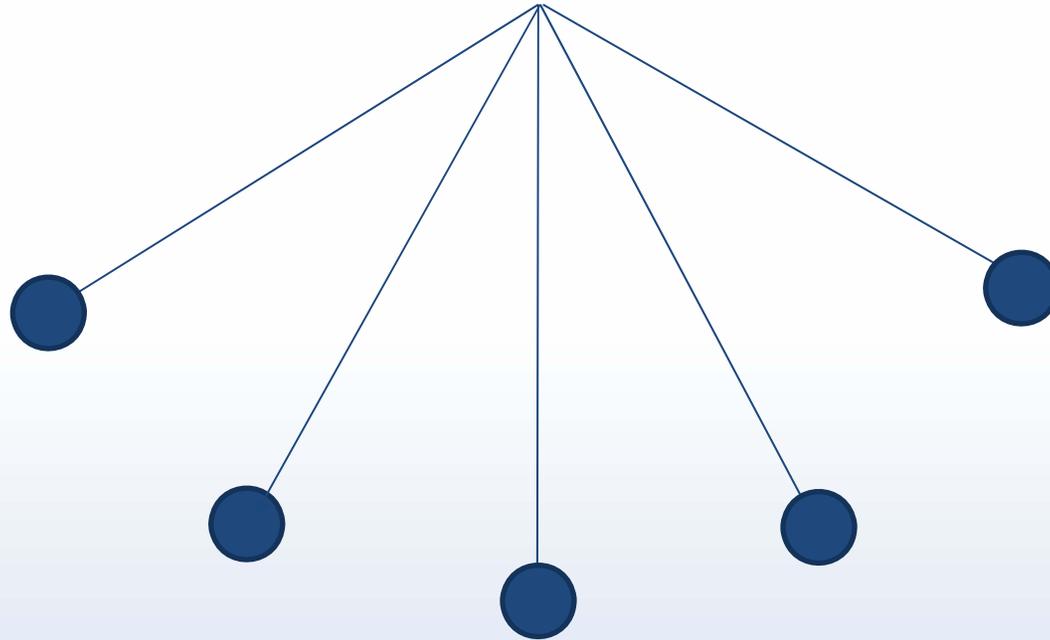




Career Change

**Final Proposal
December 18, 2013**

Return to Work Rules Pendulum - 1977 to 2013



1977: Pension stops if any service to non-federal public employer.

1990: May work in ineligible position.

1993 DRS Rules define actuarial recomputation.

1997: PERS & TRS May work up to 5 months. Return to membership optional.

2011 – return to 1997 standard.

2003: Conditions placed on 1500 hours; 1900 hour lifetime cap

2001: TRS & PERS Plan 1 may work 1500 hours per year. 5 months = 867 hours for Plan 2

Options

- At the November 20 Board Meeting, Board asked for two options for potential action on Career Change that would:
 - Close loophole allowing post retirement employment in LEOFF positions; or
 - Allow limited post-retirement employment in LEOFF positions.



Option 1

Close Loophole:

- Propose Legislation suspending LEOFF Plan 2 retirement if duties of retiree's position would qualify for LEOFF if full-time fully compensated.

Option 3A

Allow limited post-retirement employment in LEOFF position:

- Under this option LEOFF Plan 2 retirees could work up to 867 hours per calendar year without suspension of pension.
- LEOFF Return to membership laws different from PERS and TRS.

Any Questions?

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December 18, 2013
CAREER CHANGE

FINAL PROPOSAL

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ISSUE

Abuse of “Career Change” legislation could undermine public trust that the plan is responsibly designed and professionally managed.

PROPOSAL SUMMARY

The Board first considered the possibility of amending the Career Change law at the August Board meeting. After a comprehensive report at the September meeting and another follow-up at the November meeting, the Board directed staff to present final proposals on two options: 1) Restricting the career change legislation to ensure LEOFF Plan 2 retirees could not return to work as law enforcement officers or firefighters and continue to receive their LEOFF Plan 2 pension; and 2) Allow LEOFF Plan 2 retirees to come back to work in a LEOFF position for up to 867 hours per year without losing their pension.

This report will explain the difference between the Board’s Career Change policy and the retire-rehire policy in PERS and TRS; identify unintended consequences of the Career Change law, explain how the loophole works, and discuss media reaction to employer’s utilization of that loophole.

MEMBERS IMPACTED

Two hundred sixty-five LEOFF Plan 2 retirees have utilized the provisions of the career change law since its inception in 2005¹. Assuming utilization continues at the same rate, a similar number of members would be impacted by any changes to the law. The public trust issues implicated by manipulation of the original bill impact all LEOFF Plan 2 members.

¹ Data on career change usage from report produced by DRS.

BACKGROUND INFORMATION & POLICY ISSUES

When creating LEOFF Plan 2 in 1977, the Legislature prohibited members from receiving a pension while engaged in retirement system covered employment. If a LEOFF Plan 2 retiree entered public employment covered by LEOFF, the Public Employees' Retirement System (PERS), or the Teachers' retirement system (TRS), that member's pension would be suspended. Over subsequent years the suspension requirement was expanded to include employment in positions covered by the School Employees' Retirement System (SERS) or the Public Safety Officers' Retirement System (PSERS). RCW 41.26.500.

Career Change

Before 2005 a LEOFF Plan 2 retiree's pension stopped upon return to work in a job covered by any state-wide public retirement system. The LEOFF Plan 2 Board (Board) recognized members could age out of LEOFF positions before they were ready or could afford to leave the workforce. The Board proposed Career Change legislation in 2005 enabling retired LEOFF Plan 2 retiree to start a second career in non-LEOFF public employment. A retiree accepting such a job can either establish membership in another public system, thus suspending their LEOFF Plan 2 pension, or waive membership in the new system and continuing to receive a pension.

The Board intended to facilitate transition from a physically demanding profession to another, often less-well compensated, job. The average annual compensation of LEOFF Plan 2 retirees returning to work under the career change law was \$28,268¹. It did not intend to enable LEOFF Plan 2 retirees to return to work as a law enforcement officer or firefighter and continue to receive their pension. The Legislature passed the LEOFF Plan 2 Career Change bill in 2005.

