

# LEOFF 2 Board Budget Work-session

October 24, 2018

AAG Tor Jernudd Presentation

Statutory Requirements and Legal Issues

# LEOFF 2 Budget Legal Issues

- RCW 41.26 - Statute
- Fiduciary Duties
- Statutory Requirements vs Fiduciary Duties
- Division of Labor between LEOFF 2 & Other Agencies
- Open Government
- Delegation

**Canons of Construction.** The system of basic rules and maxims applied by a court to aid in its interpretation of a written document, such as a statute or contract.

- Several of the Canons are surprisingly logical and could be mistaken for common sense: “The text must be construed as a whole” and “Words are to be understood in their ordinary, everyday meanings”
- Asking the bill’s author or legislator would risk substituting the current intent or interpretation of one individual for the collective intent of the legislative body at the time of passage.

# "PLAN 2 GOVERNANCE"

[41.26.700](#)

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[41.26.904](#)

Effective date—2003 c 2 (Initiative Measure No. 790).

[41.26.906](#)

Effective date—2003 c 92.

[41.26.921](#)

Effective date—1977 ex.s. c 294.

[41.26.922](#)

Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

# RCW 41.26.700

## Overview—Intent.

- The law enforcement officers' and firefighters' retirement system plan 2 **is currently subject to policymaking** by the legislature's joint committee on pension policy with **ratification by the members of the legislature** and is **administered by the department of retirement systems**.
- Members of the plan have no direct input into the management of their retirement program. Forty-six other states currently have member representation in their pension management. Chapter 2, Laws of 2003 **is intended to give management of the retirement program to the people whose lives are directly affected by it** and who provide loyal and valiant service to ensure the health, safety, and welfare of the citizens of the state of Washington.

## RCW [41.26.705](#)

### Intent—2003 c 2.

- It is the intent of chapter 2, Laws of 2003 to:
- (1) Establish a **board of trustees** responsible for the adoption of actuarial standards to be applied to the plan;
- (2) **Provide for additional benefits** for firefighters and law enforcement officers subject to the cost limitations provided for in chapter 2, Laws of 2003;
- (3) Exercise **fiduciary responsibility** in the oversight of those pension management functions assigned to the board;
- (4) Provide effective **monitoring** of the plan by providing an annual **report** to the legislature, to the members and beneficiaries of the plan, and to the public;
- (5) Establish **contribution rates** for employees, employers, and the state of Washington that will guaranty viability of the plan, subject to the limitations provided for in chapter 2, Laws of 2003;
- (6) **Provide for an annual budget** and to pay costs from the trust, as part of the normal cost of the plan; and
- (7) Enable the board of trustees to **retain professional and technical advisors** as necessary for the fulfillment of their statutory responsibilities.

RCW [41.26.717](#)

Additional duties and powers of board.

- The law enforcement officers' and firefighters' plan 2 retirement board established in section 4, chapter 2, Laws of 2003 has the following duties and powers in addition to any other duties or powers authorized or required by law. The board:
  - (1) **Shall** hire an executive director, and **shall** fix the salary of the executive director subject to periodic review by the board and in consultation with the director of the office of financial management and shall provide notice to the chairs of the house of representatives and senate fiscal committees of changes;
  - (2) **Shall** employ other staff as necessary to implement the purposes of chapter 2, Laws of 2003. Staff must be state employees under Title [41](#) RCW;
  - (3) **Shall** adopt an annual budget as provided in section 5, chapter 2, Laws of 2003. Expenses of the board are paid from the expense fund created in RCW [41.26.732](#);
  - (4) **May** make, execute, and deliver contracts, conveyances, and other instruments necessary to exercise and discharge its powers and duties;
  - (5) **May** contract for all or part of the services necessary for the management and operation of the board with other state or nonstate entities authorized to do business in the state; and
  - (6) **May** contract with actuaries, auditors, and other consultants as necessary to carry out its responsibilities.

