



July 22, 2015

Pension Garnishment

INITIAL CONSIDERATION

By Paul Neal
Senior Research & Policy Manager
360-586-2327
paul.neal@leoff.wa.gov

ISSUE STATEMENT

Should additional exceptions be made to LEOFF Plan 2's general prohibition against garnishment?

OVERVIEW

LEOFF Plan 2 pensions are exempt from garnishment or "...any process of law whatsoever" as stated in RCW 41.26.053. Specific exceptions to this general prohibition allow garnishment for child support, property division, and federal orders such as tax liens. Washington's criminal statutes allows pension garnishment for restitution for the cost of incarceration or injury to victims.¹

The 2015 Legislature considered adding further exemptions to the garnishment prohibition in SB 6076. This bill would have amended the pension statutes to allow pension garnishment of an incarcerated retiree to off-set the cost of his or her incarceration. The Senate did not bring the bill to a vote, in part to give the Select Committee on Pension Policy and the LEOFF Plan 2 Board an opportunity to consider the issue.

This report will discuss:

- Current Washington law governing garnishment of LEOFF Plan 2 pensions
- Seek direction from the Board on further action, if any

BACKGROUND

Statutory History

LEOFF Plan 2 pensions are generally exempt from garnishment

LEOFF Plan 2, like all of Washington's public pension plans, includes an anti-alienation section protecting LEOFF Plan 2 pensions from "garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever" (see Appendix A).

¹ RCW 9.94A.750

The underlying policy against alienation of pension benefits is also a condition for federal tax qualification under tax law, 26 U.S.C. §401(a)(13) as well as being required for private pension plans under ERISA, 29 U.S.C. §1056(d)(1). The policy of these requirement is to “ensure that the benefits actually reach the beneficiary.” *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 583, 584 99 S.Ct. 802, 59 L.Ed.2d 1(1979). The Legislature codified this same policy in LEOFF:

The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and firefighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty².

The Supreme Court eroded the Legislature’s policy against garnishment in *Anthis v. Copland*, 173 Wn.2d 752 (2012). The Court described the horrific facts of the case, brought by a widow to enforce a judgment for the wrongful death of her husband:

Sometimes lives are altered, even destroyed, so suddenly and unexpectedly as to defy explanation. Copland, a retired police officer from the city of Tacoma, spent the day with a friend, John Stevens, in Kennewick, Washington. They spent some time at the Burbank Tavern in nearby Walla Walla County and then returned to Stevens' house in Kennewick. In re Copland, No. 09-47782, 2010 WL 4809327, at *1 (Bankr.W.D.Wash. Sept. 23, 2010) (unpublished).

On the way, Copland stopped to buy whiskey and vodka. At Stevens' house Stevens' longtime friend Anthis joined the pair. The three passed the afternoon on Stevens' outdoor deck drinking and eating and enjoying conversation about upcoming fishing trips. That evening, in events described as "stunning both in their rapidity and unexpectedness," Copland said to Anthis, " ' I could shoot and kill you,' " and Anthis responded, " ' bring it on.' " Id. Copland produced a .22 derringer and placed it up to Anthis' right temple. No argument preceded the exchange, and Anthis did not move. Stevens saw the flash, heard the shot, and saw Anthis fall off his chair to the floor. Copland then returned to his seat, put the gun in his back pocket, placed his head in his hands and said, " ' Oh, my God, I've killed Al.' " In a flash, two lives were destroyed. [*Anthis* at 754, 756].

Swayed in part by these facts, the Court recognized LEOFF benefits could not be garnished prior to disbursement, but ruled that they could be reached once they were on deposit in the retiree’s bank account.

Within months of the *Anthis decision*, the Legislature reversed it, amending RCW 41.25.053 to clarify that LEOFF pensions could not be garnished “whether the same be in actual possession of the person or be deposited or loaned”³.

² RCW 41.26.020

³ See laws of 2012 c 159 § 21

Exceptions Allowing Garnishment

The general prohibition against garnishing LEOFF Plan 2 pensions has been amended over time to specifically allow garnishment for:

- Child support orders under chapter 26.18 RCW, 74.20A RCW, and RCW 26.23.060
- Property division orders for ex-spouses
- Federal court orders, such as tax liens

The exceptions are consistent with the Legislature's stated goal in RCW 41.26.020 of enabling members to "provide for themselves and their dependents."

In addition to the exceptions enumerated in the LEOFF statutes, the Legislature provided for garnishment of pensions to compensate crime victims, RCW 9.94A.750 – 775. If a person is convicted in superior court, the court may include, as part of the sentencing, an assessment of a "legal financial obligation." That obligation may include⁴:

- Costs of incarceration
- Restitution for bodily injury
- Restitution for loss of property
- Support of the victim of child rape if the victim becomes pregnant
- Any case where the victim is entitled to compensation under the crime victim's compensation act, chapter 7.68 RCW

Earnings subject to garnishment "specifically includes periodic payments pursuant to pension or retirement programs"⁵.

The Legislature enacted the criminal statutes allowing garnishment of pensions without amending the LEOFF statute prohibiting it. RCW 9.94A.7601 allows garnishment of pensions: "notwithstanding any other provision of law making such payments exempt from garnishment." However, the Legislature's exemption from garnishment protects LEOFF benefits from "any other process of law whatsoever"⁶. It is uncertain which provision takes precedence over the other.