The City of DuPont recently utilized an unintended loophole in the Career Change legislation to hire a LEOFF Plan 2 retiree as police chief and continue his pension. Although DuPont's former police was a full-time employee covered by LEOFF, DuPont found a way to ostensibly place their new Chief, a LEOFF Plan 2 retiree, outside of LEOFF. The City did this by redefining the position as "part-time," i.e. 35 hours a week. The sole reason for this action was to move a law enforcement officer position into PERS to take advantage of the Career Change legislation.

Career Change vs. Retire-Rehire

The LEOFF Plan 2 Career Change bill is sometimes confused with retire-rehire provisions governing PERS and TRS. Retire-rehire was enacted in 2001 and has been in the news, and before the Legislature, repeatedly since then. The retire-rehire law was intended to allow PERS

and TRS retirees to supplement their pensions by working in part-time or temporary positions. Current retire-rehire provisions allow PERS and TRS retirees to work 867 hours per year while collecting their full pension. This allows part-time work or a temporary assignment to full-time work.

The retire-rehire law does not apply to LEOFF Plan 2. Its policy of assisting both employers and employees by facilitating part-time or temporary work by experienced workers stands in marked contrast to the Career Change policy.

Career Change Legislation

The Board studied the LEOFF Plan 2 pension suspension provisions in 2004. The policy considerations underlying the action ultimately taken by the Board were discussed in the LEOFF Plan 2 staff presentation:

The normal retirement age for LEOFF Plan 2 (53) is an age at which a person is generally considered to still be in the prime of their productive employment period although they may no longer be capable of performing the duties of a law enforcement officer or fire fighter. A LEOFF Plan 2 member who separates from LEOFF employment at age 53 may be expected to seek continued full-time employment in a non-LEOFF capacity for a number of reasons including income, access to health care coverage and the ability to qualify for social security or earn additional pension benefits to supplement those provided by LEOFF Plan 2.

Public employment offers a number of potential second careers to LEOFF 2 members where the skills developed in their LEOFF positions can be utilized. However, LEOFF Plan 2 members who seek to continue in public employment following separation or retirement from LEOFF may be restricted from establishing membership in a second public retirement system or receiving their LEOFF pension. Thus, there are barriers to transitioning to public employment after completing a career in LEOFF.

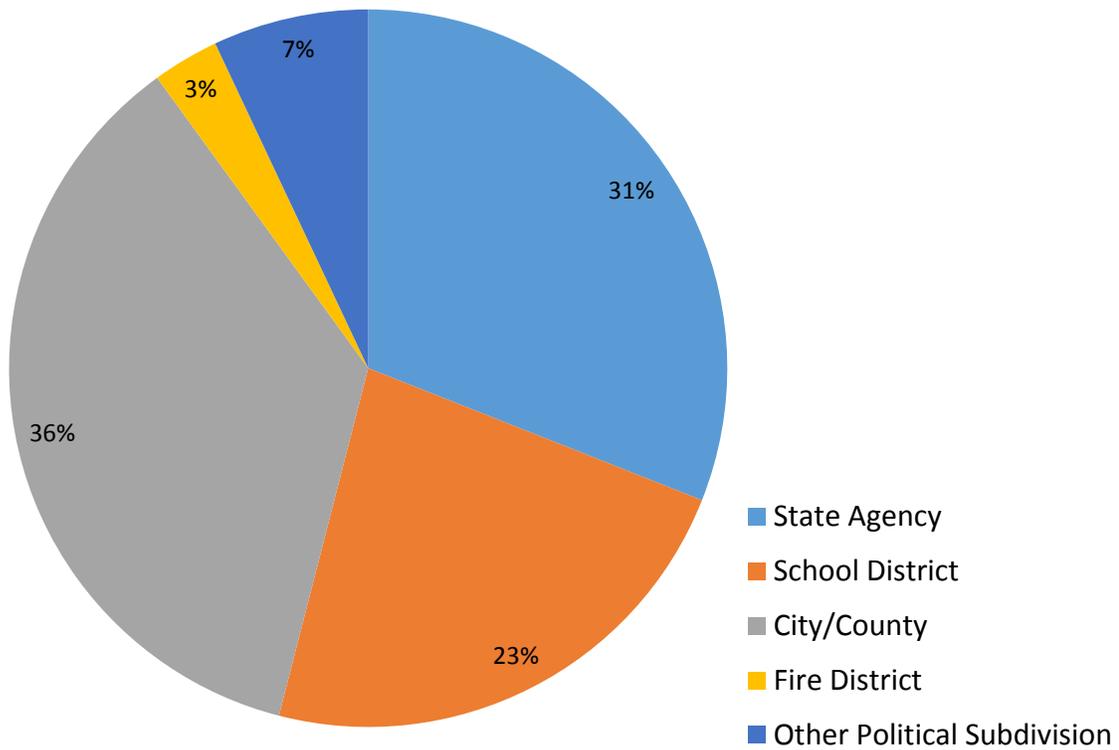
When a LEOFF Plan 2 retiree becomes employed in an eligible position covered by another state pension system the retiree will have their LEOFF pension suspended. Additionally, the retiree would normally be prohibited from participating as a member in the other state pension system and accruing a second pension. These pension provisions may make continued public employment an unviable option for LEOFF Plan 2 retirees.

LEOFF Plan 2 staff presented three different options to the Board, including providing the same retire-rehire provisions available in PERS and TRS. But the Board's concern was not supplementing a pension with part-time work. Its issue was transitioning from a law enforcement officer or fire fighter career to a new career. Accordingly, the Board declined the option to adopt retire-rehire instead proposing Career Change legislation. Those provisions, enacted in RCW 41.26.500, allow a LEOFF Plan 2 retiree who starts a new career in public employment other than as a law enforcement officer or fire fighter to either:

- Establish membership in a new public retirement system suspending their LEOFF Plan 2 pension; or
- Opt out of the second public retirement systems and continue to receive their LEOFF Plan 2 pension while pursuing their second career.

