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ENGROSSED SENATE BILL 5998

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State of Washington                      52nd Legislature      1991 1st Special Session

By Senators Nelson and Johnson.

Read first time June 21, 1991.

1            AN ACT Relating to surviving spouses under the law enforcement  
2 officers' and fire fighters' retirement system; reenacting and amending  
3 RCW 41.26.030; and creating new sections.

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

5            **Sec. 1.** RCW 41.26.030 and 1991 c 365 s 35, 1991 c 343 s 14, and  
6 1991 c 35 s 13 are 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

1 labor guild, association, or organization, which represents the fire  
2 fighters or law enforcement officers of at least seven cities of over  
3 20,000 population and the membership of each local lodge or division of  
4 which is composed of at least sixty percent law enforcement officers or  
5 fire fighters as defined in this chapter.

6 (b) "Employer" for plan II members, means the legislative authority  
7 of any city, town, county, or district or the elected officials of any  
8 municipal corporation that employs any law enforcement officer and/or  
9 fire fighter.

10 (3) "Law enforcement officer" means any person who is serving on a  
11 full time, fully compensated basis as a county sheriff or deputy  
12 sheriff, including sheriffs or deputy sheriffs serving under a  
13 different title pursuant to a county charter, city police officer, or  
14 town marshal or deputy marshal, with the following qualifications:

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

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

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

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

7 (4) "Fire fighter" means:

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

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

14 (c) Supervisory fire fighter personnel;

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

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

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

28 (g) Any person who on March 1, 1970, was employed on a full time,  
29 fully compensated basis by an employer, and who on May 21, 1971 was

1 making retirement contributions under the provisions of chapter 41.16  
2 or 41.18 RCW.

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

5 (6) "Surviving spouse" (~~((for persons who establish membership in  
6 the retirement system on or before September 30, 1977,))~~) means the  
7 surviving widow or widower of a member (~~((or an ex spouse who has been  
8 provided benefits under any court decree of dissolution or legal  
9 separation or in any court order or court approved property settlement  
10 agreement incident to any court decree of dissolution or legal  
11 separation. In order to qualify as a surviving spouse under this  
12 subsection: (a) A person shall have been married to the member for at  
13 least thirty years, including at least twenty years prior to the  
14 member's retirement or separation from service if a vested member; (b)  
15 the decree or court order must be currently effective; and (c) the  
16 decree or court order must have been entered after the member's  
17 retirement and prior to December 31, 1979. If two or more persons are  
18 eligible as surviving spouses under this subsection, benefits shall be  
19 divided between the surviving spouses based on the percentage of total  
20 service credit the member accrued during each marriage. This  
21 definition shall apply retroactively)). "Surviving spouse" shall not  
22 include the divorced spouse of a member except as provided in section  
23 2, chapter ---, Laws of 1991 1st ex. sess. (section 2 of this act).~~

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

28 (i) A natural born child;

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

1 (iii) A posthumous child;

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

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

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

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

19 (9) "Retirement fund" means the "Washington law enforcement  
20 officers' and fire fighters' retirement system fund" as provided for  
21 herein.

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

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

27 (b) "Beneficiary" for plan II members, means any person in receipt  
28 of a retirement allowance or other benefit provided by this chapter  
29 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

1 exclude lump sum payments for deferred annual sick leave, unused  
2 accumulated vacation, unused accumulated annual leave, or any form of  
3 severance pay: PROVIDED, That in any year in which a member serves in  
4 the legislature the member shall have the option of having such  
5 member's basic salary be the greater of:

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

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

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

27 (i) For members retiring after May 21, 1971 who were employed under  
28 the coverage of a prior pension act before March 1, 1970, "service"  
29 shall also include (A) such military service not exceeding five years  
30 as was creditable to the member as of March 1, 1970, under the member's

1 particular prior pension act, and (B) such other periods of service as  
2 were then creditable to a particular member under the provisions of RCW  
3 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit  
4 be allowed for any service rendered prior to March 1, 1970, where the  
5 member at the time of rendition of such service was employed in a  
6 position covered by a prior pension act, unless such service, at the  
7 time credit is claimed therefor, is also creditable under the  
8 provisions of such prior act.