**Board of trustees—Powers—Meeting procedures—Quorum—Judicial review—Budget. (Page 1/3)**

- (1) The board of trustees have the following powers and duties and shall:
  - (a) Adopt actuarial tables, assumptions, and cost methodologies in consultation with an enrolled actuary retained by the board. The state actuary shall provide assistance when the board requests. The actuary retained by the board shall utilize the aggregate actuarial cost method, or other recognized actuarial cost method based on a level percentage of payroll, as that term is employed by the American academy of actuaries. The actuary retained by the board shall adjust the actuarial cost method to recognize the actuarial present value of future revenue that will be included in the calculation of the market value of assets pursuant to RCW [41.26.805](#)(2), using the methods and assumptions employed by the state actuary in RCW [41.26.805](#)(9). In determining the reasonableness of actuarial valuations, assumptions, and cost methodologies, the actuary retained by the board shall provide a copy of all such calculations to the state actuary. If the two actuaries concur on the calculations, contributions shall be made as set forth in the report of the board's actuary. If the two actuaries cannot agree, they shall appoint a third, independent, enrolled actuary who shall review the calculations of the actuary retained by the board and the state actuary. Thereafter, contributions shall be based on the methodology most closely following that of the third actuary;
  - (b)(i) Provide for the design and implementation of increased benefits for members and beneficiaries of the plan, subject to the contribution limitations under RCW [41.26.725](#). An increased benefit may not be approved by the board until an actuarial cost of the benefit has been determined by the actuary and contribution rates adjusted as may be required to maintain the plan on a sound actuarial basis. Increased benefits as approved by the board shall be presented to the legislature on January 1st of each year. The increased benefits as approved by the board shall become effective within ninety days unless a bill is enacted in the next ensuing session of the legislature, by majority vote of each house of the legislature, repealing the action of the board;

- (ii) As an alternative to the procedure in (b)(i) of this subsection, recommend to the legislature changes in the benefits for members and beneficiaries, without regard to the cost limitations in RCW [41.26.725](#)(3). Benefits adopted in this manner shall have the same contractual protections as the minimum benefits in the plan. The recommendations of the board shall be presented to the legislature on January 1st of each year. These measures shall take precedence over all other measures in the legislature, except appropriations bills, and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session;
- (c) Retain professional and technical advisors necessary for the accomplishment of its duties. The cost of these services may be withdrawn from the trust;
- (d) Consult with the department for the purpose of improving benefit administration and member services;
- (e) Provide an annual report to the governor and the legislature setting forth the actuarial funding status of the plan and making recommendations for improvements in those aspects of retirement administration directed by the legislature or administered by the department;
- (f) Establish uniform administrative rules and **operating policies** in the manner prescribed by law;
- (g) Engage administrative staff and acquire office space independent of, or in conjunction with, the department. The department shall provide funding from its budget for these purposes;
- (h) Publish on an annual basis a schedule of increased benefits together with a summary of the minimum benefits as established by the legislature which shall constitute the official plan document; and
- (i) **Be the fiduciary of the plan** and discharge the board's duties solely in the interest of the members and beneficiaries of the plan.

- (2) Meetings of the board of trustees shall be conducted as follows:
  - (a) All board meetings are open to the public, preceded by timely public notice;
  - (b) All actions of the board shall be taken in open public session, except for those matters which may be considered in executive session as provided by law;
  - (c) The board shall retain minutes of each meeting setting forth the names of those board members present and absent, and their voting record on any voted issue; and
  - (d) The board may establish, with the assistance of the appropriate office of state government, an internet web site providing for interactive communication with state government, members and beneficiaries of the plan, and the public.
- (3) A quorum of the board is six board members. **All board actions require six concurring votes.**
- (4) The decisions of the board shall be made in good faith and are final, binding, and conclusive on all parties. The decisions of the board shall be subject to judicial review as provided by law.
- (5) **A law enforcement officers' and firefighters' retirement system plan 2 expense fund is established for the purpose of defraying the expenses of the board. The board shall cause an annual budget to be prepared consistent with the requirements of chapter [43.88](#) RCW and shall draw the funding for the budget from the investment income of the trust. Board members shall be reimbursed for travel and education expenses as provided in RCW [43.03.050](#) and [43.03.060](#). The board shall make an annual report to the governor, legislature, and state auditor setting forth a summary of the costs and expenditures of the plan for the preceding year. The board shall also retain the services of an independent, certified public accountant who shall annually audit the expenses of the fund and whose report shall be included in the board's annual report.**