The Career Change law has mostly functioned as intended: facilitating a second public career for LEOFF Plan 2 retirees as something other than a law enforcement officer or fire fighter. According to recent data compiled by DRS, 265 LEOFF Plan 2 retirees have reentered public employment without suspension of their pension. The average annual compensation for these second career employees is \$28, 268. They work as employees for a number of different public employers, the majority of which are not LEOFF employers.

LEOFF Plan 2 Retirees: Second Public Career Distribution



It was not the intention of the Board nor the Legislature to allow a retired LEOFF Plan 2 member to return to work as a law enforcement officer or fire fighter and continue receiving a LEOFF Plan 2 pension. The City of DuPont has taken advantage of a loophole created by the intersection of the Career Change law and the pre-existing LEOFF definition of law enforcement officer to do exactly that.

Unintended Consequence of career change law

The City of DuPont’s full-time Chief of Police recently retired from LEOFF. The City hired a LEOFF Plan 2 retiree to replace him. The new Chief was originally hired on an interim basis and served full-time for approximately 3 months. Following DRS’s recent disallowance of DuPont’s claim that it’s Fire Chief was an independent contractor and the resulting suspension of the Fire Chief’s LEOFF Plan 1 pension, the interim Police Chief “...notified the city of his intention to terminate his interim contract ‘out of fear and confusion from the recent audit findings,²”

² DuPont police chief to work part time, retain benefits, The Olympian, July 31, 2013.

To allow the retiree to work as Police Chief and receive his LEOFF Plan 2 pension, the City reclassified the Police Chief's position from full-time to "part-time" requiring 35 hours per week. It does not appear any change in duties accompanied the change in hours. The City redefined the position to reclassify it from LEOFF to PERS to fit within LEOFF Plan 2's Career Change provisions.

This loophole relies on an aspect of LEOFF's definition of a "Law Enforcement Officer":

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

...

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

RCW 41.26.030(18) (emphasis added). Fire fighters must also be full-time, fully compensated to qualify for LEOFF, RCW41.26.030(16). LEOFF is somewhat unique in limiting membership to full-time employees. PERS, TRS, SERS, include part-time employees if they work at least 70 hours per month³. A review of the role of volunteer firefighters and reserve police officers helps explain why the Legislature set the bar for LEOFF membership so high.

Part-time Law Enforcement Officers and Fire Fighters

LEOFF's full-time requirement springs from a unique aspect of the fire fighter and law enforcement officer professions. A number of Washington's communities are served by Volunteer Fire Fighters and/or Reserve Police Officers. These part-time public safety officers belong to the Volunteer Firefighters and Reserve Police Officers' Retirement System, Chapter 41.24 RCW.

³ An "eligible position" for PERS, PSERS, and TRS Plan 2/3 is a position that normally requires 70 or more hours per month for at least 5 months per year. The relatively new retirement system of PSERS, created for public safety officers who are not fully commissioned law enforcement officers, also requires full-time employment.

Volunteer Firefighters and Reserve police officers have the same authority and duties as their full-time counterparts when called into service. The distinction is they do not work full-time:

"Reserve officer" includes any law enforcement officer who does not serve as a law enforcement officer of this state on a full-time basis, but who, when called by such agency into active service, is fully commissioned on the same basis as full-time officers to enforce the criminal laws of this state⁴;

Washington's Courts recognize a similar distinction between LEOFF eligible fire fighters and volunteer fire fighters, noting the distinction between full-time vs. part-time/volunteer controls whether the fire fighter goes into LEOFF or the Volunteer system⁵. Similarly, when discussing LEOFF eligibility for police matrons the Court noted: "that plaintiffs are full-time employees, they are regularly employed as opposed, for example, to police reservists...⁶"

"Full-time" is not defined in the LEOFF statute, nor has it been defined by the Courts⁷. DRS adopted a rule in 1995 defining full-time as "regularly scheduled to work at least 160 hours per month," i.e. at least 40 hours per week for at least 20 days, WAC 415-104-011(3). Coming ten years before the Career Change law, the rule had no impact on post-retirement employment laws when adopted. The 2005 Career Change legislation unintentionally created the loophole used by DuPont. Prior to that time a LEOFF Plan 2 retiree's pension would be suspended upon reentering covered employment regardless of what public position he or she entered. Redefining a LEOFF position as a PERS position would have been pointless, as it would not prevent suspension of the retiree's pension.

That is no longer the case. Even though the DuPont's Police Chief is a commissioned position created by the city to enforce the criminal laws of the State of Washington generally, i.e. a law enforcement position, DuPont has reduced the hours to make it a PERS position so its Police Chief can continue to receive a LEOFF Plan 2 pension.

⁴ WAC 139-05-810(1).

⁵ *Schrom v. Board for Volunteer Fire Fighters*, 153 Wn.2d 19, 27, 28, 100 P.3d 814 (2004).

⁶ *Beggs v. City of Pasco*, 93 Wn.2d 682, 685, 611 P.2d 1252 (1980).

⁷ *Tucker v. Department of Retirement Systems of State*, 127 Wn.App. 700, 706, 113 P.3d 4 (2005); The closest the Court has come is to uphold DRS determinations that persons performing law enforcement or firefighter duties less than half time do not meet the statutory full time requirement, see *Buckley v. Department of Retirement Systems*, 116 Wn.App. 1, 65 P.3d 1216 (2003); *International Ass'n of Fire Fighters Local 3266, AFL-CIO v. Department of Retirement Systems, State of Wash.*, 97 Wn.App. 715, 987 P.2d 115 (1999).

DRS has fielded similar inquiries seeking the same result by focusing on the “fully compensated” eligibility requirement. Some examples include questioning whether a LEOFF Plan 2 retiree is not fully compensated, and therefore not LEOFF eligible, if he or she did not receive health care benefits, or earned annual leave at a lesser rate than other employees with similar experience. These inquiries are designed to take advantage of the high bar to LEOFF membership used to distinguish between LEOFF eligible law enforcement officers and fire fighters and volunteer or part-time law enforcement officers and fire fighters. They seek to use that policy for an unintended purpose: to enable retirees to work as a law enforcement officer or fire fighter and continue to receive their pension.

