LEOFF
Plan 2 Retirement Board

Career Extension

Comprehensive Follow-up
November 19, 2014

Issue Overview

Follow-up on the September 2014 career extension presentation.

Board directed staff to develop options balancing:

- Maintaining public confidence that LEOFF Plan 2 is well designed and professionally managed; and
- Facilitating smaller jurisdictions' access to highly trained and experienced LEOFF Plan 2 retirees.

LEOFF
Plan 2 Retirement Board

2014 Board Proposal - HB 2479

Prevent retirees from drawing a pension while in a historically LEOFF position even if the position:

- Is less than full time;
- Is less than fully compensated;
- Is not fully commissioned;
- Includes additional non-LEOFF duties; or
- Is filled by an independent contractor.

Board Direction

Provide options for a “bright line” of what is allowed and not allowed:

- Close loopholes by reintroducing HB 2479; plus
- Specify when a LEOFF 2 retiree could fill a LEOFF position without losing pension.

LEOFF Plan 2 Retirement Board

Balancing Issues

Issues

- Perception of unequal access to opportunity.
- Cutting short original career to draw pension + salary.
- Combined pension and salary "doubles" income.

Possible Balance:

- Employment must be with different employer.
- Specify covered positions – i.e. chiefs; or make available to all
- Require retiree to have earned at least 25 years of LEOFF plan 2 service credit.
- Limit pension to mitigate combined compensation:
  - Total compensation cannot exceed 120% of FAS;
  - 867 hour limit.
    - ≈ 5 months
    - PERS standard

LEOFF Plan 2 Retirement Board

Next Steps

1. Maintain original position – support reintroduction and passage of HB 2479

2. Redraft HB 2479 to allow LEOFF Plan 2 retiree to hold a LEOFF position without losing pension in defined circumstances:

Conditions for LEOFF 2 Retiree to Work in LEOFF position	Yes	No
Require change of employer	☐	☐
Limit to Chief positions	☐	☐
Require 25 or more years service credit	☐	☐
Limit combined pension + salary to percentage of FAS	☐	☐
Limit pension eligibility to 867 hours per year	☐	☐

3. Take no further action

Questions?

Contact:

Paul Neal
Senior Research and Policy Manager
(360) 586-2327
paul.neal@leoff.wa.gov

November 19, 2014

Career Extension

COMPREHENSIVE REPORT FOLLOW-UP

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

ISSUE STATEMENT

The LEOFF Plan 2 Board's (Board) 2014 proposal to tighten the career change law revealed tension between the policies of: 1) Maintaining public confidence that LEOFF Plan 2 is well designed and professionally managed; and 2) Facilitating smaller jurisdictions' access to highly trained and experienced LEOFF Plan 2 retirees.

OVERVIEW

Last year the Board learned some LEOFF Plan 2 retirees were using the 2005 career change law to work as law enforcement officers or fire fighters while drawing their pensions. Some employers facilitated this expansion of the law's original intent by redefining historically LEOFF positions to avoid LEOFF eligibility. Some felt this was inappropriate.

The Board proposed curtailing the ability of a LEOFF Plan 2 retiree to draw a pension and work in a historically LEOFF position. The Board's proposal was introduced in 2014 as HB 2479. The Legislative debate revealed tension between the Board's original policy goal and the goal of allowing smaller jurisdictions to compete for law enforcement officers and fire fighters they would not otherwise be able to afford.

At the September 24, 2014, meeting, the Board was briefed on this issue and directed staff to present options balancing the two policy goals.

MEMBERS IMPACTED

Two hundred sixty-five LEOFF Plan 2 retirees have utilized the provisions of the career change law since its inception in 2005[1]. A similar number of members would be impacted by any changes to the law if those utilization numbers remain constant. Additionally, there are public trust issues addressed by the original bill that impact all LEOFF Plan 2 members.