Recent Legislative Action

Governor Gregoire signed SHB 1552 reversing the *Anthiis* decision in 2012. The Governor then requested the Select Committee on Pension Policy (SCPP) to study whether more pension garnishment exceptions, such as the wrongful death judgement, should be considered. The SCPP's study included advice detailing federal tax law limitations on garnishment of public pensions. The memorandum, which was drafted for dissemination, is included as Appendix B and stated in part:

⁴ RCW 9.94A.753

⁵ RCW 9.94A.7601

⁶ RCW 41.26.053(1)

In interpreting IRC Section 401(a)(13), the IRS issued PLR 200426027 to specifically approve payment of a fine or criminal restitution to the United States government when ordered to do so pursuant to an order of garnishment obtained pursuant to 18 U.S.C. Section 3613, the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. Sections 3001-3008 ("FDCPA") and the Mandatory Victims Restitution Act, 18 U.S.C. Section 3613(c). The PLR primarily addressed the treatment of court orders for U.S. fines and criminal restitution for the U.S. government, private parties and non-federal governments (i.e., states, municipalities, counties, etc.) The IRS specifically stated that, if the garnishment occurred due to a federal court order based on the FDCPA, then it did not matter who was the ultimate recipient of the benefit dollars. The ruling of the PLR covered IRC Section 401(a)(2) as well as IRC Section 401(a)(13) because the IRS reasoned that the payment satisfies a participant's debt.

Although the PLR is only directly applicable to the entity who requested the ruling, it provides us insight as to how the IRS would react to a plan provision which included restitution-type exceptions to the anti-alienation provision of a retirement plan. Although the PLR dealt with a non-governmental plan, we believe that it is reasonable for a governmental plan to follow the approach that was approved.

The Select Committee did not propose any legislation extending garnishment.

The issue was raised again during the 2015 Legislative session by the introduction of SB 6076 (see Appendix C). The bill was heard in the Senate but not brought up for a vote. It proposed authorizing garnishment to reimburse the state for costs of incarceration for retirees convicted of a felony on or after July 1, 2015.

The bills were apparently in response to a February 23, 2015 story by King 5: *State Spends Millions on Convicted Teacher Retirements* (see Appendix D). The Freedom Foundation, which initially approached King 5 about the story, testified in favor of the bill. Crime victim advocates testified with concerns that forfeiting or otherwise alienating the convicted person's pension would take away a source of recompense from crime victims as well as support for innocent family members.

POSSIBLE FUTURE ACTION

If the Board wished to pursue this issue further it could direct staff to present options for:

1. Clarifying the interaction of current garnishment laws in Chapter 9.94A RCW and the LEOFF act;
2. Possible further exceptions to anti-garnishment provisions in the LEOFF act.

SUPPORTING INFORMATION

Appendix A: RCW 41.25.053, Exemption from judicial process, taxes — Exceptions — Deduction for insurance upon request. (LEOFF anti-attachment statute)

Appendix B: Ice Miller memorandum

Appendix C: Senate Bill 6076 - AN ACT Relating to the forfeiture of the pension of a public employee convicted of a felony for misconduct associated with such person's service as a public employee

Appendix D: *State Spends Millions on Convicted Teacher Retirements* Danielle Leigh, King 5 news, February 23, 2015

APPENDIX A
LEOFF ANTI-ALIENATION STATUTE

RCW 41.26.053

Exemption from judicial process, taxes — Exceptions —
Deduction for insurance upon request.

(1) Subject to subsections (2) and (3) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter [26.18](#) RCW, (b) an order to withhold and deliver issued pursuant to chapter [74.20A](#) RCW, (c) a notice of payroll deduction issued pursuant to RCW [26.23.060](#), (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW [41.50.500](#)(3) which fully complies with RCW [41.50.670](#) and [41.50.700](#), or (f) any administrative or court order expressly authorized by federal law.

APPENDIX B

FEDERAL LIMITATIONS ON GARNISHMENT

PENSION GARNISHMENT – FEDERAL LAW CONSIDERATIONS

By Mary Beth Braitman and Terry A.M. Mumford, Ice Miller LLP

QUESTIONS ADDRESSED BY THIS ANALYSIS

This analysis has been prepared to be included in a report by the Office of the State Actuary ("OSA") to the Washington Select Committee on Pension Policy ("Select Committee"). The Select Committee was asked by Governor Gregoire to review and make recommendations to the legislature as to whether additional exceptions to the general exemption of pensions would be appropriate. OSA has asked Ice Miller LLP to address the following scenarios and specific questions.

Under state law, pensions are exempt from garnishment and attachment, subject to certain exceptions. General exceptions include divorce, child support, or as needed to enforce a federal court order. If the state were to add one or more new exceptions:

- 1. Are there general ground rules in tax code, ERISA, or case law, for garnishing public pensions?*
- 2. Are there tax and legal implications at the federal level for expanding garnishment provisions? Specifically, would there be implications if the state were to garnish pensions when the retiree has caused serious bodily injury or death?*
 - a. Is there guidance in federal law regarding the reasons pensions can be garnished?*
 - b. Are there red flags or other options lawmakers should consider?*
 - c. Are there potential impacts to plan qualification?*

In responding to these questions, OSA is only concerned with pension garnishment at the point where the Department of Retirement Systems is issuing a monthly check. The issue the Washington Supreme Court looked at – whether one can garnish after the retiree receives the money -- is not an issue at this time.

GENERAL GROUND RULES

Federal Status of Washington State Pension Plans

The Washington State defined benefit plans have been established and maintained as qualified governmental plans under Internal Revenue Code ("IRC") Sections 401(a) and 414(d). The benefits of qualified status flow directly to the members, retirees, and beneficiaries of those plans. Therefore, it is important that the qualified status of those plans be maintained.

Exclusive Benefit Rule (IRC Section 401(a)(2))

The IRC requires that qualified plans, such as the Washington State pension plans, must be established for the exclusive benefit of members and their beneficiaries. See IRC Section 401(a)(2). This would generally mean that a qualified plan cannot make payments except to members and their beneficiaries.