RCW [41.26.725](#)

Board of trustees—Contributions—Minimum and increased benefits.

- (1) .....
- (2).....
- (3).....
- (4) The board **shall manage** the trust in a manner that maintains reasonable contributions and administrative costs. Providing additional benefits to members and beneficiaries is the board's priority.

RCW [41.26.732](#)

Plan 2 expense fund—Board oversight and administration—State investment board. (1/2)

- (1) A law enforcement officers' and firefighters' retirement system plan 2 expense fund is created within the law enforcement officers' and firefighters' retirement system plan 2 fund.
- (2) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the expense fund. The state investment board is authorized to adopt investment policies for the money in the expense fund. All investment and operating costs associated with the investment of money shall be paid pursuant to RCW [43.33A.160](#) and [43.84.160](#). With the exception of these expenses, the earnings from the investment of the money shall be retained by the law enforcement officers' and firefighters' retirement system plan 2 fund.
- (3) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW [43.33A.140](#) and the investment policy established by the state investment board.
- (4) When appropriate for investment purposes, the state investment board may commingle money in the expense fund with other funds.
- (5) The authority to establish all policies relating to the expense fund, other than the investment policies as set forth in subsections (2) through (4)

**RCW [41.26.732](#)**

**Plan 2 expense fund—Board oversight and administration—State investment board. (2/2)**

- (6) The state investment board shall routinely consult and communicate with the law enforcement officers' and firefighters' plan 2 retirement board on the investment policy, earnings of the trust, and related needs of the expense fund.
- (7) The law enforcement officers' and firefighters' plan 2 retirement board shall administer the expense fund in a manner reasonably designed to be actuarially sound. The assets of the expense fund must be sufficient to defray the obligations of the account including the costs of administration. Money used for administrative expenses is subject to the allotment of all expenditures pursuant to chapter [43.88](#) RCW. However, an appropriation is not required for expenditures. Administrative expenses include, but are not limited to, the salaries and expenses of law enforcement officers' and firefighters' plan 2 retirement board personnel including lease payments, travel, and goods and services necessary for operation of the board, audits, and other general costs of conducting the business of the board.
- (8) The state investment board shall allocate from the law enforcement officers' and firefighters' retirement system plan 2 fund to the expense fund the amount necessary to cover the expenses of the law enforcement officers' and firefighters' plan 2 retirement board.

## **RCW [41.26.740](#)**

### **Reimbursement for expenses.**

- All expenses of the department and the office of the state actuary related to the implementation of chapter 2, Laws of 2003 shall be reimbursed from the law enforcement officers' and firefighters' retirement system expense fund under RCW [39.34.130](#).

# Fiduciary Responsibility

- The Restatement (Second) of Trusts (1959) and Restatement (Third) of Trusts (1990) identify and discuss the following relational duties of a trustee: a duty to administer the trust, a duty of undivided loyalty, a duty to delegate trustee duties only when reasonable, a duty to keep and render accounts, a duty to furnish information to beneficiaries, a duty to exercise reasonable care and skill in managing the trust, a duty to take and keep control of trust property, a duty to preserve trust property, a duty to enforce claims held by the trust, a duty to defend actions that may result in loss to the trust, a duty to keep trust property separate from other property, a duty to use reasonable care regarding bank deposits, a duty to make the trust property productive, a duty to pay income to the beneficiaries, a duty to deal impartially with beneficiaries, a duty to use reasonable care to prevent breach of the trust by co-trustees, and a duty to follow the direction of persons given control over the trustee. Restatement (Second) of Trusts §§ 169-185; Restatement (Third) of Trusts §§ 170-171, 181, 183-185.
- Wash. Att'y Gen. Op. 1996 NO. 11 (1996)