Media Response to Retirees Drawing Pension and Salary

The Associated Press and the Daily Olympian recently published articles reporting on DuPont’s arrangement⁸. Publishers of the Associated Press article include the Seattle Times, the Bellingham Herald, the Spokesman Review, and the Kansas City Star.

The Olympian followed up with an editorial confusing the 2005 Career Change bill with the 2001 Retire-Rehire provisions legislation, mistakenly claiming the 2001 law allowed LEOFF Plan 2 retirees to return to work as law enforcement officers or fire fighters for 1800 hours per year (35 hours per week x 52) while receiving a benefit. Neither the 2001 law nor the 2005 career change legislation intended that result. Further, that result cannot be accomplished without redefining a full-time position as a part-time job. Nonetheless, the Olympian included the Career Change law in its call for a full repeal of retire-rehire⁹.

A second AP story on LEOFF post-retirement employment was published in the Seattle Times on November 21, 2013. This story, attached as appendix B, documented additional instances of LEOFF retirees returning to work in law enforcement or firefighter positions that did not qualify for LEOFF because they were either not full time or not fully compensated.

POLICY OPTIONS

The 3 policy options below were presented to the Board on September 25, 2013 for consideration.

⁸ *DuPont police chief will collect salary, \$90,000-a-year pension*, Associated Press, published in Seattle Times August 3, 2013.

⁹ *Time for Retire-Rehire to End in This State*, Daily Olympian, August 8, 2013.

Option 1: Duty Limitations.

The original intent of the career change law limited its application to situations where a retired LEOFF Plan 2 member began a second career as something other than a law enforcement officer or fire fighter. The policy looked to the duties of the position, not whether it was full time and/or fully compensated.

Under this option, the Board would propose remedial legislation to clarify its original intent that a LEOFF Plan 2 retiree who returned to work as a law enforcement officer or fire fighter would not qualify for the career change law even if the position was technically not LEOFF eligible.

This would reaffirm the original policy of the Career Change law, closing the loophole utilized by Dupont to place a LEOFF Plan 2 retiree into a Law Enforcement Officer position, in this case police chief, without suspension of his pension.

Option 2: Take no action

Under this option the Board would retain the Career Change law in its current form.

Option 3: Allow Return to LEOFF Employment.

Under this option a LEOFF Plan 2 retiree would have the same option upon entering a LEOFF position as he or she has under current law when entering a PERS position. That is, the retiree could either: 1) reenter LEOFF Plan 2 membership and have their pension calculated upon re-retirement; or 2) Choose not to reenter membership and continue to receive a LEOFF Plan 2 retirement allowance while employed as a law enforcement officer or firefighter.

This would alter the original policy of the Career Change law by including retirees who return to work in a LEOFF position. This would allow the option for all LEOFF Plan 2 retirees without requiring adjustment of employee hours or compensation.

POLICY OPTION FOLLOW-UP

At its September 25th meeting the Board requested follow-up on option 1, clarifying original intent by closing loophole and option 3, allowing LEOFF Plan 2 retirees to accept a LEOFF position without suspension of pension.

Option 1: Reinforce Original Intent

LEOFF Plan 2 retirees accepting employment covered by the Public Employees' (RCW 41.40), Teachers' (RCW 41.32), School Employees' (RCW 41.35) or Public Safety Employees (RCW 41.37) retirement systems may 1) enter membership in the new system and have his or her retirement allowance suspended; or 2) decline membership and continue to receive retirement checks.

LEOFF Plan 2 retirees who enter LEOFF positions do not have that option. They are not changing careers and so remain subject to suspension of benefits. It is the redefinition of LEOFF positions as PERS positions, primarily by converting them to “part-time” that allows circumvention of the original intent.

On the other hand, legitimate part-time positions, such as part-time assistant chief of a fire district, are properly outside the scope of LEOFF and thus within the original intent of the Career Change law. Such positions are designated as part-time regardless of who fills them.

These two considerations, closing the loophole while not restricting bona fide non-LEOFF employment, could be met by amending the statute to require suspension of LEOFF plan 2 retirees pension if:

- They work in a job with LEOFF duties but are outside of LEOFF because the job is not full-time and/or fully compensated; and
- Exceed a given number of hours:
 - An 867 hour annual maximum would be consistent with restrictions in place for other plans;
 - 25 hours per week, slightly more than half-time; or
 - Another standard deemed appropriate by the Board.

If these or similar standards were adopted and employers intentionally misreported they would be guilty of either a class B felony in LEOFF, RCW 41.26.062; or a misdemeanor in PERS, RCW 41.40.055.

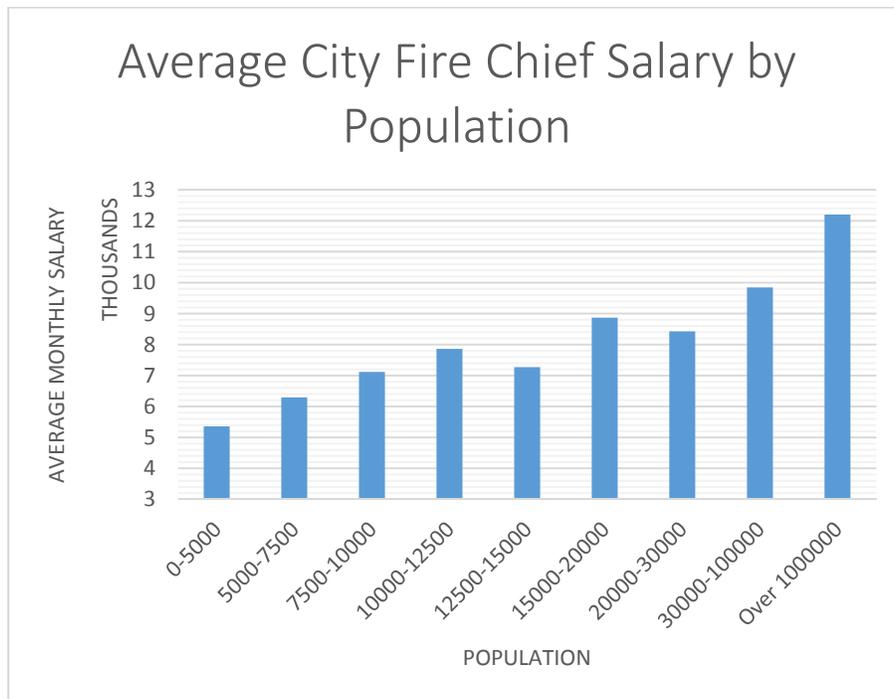
Option 3: Allow Reemployment in a LEOFF Position without Pension Suspension.