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

12 (b) "Service" for plan II members, means periods of employment by  
13 a member for one or more employers for which basic salary is earned for  
14 ninety or more hours per calendar month which shall constitute a  
15 service credit month. Periods of employment by a member for one or  
16 more employers for which basic salary is earned for at least seventy  
17 hours but less than ninety hours per calendar month shall constitute  
18 one-half service credit month. Periods of employment by a member for  
19 one or more employers for which basic salary is earned for less than  
20 seventy hours shall constitute a one-quarter service credit month.

21 Members of the retirement system who are elected or appointed to a  
22 state elective position may elect to continue to be members of this  
23 retirement system.

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

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



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

8 (15) "Accumulated contributions" means the employee's contributions  
9 made by a member plus accrued interest credited thereon.

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

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

22 (18) "Disability board" for plan I members means either the county  
23 disability board or the city disability board established in RCW  
24 41.26.110.

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

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

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

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

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

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

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

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

19 (i) The fees of the following:

20 (A) A physician or surgeon licensed under the provisions of chapter  
21 18.71 RCW;

22 (B) An osteopath licensed under the provisions of chapter 18.57  
23 RCW;

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

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

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

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

- 1 (B) Diagnostic x-ray and laboratory examinations;
- 2 (C) X-ray, radium, and radioactive isotopes therapy;
- 3 (D) Anesthesia and oxygen;
- 4 (E) Rental of iron lung and other durable medical and surgical  
5 equipment;
- 6 (F) Artificial limbs and eyes, and casts, splints, and trusses;
- 7 (G) Professional ambulance service when used to transport the  
8 member to or from a hospital when injured by an accident or stricken by  
9 a disease;
- 10 (H) Dental charges incurred by a member who sustains an accidental  
11 injury to his or her teeth and who commences treatment by a legally  
12 licensed dentist within ninety days after the accident;
- 13 (I) Nursing home confinement or hospital extended care facility;
- 14 (J) Physical therapy by a registered physical therapist;
- 15 (K) Blood transfusions, including the cost of blood and blood  
16 plasma not replaced by voluntary donors;
- 17 (L) An optometrist licensed under the provisions of chapter 18.53  
18 RCW.
- 19 (23) "Regular interest" means such rate as the director may  
20 determine.
- 21 (24) "Retiree" for persons who establish membership in the  
22 retirement system on or after October 1, 1977, means any member in  
23 receipt of a retirement allowance or other benefit provided by this  
24 chapter resulting from service rendered to an employer by such member.
- 25 (25) "Director" means the director of the department.
- 26 (26) "State actuary" or "actuary" means the person appointed  
27 pursuant to RCW 44.44.010(2).
- 28 (27) "State elective position" means any position held by any  
29 person elected or appointed to state-wide office or elected or  
30 appointed as a member of the legislature.

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

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

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

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

13 NEW SECTION. **Sec. 2.** (1) An ex spouse of a law enforcement  
14 officers' and fire fighters' retirement system retiree shall qualify as  
15 surviving spouse under RCW 41.26.160 if the ex spouse:

16 (a) Has been provided benefits under any currently effective court  
17 decree of dissolution or legal separation or in any court order or  
18 court-approved property settlement agreement incident to any court  
19 decree of dissolution or legal separation entered after the member's  
20 retirement and prior to December 31, 1979; and

21 (b) Was married to the retiree for at least thirty years, including  
22 at least twenty years prior to the member's retirement or separation  
23 from service if a vested member.

24 (2) If two or more persons are eligible for a surviving spouse  
25 benefit under this subsection, benefits shall be divided between the  
26 surviving spouses based on the percentage of total service credit the  
27 member accrued during each marriage.

28 (3) This section shall apply retroactively.

1        NEW SECTION.    **Sec. 3.**        The 1991 amendment to RCW 41.26.030 in  
2 chapter ---, Laws of 1991 1st ex. sess. (SB 5997) is hereby repealed.