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HOUSE BILL 1205

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Conway, Delvin, Simpson, Alexander, Cooper and Chase; by request of Joint Committee on Pension Policy

Read first time 01/21/2003. Referred to Committee on Appropriations.

1 AN ACT Relating to department of fish and wildlife law enforcement  
2 officers' membership in the law enforcement officers' and fire  
3 fighters' retirement system plan 2 for periods of future service;  
4 amending RCW 41.26.030 and 77.15.075; and adding a new section to  
5 chapter 41.40 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.40 RCW  
8 to read as follows:

9 (1) An employee who was a member of the public employees'  
10 retirement system plan 2 or plan 3 on or before January 1, 2003, and on  
11 the effective date of this act is employed by the department of fish  
12 and wildlife as a law enforcement officer as defined in RCW 41.26.030,  
13 shall become a member of the law enforcement officers' and fire  
14 fighters' retirement system plan 2. All officers will be dual members  
15 as provided in chapter 41.54 RCW, and public employees' retirement  
16 system service credit may not be transferred to the law enforcement  
17 officers' and fire fighters' retirement system plan 2.

1 (2) An employee who was a member of the public employees'  
2 retirement system plan 1 on or before January 1, 2003, and on or after  
3 the effective date of this act is employed by the department of fish  
4 and wildlife as a law enforcement officer as defined in RCW 41.26.030,  
5 shall remain a member of the public employees' retirement system plan  
6 1.

7 **Sec. 2.** RCW 41.26.030 and 2002 c 128 s 3 are each amended to read  
8 as follows:

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

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

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

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

26 (i) The legislative authority of any city, town, county, or  
27 district;

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

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

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

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

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

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

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

16 (d) The term "law enforcement officer" also includes the executive  
17 secretary of a labor guild, association or organization (which is an  
18 employer under RCW 41.26.030(2)) if that individual has five years  
19 previous membership in the retirement system established in chapter  
20 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to  
21 plan 2 members; and

22 (e) The term "law enforcement officer" also includes a person  
23 employed on or after January 1, 1993, as a public safety officer or  
24 director of public safety, so long as the job duties substantially  
25 involve only either police or fire duties, or both, and no other duties  
26 in a city or town with a population of less than ten thousand. The  
27 provisions of this subsection (3)(e) shall not apply to any public  
28 safety officer or director of public safety who is receiving a  
29 retirement allowance under this chapter as of May 12, 1993.

30 (4) "Fire fighter" means:

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

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

37 (c) Supervisory fire fighter personnel;

1 (d) Any full time executive secretary of an association of fire  
2 protection districts authorized under RCW 52.12.031. The provisions of  
3 this subsection (4)(d) shall not apply to plan 2 members;

4 (e) The executive secretary of a labor guild, association or  
5 organization (which is an employer under RCW 41.26.030(2) as now or  
6 hereafter amended), if such individual has five years previous  
7 membership in a retirement system established in chapter 41.16 or 41.18  
8 RCW. The provisions of this subsection (4)(e) shall not apply to plan  
9 2 members;

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

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

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

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

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

27 (i) A natural born child;

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

30 (iii) A posthumous child;

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

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

35 (b) A person shall also be deemed to be a child up to and including  
36 the age of twenty years and eleven months while attending any high  
37 school, college, or vocational or other educational institution  
38 accredited, licensed, or approved by the state, in which it is located,

1 including the summer vacation months and all other normal and regular  
2 vacation periods at the particular educational institution after which  
3 the child returns to school.

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

10 (9) "Retirement fund" means the "Washington law enforcement  
11 officers' and fire fighters' retirement system fund" as provided for  
12 herein.

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

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

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

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

36 (b) "Final average salary" for plan 2 members, means the monthly  
37 average of the member's basic salary for the highest consecutive sixty

1 service credit months of service prior to such member's retirement,  
2 termination, or death. Periods constituting authorized unpaid leaves  
3 of absence may not be used in the calculation of final average salary.

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

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

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

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

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

1 the computation of any retirement allowance or other benefit provided  
2 for in this chapter.