However, the Internal Revenue Service ("IRS") ruled in Private Letter Ruling ("PLR") 8426124 that payments made from a governmental plan, discharging a debt owed (in the bankruptcy context) by a member, satisfied the exclusive benefit rule. See GCM 39267. In this PLR, the IRS noted that the participants had voluntarily entered into debt repayment plans under Chapter 13 and that the payments were supervised by a bankruptcy court trustee. The IRS further stated the following:

For a plan to fail to qualify under section 401(a) of the Code, the diversion of funds of the trust must be for other than the exclusive benefit of the participants. If the funds of the trust are used for the exclusive benefit of the employees or their beneficiaries, there is no prohibited diversion. The repayment of debts for an employee is for the economic benefit of an employee since it relieves him of a liability. In such a case, the benefit to the creditor is incidental. Therefore, the payment by the Systems [governmental plans] to the Chapter 13 trustees is not a violation of the exclusive benefit rule of section 401(a)(2).

In summary, the key elements of the PLR were that the plans involved were governmental plans, the debt repayment plans were voluntary, the member had a liability that was being satisfied, and there was a judicial process and supervision for the payments.

By its terms a PLR only binds the IRS with respect to the recipient of the ruling. The IRS can "change its mind" when presented with a subsequent ruling request. However, it is reasonable to review PLRs to determine how the IRS might analyze a similar situation.

Assignment and Alienation of Benefits (IRC Section 401(a)(13) and Treas. Reg. Section 1.401(a)-13)

With respect to non-governmental plans, the IRC also provides that benefits under a qualified plan cannot be assigned or alienated, except in limited circumstances. See IRC Section 401(a)(13). Even though IRC Section 401(a)(13) does not apply to governmental plans, we believe that it is reasonable for governmental plans, such as the Washington State plans, to allow for assignment and alienation under the provisions of IRC Section 401(a)(13).

Assignment and alienation of benefits from a qualified plan are specifically allowed by IRC Section 401(a)(13) in the following circumstances:

1. Voluntary and revocable assignments by the benefit recipient not to exceed 10% of the benefit payment.
2. Plan loan repayments.

3. Qualified domestic relations orders (discussed below)
4. A benefit offset payable to the plan if the offset is the result of a conviction of a crime involving the plan.
5. A benefit offset payable to the plan if the offset is the result of civil judgment for certain violations of ERISA.

Treasury Regulation Section 1.401(a)-13 provides additional exceptions for:

1. The enforcement of a Federal tax levy under IRC Section 6331.
2. The collection by the United States on a judgment resulting from an unpaid tax assessment.
3. Any arrangement for the withholding of Federal, State or local tax from plan benefits.
4. Any arrangement for the recovery by the plan of overpayments of benefits previously made to a participant.
5. Any arrangement for the transfer of benefit rights from the plan to another plan.
6. Any arrangement for the direct deposit of benefit payments to an account in a bank, savings and loan association or credit union, provided such arrangement is not part of an arrangement constituting an assignment or alienation.
7. Voluntary arrangements where the third party recipient files an acknowledgement that the party has no enforceable right to the funds.

In interpreting IRC Section 401(a)(13), the IRS issued PLR 200426027 to specifically approve payment of a fine or criminal restitution to the United States government when ordered to do so pursuant to an order of garnishment obtained pursuant to 18 U.S.C. Section 3613, the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. Sections 3001-3008 ("FDCPA") and the Mandatory Victims Restitution Act, 18 U.S.C. Section 3613(c). The PLR primarily addressed the treatment of court orders for U.S. fines and criminal restitution for the U.S. government, private parties and non-federal governments (*i.e.*, states, municipalities, counties, *etc.*) The IRS specifically stated that, if the garnishment occurred due to a federal court order based on the FDCPA, then it did not matter who was the ultimate recipient of the benefit dollars. The ruling of the PLR covered IRC Section 401(a)(2) as well as IRC Section 401(a)(13) because the IRS reasoned that the payment satisfies a participant's debt.

Although the PLR is only directly applicable to the entity who requested the ruling, it provides us insight as to how the IRS would react to a plan provision which included restitution-type exceptions to the anti-alienation provision of a retirement plan. Although the PLR dealt with a non-governmental plan, we believe that it is reasonable for a governmental plan to follow the approach that was approved.

September 7, 2012

1/2932141.1

Page 3

Timing of the Garnishment

With regard to a garnishment pursuant to a federal tax levy or criminal restitution, the IRS takes the position that the IRS (or government agency) "steps into the shoes" of the "taxpayer" (in this case the member). This means that the garnishment will not apply until the participant has a right to a distribution under the terms of the plan.

Domestic Relations Orders (IRC Section 414(p))

The IRS recognizes that the payment of qualified domestic relations orders ("QDROs") is a valid exception to the prohibition against assignments and the exclusive benefit rule for a qualified plans. Under IRC Section 414(p)(11), if a governmental plan recognizes domestic relations orders, those are treated as QDROs for these purposes.

Forfeiture

In addition, for purposes of completeness, we note that the IRS has long approved plans that provide for forfeiture of pensions by employees who commit certain crimes, so called "bad-boy" provisions. Rev. Rul. 82. In these situations, the participant forfeits their benefit and nobody else (beneficiary, victim, U.S. government, *etc.*) has any right to any benefit.

Plan Provision

Plan fiduciaries must administer their plan in accordance with its terms. Therefore, even if a garnishment would be permissible as a matter of federal law, the plan must allow the garnishment in order for it to be allowed. In addition, any expansion of garnishment should be evaluated under state law and constitutional provisions. For purposes of this report, we have assumed that the analysis of state law and constitutional provisions will be handled by the Washington Office of the Attorney General.

