

HOUSE BILL REPORT

ESHB 1211

As Amended by the Senate

Title: An act relating to the assignment of retirement benefits.

Brief Description: Revising retirement benefits.

Sponsor(s): By House Committee on Judiciary (originally sponsored by Representatives Belcher, Hine, Silver, G. Fisher, Fraser, Winsley, Padden and Phillips).

Brief History:

Reported by House Committee on:
Judiciary, January 29, 1991, DPS;
Appropriations, February 26, 1991, DPS(JUD)-A;
Passed House, March 18, 1991, 93-5;
Amended by Senate.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1211 be substituted therefore, and the substitute bill do pass.* Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Hargrove; Inslee; R. Meyers; Mielke; H. Myers; Riley; Scott; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

**HOUSE COMMITTEE ON
APPROPRIATIONS**

Majority Report: *The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass.* Signed by 24 members: Representatives Locke, Chair; Inslee, Vice Chair; Spanel, Vice Chair; Morton, Assistant Ranking Minority Member; Appelwick; Belcher; Bowman; Braddock; Brekke; Dorn; Ebersole; Ferguson; Hine; Holland; Lisk; McLean; Peery; Pruitt; Rust; H. Sommers; Valle; Vance; Wang; and Wineberry.

Minority Report: Without recommendation. Signed by 2 members: Representatives Silver, Ranking Minority Member; and Fuhrman.

Staff: Barbara McLain (786-7153).

Background: When a married couple gets divorced, vested retirement benefits are divided according to community property rules. Until 1987, the Department of Retirement Systems (DRS) was responsible for dividing the retirement benefits according to dissolution decrees or other court orders. DRS was required under various retirement acts to make direct payments to the nonmember spouse (obligee) according to the property division in the divorce decree.

In addition to community property divisions, the court can order spousal maintenance based upon equitable principles.

In 1987, the Legislature passed a bill that was intended to clarify the department's responsibilities when making direct payments. The bill was also passed to create a collection mechanism for obligees whose ex-spouses were not paying the court ordered spousal maintenance. The bill created a mechanism call the "mandatory benefits assignment order" (MBAO). That mechanism placed responsibility upon the obligee to obtain a court order requiring the department to make specified payments to the obligee from the obligor's nonexempt disposable benefits. The obligee could not obtain an order until the member spouse (obligor) was 15 days delinquent in an amount of \$100 or more. DRS could not withhold more than 50 percent of the obligor's periodic retirement benefits. The 50 percent cap provisions refer to the garnishment statutes, but the garnishment statutes do not cross-reference the MBAO provisions. If an obligor is subject to two or more MBAOs, DRS must apportion the nonexempt disposable benefits among the obligees equally. Obligees must substantially comply with a statutory MBAO form. DRS may collect administrative fees for processing the MBAOs. DRS is not liable to the obligor for wrongful withholding if DRS complies with the court order.

The 1987 law eliminated direct payment of the community property division. As a result, obligees no longer automatically receive the benefits they had received automatically under the prior direct benefit scheme.

The law requires DRS to notify the obligee if the obligor requests a lump sum withdrawal of accumulated contributions but does not provide a mechanism to legally prevent DRS from disbursing those sums to the obligor, even if the obligor intends to subvert the court order by withdrawing all the retirement benefits.

Plan I of PERS, TRS, and LEOFF, and Plan II of these systems for members with less than 10 years of service provide that death benefits go first to a named beneficiary, then to a surviving spouse or minor child, and failing either of those, to the member's legal representatives. Plan II of these retirement systems makes no provisions for the disposition of accumulated contributions if a member with more than 10 years of service is not survived by a spouse or minor child.

Summary of Bill: The Department of Retirement Systems (DRS) is required to make direct payments of court ordered community property divisions of retirement benefits to the ex-spouses (obligees) of the retirement system members (obligors). The obligee spouse may still obtain a mandatory assignment of benefits order (MBAO) to enforce collection of delinquent spousal maintenance. The provisions governing each mechanism are separated to reduce confusion. An obligee may obtain a restraining order pending resolution of the dissolution restraining DRS from disbursing funds to the obligor until a court rules on the appropriate distribution between the parties.

