Alternate Revenue
Preliminary Report Follow-Up

LEOFF Plan 2 Retirement Board

September 24, 2008

Overview

- Issue Description
- 2008 Alternate Revenue Legislation
- Other Revenue Sources

Issue Description

- Identifying alternate revenue sources for funding benefit improvements identified as a key tactic in the Board's strategic plan for achieving the priority goals of enhancing benefits for the members and maintaining the financial integrity of the plan.

2008 Alternate Revenue Legislation

- Biennial Appropriation
  - Split between local gov't and LEOFF Plan 2
- Subject to increases in state revenue
  - 5% increase over previous biennium
- Revenue stream "phased-in" 2011-2017
  - Scheduled amounts 2011, 2013, 2015
  - Reaches maximum level in 2017
  - Lesser of $50 million or 1/3rd of revenue increase (split between L2 and Local Gov)

2008 Alternate Revenue Legislation

- Sub-Account created in LEOFF Plan 2 pension fund
  - “LEOFF Benefit Improvement Account”
  - Funds not included in plan assets until directed by Board

Other Revenue Sources

- Red Light Cameras
- Wireless (Cell) Phones

Red Light Cameras

- Traffic photo enforcement authorized in 2005

- Current Revenue Uses
  - Vendor and Equipment Fees
  - Increased administration
  - Local General Fund

Red Light Cameras

- Initiative 985 - Reduce Traffic Congestion
- “revenues that would otherwise be deposited in city or county general funds from fines for violations caught by automated (“red light”) cameras.”
- I-985 Fiscal Impact Study (OFM)
  - $39.8 million for fiscal years 2009 to 2013

Cell Phone Charges/Taxes

- Wireless subscribers 262.7 million
  - 84% of the total U.S. population
- Total annualized wireless revenues $143.7 billion
- Washington State has the second highest fees and taxes in the country at 20.62%

Cell Phone Charges/Taxes

- Public Concern
- Legal Issues
- Federal Legislation

Alternate Revenue

QUESTIONS?

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

Alternate Revenue Source

Preliminary Report Follow-Up

September 24, 2008

1. Issue Description

Identifying alternate revenue sources for funding benefit improvements identified as a key tactic in the Board's strategic plan for achieving the priority goals of enhancing benefits for the members and maintaining the financial integrity of the plan.

2. Staff

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4. Members Impacted

Alternate Revenue Source potentially impacts all members and retirees of LEOFF Plan 2. As of September 30, 2006 there were 15,718 active members and 779 retirees as reported in the Office of the State Actuary's 2006 LEOFF Plan 2 Actuarial Valuation Report.

5. Current Situation

LEOFF Plan 2 has three sources of revenue: contributions, investment earnings, and appropriations into the LEOFF Benefits Improvement Account as provided in the 2008 Alternate Revenue legislation recommended by the Board and passed by the Legislature.

6. Background Information and Policy Issues

Alternate Revenue Legislation Summary

The 2008 Legislature passed Engrossed Substitute Senate Bill 6573 providing additional revenue to LEOFF Plan 2 for benefit improvements and to local government for defined public safety purposes.

Beginning in 2011, and by September 30 of odd-numbered years in each subsequent fiscal biennium in which general state revenue collections increase by more than 5 percent from the prior fiscal biennium, the State Treasurer shall transfer, subject to appropriation, funds for transfer to a new Local Public Safety Enhancement Account (LPSEA). The amounts that may be transferred to the LPSEA are shown in the following schedule:

- $5 million for 2011
- $10 million in 2013
- $20 million in 2015
- $50 million in 2017

In subsequent fiscal biennium, the amount eligible for transfer is the lesser of one-third of the general revenue increase amount or $50 million. General state revenues mean total revenues to the General Fund-State less state revenues from property taxes.

Half of the funds moved to the LPSEA are to be transferred to a new Law Enforcement Officers' and Fire Fighters' Retirement System Benefits Improvement Account (Benefits Improvement Account) created within the LEOFF 2 Retirement Fund. Using the schedule above, the amounts that could be transferred to the Benefits Improvement Account if the revenue trigger is reached are: $2.5 million for 2011; $5 million in 2013; $10 million in 2015; $25 million in 2017; and in subsequent fiscal biennium the lesser of half of one-third of the general revenue increase amount or half of the $50 million.

Money transferred to the Benefits Improvement Account can only be used to fund benefits adopted by the Legislature. The cost of financing a benefit on an actuarial present value of fully projected benefits is calculated by the State Actuary and if the present value of filing projected revenue to the Account is sufficient to meet the new and existing obligations of the Account, then it may be funded from the Account.

The State Investment Board (SIB) is authorized to adopt investment policies and invest the money in the Benefits Improvement Account.