TAX AND LEGAL IMPLICATIONS FOR EXPANDING GARNISHMENT PROVISIONS

Expansion of Garnishment Provisions Generally

If Washington State garnishment provisions were expanded to include any item listed above, which has been previously approved by the IRS and/or is specifically listed in IRC Section 401(a)(13) or the related Treasury Regulations, that should not adversely affect plan qualification.

Expansion of Garnishment Provisions Specifically When Retiree Has Caused Serious Bodily Injury or Death

This expansion would raise issues under the exclusive benefit rule (IRC Section 401(a)(2)) unless the garnishment were consistent with PLR 842614 – it was voluntary, it was in payment of a retiree's liability, and it was determined in accordance with a judicial-type procedure and was supervised.

September 7, 2012

1/2932141.1

Page 4

However, if the garnishment were the result of a federal action and if it fell within the parameters of PLR 200426027, then we would also believe that the garnishment would not affect plan qualification.

IRS Approval of Garnishment

In the case of a proposed garnishment that did not fit within the IRC, Treasury Regulations, or the PLRs described above, the implementation of the garnishment change should be made contingent on receipt of IRS approval.

IMPLEMENTATION OF A GARNISHMENT

Timing and Prerequisites

As noted above, the IRS takes the position that a garnishment can only be applied when the participant is eligible for a distribution. This means that the garnishment cannot effectuate a distribution election on behalf to the participant but is subject to the terms of the plan, *e.g.*, pertaining to spousal consent, to the same extent as the participant.

Taxation

IRC Section 72(t) imposes a 10% premature distribution penalty on certain distributions that occur before a participant is 59 ½. That penalty will not apply to a periodic payment (after a separation from service), to a lump sum distribution if the member separated during the calendar year in which he/she turns 55 (age 50 for public safety), to a QDRO, or to a tax levy, criminal restitution, or a fine.

If the garnishment were made against a distribution that would otherwise be an eligible rollover distribution, the 20% mandatory withholding under IRC Section 3405(c)(1) applies. This would include a garnishment of a lump sum. A garnishment of a periodic payment would not be subject to mandatory withholding.

Circular 230 Disclosure: Except to the extent that this advice concerns the qualification of any qualified plan, to ensure compliance with recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing, or recommending to another party any tax-related matters addressed herein.

APPENDIX C – SENATE GARNISHMENT BILL – SB 6076

S-2245.1

SENATE BILL 6076

State of Washington 64th Legislature 2015 Regular Session

By Senators Bailey, Litzow, Benton, Baumgartner, Sheldon, Becker, Schoesler, Angel, Miloscia, Honeyford, Braun, and Fain

Read first time 03/04/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to garnishing public pensions to pay for the
2 costs of incarceration of a public employee convicted of a felony for
3 misconduct associated with such person's service as a public
4 employee; amending RCW 41.26.053, 41.32.052, 41.34.080, 41.35.100,
5 41.37.090, 41.40.052, and 43.43.310; prescribing penalties; providing
6 an effective date; and declaring an emergency.

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

8 **Sec. 1.** RCW 41.26.053 and 2012 c 159 s 21 are each amended to
9 read as follows:

10 (1) Subject to subsections (2) and (3) of this section, the right
11 of a person to a retirement allowance, disability allowance, or death
12 benefit, to the return of accumulated contributions, the retirement,
13 disability or death allowance itself, any optional benefit, any other
14 right accrued or accruing to any person under the provisions of this
15 chapter, and the moneys in the fund created under this chapter, are
16 hereby exempt from any state, county, municipal, or other local tax
17 and shall not be subject to execution, garnishment, attachment, the
18 operation of bankruptcy or insolvency laws, or any other process of
19 law whatsoever, whether the same be in actual possession of the
20 person or be deposited or loaned and shall be unassignable.

1 (2) On the written request of any person eligible to receive
2 benefits under this section, the department may deduct from such
3 payments the premiums for life, health, or other insurance. The
4 request on behalf of any child or children shall be made by the legal
5 guardian of such child or children. The department may provide for
6 such persons one or more plans of group insurance, through contracts
7 with regularly constituted insurance carriers or health care service
8 contractors.

9 (3) Subsection (1) of this section shall not prohibit the
10 department from complying with (a) a wage assignment order for child
11 support issued pursuant to chapter 26.18 RCW, (b) an order to
12 withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a
13 notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a
14 mandatory benefits assignment order issued by the department, (e) a
15 court order directing the department of retirement systems to pay
16 benefits directly to an obligee under a dissolution order as defined
17 in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and
18 41.50.700, ~~((or))~~ (f) any administrative or court order expressly
19 authorized by federal law, or (g) an order to garnish up to fifty
20 percent of the gross monthly benefit for costs of incarceration,
21 probation, parole, or restitution imposed on such member, former
22 member, or retiree as a result of a conviction of or a plea of guilty
23 or nolo contendere to the commission of a felony for misconduct
24 associated with such person's service as a public employee for which
25 credit in the plan was earned or accrued, for felonies committed on
26 or after July 1, 2015.

27 **Sec. 2.** RCW 41.32.052 and 2012 c 159 s 20 are each amended to
28 read as follows:

29 (1) Subject to subsections (2) and (3) of this section, the right
30 of a person to a pension, an annuity, a retirement allowance, or
31 disability allowance, to the return of contributions, any optional
32 benefit or death benefit, any other right accrued or accruing to any
33 person under the provisions of this chapter and the moneys in the
34 various funds created by this chapter shall be unassignable, and are
35 hereby exempt from any state, county, municipal or other local tax,
36 and shall not be subject to execution, garnishment, attachment, the
37 operation of bankruptcy or insolvency laws, or other process of law
38 whatsoever whether the same be in actual possession of the person or
39 be deposited or loaned.

