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**SENATE BILL 5468**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Van De Wege and Holy

1 AN ACT Relating to ensuring that firefighters who accept  
2 promotional firefighter positions within a fire department remain  
3 members of the law enforcement officers' and firefighters' retirement  
4 system; and amending RCW 41.26.030.

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

6 **Sec. 1.** RCW 41.26.030 and 2021 c 12 s 2 are each amended to read  
7 as follows:

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

10 (1) "Accumulated contributions" means the employee's  
11 contributions made by a member, including any amount paid under RCW  
12 41.50.165(2), plus accrued interest credited thereon.

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

18 (3) "Actuarial valuation" means a mathematical determination of  
19 the financial condition of a retirement plan. It includes the  
20 computation of the present monetary value of benefits payable to  
21 present members, and the present monetary value of future employer

1 and employee contributions, giving effect to mortality among active  
2 and retired members and also to the rates of disability, retirement,  
3 withdrawal from service, salary and interest earned on investments.

4 (4) (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  
17 legislature the member shall have the option of having such member's  
18 basic salary be the greater of:

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

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

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

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

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

37 (i) A natural born child;

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

40 (iii) A posthumous child;

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

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

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

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

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

15 (9) "Disability board" for plan 1 members means either the county  
16 disability board or the city disability board established in RCW  
17 41.26.110.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (i) Any compensation forgone by a member employed by a state  
10 agency or institution during the 2009-2011 fiscal biennium as a  
11 result of reduced work hours, mandatory or voluntary leave without  
12 pay, temporary reduction in pay implemented prior to December 11,  
13 2010, or temporary layoffs if the reduced compensation is an integral  
14 part of the employer's expenditure reduction efforts, as certified by  
15 the employer;

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

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

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

37 (17) "Firefighter" means:

38 (a) Any person who is serving on a full time, fully compensated  
39 basis as a member of a fire department of an employer and who is

1 serving in a position which requires passing a civil service  
2 examination for firefighter, and who is actively employed as such;

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

5 (c) Supervisory firefighter personnel;

6 (d) Any person who is serving on a full-time, fully compensated  
7 basis as an employee of a fire department and who is serving in a  
8 position that requires an experienced firefighter;

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

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

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

22 ~~((g))~~ (h) Any person who on March 1, 1970, was employed on a  
23 full time, fully compensated basis by an employer, and who on May 21,  
24 1971, was making retirement contributions under the provisions of  
25 chapter 41.16 or 41.18 RCW; and

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

31 (18) "General authority law enforcement agency" means any agency,  
32 department, or division of a municipal corporation, political  
33 subdivision, or other unit of local government of this state, and any  
34 agency, department, or division of state government, having as its  
35 primary function the detection and apprehension of persons committing  
36 infractions or violating the traffic or criminal laws in general, but  
37 not including the Washington state patrol. Such an agency,  
38 department, or division is distinguished from a limited authority law  
39 enforcement agency having as one of its functions the apprehension or  
40 detection of persons committing infractions or violating the traffic

1 or criminal laws relating to limited subject areas, including but not  
2 limited to, the state departments of natural resources and social and  
3 health services, the state gambling commission, the state lottery  
4 commission, the state parks and recreation commission, the state  
5 utilities and transportation commission, the state liquor and  
6 cannabis board, and the state department of corrections. A general  
7 authority law enforcement agency under this chapter does not include  
8 a government contractor.

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

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

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

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

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

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

1 public safety officer or director of public safety who is receiving a  
2 retirement allowance under this chapter as of May 12, 1993.

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

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

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

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

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

16 (i) The fees of the following:

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

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

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

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

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

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

29 (B) Diagnostic X-ray and laboratory examinations;

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

31 (D) Anesthesia and oxygen;

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

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

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

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



- 1 (I) Nursing home confinement or hospital extended care facility;  
2 (J) Physical therapy by a registered physical therapist;  
3 (K) Blood transfusions, including the cost of blood and blood  
4 plasma not replaced by voluntary donors;  
5 (L) An optometrist licensed under the provisions of chapter 18.53  
6 RCW.

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

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

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

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

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

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

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

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

35 (29)(a) "Service" for plan 1 members, means all periods of  
36 employment for an employer as a firefighter or law enforcement  
37 officer, for which compensation is paid, together with periods of  
38 suspension not exceeding thirty days in duration. For the purposes of  
39 this chapter service shall also include service in the armed forces  
40 of the United States as provided in RCW 41.26.190. Credit shall be

1 allowed for all service credit months of service rendered by a member  
2 from and after the member's initial commencement of employment as a  
3 firefighter or law enforcement officer, during which the member  
4 worked for seventy or more hours, or was on disability leave or  
5 disability retirement. Only service credit months of service shall be  
6 counted in the computation of any retirement allowance or other  
7 benefit provided for in this chapter.

8 (i) For members retiring after May 21, 1971 who were employed  
9 under the coverage of a prior pension act before March 1, 1970,  
10 "service" shall also include (A) such military service not exceeding  
11 five years as was creditable to the member as of March 1, 1970, under  
12 the member's particular prior pension act, and (B) such other periods  
13 of service as were then creditable to a particular member under the  
14 provisions of RCW 41.18.165, 41.20.160, or 41.20.170. However, in no  
15 event shall credit be allowed for any service rendered prior to March  
16 1, 1970, where the member at the time of rendition of such service  
17 was employed in a position covered by a prior pension act, unless  
18 such service, at the time credit is claimed therefor, is also  
19 creditable under the provisions of such prior act.

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

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

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

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

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

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

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

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

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

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

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

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

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