



Duty Death Benefits Final Proposal

LEOFF Plan 2 Retirement Board

December 15, 2010

Background Summary

- Inconsistency in remarriage policy
- L2 Pension continue unaffected by remarriage
- Workers' Compensation benefits cease upon remarriage
- Thirty-five Surviving Spouses

Issues

- The Surviving spouses of a member killed in course of employment who are receiving Workers' Compensation death benefits cannot continue to receive the monthly benefit after remarriage.

Proposal Summary – Option 1

- Continuation of Worker's compensation benefits upon registration on state domestic partnership registry
- Access to domestic partner benefits
- Not expected to have material impact on L2 pension fund

Proposal Summary – Option 2

- Eliminate the remarriage prohibition
 - Continuation of Worker's compensation benefits upon remarriage
 - Surviving spouses of public safety employees killed in the course of employment.
- Surviving spouses who have already had their benefits suspended due to remarriage will have their benefits resume.

Duty Death Benefits

Questions?

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

Duty Related Death Benefits

Final Proposal

December 15, 2010

1. Issue

The Surviving spouses of a member killed in course of employment who are receiving Workers' Compensation death benefits cannot continue to receive the benefit after remarriage.

2. Proposal Summary

Allow the surviving spouse of a member who is killed in the line of duty to register on the state domestic partnership registry and continue receiving Workers' Compensation survivor benefits in addition to domestic partner benefits; or allow the surviving spouse to remarry and continue receiving Workers' Compensation survivor benefits.

3. Staff

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4. Members Impacted

This issue impacts survivors of LEOFF Plan 2 members who are killed in the line of duty. As of June 30, 2009 there were 16,951 active members in LEOFF Plan 2.

The Office of the State Actuary estimated for the 2006 Survivor Health Care there would be approximately three duty-related deaths per year. According to information provided by Department of Retirement Systems in December 2010, there are 35 surviving spouses whose payments of premium rates to the Washington State Health Care Authority are paid by the LEOFF Plan 2 trust fund.

5. Current Situation

Workers injured in the course of employment receive various industrial insurance benefits. If death results from the injury, the surviving spouse receives a monthly benefit of 60 percent of the wages of the deceased worker. If a surviving spouse remarries, benefits are discontinued at the end of the month of remarriage.

A surviving spouse who remarries may choose to receive a lump sum of 36 times the monthly rate. If the surviving spouse does not choose to receive the lump sum and the remarriage ends, monthly benefits may be reinstated. (Elgee, 2009) Legislation to repeal the remarriage/benefit discontinuation policy has failed during the last four legislation sessions. (Appendix A)

None of the current Washington state administered retirement plans contain benefit provisions that are affected when a survivor remarries.

6. Background Information and Policy Issues

A policy inconsistency exists between Workers' Compensation benefits and retirement benefits regarding the continuation of survivor benefits when the survivor of a member killed in the line of duty remarries. A survivor who remarries will continue to receive retirement benefits but may lose Workers' Compensation benefits.

Unlike retirement benefits, surviving spouses who are receiving Workers' Compensation death benefits cannot continue to receive the benefit after remarriage. The LEOFF Plan 2 Retirement Board has been contacted by survivors of members killed in the line duty regarding this policy.

Retirement Benefits for Survivors

If a member dies in the line of duty, the surviving spouse may choose between the following two benefits:

1. Payment of 150 percent of the member's accumulated contributions, or
2. A monthly benefit based on the member's accrued service

If a survivor elects the continuing benefit, the survivor will continue to receive the benefit for their lifetime. If a survivor remarries, it has no impact on the survivor's receipt of retirement benefits. Since inception, LEOFF Plan 2 has not contained any provisions that reduce benefits upon remarriage of a survivor.

Although LEOFF Plan 1 at one point contained such a provision, it removed from the plan by the Legislature in 1977. In 2002, a provision was added to LEOFF Plan 1 to make the 1977 legislation retroactive, allowing pre-1977 survivors to remarry and continue receiving survivor retirement benefits.

None of the other State administered pension plans have prohibition of remarriage provisions. However, the pre-LEOFF Plan, administered at the local government level, does contain a remarriage prohibition.

Workers' Compensation Benefits for Survivors

If a worker dies from a work-related injury or occupational disease, a surviving spouse receives a monthly benefit from Workers' Compensation. The amount the survivor receives is 60% of the worker's wages at the time of death. There are no actuarial reductions applied

to this survivor benefit. Additional benefits are payable if there are surviving minor child/ren.

If a worker becomes disabled due to an injury, the worker may be paid a monthly pension for life. The amount the worker receives is based on the formula used for setting time-loss compensation payments. If the disabled worker dies and the death is not related to their disabling work-related injury or occupational disease, a surviving spouse is entitled to benefits if a pension survivor option was selected. The amount the survivor will receive is based on the survivor option chosen, which provides from 50 percent to 100 percent of the *actuarially reduced* monthly pension the disabled worker was receiving.

If the disabled worker dies and the death is related to their disabling work-related injury or occupational disease, the amount the survivor receives is 60% of the worker's wages at the time of disablement. There are no actuarial reductions applied to this survivor benefit.

If a surviving spouse of someone who died from a work-related injury or occupational disease remarries, monthly benefit payments stop. This occurs whether a duty-related death or death following retirement from disability. The survivor will receive benefits through the end of the month in which they remarry. The survivor then has the option to receive a final settlement, or to leave the settlement in trust with Workers' Compensation.

If the survivor accepts the settlement, no further benefits are paid under the claim. If the survivor leaves the settlement in trust and the new marriage ends in death, annulment or divorce, the survivor can apply to reinstate the pension as of the date of death or date the divorce becomes final. Should the survivor die while the settlement is in trust, the survivor's estate is paid 50 percent of the remaining pension reserve or the settlement amount, whichever is less.