BACKGROUND & POLICY ISSUES

Career Change

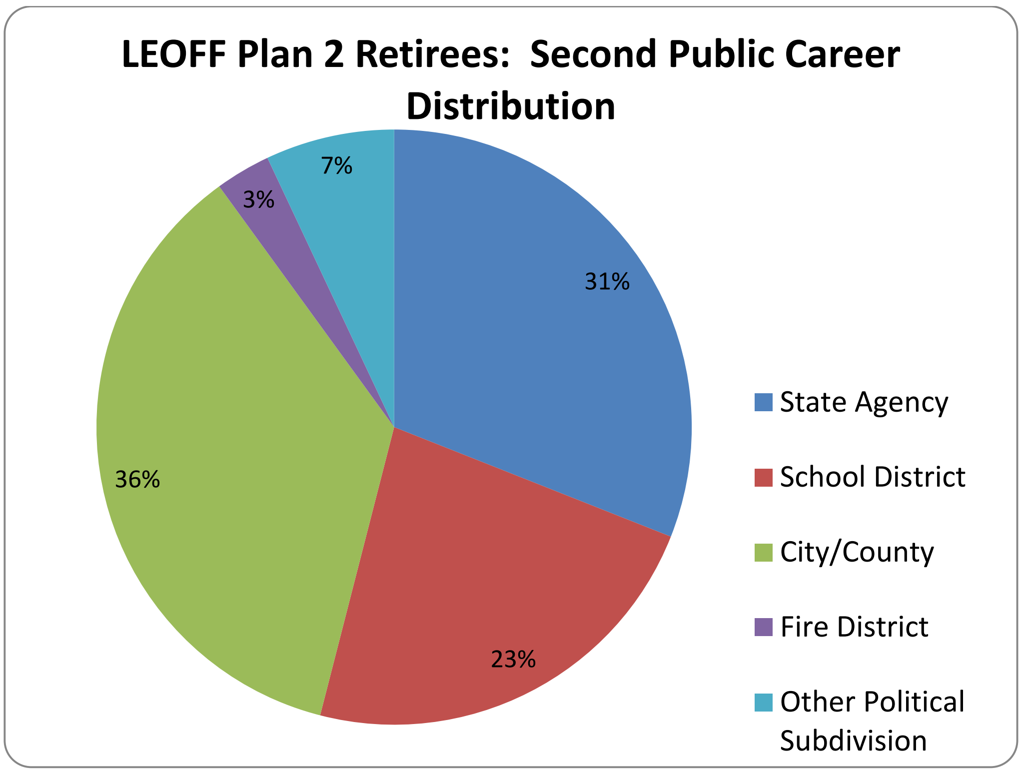
Before 2005 a LEOFF Plan 2 retiree's pension stopped if they worked in a job covered by any state-wide public retirement system. The Board recognized member's may no longer be able to fulfill the physical demands of law enforcement or fire fighting before they were ready, or could afford to stop working. The Legislature passed the Board's proposed Career Change legislation in 2005 enabling retired LEOFF Plan 2 retirees to start a second career in non-LEOFF public

[1] Data from November 2013 on career change usage from report produced by the Department of Retirement Systems (DRS).

employment. A retiree accepting such a job can either establish membership in another public system, thus suspending their LEOFF Plan 2 pension, or waive membership in the new system and continue receiving their pension.

The Board intended to facilitate transition from a physically demanding profession to a second less strenuous career. The Board did not contemplate enabling retirees to continue working as a law enforcement officer or fire fighter while receiving their pension.

The vast majority of participating retirees use Career Change as intended: to facilitate public employment as something other than a law enforcement officer or fire fighter. Recent DRS data shows 265 LEOFF Plan 2 retirees working in public employment with an average annual salary of $28,268. Sixty-one percent work for non-LEOFF employers. Most of those retirees working for LEOFF employers do not work in historically LEOFF positions:



As discussed in more detail in the 2013 Career Change briefings, some employers seeking the benefit of the years of training and experience possessed by LEOFF Plan 2 retirees have redefined LEOFF positions as PERS positions. For instance, some employers have redefined full-time police chiefs and fire chief's positions as "part-time." This allows LEOFF Plan 2 to hold those positions without losing receipt of their pensions.