# Fiduciary Responsibility

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- **Exercise fiduciary responsibility in the oversight of those pension management functions assigned to the board; RCW 41.26.705 (3) .**

# Fiduciary Responsibility

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- **Exercise fiduciary responsibility in the oversight of those pension management functions assigned to the board; RCW 41.26.705(3).**
- Provide for an annual budget and to pay costs from the trust, as part of the normal cost of the plan; and RCW 41.26.705(6) =

# Other Agencies / Duty & Statute /WSIB

- a duty to delegate trustee duties only when reasonable, a duty to keep and render accounts, a duty to furnish information to beneficiaries, a duty to exercise reasonable care and skill in managing the trust, a duty to take and keep control of trust property, a duty to preserve trust property, a duty to enforce claims held by the trust, a duty to defend actions that may result in loss to the trust, a duty to keep trust property separate from other property, a duty to use reasonable care regarding bank deposits, a duty to make the trust property productive,
- (2) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the expense fund. The state investment board is authorized to adopt investment policies for the money in the expense fund. All investment and operating costs associated with the investment of money shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the law enforcement officers' and firefighters' retirement system plan 2 fund.
- (3) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.
- (4) When appropriate for investment purposes, the state investment board may commingle money in the expense fund with other funds.
- (8) The state investment board shall allocate from the law enforcement officers' and firefighters' retirement system plan 2 fund to the expense fund the amount necessary to cover the expenses of the law enforcement officers' and firefighters' plan 2 retirement board.

# Other Agencies / Duty & Statute /DRS

- a duty to pay income to the beneficiaries,
- (d) Consult with the department for the purpose of improving benefit administration and member services; RCW 41.26.720 (1)(d.)
- **RCW [41.26.740](#)**
- **Reimbursement for expenses.**
  - All expenses of the department and the office of the state actuary related to the implementation of chapter 2, Laws of 2003 shall be reimbursed from the law enforcement officers' and firefighters' retirement system expense fund under RCW [39.34.130](#).

# Other Agencies /Duty & Statute / JCPP

- a duty to administer the trust,
- **Joint committee on pension policy—Pension funding council.**
  - The joint committee on pension policy established in \*RCW [44.44.050](#), and the pension funding council created in RCW [41.45.100](#), shall have no applicability or authority over matters relating to this plan. RCW 41.26.730.

# Other Agencies / Duty & Statute / OSA

- a duty to delegate trustee duties only when reasonable, a duty to keep and render accounts, a duty to exercise reasonable care and skill in managing the trust,
  - (5) May contract for all or part of the services necessary for the management and operation of the board with other state or nonstate entities authorized to do business in the state; and
  - (6) May contract with actuaries, auditors, and other consultants as necessary to carry out its responsibilities. RCW 41.26.717.
- **Reimbursement for expenses.**
  - All expenses of the department and the office of the state actuary related to the implementation of chapter 2, Laws of 2003 shall be reimbursed from the law enforcement officers' and firefighters' retirement system expense fund under RCW [39.34.130](#). RCW 41.26.740.

# Other Agencies / Duty & Statute / OFM

- a duty to keep and render accounts,
- (7) ...Money used for administrative expenses is subject to the allotment of all expenditures pursuant to chapter 43.88 RCW. However, an appropriation is not required for expenditures. Administrative expenses include, but are not limited to, the salaries and expenses of law enforcement officers' and firefighters' plan 2 retirement board personnel including lease payments, travel, and goods and services necessary for operation of the board, audits, and other general costs of conducting the business of the board. RCW 41.26.732 (7)
- RCC 43.88 is administered by OFM. RCW 43.88.020.