If a surviving spouse of someone whose death is not related to their disabling work-related injury or occupational disease remarries, monthly benefit payments do not stop if a survivor option was selected. Similar to survivor retirement benefits, the worker's benefit was actuarially reduced to reflect the cost of continuing the benefit over the survivor's lifetime.

A surviving spouse will also receive an immediate cash payment amounting to 100 percent of the state's average monthly wage¹. Also, L&I will pay burial/cremation expenses up to 200 percent of the state's average monthly wage.

Social Security Benefits for Survivors

Additional federal death benefits are available to survivors of state retirement system members covered by Social Security. The survivors of covered members may be eligible for a death benefit if they meet age, income, or other restrictions. The age eligibility for the Social Security death benefit is based on age 65 eligibility for full benefits, and reduced benefits are available beginning at age 60. The size of the Social Security death benefit is dependent on the contributions the deceased made to Social Security during the member's

¹ A calculation made by the Department of Employment Security and adjusted each year.

career. The majority of LEOFF members do not participate in Social Security. (Pringle, 2010)

Administrative Issues

The requirement to determine eligibility for continuing benefits has created administrative challenges for the Department of Labor and Industries. The Department of Labor and Industries received an audit finding from the State Auditor's Office in 2006 for paying benefits to survivors who were no longer eligible due to remarriage. (WA State Auditor's Office, 2006) Eliminating this requirement may help the Department of Labor and Industries.

Policy Treatment in Other States

Preliminary research by the LEOFF Plan 2 Retirement Board has identified at least four states that do not stop survivor benefits upon remarriage (See Appendix B). Those states include: Kansas, Minnesota, Nevada, and North Dakota. In the case of Nevada, the continuation of benefits after remarriage is an exception for surviving spouses of police officers or firefighters.

Treatment of Domestic Partnerships

Under the intent of the current domestic partnership law, state registered domestic partners must be treated the same as married spouses. Accordingly, Labor and Industries will stop the benefits of a LEOFF Plan 2 survivor who registers on the State domestic partnership registry. The following describes the recent history and development of the domestic partnership law in Washington State.

In 2007 the Legislature created a domestic partnership registry in the Office of the Secretary of State (OSOS). The legislation² allows individuals to enter into a state registered domestic partnership so long as the individuals meet certain criteria, such as sharing a common residence; being at least 18 years of age; being members of the same sex; or one person being at least 62 years of age.

The 2007 legislation extended certain powers and rights available to spouses to domestic partners, such as health care facility visitation rights; ability to grant informed consent for health care for a patient who is not competent; title and rights to cemetery plots; and automatic termination of power of attorney upon termination of the partnership. See Appendix C for additional details.

Same-sex domestic partners of public employees are eligible to participate in Public Employees Benefits Board (PEBB) insurance coverage. A certificate of domestic partnership issued to a same sex couple by the OSOS fulfills eligibility requirements for the same sex partner of the public employee to receive benefits.

² SSB 5336 (2007)

In 2008 the Legislature expanded the rights and responsibilities of domestic partners. The legislation³ amended statutes related to dissolutions; community property; estate planning; taxes; court process; service to indigent veterans and other public assistance; conflicts of interest for public officials; and guardianships. See Appendix C for additional details.

In 2009 the Legislature enacted additional legislation with the intent that for all purposes under state law, state registered domestic partners must be treated the same as married spouses.⁴ Agencies were required to amend their rules to reflect the intent of the Legislature to ensure that all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because that individual is or was a spouse in a marital relationship are granted or imposed on equivalent terms to an individual because that individual is or was in a state registered domestic partnership.

The terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family are interpreted as applying equally to state-registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage apply equally to state-registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Gender specific terms such as husband and wife used in any statute, rule, or other law are construed to be gender neutral, and applicable to individuals in state-registered domestic partnerships.

Other legislation⁵ passed in the 2009 session allowed qualified domestic partners to be eligible for survivor and death benefits under the same circumstances as spouses in WSPRS and LEOFF Plan 2, respectively. Additionally, domestic partners of a LEOFF Plan 2 member killed in the course of employment are eligible for the same pension and PEBB access and reimbursement benefits provided to spouses of members of LEOFF Plan 2.

7. Policy Options

At the October 27, 2010 Meeting of the LEOFF Plan 2 Retirement Board, the Board requested staff to develop Option 1 as a Final Proposal. The coordinated benefit alternatives under Option 2 were deferred for possible consideration in the future.

Option 1 –Domestic Partnership

This option allows the surviving spouse of a member who is killed in the line of duty to register on the state domestic partnership registry and continue receiving Workers' Compensation survivor benefits. This option would require a change in the domestic partnership laws to make the survivors eligible and to the Workers' Compensation laws to ensure continuation of benefits. The preliminary pricing provided by the Office of the State Actuary (OSA) indicates that they do not believe this option would have any material impact on the retirement system. (See; Won, Lisa (Office of the State Actuary). Letter to: Steve Nelsen (LEOFF Plan 2 Retirement Board). 2010 Oct 15)

³ 2SHB 3104 (2008)

⁴ E2SSB 5688 (2009)

⁵ ESHB 1445 (2009) and EHB 1616 (2009)

Option 2 – Eliminate Remarriage Prohibition

This option eliminates the remarriage prohibition on workers' compensation survivor benefits for surviving spouses of public safety employees killed in the course of employment. This would allow survivors to remarry and continue to receive workers' compensation benefits. Surviving spouses who have already had their benefits suspended due to remarriage would have their benefits resume.

