

(4) When voters approve initiatives, politicians have a moral, ethical, and constitutional obligation to fully implement them. When politicians ignore this obligation, they corrupt the term "public servant."

(5) Any attempt to violate the clear intent and spirit of this measure undermines the trust of the people in their government and will increase the likelihood of future tax limitation measures.

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Approved by the People of the State of Washington in the General Election on November 5, 2002.

CHAPTER 2

[Initiative 790]

LAW ENFORCEMENT, FIRE FIGHTERS' RETIREMENT SYSTEM

AN ACT Relating to the law enforcement officers' and fire fighters' retirement system, plan 2; adding new sections to chapter 41.26 RCW; creating new sections; and providing an effective date.

Be it enacted by the People of the State of Washington:

NEW SECTION. Sec. 1. OVERVIEW. The law enforcement officers' and fire fighters' retirement system plan 2 is currently subject to policymaking by the legislature's joint committee on pension policy with ratification by the members of the legislature and is administered by the department of retirement systems.

Members of the plan have no direct input into the management of their retirement program. Forty-six other states currently have member representation in their pension management. This act is intended to give management of the retirement program to the people whose lives are directly affected by it and who provide loyal and valiant service to ensure the health, safety, and welfare of the citizens of the state of Washington.

NEW SECTION. Sec. 2. INTENT. It is the intent of this act to:

(1) Establish a board of trustees responsible for the adoption of actuarial standards to be applied to the plan;

(2) Provide for additional benefits for fire fighters and law enforcement officers subject to the cost limitations provided for in this act;

(3) Exercise fiduciary responsibility in the oversight of those pension management functions assigned to the board;

(4) Provide effective monitoring of the plan by providing an annual report to the legislature, to the members and beneficiaries of the plan, and to the public;

(5) Establish contribution rates for employees, employers, and the state of Washington that will guaranty viability of the plan, subject to the limitations provided for in this act;

(6) Provide for an annual budget and to pay costs from the trust, as part of the normal cost of the plan; and

(7) Enable the board of trustees to retain professional and technical advisors as necessary for the fulfillment of their statutory responsibilities.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this act unless the context clearly requires otherwise.

(1) "Member" or "beneficiary" means:

(a) Current and future law enforcement officers and fire fighters who are contributing to the plan;

(b) Retired employees or their named beneficiaries who receive benefits from the plan; and

(c) Separated vested members of the plan who are not currently receiving benefits.

(2) "Plan" means the law enforcement officers' and fire fighters' retirement system plan 2.

(3) "Actuary" means the actuary employed by the board of trustees.

(4) "State actuary" means the actuary employed by the department.

(5) "Board" means the board of trustees.

(6) "Board member" means a member of the board of trustees.

(7) "Department" means the department of retirement systems.

(8) "Minimum benefits" means those benefits provided for in chapter 41.26 RCW as of July 1, 2003.

(9) "Employer" means the same as under RCW 41.26.030(2)(b).

(10) "Enrolled actuary" means an actuary who is enrolled under the employee retirement income security act of 1974 (Subtitle C of Title III) and who is a member of the society of actuaries or the American academy of actuaries.

(11) "Increased benefit" means a benefit in addition to the minimum benefits.

(12) "Trust" means the assets of the plan.

(13) "Benefits" means the age or service or combination thereof required for retirement, the level of service and disability retirement benefits, survivorship benefits, payment options including a deferred retirement option plan, average final compensation, postretirement cost of living adjustments, including health care and the elements of compensation. Benefits shall not include the classifications of employment eligible to participate in the plan.

(14) "Actuarially sound" means the plan is sufficiently funded to meet its projected liabilities and to defray the reasonable expenses of its operation based upon commonly accepted, sound actuarial principles.

NEW SECTION. Sec. 4. BOARD OF TRUSTEES CREATED—SELECTION OF TRUSTEES—TERMS OF OFFICE—VACANCIES. (1) An eleven member board of trustees is hereby created.

(a) Three of the board members shall be active law enforcement officers who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, one board member shall be a retired law enforcement officer who is a member of the plan. The law enforcement officer board members shall be appointed by the governor from a list provided by a recognized statewide council whose membership consists exclusively of guilds, associations, and unions representing state and local government police officers, deputies, and sheriffs and excludes federal law enforcement officers.

(b) Three of the board members shall be active fire fighters who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, one board member shall be a retired fire fighter who is a member of the plan. The fire fighter board member shall be appointed by the governor from a list provided by a recognized statewide council, affiliated with an international association representing the interests of fire fighters.

(c) Three of the board members shall be representatives of employers and shall be appointed by the governor.