1 (2) This section shall not be deemed to prohibit a beneficiary of
2 a retirement allowance who is eligible:

3 (a) Under RCW 41.05.080 from authorizing monthly deductions
4 therefrom for payment of premiums due on any group insurance policy
5 or plan issued for the benefit of a group comprised of public
6 employees of the state of Washington or its political subdivisions;

7 (b) Under a group health care benefit plan approved pursuant to
8 RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions
9 therefrom, of the amount or amounts of subscription payments,
10 premiums, or contributions to any person, firm, or corporation
11 furnishing or providing medical, surgical, and hospital care or other
12 health care insurance; or

13 (c) Under this system from authorizing monthly deductions
14 therefrom for payment of dues and other membership fees to any
15 retirement association composed of retired teachers and/or public
16 employees pursuant to a written agreement between the director and
17 the retirement association.

18 Deductions under (a) and (b) of this subsection shall be made in
19 accordance with rules that may be adopted by the director.

20 (3) Subsection (1) of this section shall not prohibit the
21 department from complying with (a) a wage assignment order for child
22 support issued pursuant to chapter 26.18 RCW, (b) an order to
23 withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a
24 notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a
25 mandatory benefits assignment order issued by the department, (e) a
26 court order directing the department of retirement systems to pay
27 benefits directly to an obligee under a dissolution order as defined
28 in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and
29 41.50.700, ~~((or))~~ (f) any administrative or court order expressly
30 authorized by federal law, or (g) an order to garnish up to fifty
31 percent of the gross monthly benefit for costs of incarceration,
32 probation, parole, or restitution imposed on such member, former
33 member, or retiree as a result of a conviction of or a plea of guilty
34 or nolo contendere to the commission of a felony for misconduct
35 associated with such person's service as a public employee for which
36 credit in the plan was earned or accrued, for felonies committed on
37 or after July 1, 2015.

38 **Sec. 3.** RCW 41.34.080 and 2012 c 159 s 23 are each amended to
39 read as follows:

1 (1) Subject to subsections (2) and (3) of this section, the right
2 of a person to a pension, an annuity, a retirement allowance, any
3 optional benefit, any other right accrued or accruing to any person
4 under the provisions of this chapter, and the various funds created
5 by chapter 239, Laws of 1995; chapter 341, Laws of 1998; and chapter
6 247, Laws of 2000 and all moneys and investments and income thereof,
7 is hereby exempt from any state, county, municipal, or other local
8 tax, and shall not be subject to execution, garnishment, attachment,
9 the operation of bankruptcy or insolvency laws, or other process of
10 law whatsoever, whether the same be in actual possession of the
11 person or be deposited or loaned and shall be unassignable.

12 (2) This section shall not be deemed to prohibit a beneficiary of
13 a retirement allowance from authorizing deductions therefrom for
14 payment of premiums due on any group insurance policy or plan issued
15 for the benefit of a group comprised of public employees of the state
16 of Washington or its political subdivisions and that has been
17 approved for deduction in accordance with rules that may be adopted
18 by the state health care authority and/or the department. This
19 section shall not be deemed to prohibit a beneficiary of a retirement
20 allowance from authorizing deductions therefrom for payment of dues
21 and other membership fees to any retirement association or
22 organization the membership of which is composed of retired public
23 employees, if a total of three hundred or more of such retired
24 employees have authorized such deduction for payment to the same
25 retirement association or organization.

26 (3) Subsection (1) of this section shall not prohibit the
27 department from complying with (a) a wage assignment order for child
28 support issued pursuant to chapter 26.18 RCW, (b) an order to
29 withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a
30 notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a
31 mandatory benefits assignment order issued by the department, (e) a
32 court order directing the department to pay benefits directly to an
33 obligee under a dissolution order as defined in RCW 41.50.500(3)
34 which fully complies with RCW 41.50.670 and 41.50.700, ~~((or))~~ (f) any
35 administrative or court order expressly authorized by federal law, or
36 (g) an order to garnish up to fifty percent of the gross payment for
37 costs of incarceration, probation, parole, or restitution imposed on
38 such member, former member, or retiree as a result of a conviction of
39 or a plea of guilty or nolo contendere to the commission of a felony
40 for misconduct associated with such person's service as a public

1 employee for which credit in the plan was earned or accrued, for
2 felonies committed on or after July 1, 2015.

3 **Sec. 4.** RCW 41.35.100 and 2012 c 159 s 24 are each amended to
4 read as follows:

5 (1) Subject to subsections (2) and (3) of this section, the right
6 of a person to a pension, an annuity, or retirement allowance, any
7 optional benefit, any other right accrued or accruing to any person
8 under the provisions of this chapter, the various funds created by
9 this chapter, and all moneys and investments and income thereof, are
10 hereby exempt from any state, county, municipal, or other local tax,
11 and shall not be subject to execution, garnishment, attachment, the
12 operation of bankruptcy or insolvency laws, or other process of law
13 whatsoever, whether the same be in actual possession of the person or
14 be deposited or loaned and shall be unassignable.

15 (2) This section does not prohibit a beneficiary of a retirement
16 allowance from authorizing deductions therefrom for payment of
17 premiums due on any group insurance policy or plan issued for the
18 benefit of a group comprised of public employees of the state of
19 Washington or its political subdivisions and which has been approved
20 for deduction in accordance with rules that may be adopted by the
21 state health care authority and/or the department. This section also
22 does not prohibit a beneficiary of a retirement allowance from
23 authorizing deductions therefrom for payment of dues and other
24 membership fees to any retirement association or organization the
25 membership of which is composed of retired public employees, if a
26 total of three hundred or more of such retired employees have
27 authorized such deduction for payment to the same retirement
28 association or organization.