8. Supporting Information

- Bill Draft: Option 1 Domestic Partnership
- Bill Draft: Option 2 Eliminate Remarriage Prohibition
- Appendix A: Legislative History
- Appendix B: States Allowing Continuation of Benefits After Remarriage
- Appendix C: Legislative Summary of Domestic Partnership Benefits
- Bibliography

BILL REQUEST CODE REVISER'S OFFICE

BILL REQ. #: Z-0215.1/11

ATTY/TYPIST: LL:seg

BRIEF DESCRIPTION: Addressing certain surviving spouses of
law enforcement officers, firefighters,
and state patrol officers.

AN ACT Relating to certain surviving spouses of law enforcement officers, firefighters, and state patrol officers; and amending RCW 26.60.030 and 51.32.050.

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

Sec. 1. RCW 26.60.030 and 2007 c 156 s 4 are each amended to read as follows:

To enter into a state registered domestic partnership the two persons involved must meet the following requirements:

- (1) Both persons share a common residence;
- (2) Both persons are at least eighteen years of age;
- (3) Neither person is married to someone other than the party to the domestic partnership and neither person is in a state registered domestic partnership with another person;
- (4) Both persons are capable of consenting to the domestic partnership;
- (5) Both of the following are true:

(a) The persons are not nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law; and

(b) Neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and

(6) Either (a) both persons are members of the same sex; ((or)) (b) at least one of the persons is sixty-two years of age or older; or (c) at least one of the persons is the surviving spouse of a law enforcement officer as defined in RCW 41.26.030, firefighter as defined in RCW 41.26.030, or member of the Washington state patrol retirement fund as defined in RCW 43.43.130, who died in the course of his or her employment as determined by the director of the department of labor and industries.

Sec. 2. RCW 51.32.050 and 2010 c 261 s 3 are each amended to read as follows:

(1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month

following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section:

(i) Exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER
PERCENTAGE

June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and

an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (2)(d)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under RCW 51.08.178, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.

(e) In addition to the monthly payments provided for in subsection (2)(a) through (c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i)(A) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is

the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect;

(B) If a surviving spouse is the surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW or the state patrol retirement system under chapter 43.43 RCW, the surviving spouse may elect to register as a domestic partner as provided in RCW 26.60.030 and continue to receive monthly payments as provided in this section or receive a lump sum of thirty-six times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and RCW 51.32.075(3) or fifty percent of the remaining annuity value of his or her pension provided under this chapter, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the lump sum benefit shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her

estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975 '76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER
PERCENTAGE

June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER
PERCENTAGE

June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067.

BILL REQUEST CODE REVISER'S OFFICE

BILL REQ. #: Z-0374.1/11

ATTY/TYPIST: LL:crs

BRIEF DESCRIPTION: Addressing a surviving spouse's death
 benefits under the law enforcement
 officers' and firefighters' retirement
 system and Washington state patrol
 retirement system.

AN ACT Relating to a surviving spouse's death benefits under the law enforcement officers' and firefighters' retirement system and Washington state patrol retirement system; and amending RCW 51.32.050.

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

Sec. 1. RCW 51.32.050 and 2010 c 261 s 3 are each amended to read as follows:

(1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker.

(b) A surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW, or the state patrol retirement system under chapter 43.43 RCW, who is entitled to benefits under this section must continue to receive benefits under this section monthly for life.

(c) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children

shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

((c)) (d) Except as provided in (b) of this subsection, payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

((d)) (e) In no event shall the monthly payments provided in this subsection (2) ((of this section)):

(i) Exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER
PERCENTAGE

June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (2)((d)) (e)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under RCW 51.08.178, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.

((e)) (f) In addition to the monthly payments provided for in ((subsection (2)))(a) through ((c)) (d) of this subsection, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

((f)) (g) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as

provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i)(A) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to ((subsection (2)))(a)(i) of this subsection and subject to any modifications specified under ((subsection (2)(d))) (e) of this subsection and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect;

(B) If a surviving spouse is the surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW or the state patrol retirement system under chapter 43.43 RCW, the surviving spouse may receive a lump sum of thirty-six times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to ((subsection (2)))(a)(i) of this subsection and RCW 51.32.075(3) or fifty percent of the remaining annuity value of his or her pension provided under this chapter, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the lump sum benefit shall be as provided in the remarriage benefit schedules then in effect; ((or))

(ii) If a surviving spouse does not choose the option specified in ((subsection (2)(f))) (g)(i) of this subsection

to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in ((subsection (2)(f))) (g)(i) of this subsection during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment; or

(iii) After the effective date of this section, the monthly payments to such surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW, or the state patrol retirement system under chapter 43.43 RCW, shall resume regardless of remarriage.

((g)) (h) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in ((subsection (2)(f))) (g)(i) of this subsection, his or her estate shall be entitled to receive the sum specified under ((subsection (2)(f))) (g)(i) of this subsection or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

((h)) (i) The effective date of resumption of payments under ((subsection (2)(f))) (g)(ii) of this subsection to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

((i)) (j) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws

of 1975 '76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER
PERCENTAGE

June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be

made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER
PERCENTAGE

June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as

provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067.

Appendix A: Legislative History

The Legislature has considered the policy issue of terminating worker's compensation death benefits when the surviving spouse of certain public safety employees remarries during each of the last four Legislative Sessions (HB 1545/2007 & 2008, HB 1212/2009, HB 2519/2010).

2007 - 2008 Legislative Sessions. Legislation first introduced to the 2007 Legislature by Representative Steve Kirby (HB 1545) would have allowed surviving spouses of LEOFF Plan 2 members, who are receiving Workers' Compensation death benefits, to continue to receive the benefit after remarriage.