(d) One board member shall be a member of the house of representatives who is appointed by the governor based on the recommendation of the speaker of the house of representatives.

(e) One board member shall be a member of the senate who is appointed by the governor based on the recommendation of the majority leader of the senate.

(2) The initial law enforcement officer and fire fighter board members shall serve terms of six, four, and two years, respectively. Thereafter, law enforcement officer and fire fighter board members serve terms of six years. The remaining board members serve terms of four years. Board members may be reappointed to succeeding terms without limitation. Board members shall serve until their successors are appointed and seated.

(3) In the event of a vacancy on the board, the vacancy shall be filled in the same manner as prescribed for an initial appointment.

NEW SECTION. Sec. 5. POWERS OF THE BOARD OF TRUSTEES—MEETING PROCEDURES—QUORUM—JUDICIAL REVIEW—BUDGET OF THE BOARD OF TRUSTEES.

(1) The board of trustees have the following powers and duties and shall:

(a) Adopt actuarial tables, assumptions, and cost methodologies in consultation with an enrolled actuary retained by the board. The state actuary shall provide assistance when the board requests. The actuary retained by the board shall utilize the aggregate actuarial cost method, or other recognized actuarial cost method based on a level percentage of payroll, as that term is employed by the American academy of actuaries. In determining the reasonableness of actuarial valuations, assumptions, and cost methodologies, the actuary retained by the board shall provide a copy of all such calculations to the state actuary. If the two actuaries concur on the calculations, contributions shall be made as set forth in the report of the board's actuary. If the two actuaries cannot agree, they shall appoint a third, independent, enrolled actuary who shall review the calculations of the actuary retained by the board and the state actuary. Thereafter, contributions shall be based on the methodology most closely following that of the third actuary;

(b)(i) Provide for the design and implementation of increased benefits for members and beneficiaries of the plan, subject to the contribution limitations under section 6 of this act. An increased benefit may not be approved by the board until an actuarial cost of the benefit has been determined by the actuary and contribution rates adjusted as may be required to maintain the plan on a sound actuarial basis. Increased benefits as approved by the board shall be presented to the legislature on January 1st of each year. The increased benefits as approved by the board shall become effective within ninety days unless a bill is enacted in the next ensuing session of the legislature, by majority vote of each house of the legislature, repealing the action of the board;

(ii) As an alternative to the procedure in (b)(i) of this subsection, recommend to the legislature changes in the benefits for members and beneficiaries, without regard to the cost limitations in section 6(3) of this act. Benefits adopted in this manner shall have the same contractual protections as the minimum benefits in the plan. The recommendations of the board shall be presented to the legislature on January 1st of each year. These measures shall take precedence over all other measures in the legislature, except appropriations

bills, and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session;

(c) Retain professional and technical advisors necessary for the accomplishment of its duties. The cost of these services may be withdrawn from the trust;

(d) Consult with the department for the purpose of improving benefit administration and member services;

(e) Provide an annual report to the governor and the legislature setting forth the actuarial funding status of the plan and making recommendations for improvements in those aspects of retirement administration directed by the legislature or administered by the department;

(f) Establish uniform administrative rules and operating policies in the manner prescribed by law;

(g) Engage administrative staff and acquire office space independent of, or in conjunction with, the department. The department shall provide funding from its budget for these purposes;

(h) The board shall publish on an annual basis a schedule of increased benefits together with a summary of the minimum benefits as established by the legislature which shall constitute the official plan document; and

(i) Be the fiduciary of the plan and discharge the board's duties solely in the interest of the members and beneficiaries of the plan.

(2) Meetings of the board of trustees shall be conducted as follows:

(a) All board meetings are open to the public, preceded by timely public notice;

(b) All actions of the board shall be taken in open public session, except for those matters which may be considered in executive session as provided by law;

(c) The board shall retain minutes of each meeting setting forth the names of those board members present and absent, and their voting record on any voted issue; and

(d) The board may establish, with the assistance of the appropriate office of state government, an internet web site providing for interactive communication with state government, members and beneficiaries of the plan, and the public.

(3) A quorum of the board is six board members. All board actions require six concurring votes.

(4) The decisions of the board shall be made in good faith and are final, binding, and conclusive on all parties. The decisions of the board shall be subject to judicial review as provided by law.

(5) A law enforcement officers' and fire fighters' retirement system plan 2 expense fund is established for the purpose of defraying the expenses of the board. The board shall cause an annual budget to be prepared consistent with the requirements of chapter 43.88 RCW and shall draw the funding for the budget from the investment income of the trust. Board members shall be reimbursed for travel and education expenses as provided in RCW 43.03.050 and 43.03.060. The board shall make an annual report to the governor, legislature, and state auditor setting forth a summary of the costs and expenditures of the plan for the preceding year. The board shall also retain the services of an independent, certified public accountant who shall annually audit the expenses of the fund and whose report shall be included in the board's annual report.