Another policy option is allowing reemployment without pension suspension. This could either be done for a defined class of LEOFF Plan 2 reemployment or for all LEOFF Plan 2 reemployment.

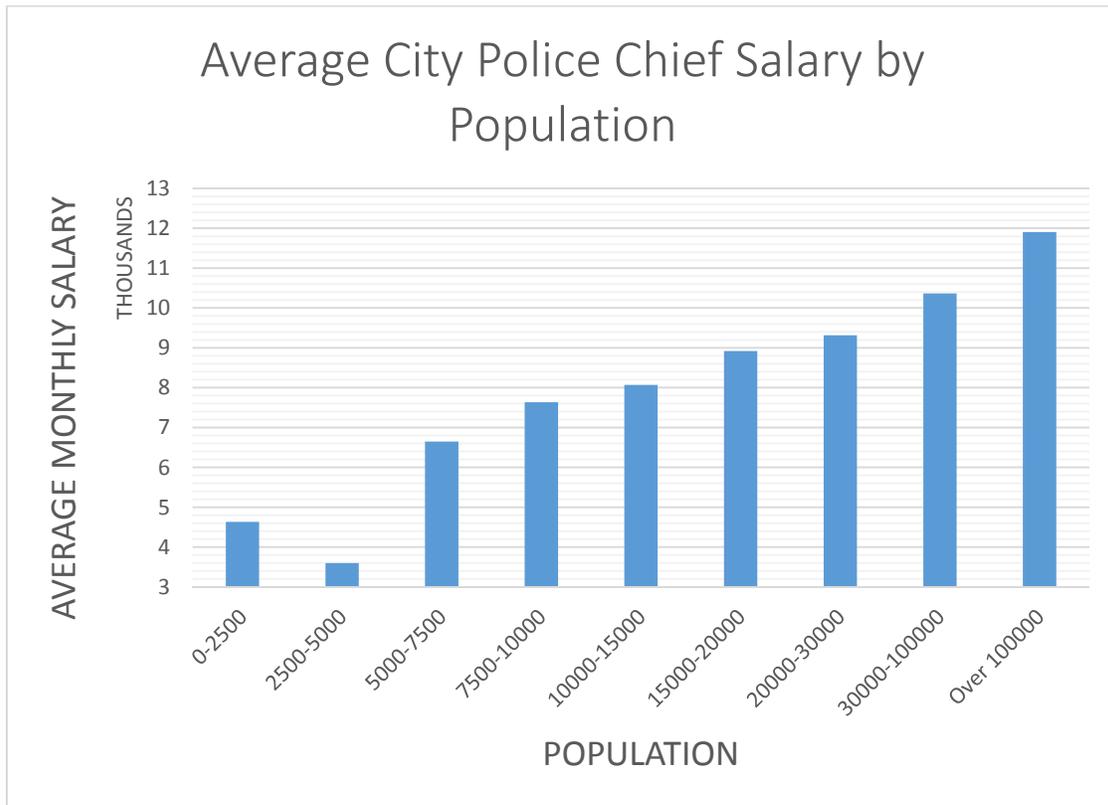
Option 3a: Allow limited reemployment

Some Board members noted that skilled LEOFF 2 retirees could be valuable to smaller jurisdictions lacking the resources to compete with larger jurisdictions on salaries. Allowing limited reemployment in a LEOFF position could enable those smaller jurisdictions to hire experienced chiefs they could not otherwise afford.

Reviewing salary and population data from police and fire chiefs supplied by the Association of Washington Cities (AWC) shows a salary gap between smaller and larger jurisdictions. The charts below were extrapolated from AWC’s 2012 salary survey of Cities and Towns¹⁰:



¹⁰ Salaries were reported in ranges, from which salary midpoints were determined. Salary midpoints within a population group were then averaged to estimate average Chief salaries within a particular population cohort.



From the AWC data, it appears possible to enable smaller, lower paying jurisdictions access to hire chiefs retired from more populous jurisdictions by allowing reemployment in smaller jurisdictions without loss of pension. The AWC data shows that cities and towns with less than 10,000 people tend to pay less for their police and fire chiefs.

Other LEOFF provisions use employer population as an eligibility criteria. Public safety officers, who perform both police and fire duties, qualify for LEOFF Plan 2 only if employed in a City or town less than 10,000 people, RCW 41.26.030(18)(e).

Population is an easily verifiable objective measure, but is not necessarily a good predictor of salary. Police Chief salary data shows a wide variance between cities of nearly identical size:

City	County	Population	Average Monthly Police Chief Salary
DuPont	Pierce	8,855	7,647
College Place	Walla Walla	8,875	6,698
Grandview	Yakima	11,010	5,897
Cheney	Spokane	11,070	7,084
Enumclaw	King	11,100	7,685
Snoqualmie	King	11,700	9,548

Population is not the most robust predictor of salary levels. For instance, DuPont’s Police Chief’s average salary is \$1750 per month higher than Grandview though Grandview has over 1000 more people. A City’s location, i.e. urban vs. rural, appears a better predictor of salary levels.

There would also be challenges crafting statutory language accomplishing the policy goal without creating new loopholes. Without limiting language, any LEOFF Plan 2 retiree could work and draw a pension as long as the employer had less than 10,000 inhabitants. Consistency with the underlying policy requires developing standards to ensure new provisions accomplished the goal of allowing LEOFF Plan 2 retired Chiefs to transition from larger better-paying employers to smaller lower-paying employers:

- Tracking pre-retirement employment:
 - Ensuring retiree came from more populous, higher paying employer, otherwise transfer is lateral, not necessarily to a lower-paying district;
 - Ensuring retiree retired from a different employer; otherwise a current employee is simply retiring before taking a promotion – no real advantage to the employer.