A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$201,662 in the 2007-09 biennium and \$21,536 in each of the 2009-11 and 2011-13 biennia. The Fiscal Note did not identify specific costs attributable to self-insurers.

The 2007 bill did not receive a hearing. During the 2008 session, the bill was passed unanimously by the House of Representatives, but the bill did not move past the Senate Rules Committee.

2009 Legislative Session. New legislation (HB 1212) was introduced in the 2009 session allowing the continuation of workers' compensation benefits after remarriage for surviving spouses of LEOFF Plan 2 members and Washington State Patrol Retirement System members who died in the course of employment or whose death is due to an occupational disease.

A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$637,000 in the 2007-09 biennium and \$56,000 in each of the 2009-11 and 2011-13 biennia. The 2007-09 cost *includes* \$223,429 self-insurers will have to pay as their portion of the on-time reserve increase to the Pension Reserve Fund. Self-Insured plans would also incur costs of \$19,000 per future biennium for new claims.

The bill passed the House of Representatives, but was amended in the Senate before being passed. The amendment requires the Workers' Compensation Advisory Committee to study issues relating to allowing a surviving spouse to continue to receive industrial insurance death benefits after remarriage. The amended bill was sent to Conference Committee, but did not proceed any further. The bill was returned to the House of Representatives for consideration during the 2010 session.

Following the 2009 Legislative Session, Representative Steve Conway, Chair of the House Commerce and Labor Committee and Senator Jeanne Kohl-Welles, Chair of the Senate Labor, Commerce, and Consumer Protection Committee, sent a joint letter to Judy Schurke, Director of Labor and Industries requesting a study on the policy of terminating survivors' benefits upon remarriage. The letter requested the following information:

1. The history of and reasons for the policy.
2. The cost of changing the policy and likely impact on rates.
3. Alternatives to offset potential costs.
4. The number of spouses currently receiving monthly benefits.

5. The number of remarriages that have occurred.
6. Assumptions regarding the expected number of new surviving spouses and likelihood of future remarriages.
7. Savings that may result from no longer needing to ensure that remarried spouse stop receiving benefits.
8. Whether other states allow continuation of benefits.
9. Whether other states treat public safety employees different from other employees.

2010 Legislative Session. A comprehensive death benefits bill (HB2519) recommended to the Legislature included a provision which would have eliminated the remarriage prohibition for workers' compensation benefits on surviving spouses of LEOFF and State Patrol members killed in the course of employment. The provision also provided that surviving spouses whose benefits had been suspended due to remarriage would have their benefits resume.

A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$1,080,500 in the 2009-11 biennium and \$72,000 in each of the 2011-13 and 2013-15 biennia. The 2009-11 cost *does not* include \$1,089,858 self-insurers will have to pay as their portion of the one-time reserve increase to the Pension Reserve Fund. Self-Insured plans would also incur costs of \$44,800 per future biennium for new claims.

The House of Representatives overwhelmingly passed the legislation. However, in the Senate an amendment removed the remarriage prohibition provision and increased the lump-sum cash out option from 24 months of salary to 36 months of salary. The Senate passed the bill as amended. The House of Representatives concurred and passed the amended bill.

Appendix B: States Allowing Continuation of Benefits After Survivor Remarriage

Kansas	<p><u>44-510b. Compensation where death results from injury; compensation upon remarriage; apportionment; burial expenses; limitations on compensation; annual statement by surviving spouse.</u></p> <p>(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.</p> <p>(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.</p> <p>(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, such other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as such other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all such other dependents, regardless of the number of such other dependents, shall not exceed a maximum amount of \$18,500.</p> <p>(g) The marriage or death of any dependent shall terminate all compensation, under this section, to such dependent except the marriage of the surviving legal spouse shall not terminate benefits to such spouse. Upon the death of the surviving legal spouse or the marriage or death of a dependent child, the compensation payable to such spouse or child shall be reapportioned to those, among the surviving legal spouse and dependent children, who remain eligible to receive compensation under this section.</p>
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<p>Minnesota</p> <p>Per MN worker's comp staff, benefits do not cease or suspend due to remarriage after 10/1/83, per Ott v. Krans</p>	<p><u>176.111 Dependents, allowances.</u></p> <p>Subdivision 1. Persons wholly dependent, presumption. For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent: (a) spouse, unless it be shown that the spouse and decedent were voluntarily living apart at the time of the injury or death;</p> <p>Subd. 6. Spouse, no dependent child. If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse weekly workers' compensation benefits at 50 percent of the weekly wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.</p> <p>Subd. 9a. Remarriage of spouse. A surviving spouse who remarries and is receiving benefits under subdivision 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse is entitled to receive benefits pursuant to this section.</p> <p>-----</p> <p><i>Winter, deceased by Winter Ott v. D.J. Kranz, 3/31/04*</i> DOD: 11/24/97</p> <p>Dependency Benefits – Remarriage of Spouse Minnesota Statutes §176.111, subd. 8 Minnesota Statutes §176.111, subd. 9a Minnesota Statutes §176.111, subd. 16</p> <p>The purpose of Minnesota Statutes §176.111 is to provide wage replacement benefits to a surviving spouse and dependent children. We cannot conclude the phrase “continue to be eligible to receive” requires that benefits to the surviving spouse be suspended upon remarriage. Rather, the dependency statute, as amended effective Jan. 1, 1984, continues to provide for the continuation of benefits to a surviving spouse upon remarriage. Affirmed.</p>
<p>Nevada</p>	<p><u>NRS 616C.505 Amount and duration of compensation.</u> If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit and is payable as follows:</p> <p>2. Except as otherwise provided in subsection 3 and NRS 616C.507, to the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.</p> <p><u>NRS 616C.507 Duration of compensation for surviving spouse of police officer or firefighter.</u></p> <p>1. Except as otherwise provided in this section, if the surviving spouse of a deceased police officer or firefighter who died while actively employed as a police officer or firefighter is entitled to be paid compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487, the surviving spouse:</p> <p>(a) Must be paid that compensation until the death of the surviving spouse, whether or not the surviving spouse remarries; and</p> <p>(b) Must not be paid any compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487 in one lump sum upon remarriage.</p> <p>(Added to NRS by 2007, 678)</p>