# Other Agencies / OFM / What is allotment?

- RCW 43.88.020 Definitions.
- "Allotment of appropriation" means the agency's statement of proposed expenditures, the director of financial management's review of that statement, and the placement of the approved statement into the state budgeting, accounting, and reporting system.  
RCW 43.88.020 (23)

# Other Agencies / OFM / What is allotment?

- . RCW [43.88.110](#) (Sections 1,2 of 9)
- **Expenditure programs—Allotments—Reserves—Monitor capital appropriations—Predesign review for major capital construction.**
- This section sets forth the expenditure programs and the allotment and reserve procedures to be followed by the executive branch for public funds.
- (1) Allotments of an appropriation for any fiscal period shall conform to the terms, limits, or conditions of the appropriation.
- (2) The director of financial management shall provide all agencies with a complete set of operating and capital instructions for preparing a statement of proposed expenditures at least thirty days before the beginning of a fiscal period. The set of instructions need not include specific appropriation amounts for the agency.

# Other Agencies / OFM / What is allotment?

- (3) Within forty-five days after the beginning of the fiscal period or within forty-five days after the governor signs the omnibus biennial appropriations act, whichever is later, all agencies shall submit to the governor a **statement of proposed expenditures** at such times and in such form as may be required by the governor.
- (8) It is expressly provided that all agencies shall be required to **maintain accounting records and to report** thereon in the manner prescribed in this chapter and under the regulations issued pursuant to this chapter. Within ninety days of the end of the fiscal year, all agencies shall **submit** to the director of financial management their final **adjustments** to close their books for the fiscal year. Prior to submitting fiscal data, written or oral, to committees of the legislature, it is the responsibility of the agency submitting the data to reconcile it with the budget and accounting data reported by the agency to the director of financial management.
- (9) **The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not practical or necessary to allot the funds.** Allotment control exemptions expire at the end of the fiscal biennium for which they are granted. The director of financial management shall report any exemptions granted under this subsection to the legislative fiscal committees.
- RCW 43.88.110

# Other Agencies / OFM / What is allotment?

## 1.1 WHAT ARE ALLOTMENTS?

Allotments are a detailed plan of expenditures authorized in the budget, the assumed revenue estimates, and the related FTE estimates required by law (RCW 43.88.110).

Agencies, OFM, the Legislature, and the public monitor an agency's actual spending and revenue against its allotments. Allotments must:

- » Conform to the terms, limits, or conditions of legislative appropriations.
- » Reflect the priorities of the agency's strategic plan, the implementation of those strategies, and the achievement of performance targets.
- » Serve as the agency's best estimate of how its authorized expenditures will be spent and the revenue it will earn each month of the biennium.

<https://www.ofm.wa.gov/sites/default/files/public/legacy/budget/instructions/allotment/2017-19allotment.pdf>

# Other Agencies / OFM / What is allotment?

Allotments and allotment controls help ensure that:

- » Appropriations are used only for purposes that meet legislative intent.
- » Sufficient funding exists to allow the state to incur financial obligations.
- » Changes in the original budget assumptions are communicated and understood.

We expect agencies to monitor variances and to take management action as appropriate. Administering agencies should regularly track the fiscal health of accounts for which they are responsible. Agencies can order a variety of Enterprise Reporting Administering Agency reports to assist in this effort at <https://rp.des.wa.gov/>.

<https://www.ofm.wa.gov/sites/default/files/public/legacy/budget/instructions/allotment/2017-19allotment.pdf>

# Other Agencies / OFM / What is allotment?

OFM monitors actual expenditures and revenue against allotments and posts monthly fiscal status reports on its website at

<http://www.ofm.wa.gov/budget/fiscalstatus/default.asp>.