29 (3) Subsection (1) of this section does not prohibit the
30 department from complying with (a) a wage assignment order for child
31 support issued pursuant to chapter 26.18 RCW, (b) an order to
32 withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a
33 notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a
34 mandatory benefits assignment order issued by the department, (e) a
35 court order directing the department of retirement systems to pay
36 benefits directly to an obligee under a dissolution order as defined
37 in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and
38 41.50.700, ~~((or))~~ (f) any administrative or court order expressly
39 authorized by federal law, or (g) an order to garnish up to fifty

1 percent of the gross monthly benefit for costs of incarceration,
2 probation, parole, or restitution imposed on such member, former
3 member, or retiree as a result of a conviction of or a plea of guilty
4 or nolo contendere to the commission of a felony for misconduct
5 associated with such person's service as a public employee for which
6 credit in the plan was earned or accrued, for felonies committed on
7 or after July 1, 2015.

8 **Sec. 5.** RCW 41.37.090 and 2012 c 159 s 25 are each amended to
9 read as follows:

10 (1) Subject to subsections (2) and (3) of this section, the right
11 of a person to a pension, an annuity, or retirement allowance, any
12 optional benefit, any other right accrued or accruing to any person
13 under this chapter, the various funds created by this chapter, and
14 all moneys and investments and income thereof, are hereby exempt from
15 any state, county, municipal, or other local tax, and shall not be
16 subject to execution, garnishment, attachment, the operation of
17 bankruptcy or insolvency laws, or other process of law whatsoever,
18 whether the same be in actual possession of the person or be
19 deposited or loaned and shall be unassignable.

20 (2) This section does not prohibit a beneficiary of a retirement
21 allowance from authorizing deductions therefrom for payment of
22 premiums due on any group insurance policy or plan issued for the
23 benefit of a group comprised of public employees of the state of
24 Washington or its political subdivisions and which has been approved
25 for deduction in accordance with rules that may be adopted by the
26 state health care authority and/or the department. This section also
27 does not prohibit a beneficiary of a retirement allowance from
28 authorizing deductions therefrom for payment of dues and other
29 membership fees to any retirement association or organization the
30 membership of which is composed of retired public employees, if a
31 total of three hundred or more retired employees have authorized the
32 deduction for payment to the same retirement association or
33 organization.

34 (3) Subsection (1) of this section does not prohibit the
35 department from complying with (a) a wage assignment order for child
36 support issued pursuant to chapter 26.18 RCW, (b) an order to
37 withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a
38 notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a
39 mandatory benefits assignment order issued by the department, (e) a

1 court order directing the department to pay benefits directly to an
2 obligee under a dissolution order as defined in RCW 41.50.500(3)
3 which fully complies with RCW 41.50.670 and 41.50.700, ~~((e+))~~ (f) any
4 administrative or court order expressly authorized by federal law, or
5 (g) an order to garnish up to fifty percent of the gross monthly
6 benefit for costs of incarceration, probation, parole, or restitution
7 imposed on such member, former member, or retiree as a result of a
8 conviction of or a plea of guilty or nolo contendere to the
9 commission of a felony for misconduct associated with such person's
10 service as a public employee for which credit in the plan was earned
11 or accrued, for felonies committed on or after July 1, 2015.

12 **Sec. 6.** RCW 41.40.052 and 2012 c 159 s 26 are each amended to
13 read as follows:

14 (1) Subject to subsections (2) and (3) of this section, the right
15 of a person to a pension, an annuity, or retirement allowance, any
16 optional benefit, any other right accrued or accruing to any person
17 under the provisions of this chapter, the various funds created by
18 this chapter, and all moneys and investments and income thereof, are
19 hereby exempt from any state, county, municipal, or other local tax,
20 and shall not be subject to execution, garnishment, attachment, the
21 operation of bankruptcy or insolvency laws, or other process of law
22 whatsoever, whether the same be in actual possession of the person or
23 be deposited or loaned and shall be unassignable.

24 (2)(a) This section shall not be deemed to prohibit a beneficiary
25 of a retirement allowance from authorizing deductions therefrom for
26 payment of premiums due on any group insurance policy or plan issued
27 for the benefit of a group comprised of public employees of the state
28 of Washington or its political subdivisions and which has been
29 approved for deduction in accordance with rules that may be adopted
30 by the state health care authority and/or the department, and this
31 section shall not be deemed to prohibit a beneficiary of a retirement
32 allowance from authorizing deductions therefrom for payment of dues
33 and other membership fees to any retirement association or
34 organization the membership of which is composed of retired public
35 employees, if a total of three hundred or more of such retired
36 employees have authorized such deduction for payment to the same
37 retirement association or organization.

38 (b) This section does not prohibit a beneficiary of a retirement
39 allowance from authorizing deductions from that allowance for

1 charitable purposes on the same terms as employees and public
2 officers under RCW 41.04.035 and 41.04.036.

3 (3) Subsection (1) of this section shall not prohibit the
4 department from complying with (a) a wage assignment order for child
5 support issued pursuant to chapter 26.18 RCW, (b) an order to
6 withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a
7 notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a
8 mandatory benefits assignment order issued by the department, (e) a
9 court order directing the department of retirement systems to pay
10 benefits directly to an obligee under a dissolution order as defined
11 in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and
12 41.50.700, ~~((or))~~ (f) any administrative or court order expressly
13 authorized by federal law, or (g) an order to garnish up to fifty
14 percent of the gross monthly benefit for costs of incarceration,
15 probation, parole, or restitution imposed on such member, former
16 member, or retiree as a result of a conviction of or a plea of guilty
17 or nolo contendere to the commission of a felony for misconduct
18 associated with such person's service as a public employee for which
19 credit in the plan was earned or accrued, for felonies committed on
20 or after July 1, 2015.

