

There were a number of questions raised at the October 17 Board meeting related to possible compensation for Board members. Following the meeting, the Board's Assistant Attorney General researched the following questions:

If a LEOFF 2 Board member is required to take unpaid leave from work in order to attend a Board meeting or conduct other Board business, is the lost pay a reimbursable expense? Would it be reimbursable if the Board adopted a policy expressly making the expense payable?

The answer to both questions is no.

Analysis

RCW 41.26.720 provides that board members will be reimbursed for travel and education expenses under RCW 43.03.050 and .060. Under RCW 43.03.050, OFM sets the standards for lodging and subsistence for officials on official state business. The section entitles board members to per diem rates; it does not address compensation for lost work. (RCW 43.03.060 addresses mileage.)

RCW 43.03.240, which generally addresses compensation of board and commission members, provides that service on a particular body is either compensated or is not, and compensation must be expressly authorized in statute [RCW 43.03.240(3)].

The Board may authorize expenditures from an expense fund for purposes stated in RCW 41.26.720--to carry out actuarial functions, design and implement increased benefits, recommend changes in benefits to the legislature, retain professional and technical advisors, etc. However, none of the LEOFF 2 Board statutes specifically authorize compensation for lost work.

The LEOFF 2 Board statutes might be contrasted with a State Investment Board statute that expressly addresses time lost from work by SIB members who are public employees:

Members of the state investment board who are public employees shall serve without compensation but shall suffer no loss because of absence from their regular employment. Members of the board who are not public employees shall be compensated in accordance with RCW 43.03.240. Members of the board who are not legislators shall be reimbursed for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060. Legislative members shall receive allowances provided for in RCW 44.04.120.

RCW 43.33A.050 (emphasis added).

Adopting a Board policy to compensate board members for time away from work without express statutory authority would risk a negative audit finding. In that event, Board members who had received compensation likely would be required to make restitution.

Possible Approaches:

The Board may consider asking the employers of Board members who are public employees to grant paid leave for board service. Such expenditure appears to be for a proper governmental purpose. Whether to grant such leave and on what basis would be a decision for each local government to make in light of its own applicable laws, ordinances, policies, bargaining agreements and decision-making process.

The Board could also propose legislation that expressly provides that Board members who are public employees shall suffer no lost compensation because of absence from their regular employment.