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

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

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

27 Members of the retirement system who are elected or appointed to a  
28 state elective position may elect to continue to be members of this  
29 retirement system.

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

35 If a member receives basic salary from two or more employers during  
36 any calendar month, the individual shall receive one service credit  
37 month's service credit during any calendar month in which multiple  
38 service for ninety or more hours is rendered; or one-half service

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

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

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

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

21 (18) "Disability board" for plan 1 members means either the county  
22 disability board or the city disability board established in RCW  
23 41.26.110.

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

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

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

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

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



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

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

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

9 (i) The fees of the following:

10 (A) A physician or surgeon licensed under the provisions of chapter  
11 18.71 RCW;

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

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

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

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

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

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

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

23 (D) Anesthesia and oxygen;

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

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

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

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

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

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

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

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

1 (23) "Regular interest" means such rate as the director may  
2 determine.

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

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

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

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

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

17 (29) "Plan 2" means the law enforcement officers' and fire  
18 fighters' retirement system, plan 2 providing the benefits and funding  
19 provisions covering persons who first became members of the system on  
20 and after October 1, 1977.

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

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

25 (32) "General authority law enforcement agency" means any agency,  
26 department, or division of a municipal corporation, political  
27 subdivision, or other unit of local government of this state, and any  
28 agency, department, or division of state government, having as its  
29 primary function the detection and apprehension of persons committing  
30 infractions or violating the traffic or criminal laws in general, but  
31 not including the Washington state patrol (~~or the department of fish  
32 and wildlife~~). Such an agency, department, or division is  
33 distinguished from a limited authority law enforcement agency having as  
34 one of its functions the apprehension or detection of persons  
35 committing infractions or violating the traffic or criminal laws  
36 relating to limited subject areas, including but not limited to, the  
37 state departments of natural resources and social and health services,  
38 the state gambling commission, the state lottery commission, the state

1 parks and recreation commission, the state utilities and transportation  
2 commission, the state liquor control board, and the state department of  
3 corrections.

4 **Sec. 3.** RCW 77.15.075 and 2002 c 128 s 4 are each amended to read  
5 as follows:

6 (1) Fish and wildlife officers and ex officio fish and wildlife  
7 officers shall enforce this title, rules of the department, and other  
8 statutes as prescribed by the legislature. Fish and wildlife officers  
9 who are not ex officio officers shall have and exercise, throughout the  
10 state, such police powers and duties as are vested in sheriffs and  
11 peace officers generally. An applicant for a fish and wildlife officer  
12 position must be a citizen of the United States of America who can read  
13 and write the English language. All fish and wildlife officers  
14 employed after June 13, 2002, must successfully complete the basic law  
15 enforcement academy course, known as the basic course, sponsored by the  
16 criminal justice training commission, or the basic law enforcement  
17 equivalency certification, known as the equivalency course, provided by  
18 the criminal justice training commission. All officers employed on  
19 June 13, 2002, must have successfully completed the basic course, the  
20 equivalency course, or the supplemental course in criminal law  
21 enforcement, known as the supplemental course, offered under chapter  
22 155, Laws of 1985. Any officer who has not successfully completed the  
23 basic course, the equivalency course, or the supplemental course must  
24 complete the basic course or the equivalency course within fifteen  
25 months of June 13, 2002.

26 (2) Fish and wildlife officers are peace officers. ((However,  
27 ~~nothing in this section or RCW 10.93.020 confers membership to such~~  
28 ~~officers in the Washington law enforcement officers' and fire fighters'~~  
29 ~~retirement system under chapter 41.26 RCW.))~~

30 (3) Any liability or claim of liability under chapter 4.92 RCW that  
31 arises out of the exercise or alleged exercise of authority by a fish  
32 and wildlife officer rests with the department unless the fish and  
33 wildlife officer acts under the direction and control of another agency  
34 or unless the liability is otherwise assumed under an agreement between  
35 the department and another agency.

36 (4) Fish and wildlife officers may serve and execute warrants and  
37 processes issued by the courts.

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