21 **Sec. 7.** RCW 43.43.310 and 2012 c 159 s 28 are each amended to
22 read as follows:

23 (1) Except as provided in subsections (2) and (3) of this
24 section, the right of any person to a retirement allowance or
25 optional retirement allowance under the provisions hereof and all
26 moneys and investments and income thereof are exempt from any state,
27 county, municipal, or other local tax and shall not be subject to
28 execution, garnishment, attachment, the operation of bankruptcy or
29 the insolvency laws, or other processes of law whatsoever, whether
30 the same be in actual possession of the person or be deposited or
31 loaned and shall be unassignable except as herein specifically
32 provided.

33 (2) Subsection (1) of this section shall not prohibit the
34 department of retirement systems from complying with (a) a wage
35 assignment order for child support issued pursuant to chapter 26.18
36 RCW, (b) an order to withhold and deliver issued pursuant to chapter
37 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW
38 26.23.060, (d) a mandatory benefits assignment order issued pursuant
39 to chapter 41.50 RCW, (e) a court order directing the department of

1 retirement systems to pay benefits directly to an obligee under a
2 dissolution order as defined in RCW 41.50.500(3) which fully complies
3 with RCW 41.50.670 and 41.50.700, ~~((e+))~~ (f) any administrative or
4 court order expressly authorized by federal law, or (g) an order to
5 garnish up to fifty percent of the gross monthly benefit for costs of
6 incarceration, probation, parole, or restitution imposed on such
7 member, former member, or retiree as a result of a conviction of or a
8 plea of guilty or nolo contendere to the commission of a felony for
9 misconduct associated with such person's service as a public employee
10 for which credit in the plan was earned or accrued, for felonies
11 committed on or after July 1, 2015.

12 (3) Subsection (1) of this section shall not be deemed to
13 prohibit a beneficiary of a retirement allowance from authorizing
14 deductions therefrom for payment of premiums due on any group
15 insurance policy or plan issued for the benefit of a group comprised
16 of members of the Washington state patrol or other public employees
17 of the state of Washington, or for contributions to the Washington
18 state patrol memorial foundation.

19 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of
21 the state government and its existing public institutions, and takes
22 effect July 1, 2015.

--- END ---

State spends millions on convicted teachers retirements

They were supposed to teach our kids, but instead many of these teachers victimized them. Now they're retired and getting monthly checks with the help of your tax dollars. Danielle Leigh reports.

Danielle Leigh, KING 5 News 7:49 p.m. PST February 23, 2015

In Washington, public employees who commit a crime don't lose their taxpayer guaranteed retirements, and teachers can earn the right to a lifetime retirement after working for as little as five years.



In Washington, public employees who commit a crime don't lose their taxpayer guaranteed retirements, and teachers can earn the right to a lifetime retirement after working for as little as five years.

KING 5 asked the state for a list of all the teachers who have had their Washington teaching license revoked and compared that list to a list of all the public employees receiving a pension.

The state has multiple retirement plans for teachers. Two of them would be considered a traditional pension plan, the third includes a private component. KING 5 only focused on the first two.

That led to a list of 22 teachers, most who had been convicted of crimes against children, who together have received about \$5.1 million above their own retirement contributions, interest included as of the end of 2014.

Convicted Teachers Receiving Pension Benefits

Name	Monthly	Contributions & Interest	Received	Difference
Malone, Jeanell M	\$1,242.30	\$74,991.63	\$108,274.37	\$33,282.74
Figley, Craig	\$3,111.99	\$177,693.84	\$214,577.72	\$36,883.88
Bone, William A	\$387.19	\$5,488.59	\$81,329.69	\$75,841.10
Maib, Kevin	\$2,175.69	\$112,193.11	\$218,772.58	\$106,579.47
Ball, John T	\$1,372.66	\$129,285.24	\$256,863.06	\$127,577.82
Castillo, Alfredo	\$577.80	\$20,288.71	\$156,429.79	\$136,141.08
Stiltner, Kirk Forrest	\$3,083.80	\$141,670.92	\$284,632.16	\$142,961.24
Carrera, Ruben	\$3,244.83	\$144,284.19	\$301,313.46	\$157,029.27
Gordon, Douglas E	\$1,760.16	\$92,599.20	\$262,471.94	\$169,872.74
Loftus, Christopher	\$1,765.69	\$93,634.56	\$281,168.82	\$187,534.26
McDonald, Alan D	\$2,782.30	\$192,853.05	\$393,178.65	\$200,325.60
Hill, Laurence E "Shayne"	\$2,629.35	\$125,902.87	\$334,471.03	\$208,568.16
Deming, James Randolph	\$2,936.99	\$115,356.85	\$347,391.46	\$232,034.61
Stritmatter, Ande R	\$2,056.35	\$108,626.86	\$431,804.48	\$323,177.62
Anderson, David Lloyd	\$2,042.05	\$97,249.05	\$449,280.15	\$352,031.10
Mainger, Roy W	\$1,979.23	\$96,885.18	\$451,924.68	\$355,039.50
Altheide, Jerome B	\$1,913.59	\$105,952.83	\$462,685.73	\$356,732.90
Pierson, Larry	\$3,539.41	\$130,627.14	\$488,438.58	\$357,811.44
Norman Standley	\$2,042.29	\$85,055.36	\$455,932.72	\$370,877.36
Ellwanger, Charles	\$1,532.25	\$24,213.10	\$426,010.78	\$401,797.68
Stacy, Kenneth	\$2,164.95	\$104,560.02	\$508,168.12	\$403,608.10
Pickerel, William B	\$3,086.60	\$114,971.38	\$571,878.63	\$456,907.25

That's about \$236,027.95 on average per person.