HB 2479

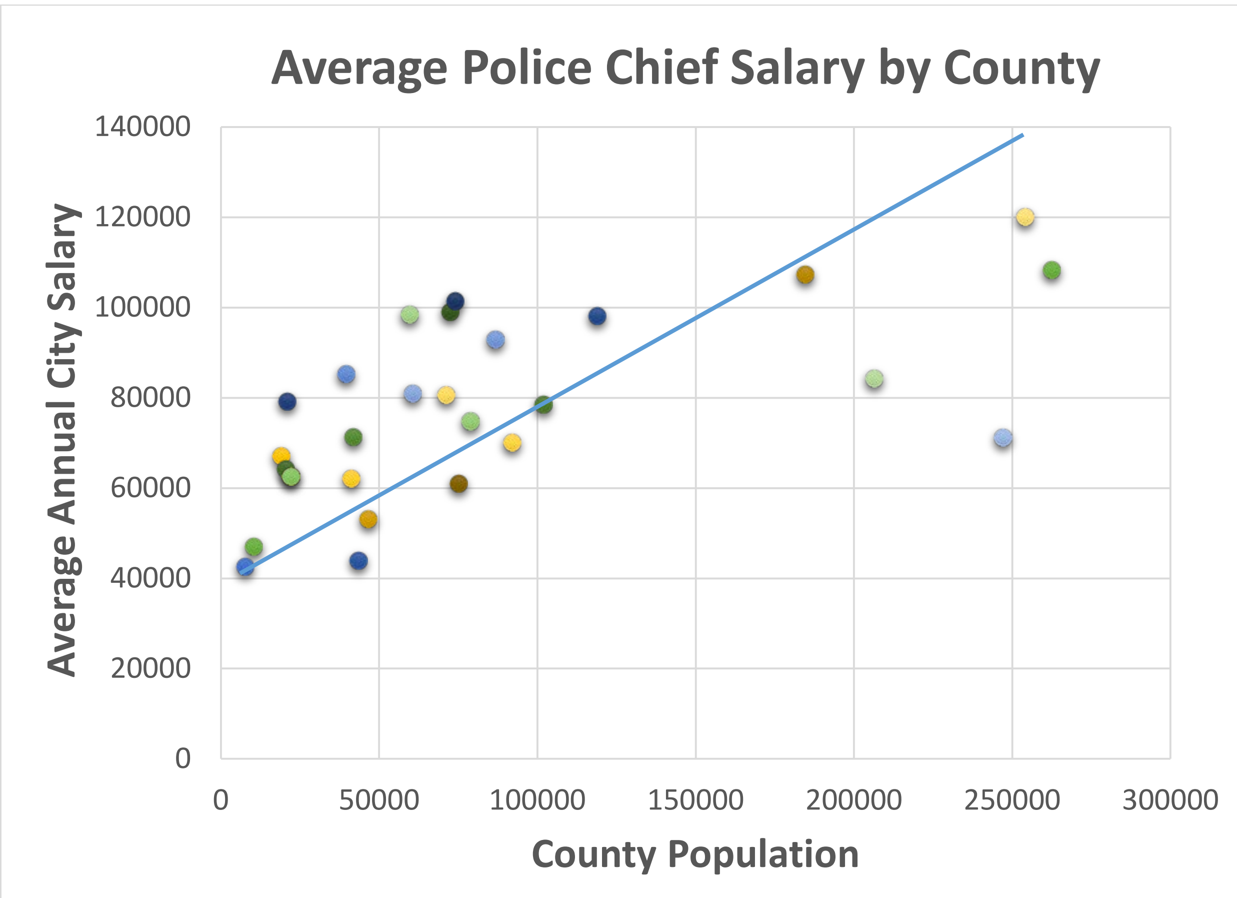
The Board proposed curtailing the ability of a LEOFF Plan 2 retiree to draw a pension and work in a historically LEOFF position. The proposal was introduced in 2014 as HB 2479. After passing the House, the bill failed to pass the Senate, in part because of concerns raised by stakeholder groups about the desirability of providing smaller jurisdictions access to highly trained and experienced fire chiefs and police chiefs they could not otherwise afford.