Mandatory Assignment of Benefits Orders (MBAO) amendments. DRS may not consider any withholding that is elective to the obligor to calculate the obligor's disposable benefits. The term "disposable benefits" is amended accordingly. DRS may withhold elective withholdings after deducting the amount due the obligee under the MBAO. The 50 percent cap on withdrawing funds to satisfy the MBAO is clarified to distinguish it from garnishments. The garnishment statute is amended to reflect that garnishments for spousal maintenance have a 50 percent cap. If the obligor's retirement benefits are subject to two or more MBAOs, DRS must apportion the various amounts proportionately. Any obligee may seek a court order reapportioning the division upon notice to all parties. The court order form in the statute is amended to provide that the obligees must comply with the statutory format, not just substantially comply. Any funds DRS collects from the fee for processing the MBAOs will be placed in DRS' expense account. If DRS complies with the court order DRS will not be liable to the obligee as well as the obligor for wrongful withholding.

Direct Payment of Community Property Divisions of Retirement Benefits. The court may not order DRS to pay more than 75 percent of the periodic retirement benefits to the obligee. DRS must notify obligees who obtained divorce decrees after the 1987 act's effective date, but before this act's effective date, that obligees may receive direct payment of retirement benefits if their court orders comply or are

modified to comply with this act's requirements. Obligees must obtain court orders that comply with specific language necessary for DRS to adequately administer the orders or DRS will not have to comply with the orders. DRS may collect up to a \$75 setup fee and may charge \$6 for subsequent disbursements. The obligor and obligee will share the fee equally. Money collected will be deposited in DRS' expense fund. Benefits cease upon the obligor's death except that if the court order so provides, the obligee may obtain a lump sum death benefit. If allowed under federal confidentiality laws, DRS must provide the obligee spouse with timely information about the account so the obligee can comply with federal tax requirements. Several technical and procedural sections and definitions are created to enable DRS to effectively administer the act. DRS will not be liable to the obligor or obligee for wrongful withholding if DRS complies with the court order.

The accumulated contributions of a member with more than 10 years of service in PERS, TRS, or LEOFF Plan II go to the member's named beneficiary or the member's legal representatives if the member is not survived by a spouse or minor child.

EFFECT OF SENATE AMENDMENT(S):

(1) The appropriation is stricken.

(2) The act applies to annulments as well as divorces and legal separations. This is a technical correction.

(3) A provision that governs when a disabled teacher has the option of receiving retirement is amended. Under current law a full-time teacher who is receiving temporary disability, when the medical director determines that the teacher is permanently disabled, has the option of then 1) receiving all of the teacher's accumulated contributions in a lump sum, or 2) accepting a retirement allowance based on age or service if eligible, or 3) accepting a retirement allowance based on disability if the teacher has been in service five or more years. The law is amended to apply to all teachers employed under an annual contract or half-time contract. These two provisions are also contained in HB 1269. Unless the term "annual contract" is a term of art that applies only to full-time teachers, one section appears to apply to not only full and half-time employees but also teachers employed less than half-time, while the other section applies to half-time employees. An ambiguity appears to exist which could be corrected by amending the language to state "an annual full or half time contract."

(4) An amendment that was passed by the Senate last year to a similar bill is added. The amendment carves out a very narrow exception to the definition of "surviving spouse" in the fire fighter's retirement system to include persons or ex-spouses who established membership in the retirement system on or before September 30, 1977 if the couple was married for at least 30 years, the divorce decree must be currently in effect, and the decree or order must have been entered after the member's retirement and prior to December 31, 1979. The amendment applies retroactively.

Fiscal Note: Available.

Appropriation: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Judiciary) Restoration of direct payment of court awarded community property divisions of retirement benefits reflects the intent of the Legislature and is equitable while the technical changes assist the department in implementing the bill.

(Appropriations) None.

Testimony Against: (Judiciary) None.

(Appropriations) None.

Witnesses: (Judiciary) Paul Neal, Department of Retirement Systems (in favor of bill); and Kim Prochnau, Washington State Bar Association, Family Law Section (supports).

(Appropriations) None.

VOTE ON FINAL PASSAGE:

Yeas 93; Nays 5

Nays: Representatives Beck, Fuhrman, Morton, Nealey, Silver