- Duty Limitations:
 - Limiting availability to chief or similarly high level positions; otherwise any LEOFF member may take essentially the same job with another employer, or even the same employer, drawing both full salary and full pension without furthering the policy goal.

Tracking these kind of limitations would probably be administratively difficult for DRS. It also presents the possibility for more manipulation. Generally speaking, the more complicated an administrative standard, the more susceptible to gaming.

Option 3B: Unlimited Reemployment in LEOFF Positions

The Board could propose allowing LEOFF Plan 2 retirees to take a LEOFF position without suspension of pension. This would increase transparency as returning to work in a LEOFF position would no longer require redefining the position to disqualify it from LEOFF. It would, however, raise some issues.

- Inconsistent with the Original Intent: The Career Change law would no longer be targeted towards LEOFF Plan 2 retirees changing careers, but would instead look more like a standard retire-rehire program, allowing LEOFF Plan 2 retirees to earn a salary and collect their pensions regardless of the type of post-retirement employment.
- Negative Public Response: Given the recent negative public response to LEOFF members drawing both pension and salary at the same time, it appears likely that loosening the current restrictions on post-retirement employment would engender more of the same.
- Inconsistent with Current Legislative Policy: The Legislature's recent actions rolling back retire-rehire provisions in other public retirement systems¹¹ indicate that introducing a bill moving in the opposite direction may not be well received.

FINAL POLICY PROPOSALS

At the November 20 meeting the Board asked for final proposals on the following options:

Option 1: Apply duty limitation. Propose Legislation suspending LEOFF Plan 2 retirement allowance if retiree performs LEOFF duties even if not full-time fully compensated.

This option reaffirms the original intent of Career Change: to facilitate a change in careers rather than a continuation of the retiree's original career. This would reduce employer

¹¹ ESHB 1981 (ch. 47, laws of 2011), repealed provisions allowing PERS 1 and TRS 1 retirees to work up to 1500 hours in a calendar year without impacting their pension.

access to LEOFF retiree's as a pool to fill LEOFF jobs, but that access currently requires manipulation of job descriptions to fit into the loophole described above.

Option 3a: Apply hours limitation. Allow LEOFF Plan 2 retirees the same level of post-retirement employment allowed for PERS 2 and TRS 2 retirees: 867 hours per calendar year. Under the PERS and TRS standards, if a retiree works over 867 hours in a calendar year his or her pension is suspended. It then starts up again in the following calendar year unless and until the retiree works 867 hours in that year.

This would partially standardize return to work rules across PERS, TRS, and LEOFF. It does, however open up post-retirement membership issues. In order to be truly consistent with PERS and TRS, the LEOFF law would have to be amended to make return to membership following retirement optional instead of mandatory, as is currently the case. This would be a significant change in LEOFF membership standards.

This course of action also contains a certain amount of "headline risk" as evidenced by appendix B.

Appendix A - History of Plan 2 return to work 1977-2013

This appendix provides historical background on post-retirement employment laws in the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) to inform the Board's consideration of possible amendments to the LEOFF Plan 2 Career Change law.

1. **1977: Post-Retirement Public Employment stops Pension**

Beginning in 1977, LEOFF 2, TRS 2, and PERS 2, each prohibited a retiree from receiving a pension if "performing service for any nonfederal public employer in this state."¹ A Plan 2 retiree could not earn money in public employment and still draw a pension. Upon cessation of public service the retiree's benefit would be "actuarially recomputed pursuant to the rules adopted by the department." Those rules were not forthcoming, probably in part because the distant prospect of having any Plan 2 retirees.

2. **1990: Limited Post-Retirement Employment Allowed**

The Legislature reexamined the restrictions on Plan 2 post retirement employment in 1990:

The legislature finds that retirees from the plan 2 systems of the law enforcement officers' and firefighters' retirement system, the teachers' retirement system, and the public employees' retirement system, may not work for a nonfederal public employer without suffering a suspension of their retirement benefits. This fails to recognize the current and projected demographics indicating the decreasing workforce and that the expertise possessed by retired workers can provide a substantial benefit to the state. At the same time, the legislature recognizes that a person who is working full time should have his or her pension delayed until he or she enters full or partial retirement. By allowing plan 2 retirees to work in ineligible positions, the competing concerns listed above are both properly addressed.²

The amended Plan 2 return to work statutes allowed public service without affecting the pension as long as the retiree did not hold an eligible position in LEOFF, TRS or PERS³.

¹ TRS Plan 2: laws of 1977 ex. Sess. Ch. 293. §11; LEOFF Plan 2: laws of 1977 ex. Sess. Ch. 294, §11; PERS Plan 2: laws of 1977 ex. Sess. Ch. 294, §12.

² Laws of 1990 c 274 § 1

³ Laws of 1990 c 274, §§ 11, 12, 13.

This played out differently in each system. PERS Plan 2 retirees were allowed to work up to 5 months in an eligible position before their pension stopped and they were required into membership. TRS Plan 2 retirees had an option whether to return to membership, however their pension stopped as soon as they entered an eligible position. LEOFF Plan 2 retirees, then as now, are mandated into membership on the first day of LEOFF eligible service.

Language was added to each plan referring to benefits as “suspended” and specifying reinstatement of benefits and actuarial recomputation. DRS adopted rules in 1993 explaining how it would actuarially recompute benefits under the statute.

3. 1997: Legislature Standardizes Return to Work Rules.

Prior to 1997 separation from service was not defined in PERS, TRS, or LEOFF. This led to confusion and differing results in determining whether a person had retired and returned, simply failed to retire, and whether they returned to membership. DRS submitted request legislation to clarify the standards across plans.

The Legislature adopted a consistent definition of separation from service in all 3 plans and also required PERS and TRS retirees to be absent from public employment for a full calendar month before returning to work⁴. Upon reemployment in an eligible position PERS members were no longer mandated into membership but, like TRS before them, had a choice whether to reenter membership⁵.

The ability of PERS Plan 2 retirees to work up to 5 months in an eligible position was extended to TRS Plan 2 retirees⁶. If a retiree exceeded that limit his or her pension would be suspended for the remainder of the calendar year. At the beginning of the next year he or she could again work up to 5 months without suspension of benefit⁷.

