department shall constitute a debt from the employer or member to the department, recovery of which shall not be barred by laches or statutes of limitation.

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

(1) If an overpayment for a law enforcement officers' and firefighters' retirement system plan 2 retiree was due to an employer erroneously reporting law enforcement officers' and firefighters' retirement system plan 2 member information to the department, and the erroneous reporting was not the result of the member's nondisclosure, fraud, misrepresentation, or other fault, the employer is liable for the resulting overpayment.

(2) Upon receipt of a billing from the department, the employer shall pay into the Washington law enforcement officers' and firefighters' system plan 2 retirement fund the amount of the overpayment plus interest as determined by the director. The employer's liability under this section shall not exceed the amount of overpayments plus interest received by the retiree within one year of the date of discovery, except in the case of fraud committed by the employer. In the case of fraud committed by the employer, the employer is liable for the entire overpayment plus interest.

NEW SECTION. **Sec.**  Sections 301 and 302 of this act take effect January 1, 2025.

**Part IV**

**Disability Pension Benefits**

**Sec.**  RCW 41.26.470 and 2016 c 115 s 3 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

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

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

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

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

(b) Federal social security disability benefits, if any;

so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line‑of‑duty disability retirement allowance as provided in subsection (7) of this section.

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

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

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

(11) A member who has left the employ of an employer due to service in the national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States department of health and human services and who becomes totally incapacitated for continued employment by an employer as determined by the director while performing service in response to a disaster, major emergency, special event, federal exercise, or official training on or after March 22, 2014, shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 except such allowance is not subject to an actuarial reduction for early retirement as provided in RCW 41.26.430. The member's retirement allowance is computed under RCW 41.26.420, except that the member shall be entitled to a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(12) A member who is in receipt of a nonduty disability benefit under subsection (1) of this section, for a disabling condition that was not considered an occupational disease by the department of labor and industries at the time the member retired but is now considered an occupational disease in accordance with the definition of posttraumatic stress disorder in RCW 51.08.165, may file a new application with the department for a determination of their eligibility for an in the line of duty disability retirement benefit under subsections (7) and (9) of this section with the current occupational disease eligibility applied to their application. If the department finds that the member is eligible for an in the line of duty disability retirement the benefit must be paid retroactive to the disabling condition being made eligible as an occupational disease under RCW 51.08.165.

**--- END ---**