THE VALUE OF EXPERIENCE

Perhaps more than other public professions, law enforcement and fire fighting require continuous, specific training, such as the FBI academy for upper level law enforcement officers. Similarly, over the course of a 25 year career a fire fighter's employer spends approximately $142,500 on training[2]. Law enforcement employers also incur significant training costs. In addition to specific training, the years of field experience possessed by LEOFF Plan 2 retirees has great potential value to employers.

LEOFF employers are, by definition, mostly political subdivisions. Local government budgets, and hence public safety salaries, vary widely across Washington depending in large part on the tax base. Last year's career change analysis looked at chief salaries by employer population. While salary ranged significantly between many small jurisdictions and large jurisdictions, a better predictor of salary range was a city's location, i.e. urban vs. rural.

In an effort to sort the data to examine the urban vs rural distinction, last year's data is sorted below by population of the county the city is in, rather than the city itself.



[2] The South King County Fire Training Coalition, which provides training to fire fighters from 8 different jurisdictions, charges employee $5700 per year per fire fighter. $5700 x 25 years = $142,500.

While there is not a one-to-one correspondence, the overall trend is that cities in counties with higher populations tend to pay higher salaries. This lends some support to the idea that allowing LEOFF Plan 2 retirees some ability to work while receiving their pensions could help lower paying jurisdictions compete for highly trained and experienced law enforcement officers and fire fighters.

IMPORTANCE OF A WELL DESIGNED AND PROFESSIONALLY MANAGED PLAN

Public perception of pension abuse can be exacerbated when benefits appear to flow disproportionately to highly placed employees. Public displeasure over perceived abuses undermines public confidence in the retirement system as a whole.

Uninterrupted Employment

If an employee appears to retire, then comes back to work in the same or similar position with their former employer, it raises questions whether the person ever actually retired. Both state retirement law and the Internal Revenue Code require a full separation from service before qualifying for a retirement allowance. These requirements exist to guard against pseudo-retirements, where a person goes through the process of retiring in order to qualify for their pension, but has only briefly, or in some cases never, left their employer.

Public Pension + Public Salary

Receiving both a public pension and a public salary at the same time is a common hot-button with the general public.

Newspaper articles have featured the total compensation received by LEOFF Plan 2 retirees who return to law enforcement officer or fire fighter employment. A recent Seattle Times report on LEOFF Plan 2 retirees working as police chiefs and fire chiefs described a LEOFF Plan 2 retiree working a fire chief collecting a $100,000 a year pension and a $90,000 a year salary. *See Appendix A.*

One could argue adding together pensions for previous service and the salaries earned for current service is mixing apples and oranges. LEOFF Plan 2 pensions, unlike salaries for current service, are not paid out of current revenues. LEOFF Plan 2 retiree pensions are fully funded at retirement by employer and employee contributions paid over the course of the employee's career, plus earnings on those contributions.

When a public employee retires and goes to work in the private sector, or even for a public entity in another state, few objections are heard. Some question why the result is different if that same public retiree goes to work in the public sector. Judging from the comments posted in response to recent newspaper articles, many members of the public do not find this analysis persuasive.

Perceived Favoritism

The vast majority of LEOFF Plan 2 retirees utilizing the career change law do not work as law enforcement officers or fire fighters and make less than in their first careers. For example, a retired police officer providing part-time security at a middle school. These are not the cases reported in the paper. Those articles often feature persons working in upper management negotiating with the mayor and/or city council to create a position description allowing them to earn a salary as a law enforcement officer or fire fighter while drawing a LEOFF pension. Some of the public anger over allegations of abuse flow from a perceived misuse of authority.

BALANCING OPTIONS

The Board discussed the career extension issue at the September 24, 2014, meeting. Many members saw the value of allowing LEOFF Plan 2 retirees to share the value of their experience with smaller employers, but were uncomfortable with the current situation where position descriptions for LEOFF positions were modified to facilitate employment of LEOFF retirees.

The Board directed staff to develop options which maintain LEOFF Plan 2 as a well-designed and professionally managed plan while providing a "bright line" defining when a LEOFF Plan 2 retiree could work in a historically LEOFF position without suspension of their entire pension.