The Board has the sole authority to authorize disbursements from the Benefits Improvement Account, and to establish all other policies relating to the Benefits Improvement Account, which must be administered in an actuarially sound manner. Funds in the Benefits Improvement Account may not be considered assets of the plan and are not included in contribution rate calculations by the State Actuary until so directed by the Board for purposes of financing benefits adopted by the Board. The LEOFF 2 Board is required to include sufficient funds from the Account in the LEOFF 2 Fund to meet benefit obligations within 90 days of the fund's transfer into the Account.

The State Treasurer is responsible for the distribution of the remaining funds in the LPSEA to local governments. Each jurisdiction's allocation is proportionate to the share of LEOFF Plan 2 membership that it employs. In the event that two jurisdictions have a contract for the provision of law enforcement or fire protection services, the two parties must agree on a revenue sharing arrangement before funds will be distributed. The LPSEA funds may only be used for the purposes of enhancement of criminal justice services, information and assistance programs for families of at risk or runaway youth, or other public safety purposes, and may not supplant existing expenditures by local jurisdictions for those purposes.

Additional Revenue Streams

As passed, the legislation provides for biennial appropriations (instead of annual) and takes a "phased-in" approach to the revenue stream where specified appropriations would be made starting in 2011 and in each subsequent biennium if the revenue trigger is achieved. The maximum amount allowed to be transferred under the revenue stream would be reached by the 2017-19 biennium.

Although the benefit improvement account may only accrue $42.5 million plus earnings between 2011 and 2017, the long term projected revenue and earnings could be significant. Ideas for additional revenue sources that could supplement the legislative appropriation from the alternate revenue legislation have been suggested. Two of the potential sources include revenues from red light cameras and cell phone taxes/charges. Following is background information regarding each of the potential revenue sources.

Red light Camera Revenues

Under current law (RCW 46.63.170), an Automated Traffic Safety Program (ATSP), commonly known as red light photo enforcement, is designed to enable cities to issue traffic infractions when stoplight, railroad crossing, or school speed zone violations occur. Fines are set through the city ordinance process as required under current law. Net revenues are deposited into a city's general fund budget or are earmarked for expressed transportation safety-related purposes.

Prior to 2005 there was no express statutory authority allowing local governments to use automated traffic enforcement systems such as photo radar, photo devices at stop lights, and photo devices at railroad crossings. However, in 2004 the legislature allowed for the use of photo enforcement systems to deter toll collection evasion. Additionally, the state transportation budgets for the 2001-03 and 2003-05 fiscal biennia contained provisos establishing pilot projects, to be monitored by the Washington Traffic Safety Commission, utilizing traffic safety cameras.

Following the pilot project, automated traffic safety cameras were authorized during the 2005 legislative session[1] to detect stoplight, railroad crossing or school speed violations. Infractions detected through the use of this equipment must be processed in the same manner as parking infractions and are not part of the registered owners' driving record.

City treasurers are currently required to remit monthly to the State Treasurer 32 percent of the noninterest money received from penalties, fines, bail forfeitures, fees and costs for violations of municipal or town ordinances, together with any other noninterest revenues received by the clerk. Such funds are deposited by the State Treasurer into the Public Safety and Education Account (PSEA). The 32 percent remittance does not include monies received for parking infractions. According to the Administrator for the Courts who administers the PSEA, the local jurisdictions are not required to remit moneys from photo enforcement tickets.

Initiative 985 (I-985) submitted by Tim Eyman is expected to be placed on the November 2008 ballot. The title of this initiative is the “Reduce Traffic Congestion Initiative”. The funding for the programs introduced by the initiative would come from four sources, one of which is “revenues that would otherwise be deposited in city or county general funds from fines for violations caught by automated (“red light”) cameras.”[2]

The Office of Financial Management prepared a fiscal impact statement for I-985. The revenue assumptions in the I-985 fiscal impact statement estimate the revenue from red light traffic cameras for fiscal years 2009 to 2013 to be almost $40 million.

I-985 Revenue Assumptions

Estimated Revenue Deposited into the Reduce Traffic Congestion Account Fiscal Year 2009 to 2013				
	Biennium			
	2007-09	**2009-11**	**20011-13**	**Total**
Red Light Traffic Cameras	**$ 13,043,998**	**$ 13,383,998**	**$ 13,383,998**	**$ 39,811,994**
Transportation-Related Public Works Projects	0	4,921,505	3,895,273	8,816,778
Sales and Use Taxes on Motor Vehicles	52,453,000	237,965,000	283,526,000	573,944,000
Toll Revenues	0	0	0	0
Total Revenue	**$ 65,496,998**	**$ 256,270,503**	**$ 300,805,271**	**$ 622,572,772**

Source: Fiscal Impact Statement for Initiative 985, http://www.ofm.wa.gov/initiatives/985.asp viewed 9/12/08

According to the Fiscal Impact Statement, the red light camera revenue estimate was based on the assumption that no counties and 12 cities have automated traffic safety camera programs. This information was reported to have come from an Association of Washington

[1] RCW 46.63.170

[2] Municipal Research Services Center, Budget Suggestions for 2009 Information Bulletin No. 531, August 2008

Cities survey of its participating members. Information from photoenforced.com, which manages a nationwide database of red light camera and speed camera locations and fines, indicates that there are 20 cities in Washington State that utilize red light cameras.