North Dakota	<p><u>65-05-21. Marriage settlement to spouse.</u></p> <p>If a spouse who receives compensation under the provisions of subsection 1 of section 65-05-17 remarries, there shall be paid to such spouse a lump sum equal to one hundred four weeks' compensation. If, prior to such marriage, such spouse has received a partial lump sum settlement which covers all or any portion of the said one hundred four weeks following such spouse's marriage, the amount of such partial lump sum settlement which covers all or any part of the said one hundred four weeks following such spouse's marriage shall be deducted from such marriage settlement, and the spouse shall receive only the remainder, if any, over and above such deduction. Any judgment annulling such marriage shall not reinstate the right of such spouse to compensation if the action for annulment is instituted more than six months after the marriage. The provisions of this section apply only to remarriages that occur before August 1, 2003, regardless of the date of injury or date of death of the decedent.</p>
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Appendix C: Legislative Summary of Domestic Partnership Benefits

2007 Legislation

Final Bill Report SSB 5336/C 156 L 2007

Extension of Rights to Domestic Partners: Certain powers and rights granted to spouses are granted to domestic partners as follows:

- health care facility visitation rights;
- ability to grant informed consent for health care for a patient who is not competent;
- authority of health care providers to disclose information about a patient without the patient's authorization to the patient's state registered domestic partner;
- automatic revocation of the designation of a domestic partner as the beneficiary for non probate assets upon termination of the partnership;
- automatic revocation of power of attorney granted to domestic partner upon termination of the partnership;
- title and rights to cemetery plots and rights of interment;
- ability to authorize autopsies and request copies of autopsy reports and records;
- right to control the disposition of the remains of a deceased person;
- ability to consent to removal of human remains from a cemetery plot;
- ability to make anatomical gifts;
- inheritance rights when the domestic partner dies without a will;
- administration of an estate if the domestic partner died without a will or if the representative named in the will declined or was unable to serve;
- beneficiary rights in wrongful death actions; and
- ability to designate a partner's physician as the attorney-in-fact.

2008 Legislation

Final Bill Report 2SHB 3104/C 6 L 2008

Rights and Responsibilities.

Rights and responsibilities provided to spouses in various areas of law are extended to state registered domestic partners. The amended statutes generally involve: dissolutions; community property; estate planning; taxes; court process; services to indigent veterans and other public assistance; conflicts of interest for public officials; and guardianships. The following is a list of the broad categories and a short description of some of the changes made in each category.

Dissolution, Parenting Plans, and Child Support.

- Procedures for dissolution apply to domestic partners.
- Child support, maintenance, and parenting plan obligations, and procedures for enforcing such orders, apply to domestic partners.

Community Property and Other Property Rights.

- Property of domestic partners are subject to community property laws.
- A domestic partner's property is obligated to family expenses and education of the children.
- The slayer statute prohibits inheritance by a domestic partner perpetrator.
- A homestead may consist of property owned by domestic partners.

Judicial Process and Victim's Rights.

- A domestic partner may sue on behalf of the community.
- Testimonial privilege for spouses applies to domestic partners.
- A domestic partner is a "family or household member" for purposes of the domestic violence laws.

Taxes.

- Property assigned from one domestic partner to another under a dissolution decree is exempt from real estate excise tax.
- Property tax deferrals for eligible persons, such as senior citizens meeting certain criteria, extend to the person's surviving domestic partner.

Public Officials.

- Appointed and elected officials must disclose financial affairs of their domestic partners.
- Gifts received by an elected official's domestic partner are subject to public disclosure reporting requirements.
- A domestic partner of an elected official may not be a member of the State Commission on Salaries.

Public Assistance.

- The Department of Social and Health Services must consider hardship to a person's domestic partner, to the same extent hardship is considered for spouses, when filing a lien against a person's property as reimbursement for receiving medical assistance.
- Domestic partners who are residents in long-term care facilities or nursing homes may share the same room under certain circumstances.
- An abused same-sex domestic partner is considered a "victim" for purposes of services provided by domestic violence shelters.

Veterans.

- State colleges and universities must waive tuition for domestic partners of deceased or disabled veterans if certain conditions are met.
- Services for honorably discharged indigent veterans, such as residency in a veteran's home, are available to veterans' domestic partners.

Guardianship and Powers of Attorney.

- Procedures under guardianship laws, such as who is entitled to notice, apply to domestic partners of incapacitated persons.
- Domestic partners may file a petition to determine the effectiveness of a power of attorney, receive an accounting, and request other information regarding the power of attorney.

Probate and Trust Law.

- A domestic partner not named in a will that was created before registration of the domestic partnership is an omitted domestic partner for purposes of intestate distribution.
- Letters testamentary go to the surviving domestic partner to administer community property.
- Procedures under probate involving transfer of community property apply to domestic partners.
- The court may award a certain amount from the estate to the decedent's domestic partner for purposes of family support.

Bibliography

Elgee, J. (2009). *Bill Analysis - House Bill 1212*. Olympia: WA House of Representative Office of Program Research.

Pringle, D. (2010). *House Bill Analysis - House Bill 2519*. Olympia: Office of Program Research, WA House of Representatives.