LEOFF Plan 2 standards did not change.

4. 2001: Return to Work Limits Increased.

Citing a shortage of qualified workers, the Legislature increased the allowable annual hours for Plan 1 retirees to 1500 hours⁸ in 2001. Originally set to expire in 2004, the

⁴ Laws of 1997, chapter 254.

⁵ Id. §11

⁶ Id. §8

⁷ Id. §8, §14.

⁸ Laws of 2001, 2nd sp. Sess., ch. 10.

Governor, citing a “critical shortage of or experienced teachers and other employees with skill that are in high demand” vetoed the expiration date sections.

The post-retirement limits on PERS Plan 2 and TRS Plan 2 retirees were not amended although the 5 month limit was redefined as 867 hours so it would be easier for DRS to track.

5. 2003: Limitations on Post-Retirement Employment Extensions.

After high profile cases of PERS Plan 1 retirees “separating” then returning to their same jobs 1 calendar month later to draw both a pension and a salary, the Legislature restricted access to the 1500 hour limit and tightened up the definition of separation.

In 2003 the Legislature reinstated 867 hour baseline limit for PERS Plan 1 and TRS Plan 1 retirees. Those retirees could still work up to 1500 hours but only if the employer documented an unfilled employment need and followed previously adopted hiring procedures. The new law also enacted a lifetime limit on 1900 hours that could be worked in excess of the 867 hour baseline. For instance, a retiree working 1500 hours would incur 633 hours towards their 1900 hour limit. This was essentially a 3 year limitation on post-retirement employment exceeding 867 hours⁹.

The Governor signed the PERS Plan 1 amendments, but vetoed those applicable to TRS Plan 1. Those same restrictions were ultimately added to TRS Plan 1 in 2007¹⁰.

6. 2005: LEOFF 2 Career Change.

As explained in more detail in the main body of the report (*see* main report, pages 2-5) the Legislature addressed LEOFF Plan 2 post-retirement employment in a separate bill. This bill started as a proposal from the Board. The Board considered different options when examining this issue in 2004, including adopting the 867 hour rule applicable to PERS Plan 2 and TRS Plan 2. The Board opted for the current career change legislation, intended to facilitate starting a new career after retiring from law enforcement or firefighting.

⁹ Laws of 2003, ch. 412, §5

¹⁰ Laws of 2007 c 50 § 3.

7. 2011: Return to 1997.

The Legislature rolled back the PERS Plan 1 and TRS Plan 1 return to work limits to 1997 limits¹¹. Under current law all PERS and TRS retirees are limited 867 hours (5 months) post-retirement service. Continuing service after that point requires suspension of their benefit for the remainder of the year. At the beginning of the next year a retiree may work another 867 hours without affecting their benefit.

¹¹ Laws of 2011, sp. Sess. Ch. 47.

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Fire, police officials get retire-rehire deals

By MIKE BAKER

The Associated Press

SEATTLE —

A couple years after retiring as Lakewood fire chief at age 58, Paul Webb returned to the profession and his former job title — this time at Orting Valley Fire and Rescue.

Hired under a contract without some of the typical employee benefits, Webb's arrangement at the end of 2009 allowed him to draw more than \$100,000 in annual pension payments while also earning up to \$90,000 in yearly pay. It was an interim position, according to his contracts. He stayed in the job for three years.

It wasn't long before six of Webb's past colleagues followed similar paths, retiring and taking jobs in various contract positions, according to records.

In recent years, Washington lawmakers changed laws to crack down on retire-rehire arrangements, seeking to prevent pensioners from double-dipping when they return to similar government jobs.

But The Associated Press found that gaps in the special rules created for law enforcement officers and firefighters have allowed them to draw salaries alongside their pension. And those retirees generally retire much younger and with much larger retirement plans than teachers or other government workers.

According to local and state records obtained by AP under public records law, dozens of public safety retirees around the state became contractors. Some took part-time jobs such as polygraph consultants or pilots or instructors, while others returned to prominent managerial positions.

Other retirees in those two retirement systems reserved for law enforcement officers and firefighters — called LEOFF-1 and LEOFF-2 — took jobs that had them work slightly less than full time or with slightly less benefits, also allowing them to bypass rules that would have halted pension payments.

Local governments gain from the arrangements because officials can hire someone with experience at either a discounted pay rate or without having to cover some typical benefits.

DuPont Mayor Michael Grayum recently worked closely with the Department of Retirement Systems to ensure the city was following the rules in the hiring of a police chief who had

retired from a different department. The city didn't seek out pensioners, but three of the top candidates for the job were retirees.

"We were able to hire more experienced leadership for a lower cost than we have historically," he said. The new chief is able to keep his pension because his job is only 35 hours a week instead of 40.

The Legislature established retire-rehire rules for many government workers in 2003 due to concerns about the frequency and cost of those arrangements. In 2011, lawmakers placed even tighter controls on those deals, closing what some political leaders derided as "loopholes."

Rules for members of the newer LEOFF system were established in 2005 with the intent of preventing retire-rehire arrangements in similar jobs but designed to allow transition to less-demanding occupations in government.

Steve Nelsen, executive director of the LEOFF-2 Retirement Board, said the rules weren't meant to allow retirees to return to work in similar LEOFF jobs. "This was not the intent of the bill," Nelsen said. He said several board members have expressed concern about the DuPont case that surfaced in the wake of a previous AP story and that the board is now exploring the issue.

LEOFF rehire rules revolve around the issue of eligibility. Workers are eligible for the LEOFF system if they are fully compensated in full-time positions as a law enforcement officer, firefighter or supervisor. A retiree who gets rehired into a similar LEOFF-eligible position would have their pensions benefits halted.

But if a LEOFF retiree returns to a position that's less than full-time or not fully compensated, they technically would not qualify for the system and can avoid disruption of their benefits, according to the state.

Some have seized on that potential.

— In Maple Valley, in King County, Larry Rude was hired in 2007 to a contract position as assistant fire chief. He started in the new position the same day he retired from the state system, according to records.