Make Benefit Generally Available

An issue with the current situation is the appearance of a "work around" where an employer takes specific action to accommodate a specific employee. This perceived dynamic appears where the employee continues with the same employer. It also appears when the benefit appears limited to persons with a motivated prospective employer.

These issues could be addressed by:

- Requiring the LEOFF Plan 2 retiree work for a different employer than they retired from;
- Openly provide the benefit so specific employer action would no longer be required. This could be done by:
    - Making the benefit available to a specific class of employees, i.e. chiefs; or
    - Making the benefit generally available to all LEOFF Plan 2 retirees.

Not Encouraging Earlier Retirement

Making the benefit generally available could incentivize employees to retire earlier in order to utilize the new standard. This could negatively impact the original employer and create an actuarial cost. The Actuary bases future costs in part by projecting when people will retire, i.e. how long they will draw a benefit. If the new standard creates enough incentive to retire earlier, this could have an actuarial cost.

A minimum service credit requirement would also ensure that persons eligible for this benefit were highly experienced employees.

This issue could be addressed by limiting the benefit to retirees with a set minimum of service credit. This could be 20 years or 25 years or some other number as directed by the Board.

Limiting Total of Pension Plus Salary

The public shows concern when a retiree's total income, pension plus salary, appears excessive. Concern is especially likely if the combination doubles or nearly doubles the person's compensation. While the objection is debatable, it is clearly an area of public concern.

This issue could be addressed by limiting the combined amount of a LEOFF Plan 2 retiree's salary and pension. Options include:

- Limiting total compensation to a percentage of Final Average Salary: Limiting total pension and salary to a set percentage of Final Average Salary (FAS) would ensure that the retiree's total compensation would be similar to what he or she earned prior to retirement. This could address perceptions of abuse. On the other hand, requiring DRS to develop and track a new, LEOFF Plan 2 specific, post-retirement employment standard could generate an administrative cost.

- Limit the Timeframe for Collecting Both Pension and Salary. The State's other Plan 2 systems allow retirees to work in a system-covered position for up to 867 hours per year (approximately 5 months). Once a retiree reaches that point, their pension stops for the remainder of the calendar year. It restarts at the beginning of the next year, stopping again if the retiree works another 867 hours. DRS has systems and reporting requirements in place to track the 867 hour rule for the State's other Plan 2 systems.

  Adopting this same standard for LEOFF plan 2 retirees working in historically LEOFF positions would effectively limit the combined salary and pension, thus mitigating the "double-dipping" issue. It would be consistent with current policy in the State's other plan 2 systems. Finally, it would be administratively easier for DRS than administering a new standard.

NEXT STEPS

Possible options for further Board action include:

1. Support reintroduction and passage of HB 2479

2. Reconcile the policies discussed above by proposing legislation that would amend HB 2479 by:

   a) Retaining prohibition on avoiding LEOFF membership by modifying positions; and
   b) Allowing LEOFF Plan 2 retirees to work in LEOFF positions under specified circumstances. The table below summarizes the options discussed above:

Conditions for LEOFF 2 retiree to work in LEOFF position	Yes	No
Require change of employer	☐	☐
Limit to Chief positions	☐	☐
Require 25 or more years service credit	☐	☐
Limit combined pension + salary to percentage of FAS	☐	☐
Limit pension eligibility to 867 hours per year	☐	☐

3. Take no further action on this issue

APPENDIX A

Seattle Times Article: *Fire, police officials get retire-rehire deals*

Published in Seattle Times:
Updated: 8:25 a.m. Thursday, Nov. 21, 2013 | Posted: 8:25 a.m. Thursday, Nov. 21, 2013

Fire, police officials get retire-rehire deals

By MIKE BAKER
The Associated Press
SEATTLE —

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

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

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

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

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

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

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

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

DuPont Mayor Michael Grayum recently worked closely with the Department of Retirement Systems to ensure the city was following the rules in the hiring a of a police chief who had retired from a different department. The city didn't seek out pensioners, but three of the top candidates for the job were retirees.

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

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

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

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

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

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

Some have seized on that potential.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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AP Writer Mike Baker can be reached on Facebook: http://on.fb.me/HiPpEV
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