WA State Auditor's Office. (2006). *Audit Report 6541*. Olympia: WA State Auditor's Office.

DRAFT ACTUARY'S FISCAL NOTE

RESPONDING AGENCY:	CODE:	DATE:	PROPOSAL [NAME or Z-NUMBER]:
Office of the State Actuary	035	12/07/10	Duty-Related Death Benefits, Domestic Partner Definition

WHAT THE READER SHOULD KNOW

The Office of the State Actuary (“we”) prepared this draft fiscal note based on our understanding of the proposal as of the date shown above. We intend this draft fiscal note to be used by the Law Enforcement Officers’ and Fire Fighters’ Plan 2 Retirement Board during the 2010 Interim only. If a legislator introduces this proposal as a bill during the next legislative session, we will prepare a final fiscal note based on that bill language. The actuarial results shown in this draft fiscal note may change when we prepare our final version for the Legislature.

We advise readers of this draft fiscal note to seek professional guidance as to its content and interpretation, and not to rely upon this communication without such guidance. Please read the analysis shown in this draft fiscal note as a whole. Distribution of, or reliance on, only parts of this draft fiscal note could result in its misuse, and may mislead others.

SUMMARY OF RESULTS

This proposal (see attached bill draft) expands registered domestic partner eligibility to include any survivor of a law enforcement officer or fire fighter who dies in the line of duty.

The proposal does not change pension benefits in Washington’s public retirement systems. However, it has a small, but indeterminate, impact on the systems by increasing the potential pool of survivors of pre-retirement deaths. We display potential cost impacts in the “How The Results Change When The Assumptions Change” section of this fiscal note.

This draft fiscal note addresses the potential effects of the proposal on the state-administered retirement systems. It does not address changes affecting duty-related death benefits from the Worker's Compensation Program in the Department of Labor and Industries (L&I).

Please see the body of this draft fiscal note for additional detail.

WHAT IS THE PROPOSED CHANGE?

Summary Of Change

This proposal could impact any of the following systems:

- ❖ Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF).
- ❖ Washington State Patrol Retirement System (WSPRS).
- ❖ Public Employees' Retirement System (PERS).
- ❖ Teachers' Retirement System (TRS).
- ❖ School Employees' Retirement System (SERS).
- ❖ Public Safety Employees' Retirement System (PSERS).
- ❖ Volunteer Fire Fighters' and Reserve Officers' Relief and Pension Fund (VFFRPF).
- ❖ Judicial Retirement System (JRS).

The proposal (see attached bill draft) does not change retirement benefits administered by the Department of Retirement Systems (DRS) or by the Board for Volunteer Fire Fighters.

The proposal increases the number of couples who could register as state domestic partners by expanding the current domestic partner definition (RCW 26.60.030). It would allow a couple to register if at least one person is a qualified survivor of a LEOFF or WSPRS member who dies in the line of duty.

This proposal also allows a surviving spouse who registers as a domestic partner to continue receiving duty-related death benefits from L&I. Analysis of this provision is beyond the scope of this draft fiscal note.

Effective Date: 90 days after session.

What Is The Current Situation?

Survivor Benefits In The Retirement Systems

If a member of a retirement system dies prior to retirement, a surviving spouse may receive a retirement allowance. The provisions of the allowance will vary by plan.

Under the domestic partnership statutes, a surviving domestic partner is qualified to receive the same retirement allowance as a surviving spouse.

Registration As A Domestic Partner

Couples wishing to register as domestic partners must meet certain criteria. Among the criteria, current law requires one of the following:

- ❖ Both persons are of the same sex; or
- ❖ At least one of the persons is age sixty-two or older.

L&I Duty-Related Death Benefits

L&I currently ceases or suspends duty-related death benefits for surviving spouses who remarry or register as a domestic partner.

Who Is Impacted And How?

We estimate this proposal could affect any current or future qualified survivors of LEOFF and WSPRS duty-related deaths. If these survivors enter into domestic partnerships with members of any of the state-administered public retirement systems, they could be eligible for additional survivor benefits from those plans. The table below shows the expected number of duty-related deaths per year in LEOFF and WSPRS. These numbers represent an expected annual increase in the size of the population from which domestic partnerships might occur.

Expected Duty Deaths per Year			
	LEOFF 1	LEOFF 2	WSPRS
Count	0.1	6.4	0.2

This proposal will not change the DRS-administered benefits offered to survivors of LEOFF and WSPRS duty-related deaths. Instead, it increases the number of possible survivor benefits paid from the plans. It also allows the survivors to enter into state-registered domestic partnerships without losing or suspending benefits they receive from L&I.

This proposal impacts WSPRS Plan 1 members, and Plan 2 members of all systems through slightly increased contribution rates. With the exception of WSPRS members, this proposal will not affect member contribution rates in Plan 1 since the contribution rates are fixed in statute. Additionally, this proposal will not affect member contribution rates in Plan 3 since Plan 3 members do not contribute to their employer-provided defined benefit.

WHY THIS PROPOSAL HAS A COST AND WHO PAYS FOR IT

Why This Proposal Has A Cost

This proposal has a cost to the public retirement systems because it increases the probability that a member who dies before retirement could leave a qualified survivor (survivor percent). That survivor is then eligible for benefits from the public retirement systems.

We do not believe that L&I's required continuation of benefits for survivors who enter into registered domestic partnerships has a direct affect on any of the public retirement

systems. The cost to L&I's Worker's Compensation Program is not considered in this draft fiscal note.

Who Will Pay For These Costs?