Automated traffic photo enforcement has been subject to various forms of public criticism. One common criticism from opponents is that the red light cameras only about generating revenue for municipalities rather than about improving safety. At the same time, I-985 has been criticized with respect to red light cameras as a revenue source because it takes away revenue from municipalities that might be used for enhanced police services or increased traffic enforcement.

Cell Phone Taxes/Charges

The U.S. has experienced significant increase in the wireless services industry during the past decade. In a report on Taxes and Regulations by Thomas Lenard and Brent Mast from the The Progress & Freedom Foundation, as of 2001 wireless subscribers in the U.S. exceeded residential wire line telephone subscribers for the first time[3]. According to a report from a wireless industry lobbyist, the number of wireless subscribers mid-year 2008 reached over 262.7 million, or 84 percent of the total U.S. population. Total annualized wireless revenues reached $143.7 billion.[4]

The maturing of the wireless sector has also brought it under increasing scrutiny and pressure, most notably in the area of taxation and regulation according to Lenard and Mast. Historically, telephony is one of the most heavily taxed services and many states and local governments have moved forward to apply similar treatment to wireless. Additionally, wireless has become subject to increasing regulatory mandates which increase individual subscriber costs. Collectively, the various taxes and regulatory costs, and changes thereof, have created a confusing cost landscape with respect to wireless.

Among the federal regulatory mandates assessed are:

- Wireless Local Number Portability, which allows consumers to take their cell phone numbers with them when changing providers;
- Number Pooling, which sets aside numbers for anticipated growth;
- The Communications Assistance for Law Enforcement Act, which requires cell phone companies to modify their equipment to allow law enforcement and national security agencies to eavesdrop on calls;
- Enhanced 911 (E911), which enables 911 dispatchers to know where a cell phone call is coming from.

According to one report, when the costs of federal regulatory mandates are added to local, state, and federal taxes on wireless services, Washington State has the second highest fees

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[3] Lenard, Thomas M. and Mast, Brent D. "Taxes and Regulation: The Effects of Mandates on Wireless Phone Users". The Progress & Freedom . Release 10.18, October 2003.

[4] "Wireless Quick Facts and Figures". CTIA 15 September 2008 http://www.ctia.org/advocacy/research/index.cfm?bPrint=1&showbox=0&AID=10323

and taxes in the country at 20.62%.[5] Comparatively, various reports suggest that the average U.S. wireless customer pays from 15 percent to 16 percent in taxes, fees, and charges on their wireless bill.

Based on various press and industry reports, consumers think they already pay enough in fees and taxes for wireless service. A survey from CTIA, an industry lobbyist, found that consumers equate regulation with driving up prices. Some 83 percent of respondents thought they already pay "too much" or the "right amount" in taxes and fees, and do not want further tax increases. Seventy one percent of respondents said they would be unwilling to support any increase in regulatory fees or taxes. The wireless industry has launched significant legal and public relations campaigns to challenge wireless tax increases by states, counties, or local governments. A newsletter on developments in state and local tax law from Nixon Peabody LLP summarizes the message that the wireless industry is sending to states and localities that might be considering enacting new or addition taxes on wireless telephone service:

> "They don't think it's fair to charge special taxes to cellular subscribers that are used to support general government services provided for all citizens. The carriers have pledged to scrutinize any and all new taxes on wireless service, and to challenge the taxes wherever possible, using all legal means available.

Aware of increasing legal battles[6] over increases in wireless taxes at the state and local level, congress has taken up this issue. In 2007, the "Cell Phone Consumer Empowerment Act of 2007" was introduced; One provision in the bill would prohibit any customer fees not expressly authorized by federal, state, or local governments. Largely, this provision would have restricted wireless providers from adding on mysterious regulatory charges and other junk fees, according to the Consumers Union and Consumer Federation of America. This legislation received a hearing in October 2007 by the Committee on Commerce, Science, and Transportation, but has not moved forward.

This year the "Mobile Wireless Tax Fairness Act of 2008" was introduced in Congress this year. This legislation restricts State and local jurisdictions from imposing any new discriminatory taxes on or with respect to mobile services, mobile service providers, or mobile service property for a 5 year period from the enactment of the legislation. According to Senator Olympia Snowe (R-ME), one of the bills prime sponsors, the intent of the legislation is to end excessive and discriminatory taxes that discourage wireless use by low income individuals and families and to equalize the taxation of the wireless industry with that of other goods and service and protect the wireless consumer from the weight of fees, surcharges, and general business tax.

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[5] Dudley, Brier. "Wireless industry says phone taxes whack Washingtonians". The Seattle Times 9 April 2008. http://www.consumeraffairs.com/news03/cell_regs.html

[6] Baltimore, San Francisco, Los Angeles, and Montgomery County (MD) are the most highly publicized legal battles over increases in wireless tax increases for to generate additional revenue for governments.