<https://www.ofm.wa.gov/sites/default/files/public/legacy/budget/instructions/allotment/2017-19allotment.pdf>

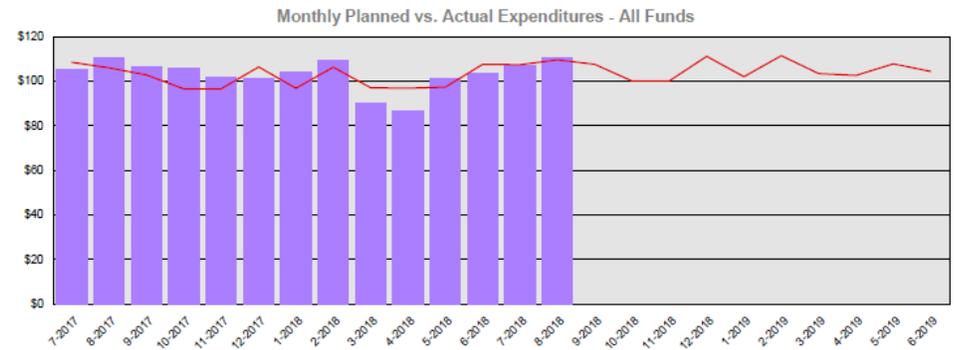
- **Why are agency fiscal status reports important?**
- These summary financial status reports provide high-level information regarding an agency's expenditures, revenues, FTEs and deficit fund balances. These reports are intended to provide a quick look at an agency's financial status and to highlight areas where there may be problems. We welcome your comments on the usefulness of these reports.
- <https://ofm.wa.gov/budget/agency-expenditure-monitoring/agency-fiscal-status-reports>

Bookmarks

- Agency Financial Status
  - Expenditure Total
  - Expenditure All Funds
  - Expenditure by Program
  - Expenditure by Fund Group
  - FTE**
  - Deficit Fund Balance

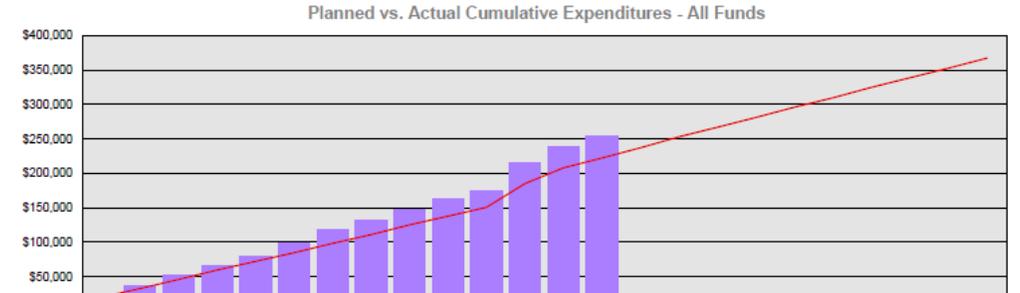
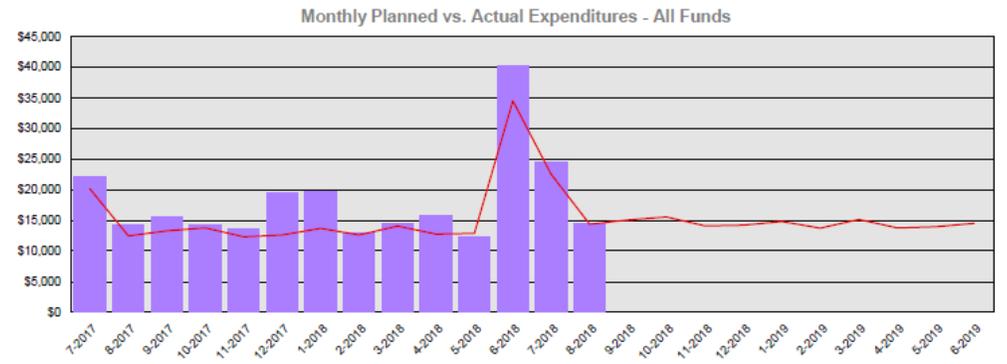
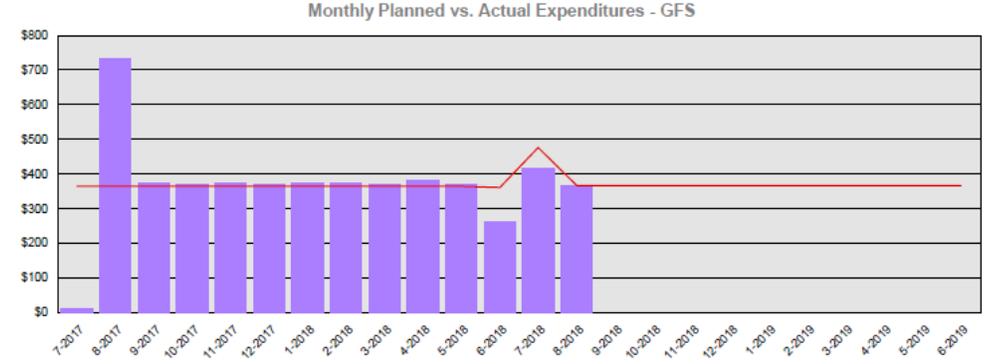
### Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board Summary Financial Report for 2017-19 Biennium to Date Dollars in Thousands