The list includes people like Norman Standley, David Lloyd Anderson, William Pickerel, Ruben Carrera, Alfredo Castillo and Ande Stritmatter, who were all found guilty of child molestation, Larry Pierson who was found guilty of assault with sexual motivation, Craig Figley who is serving a life sentence for molesting children and Christopher Loftus who was convicted of child rape.

In one specific example, KING 5 looked at the records for Laurence "Shayne" Hill. Hill was convicted on multiple counts of child molestation in King County in 2005 after he admitted to molesting his 10-year-old and 11-year-old students.

By the end of last year, Hill had received about \$334,471.03 from the state retirement system; just over \$208,568.16 was money above and beyond what Hill contributed into his own retirement, interest included.

"What! It's that gut reaction of, 'Oh, my gosh!' This person is in prison for this and they are receiving several thousand dollars a month? What?!" exclaimed Anne Marie Gurney, a researcher with the Freedom Foundation, a conservative policy group in Washington state.

Gurney contacted KING 5 with concerns about the state's pension laws.

"To a certain degree, we need to protect our taxpayers," Gurney said.

At least 25 states, including Alaska, California, and Arizona, have pension forfeiture laws, in other words public employees and/or elected officials convicted of a crime lose at least some aspect of their taxpayer funded retirements.

Washington does not have a pension forfeiture law.

"I really think that probably it has never really come to the surface," said State Senator Barbara Bailey, R-Oak Harbor.

Bailey is the chair of the Select Committee on Pension Policy.

"I would agree, you know some things are so egregious you really can't understand how these things can happen," Bailey said regarding teachers who have committed crimes against children and are still receiving a pension.

Bailey said she'd consider whether public employees who commit a crime should be required to forfeit a portion of their pension, for instance to help pay for incarceration costs.

"I think that is only fair, and I think taxpayers would agree," Bailey said.

Rep. Timm Ormsby, D-Spokane, said he would be open to considering some kind of pension forfeiture law for future hires, but he would want to make sure whatever penalty was imposed only negatively impacted the person who committed the crime and not his or her dependents.

"I would fight it," said Kit Raney, President of the Washington Teacher's Association-Retired. She represents the interests of retired teachers.

"So, this is just pure noise and a non-issue as far as I'm concerned," Raney said.

Raney said she doesn't believe teachers should lose their pensions under any circumstance.

"If a worker commits a crime, it is handled by the legal system. The trial, the conviction is part of the legal system. It is totally separate from the pension system, which they contributed to and earned throughout their career. It's apples and oranges," Raney said.

Raney accused the Freedom Foundation of being anti-teacher and anti-pension.

Gurney said the issue is not teachers or their pensions, but creating the legal room for taxpayers to have a choice.

"I think taxpayers should have a choice if they are going to fund the pension of hardened criminals," Gurney said.

Any new legislation would be met with by lot of resistance.

For now, Senator Bailey said she's studying her options and the earliest she would propose a bill would be next year.



Pension Garnishment

Initial Consideration
July 22, 2015

Overview

- **Interest in garnishing or forfeiting public pensions of convicted public employees arises periodically**
- **Most recent interest**
 - Evergreen Freedom Foundation Press Release
 - King 5 story [[Video](#)]

Issue

- **Should additional exceptions be made to the general prohibition against pension garnishment?**

Policy Against Garnishment

- **LEOFF Plan 2 pensions are generally exempt from garnishment or “...any process of law whatsoever.”**
 - All Washington public plans have similar provision
 - IRS requirement
 - ERISA requirement
- **Consistent with policy: “...ensure benefits actually reach the beneficiary.”**
 - Purpose in LEOFF is to “provide for employees and their dependents.”

Recent Court and Legislative Action

- **Anthis v. Copland (2012):**
 - Horrific facts
 - Washington Supreme Court allowed garnishing bank account
 - Legislature reversed decision

Exceptions

- **Anti-alienation statute allows partial garnishment for:**
 - Child support
 - Division of community property
 - Federal Court orders, i.e. tax liens
- **Consistent with policy to use LEOFF pension to provide for dependents**

Garnishment for Restitution

- **Criminal code allows pension garnishment for:**
 - Costs of incarceration
 - Restitution for bodily injury
 - Restitution for loss of property;
 - Support of the victim of child rape if the victim becomes pregnant
 - Any case where the victim is entitled to compensation under the crime victim's compensation act, chapter 7.68 RCW

Garnishment for Restitution

- Possible ambiguity in interaction of criminal statute (RCW 9.94A.753) with LEOFF anti-alienation statute (RCW 41.26.053) – neither cross-references the other

Recent Legislative Action

- **Following Anthis, the Governor asked SCPP to study other options allowing garnishment**
- **SCPP studied issue**
- **Tax Counsel advice:**
 - IRS authorizes garnishing pensions to pay federally ordered fines or restitution
 - Tax counsel advised IRS would probably not object to similar garnishment provisions in state law

Recent Legislative Action

- **SB 6076**
 - Allows garnishment of up to 50% of pension for convicted retiree
 - Limited to restitution for costs of incarceration
 - Limited to convictions on or after July 1, 2015
 - Public hearing, but no vote

Options

- **Clarify interaction of Chapter 9.94A and the LEOFF Act**
- **Consider amending LEOFF anti-alienation statute to include more exceptions**
- **Take no action at this time**

Questions?

Contact:

Paul Neal

Senior Research and Policy Manager

(360) 586-2327

paul.neal@leoff.wa.gov