



December 16, 2020
King County EMT Study

TO: Senator Christine Rolfes, Chair
Senate Ways and Means Committee
Senator John Braun, Ranking Minority Member
Senate Ways and Means Committee
Representative Timm Ormsby, Chair
House Appropriations Committee
Representative Drew Stokesbary, Ranking Minority Member
House Appropriations Committee

FROM: Dennis Lawson, Chair
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board

SUBJECT: 2020 King County EMT Study

The 2020 Legislature directed the Law Enforcement Officers' and Fire Fighters' (LEOFF) Plan 2 Retirement Board to study the pension benefits provided to Emergency Medical Technicians (EMTs) who provided services in King County between October 1, 1978 and January 1, 2003. The board shall examine the legal and fiscal implications of extending membership in the plan for these periods, including King County employers that might be included, the benefits that would be paid to members on a prospective and retroactive basis, and the contribution requirements and plan liability that would be created for employers, employees, and the State.

The results of this study are included herein and available on the LEOFF Plan 2 website.

ISSUE STATEMENT

Are EMTs who provided services from 1978 to 2003, in King County through intergovernmental consortium with Evergreen Hospital, eligible for retirement service credit in the Public Employees Retirement System (PERS)?

OVERVIEW

King County was a pioneer in EMT services:

In 1970, the Seattle Fire Department, in cooperation with Harborview Medical Center and the University of Washington, trained the first class of firefighters as paramedics. The program was quite a success, and later classes soon followed. In 1977, the first paramedics came to work in King County. The prehospital emergency medical care pioneered in Seattle has become famous around the world. The expression that "Seattle is the best place in the world to have a heart attack" was coined after a 1974 *60 Minutes* story that featured the fledgling paramedic program. King County Medic One continues this tradition. The Medic One programs throughout King County are considered models for much of the world.¹

¹ <https://www.kingcounty.gov/depts/health/emergency-medical-services/medic-one/history.aspx>

King County, and other local governments, formed intergovernmental consortiums, also known as provider groups, to provide emergency medical services. These consortiums consist of counties, cities, and hospitals. They provide emergency medical services over their shared geographic area. The EMTs funded by the consortiums provide services to the citizens of all the consortium members. Some of the employees working for these consortiums were not reported as members in a state retirement plan, while others were. This inconsistency resulted in piece-meal legislation to provide state retirement benefits to some of these EMTs on an employer by employer basis.

EXECUTIVE SUMMARY

King County delivered emergency medical services using a variety of methods starting in the 1970s. Many of the employees who delivered those services were reported in LEOFF or PERS. However, one group which was not reported into LEOFF, PERS, or any other state pension plan, were EMTs for the King County/Evergreen Public Hospital District consortium.

This group of EMTs worked for a consortium that included King County and Evergreen Public Hospital District. Evergreen Public Hospital District was not a PERS employer, while King County was a PERS employer. The consortium believed the EMTs were employees of Evergreen Public Hospital District and therefore, did not report them as PERS members.

During the 2020 legislative session legal concerns were raised regarding whether these EMTs were eligible for PERS membership. These legal concerns included whether the EMTs could receive service credit in PERS if their employer was not a PERS employer. This raised the question of whether the EMTs' employer, for purposes of determining eligibility in PERS, was Evergreen Public Hospital District or King County.

As part of this study, the LEOFF 2 Board's tax counsel, Ice Miller LLP (Ice Miller), completed a legal analysis to determine whether these EMTs should have been reported in PERS (see Appendix A). Their analysis concluded these EMTs were correctly determined to be employees of the Evergreen Public Hospital District and therefore, not eligible for PERS.

Also, as part of this study, the Office of the State Actuary (OSA) completed an actuarial analysis of the fiscal impact to PERS Plan 2 if these EMTs were eligible for PERS Plan 2. They determined that past service credit granted to Evergreen Hospital EMTs would increase PERS Plan 2 liabilities by \$12.2 million, causing a contribution rate impact of one basis point to PERS Plan 2.

BACKGROUND AND POLICY ISSUES

EMT LEOFF Plan 2 History

As described above, starting with King County, some local governments moved their EMT positions to fire departments. Upon meeting requirements to become firefighters, such as training and applicable examinations, these EMTs employed at fire departments become members of LEOFF Plan 2.²

² In 2003, House Bill 1202 was enacted, permitting members of LEOFF whose jobs as EMT's were moved into fire departments the opportunity to transfer past service credit from PERS into LEOFF. The LEOFF members who elect to transfer service credit earned as an EMT in PERS are required to pay the difference between the contributions they paid into PERS, and the contributions that they would have paid into LEOFF, plus interest.

In 2005, Substitute House Bill 1936, was enacted amending the definition of "fire fighter" in LEOFF to include any person employed on a full-time, fully compensated basis as an EMT by a city, town, county or district. Prior to 2005, EMTs employed by local governments in health departments or other divisions of local governments were members of PERS if their employer opted into PERS membership.

Members of PERS Plan 2 employed as EMTs were transferred to LEOFF Plan 2 for purposes of future service. An EMT transferred to LEOFF Plan 2 could also elect to transfer past service earned as an EMT in PERS into LEOFF 2.³ After 2005, there remained a question of whether Public Hospital Districts met the definition of "employer" in LEOFF. In 2017, Substitute House Bill 2202 was enacted to clarify that Public Hospital Districts are LEOFF Plan 2 employers and that their EMTs were eligible for past service credit retroactive to 2005, when they would have been made eligible under Substitute House Bill 1936 (2005). However, these EMTs would still not have been eligible for service credit in PERS prior to 2005 for their employment at the Public Hospital District, if the Public Hospital District had not opted into PERS.