The cost of this proposal will be divided between members, local employers, and the state according to standard funding methods:

- ❖ LEOFF 2: 50 percent member, 30 percent employer, and 20 percent State.
- ❖ Plan 1: 100 percent employer.
- ❖ Plan 2, WSPRS: 50 percent member and 50 percent employer.
- ❖ Plan 3: 100 percent employer.

HOW WE VALUED THESE COSTS

Assumptions We Made

We were not able to estimate the additional number of survivors that would enter into domestic partnerships through this proposal. Therefore, we were unable to set new survivor percent assumptions. As a result, we are unable to provide a determinate fiscal impact for this proposal.

We do believe the proposal has a cost to the state's public retirement plans. We also believe the cost is immaterial since the increased pool of eligible survivors is small. In order to evaluate the potential cost magnitude from the proposal, we increased the survivor percent assumptions in LEOFF and WSPRS. Please see the section How The Results Change When The Assumptions Change for additional detail.

How We Applied These Assumptions

To evaluate the potential cost magnitude from this proposal, we changed the assumed survivor percent in LEOFF and WSPRS and measured the resulting change in liability.

Otherwise, we developed these costs using the same methods as disclosed in the June 30, 2009, Actuarial Valuation Report (AVR).

Special Data Needed

We developed these costs using the same assets and data as disclosed in the AVR.

HOW THE RESULTS CHANGE WHEN THE ASSUMPTIONS CHANGE

The tables below show results if we increase our survivor percent assumption in LEOFF and WSPRS by the duty-related death assumption.

Impact on Pension Liability			
<i>(Dollars in Millions)</i>	Current	Increase	Total
Today's Value of All Future Pensions	\$12,837	\$0.050	\$12,837
Earned Pensions Not Covered by Today's Assets	(\$1,111)	\$0.001	(\$1,111)

Impact on Contribution Rates: (Effective 09/01/2011)		
2011-2013 State Budget	LEOFF	WSPRS
Employee (Plan 2)	0.00011%	0.00057%
Employer:		
Current Annual Cost	0.00007%	0.00057%
Plan 1 Past Cost	0.00000%	0.00000%
Total	0.00007%	0.00057%
State		
Current Annual Cost	0.00004%	
Plan 1 Past Cost	0.00000%	
Total	0.00004%	

The increase in the required actuarial contribution rate does not round up to the minimum supplemental contribution rate of 0.01 percent. Therefore contribution rates would not be affected in the current biennium. However, using the un-rounded rate increase to measure the budget changes in future biennia, the total employer fiscal cost over 25 years would be less than \$100,000 for LEOFF and WSPRS combined under this scenario.

We think the results shown above establish the maximum long-term cost this proposal would generate for LEOFF and WSPRS. Fewer qualified survivors entering into domestic partnerships with LEOFF or WSPRS members, or survivors entering into domestic partnerships with members outside LEOFF and WSPRS, would result in even smaller impacts to those systems.

We did not attempt to measure potential costs to other state-administered systems because we believe the impact to those systems will be very immaterial.

Please see Appendix A for additional detail on the assumption changes.

ACTUARY'S CERTIFICATION

The undersigned hereby certifies that:

1. The actuarial cost methods are appropriate for the purposes of this pricing exercise.
2. The actuarial assumptions used are appropriate for the purposes of this pricing exercise.
3. The data on which this draft fiscal note is based are sufficient and reliable for the purposes of this pricing exercise.
4. Use of another set of assumptions may also be reasonable, and might produce different results.
5. We prepared this draft fiscal note for the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board.
6. We prepared this draft fiscal note and provided opinions in accordance with Washington State law and accepted actuarial standards of practice as of the date shown on page one of this draft fiscal note.

While this draft fiscal note is meant to be complete, the undersigned is available to provide extra advice and explanations as needed.



Lisa A. Won, ASA, MAAA
Actuary

Attachment
Draft Bill Language

APPENDIX A – ASSUMPTIONS WE MADE

To determine a possible cost impact due to this proposal, we varied the survivor percent for LEOFF and WSPRS. We believe the assumption change in any system would be very minor on an expected basis, but we have no data on which to base a best-estimate assumption change. Therefore, we applied maximum expected increases in the assumption to show that even extreme changes would not result in significant costs.

We increased the survivor percent assumptions in LEOFF and WSPRS by the duty-related death assumption in those systems. This increase models what happens if all duty-related deaths leave qualified survivors and all of those qualified survivors enter into new domestic partnerships within the same plan as the deceased member.

Duty-Related Death Assumption*		
LEOFF 1	LEOFF 2	WSPRS
0.000376	0.000376	0.000200

**The duty death rate is a constant probability, regardless of age.*

LEOFF Assumed Ratio of Survivors Selecting Annuities*				
Ages	LEOFF 1		LEOFF 2	
	Current	Increased	Current	Increased
34 and Under	0.0000	0.0000	0.0000	0.0000
35-39	0.0000	0.0000	0.0728	0.0732
40-44	0.5670	0.5674	0.1714	0.1718
45-49	0.5670	0.5674	0.2701	0.2705
50-54	0.5670	0.5674	0.3030	0.3034
55-59	0.5670	0.5674	0.4017	0.4020
60-61	0.5670	0.5674	0.5332	0.5336
62 and Over	0.6000	0.6004	0.5662	0.5666

**Denoted as Survivor Percent in this draft fiscal note. Values rounded for display purposes. Refers to survivor who selects annuity payments (rather than a lump sum payment) upon active or terminated vested member's death. The assumed duty-related death ratios increase from 0.607 to 0.6074 for LEOFF 2.*