For three years, Rude earned more than \$100,000 a year in salary — plus other benefits — along with a similar amount in retirement payments. Rude said he was allowed to draw pension and salary because he was only working in a part-time position, saying it "wasn't very many" hours a week.

Rude said he didn't have a specific number of hours that he typically worked, although the final contract he signed said Rude could work up to 159 hours a month — an average of about 37 hours a week.

— In Soap Lake, in central Washington, officials chose Glenn Quantz as an interim police chief last year, bringing him on as a contractor. Quantz had retired in 2009 at age 53 from the Thurston County Sheriff's Office.

Mayor Raymond Gravelle told state officials in a letter obtained by AP that Quantz was working 32 hours a week — making it a part-time job that wouldn't disrupt his benefits. However, Quantz is earning the full salary of the police chief and the same amount as the previous chief, according to records provided by the city's finance director.

Quantz declined to comment about his situation. Gravelle said the city is small enough that Quantz doesn't need to work full-time, but he said officials will be going back to review records to ensure they are compliant.

— In the Orting Valley case, documents show Webb consulted with the state about his rehire transition because he didn't want it to disrupt his retirement benefits. While Webb was working in a full-time post, a state official told him that there would be no impact because he didn't qualify for sick leave cash-outs and some other benefits.

"It was definitely full-time, but it wasn't fully compensated," Webb said in an interview.

Dave Nelsen, the legal and legislative services manager at the Department of Retirement Systems, said it's not clear what the review entailed at the time but said the issue of what qualifies as "fully compensated" is subjective and could be interpreted differently by other officials.

— At North Highline Fire District in the Seattle area, Steve Marstrom was hired to a contract as the administrative chief. Marstrom had retired from the Lakewood Fire District more than a decade before at age 50.

Marstrom's contract said he did not have set hours but would be paid \$8,000 a month. He could also get \$1,500 a month for housing. Marstrom said his role at North Highline was strictly an administrative one, since he was supervising personnel and not participating in any firefighting activities.

Because he wasn't personally involved in firefighting, Marstrom said the role didn't qualify for the LEOFF system so it wouldn't disrupt his LEOFF benefits.

Other LEOFF retirees in the system managed to get hired in similar roles that are technically in other pension systems. Some fire officials transitioned to become fire inspector or deputy fire marshal. Police officials transitioned to work as a "violence prevention" leader or agency security manager.

Depending on the circumstances, state officials could decide that workers hired as contractors should have been reported to the state as actual employees, potentially leading to a halting of pension payments. By hiring as contractors, however, the employees are more difficult for state pension managers to track.

One worker in the larger group of Lakewood retirees who became contractors had a part-time salary of \$90 per hour, while another was hired back as the department's full-time "emergency preparedness coordinator." Nelsen, the retirement system manager, said the agency was further examining the cases of Rude, Marstrom and Webb.

Earlier this year, after an AP report that described the case of former Lakewood official Greg Hull as part of a larger story about how some workers boosted their pensions with pre-retirement raises, the state audited files related to Hull and determined that he had been improperly classified as a contractor in his newer job at DuPont.

Retirement system managers are now seeking to recover more than \$550,000 in excess pension payments from that city.

Retirees in the two systems dedicated for law enforcement officers and firefighters have different rules than most other retirees. Many retired teachers, for example, would be unable to work more than 867 hours a year in a government job without having their benefits disrupted, but law enforcement and firefighter retirees could conceivably work more than 1,800 hours a year.

Law enforcement and firefighters also get more leeway even though their pay and benefits are typically much greater than other government workers. The median worker who retired over the last 10 years into a LEOFF system currently gets about \$45,000 per year in pension payments. By comparison, the median retiree into the teacher pension systems has a benefit about half that size — \$24,000.

Despite the much larger pension values, the median LEOFF retiree departed the job at age 56 while the median teacher retiree worked until age 61.

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Appendix C

Career Change Options: Option 1 – limit career change benefit to persons going into other careers

RCW 41.26.500

Suspension of retirement allowance upon reemployment — Reinstatement — Option to enter into membership.

(1) Except under subsection (3) of this section, a retiree under the provisions of plan 2 shall not be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW [41.40.010](#), [41.32.010](#), [41.37.010](#), or [41.35.010](#), or as a law enforcement officer or firefighter as defined in RCW [41.26.030](#). If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

(3) A member or retiree who becomes employed in an eligible position as defined in RCW [41.40.010](#), [41.32.010](#), [41.35.010](#), or [41.37.010](#) shall have the option to enter into membership in the corresponding retirement system for that position notwithstanding any provision of RCW [41.04.270](#).

(a) A retiree who elects to enter into plan membership shall have his or her benefits suspended as provided in subsection (1) of this section.

(b) A retiree who does not elect to enter into plan membership shall continue to receive his or her benefits without interruption except as provided in (c) of this subsection.

(c) Plan membership shall be mandatory if the retiree's employment requires duties that would qualify the position for the law enforcement officers and fire fighters retirement system if the position was full time or fully compensated.

Appendix D

Option 3: Amend LEOFF Plan 2 return to work provisions to parallel PERS 2 and TRS 2:

RCW 41.26.500

Suspension of retirement allowance upon reemployment —
Reinstatement — Option to enter into membership.

(1) Except under subsection (3) of this section, a retiree under the provisions of plan 2 shall not be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW [41.40.010](#), [41.32.010](#), [41.37.010](#), or [41.35.010](#), or as a law enforcement officer or firefighter as defined in RCW [41.26.030](#). If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

(3) A member or retiree who becomes employed in an eligible position as defined in RCW [41.40.010](#), [41.32.010](#), [41.35.010](#), or [41.37.010](#) shall have the option to enter into membership in the corresponding retirement system for that position notwithstanding any provision of RCW [41.04.270](#).

(a) A retiree who elects to enter into plan membership shall have his or her benefits suspended as provided in subsection (1) of this section.

(b) A retiree who does not elect to enter into plan membership shall continue to receive his or her benefits without interruption.

(c) Plan membership shall be mandatory if the retiree's employment:

- (i) requires duties that would qualify the position for the law enforcement officers and fire fighters retirement system if the position was full time or fully compensated; and
- (ii) Requires more than 867 hours per year. **Membership?**