NEW SECTION. Sec. 6. CONTRIBUTIONS. (1) The board of trustees shall establish contributions as set forth in this section. The cost of the minimum benefits as defined in this plan shall be funded on the following ratio:

Employee contributions 50%

Employer contributions 30%

State contributions 20%

(2) The minimum benefits shall constitute a contractual obligation of the state and the contributing employers and may not be reduced below the levels in effect on July 1, 2003. The state and the contributing employers shall maintain the minimum benefits on a sound actuarial basis in accordance with the actuarial standards adopted by the board.

(3) Increased benefits created as provided for in section 5 of this act are granted on a basis not to exceed the contributions provided for in this section. In addition to the contributions necessary to maintain the minimum benefits, for any increased benefits provided for by the board, the employee contribution shall not exceed fifty percent of the actuarial cost of the benefit. In no instance shall the employee cost exceed ten percent of covered payroll without the consent of a majority of the affected employees. Employer contributions shall not exceed thirty percent of the cost, but in no instance shall the employer contribution exceed six percent of covered payroll. State contributions shall not exceed twenty percent of the cost, but in no instance shall the state contribution exceed four percent of covered payroll. Employer contributions may not be increased above the maximum under this section without the consent of the governing body of the employer. State contributions may not be increased above the maximum provided for in this section without the consent of the legislature. In the event that the cost of maintaining the increased benefits on a sound actuarial basis exceeds the aggregate contributions provided for in this section, the board shall submit to the affected members of the plan the option of paying the increased costs or of having the increased benefits reduced to a level sufficient to be maintained by the aggregate contributions. The reduction of benefits in accordance with this section shall not be deemed a violation of the contractual rights of the members, provided that no reduction may result in benefits being lower than the level of the minimum benefits.

(4) The board shall manage the trust in a manner that maintains reasonable contributions and administrative costs. Providing additional benefits to members and beneficiaries is the board's priority.

(5) All earnings of the trust in excess of the actuarially assumed rate of investment return shall be used exclusively for additional benefits for members and beneficiaries.

NEW SECTION. Sec. 7. NONAPPLICABILITY OF JOINT COMMITTEE ON PENSION POLICY AND PENSION FUNDING COUNCIL. The joint committee on pension policy established in RCW 44.44.050, and the pension funding council created in RCW 41.45.100, shall have no applicability or authority over matters relating to this plan.

NEW SECTION. Sec. 8. ASSET MANAGEMENT. Assets of the plan shall be managed by the state investment board as provided by law.

NEW SECTION. Sec. 9. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the

act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. CAPTIONS NOT LAW. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 11. IMPLEMENTING LEGISLATION. The department of retirement systems and the office of the state actuary shall prepare and submit to the fiscal committees of the legislature by January 15, 2003, proposed legislation for implementing this act.

NEW SECTION. Sec. 12. CODIFICATION. Sections 1 through 9 of this act are each added to chapter 41.26 RCW.

NEW SECTION. Sec. 13. EFFECTIVE DATE. Except for section 11 of this act, the remainder of this act takes effect July 1, 2003.

Originally filed in Office of Secretary of State February 4, 2002.

Approved by the People of the State of Washington in the General Election on November 5, 2002.

CHAPTER 3

[Senate Bill 5001]

FELONY MURDER

AN ACT Relating to assault as a predicate for felony murder; amending RCW 9A.32.050; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the 1975 legislature clearly and unambiguously stated that any felony, including assault, can be a predicate offense for felony murder. The intent was evident: Punish, under the applicable murder statutes, those who commit a homicide in the course and in furtherance of a felony. This legislature reaffirms that original intent and further intends to honor and reinforce the court's decisions over the past twenty-eight years interpreting "in furtherance of" as requiring the death to be sufficiently close in time and proximity to the predicate felony. The legislature does not agree with or accept the court's findings of legislative intent in *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, and reasserts that assault has always been and still remains a predicate offense for felony murder in the second degree.

To prevent a miscarriage of the legislature's original intent, the legislature finds in light of *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, that it is necessary to amend RCW 9A.32.050. This amendment is intended to be curative in nature. The legislature urges the supreme court to apply this interpretation retroactively to July 1, 1976.

Sec. 2. RCW 9A.32.050 and 1975-76 2nd ex.s. c 38 s 4 are each amended to read as follows:

(1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; or

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and