WSPRS Assumed Ratio of Survivors Selecting Annuities*				
Ages	WSPRS 1		WSPRS 2	
	Current	Increased	Current	Increased
34 and Under	0.0000	0.0000	0.0000	0.0000
35-39	0.0000	0.0000	0.0728	0.0730
40-44	0.5670	0.5672	0.1714	0.1716
45-49	0.5670	0.5672	0.2701	0.2703
50-54	0.5670	0.5672	0.3030	0.3032
55-59	0.5670	0.5672	0.4017	0.4019
60-61	0.5670	0.5672	0.5332	0.5334
62 and Over	0.6000	0.6002	0.5662	0.5664

**Denoted as Survivor Percent in this draft fiscal note. Values rounded for display purposes. Refers to survivor who selects annuity payments (rather than a lump sum payment) upon active or terminated vested member's death. The assumed duty-related death ratios increase from 0.607 to 0.6072 for WSPRS 2.*

We believe the assumption changes we selected are higher than we would expect to see for several reasons. Among them,

- ❖ The current survivor percent assumption already includes a component for duty-related deaths. In effect, adding the duty-related death rate “double-counts” qualified duty-death survivors;
- ❖ We do not believe every member who dies in the line of duty will leave a qualified survivor. We currently assume about 60 percent leave qualified survivors for all plans in LEOFF and WSPRS;
- ❖ We do not believe that every survivor of a duty-related death would enter into a domestic partnership. However, we do not have an estimate for how many survivors would enter into a domestic partnership;
- ❖ We do not believe that every survivor who enters into a domestic partnership will do so with a member of a state-administered public pension system. We do not have a best-estimate assumption for this;
- ❖ We do not believe that every survivor who enters into a domestic partnership with another public employee will necessarily do so with a member from the same plan as the deceased member. They could enter into a domestic partnership with a member of another system instead. We do not have a best-estimate assumption for this.

Otherwise, we developed these costs using the same assumptions as disclosed in the AVR.

GLOSSARY OF ACTUARIAL TERMS

Actuarial Accrued Liability: Computed differently under different funding methods, the actuarial accrued liability generally represents the portion of the present value of fully projected benefits attributable to service credit that has been earned (or accrued) as of the valuation date.

Actuarial Present Value: The value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of actuarial assumptions (i.e. interest rate, rate of salary increases, mortality, etc.).

Aggregate Funding Method: The Aggregate Funding Method is a standard actuarial funding method. The annual cost of benefits under the Aggregate Method is equal to the normal cost. The method does not produce an unfunded actuarial accrued liability. The normal cost is determined for the entire group rather than on an individual basis.

Entry Age Normal Cost Method (EANC): The EANC method is a standard actuarial funding method. The annual cost of benefits under EANC is comprised of two components:

- ❖ Normal cost.
- ❖ Amortization of the unfunded actuarial accrued liability.

The normal cost is determined on an individual basis, from a member's age at plan entry, and is designed to be a level percentage of pay throughout a member's career.

Normal Cost: Computed differently under different funding methods, the normal cost generally represents the portion of the cost of projected benefits allocated to the current plan year.

Projected Unit Credit (PUC) Liability: The portion of the Actuarial Present Value of future benefits attributable to service credit that has been earned to date (past service).

Projected Benefits: Pension benefit amounts that are expected to be paid in the future taking into account such items as the effect of advancement in age as well as past and anticipated future compensation and service credits.

Unfunded PUC Liability: The excess, if any, of the Present Value of Benefits calculated under the PUC cost method over the Valuation Assets. This is the portion of all benefits earned to date that are not covered by plan assets.

Unfunded Actuarial Accrued Liability (UAAL): The excess, if any, of the actuarial accrued liability over the actuarial value of assets. In other words, the present value of benefits earned to date that are not covered by plan assets.

Sec. 1. RCW 26.60.030 is amended to read as follows:

To enter into a state registered domestic partnership the two persons involved must meet the following requirements:

- (1) Both persons share a common residence;
- (2) Both persons are at least eighteen years of age;
- (3) Neither person is married to someone other than the party to the domestic partnership and neither person is in a state registered domestic partnership with another person;
- (4) Both persons are capable of consenting to the domestic partnership;
- (5) Both of the following are true:
 - (a) The persons are not nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law; and
 - (b) Neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and
- (6) Either (a) both persons are members of the same sex; or (b) at least one of the persons is sixty-two years of age or older; or (c) at least one of the persons is the surviving spouse of a law enforcement officer as defined in RCW 41.26.030, fire fighter as defined in RCW 41.26.030, or member of the Washington state patrol retirement fund as defined in RCW 43.43.130, who died in the course of his or her employment as determined by the Director of the Department of Labor and Industries.

Sec. 2. RCW 51.32.050 is amended to read as follows:

- (1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.
- (2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:
 - (i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker;
 - (ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker;
 - (iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker;
 - (iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section:

(i) Exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER

PERCENTAGE

June 30, 1993 105%

June 30, 1994 110%

June 30, 1995 115%

June 30, 1996 120%

(ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (2)(d)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under RCW

51.08.178, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.

(e) In addition to the monthly payments provided for in subsection (2)(a) through (c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i)(A) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect;

(B) If a surviving spouse is the surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW or the state patrol retirement system under chapter 43.43 RCW, the surviving spouse may elect to register as a domestic partner as provided in RCW 26.60.030 and continue to receive monthly payments as provided in this section or receive a lump sum of thirty-six times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and RCW 51.32.075(3) or fifty percent of the remaining annuity value of his or her pension provided under this chapter, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the lump sum benefit shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of

such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER

PERCENTAGE

June 30, 1993 105%

June 30, 1994 110%

June 30, 1995 115%

June 30, 1996 120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER

PERCENTAGE

June 30, 1993 105%

June 30, 1994 110%

June 30, 1995 115%

June 30, 1996 120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067.