All Funds Variance to Date      \$8 Overexpenditure      0.6% Overexpenditure



- Bookmarks
- Agency Financial Status
  - Expenditure Total
  - Expenditure GFS
  - Expenditure All Funds
  - Expenditure by Program
  - Expenditure by Fund Group
  - FTE
  - Revenue by Fund
  - Revenue by Fund Group

Dollars in thousands  
All Funds Variance to Date \$31,842 Overexpenditure 14.3% Overexpenditure



# Other Agencies / OFM / What is allotment?

**SUMMARY:** RCW 41.26.732 requires that “Money used for administrative expenses is subject to the allotment of all expenditures pursuant to chapter 43.88 RCW.” In summary, OFM explains that allotments are a detailed plan of budgeted expenditures, and are intended to monitor an agency’s actual spending, conform to conditions of the appropriation, reflect the priorities of the agency’s strategic plan, and serve as the agency’s best estimate of how its authorized expenditures will be spent. The required allotment of administrative expenses is a standardized monitoring and management tool. While LEOFF 2’s budget is subject to fiduciary and statutory constraints it is not appropriated.

# Other Agencies / OFM / What is allotment?

OFM may have exempted LEOFF2 from allotment:

The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not practical or necessary to allot the funds. RCW 43.88.110(9).

A law enforcement officers' and firefighters' retirement system plan 2 expense fund is created within the law enforcement officers' and firefighters' retirement system plan 2 fund. RCW 41.26.732 (1).

It follows that the LEOFF 2 expense fund is “within” the LEOFF 2 system fund. (identified as “829”). OFM sent the following letter in July 2017:

# Other Agencies / OFM / What is allotment?

July 13, 2017

TO: Agency Directors

FROM: David Schumacher

Director

SUBJECT: PUBLIC FUNDS EXEMPT FROM ALLOTMENT – RCW 43.88.110(10)

The state Budget, Accounting and Reporting Act grants authority to the director of the Office of Financial Management (OFM) to exempt certain funds from allotment controls.

I am writing to inform you that the public funds on the attached list do not require allotment in the 2017-19 biennium:

829 L.E.O.F.F. Retirement Plan II Account

<https://www.ofm.wa.gov/sites/default/files/public/legacy/budget/instructions/allotment/2017-19fundsexemptfromallotment.pdf>

# Delegation / Statute

- Enable the board of trustees to retain professional and technical advisors as necessary for the fulfillment of their statutory responsibilities. RCW 41.26.705(7)
- Shall employ other staff as necessary to implement the purposes of chapter 2, Laws of 2003.... RCW 41.26.717 (2)
- a duty to delegate trustee duties only when reasonable, a duty to exercise reasonable care and skill in managing the trust,

# OPMA / Open Government

- Unless a specific exemption applies .....
- Reporting
- Transparency to beneficiaries

Questions?