Legislation regarding EMTs working for consortiums

In 2016, Senate Bill 6423, was enacted which provided that an employee providing emergency medical services to a consortium of local governments may choose to establish service credit in PERS for service performed prior to July 23, 2003, if the service was performed in Snohomish County.⁴

In 2020, Senate Bill 6616 sought to provide a similar benefit to a group of EMTs who worked in King County. This group of EMTs worked for a consortium that included King County and Evergreen Public Hospital District. Evergreen Public Hospital District was not a PERS employer, while King County was a PERS employer. The consortium believed the EMTs were employees of Evergreen Public Hospital District and therefore, did not report them as PERS members.

During the legislative session legal concerns were raised regarding whether these EMTs were eligible to be allowed PERS membership. These legal concerns included whether the EMTs could receive service credit in PERS, if their employer was not a PERS employer. This raised the question of whether the EMTs' employer, for purposes of determining eligibility in PERS, was Evergreen Public Hospital District or King County.

After this legal issue was raised, House Bill 2902 was introduced to provide the same group of EMTs membership in LEOFF Plan 2, instead of PERS. Similar legal concerns were also raised regarding this bill. The legal concerns regarding these two bills and the ongoing issues regarding EMTs in similar situations resulted in the legislature funding this LEOFF Plan 2 Board Study.

³ For the period of past service a member transferred, the member was required to pay the difference between the employee contributions made to PERS, and the contributions that would have been made had the service been performed in LEOFF 2, plus interest. The employee was required to complete this payment within five years. Upon completing the required payment, the member's service credit and accumulated contributions, and an equal amount of employer contributions would be transferred from PERS Plan 2 to LEOFF Plan 2. Within five years of the completing payment for the transfer of service credit, the employer is required to pay into LEOFF Plan 2 an amount sufficient to ensure that the contribution rates for LEOFF Plan 2 will not increase due to the transfer of service.

⁴ The employee must pay both the employer and employee contribution, as calculated by DRS, within five years of making the election to establish service credit.

TAX COUNSEL ANALYSIS

The LEOFF Plan 2 Board requested the following legal advice from Ice Miller:

1. Whether the EMT employees can be considered employees of an employer other than Evergreen Hospital?
2. Whether the employees may receive retroactive coverage in LEOFF or PERS if Evergreen Hospital opts to become a participating employer retroactively?
3. Whether the employees may purchase service credit for the pre-2003 employment time?

In response to question 1, Ice Miller advised that “based on the extensive information provided to [them], it appears that the EMS employees were properly classified as Evergreen Hospital employees using analysis provided by the Internal Revenue Service (“IRS”)” (See Appendix A).

In response to question 2, Ice Miller advised that:

Federal law would not prevent the EMT employees from receiving retroactive coverage. However, PERS or LEOFF 2 would need to collect the retroactive mandatory employer and employee contributions with interest. This could prove administratively complicated and burdensome on the retirement systems, the employer, and the employee (See Appendix A).

In response to question 3, Ice Miller advised that “[i]f the employees are members in PERS or LEOFF 2, the members may be eligible to purchase some or all of their respective pre-2003 EMT employment service” (See Appendix A).

ACTUARIAL ANALYSIS

The LEOFF Plan 2 Board made the following price request to OSA:

- The increase in liabilities to PERS of adding EMTs who were employed at the intergovernmental consortium between King County and Evergreen Public Hospital District between October 1, 1978 and January 1, 2003; and,
- If the employer and member contributions are paid by the employer and/or member, does the interest (lost investment earnings) being paid by the system trigger a contribution rate increase?

OSA’s analysis (see Appendix B) estimated PERS liabilities increase by \$12.2 million as a result of past service granted to Evergreen Hospital EMTs. As requested by the LEOFF Plan 2 Board, OSA’s analysis assumed the employer and member contributions were paid, and that the lost investment earnings for those contributions was socialized across the plan. The Department of Retirement Systems calculated that these past employer and member contributions totaled \$2.6 million. OSA used the investment return assumption of 7.5 percent to determine the amount of lost investment earnings. OSA estimated a one basis point contribution rate increase in PERS Plan 2/3 charged to all employers and Plan 2 members to fund the cost of benefit improvements measured at June 30, 2019. Costs from granting this past service occur because the past contributions are provided without the investment returns, they would have otherwise earned over time. Contributions provided to the trust fund are expected to be made at the time the service is earned and then grow by 7.5 percent annually.

SUPPORTING INFORMATION

Appendix A: Ice Miller Legal Advice Memo Re: Classification of EMTs Employed by Evergreen Hospital, November 12, 2020.

Appendix B: Office of the State Actuary Memo Re: Evergreen Hospital Pricing Request, December 9, 2020.



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PRIVILEGED AND CONFIDENTIAL MEMORANDUM

TO: Steve Nelsen, Executive Director
FROM: Audra Ferguson-Allen and Robert L. Gauss, Ice Miller LLP
CC: Jacob White, Senior Research and Policy Manager
DATE: November 12, 2020
RE: Classification of EMTs Employed by Evergreen Hospital

This Memorandum is provided in confidence and subject to the attorney-client privilege. We have not provided copies to anyone other than the individuals named above. To preserve the attorney-client privilege, you should disclose the contents of this Memorandum only to persons making decisions on the matters discussed herein.

I. QUESTIONS PRESENTED AND BRIEF ANSWERS

Please allow this Memorandum to address the questions posed during our call on July 27, 2020. In particular, and as authorized by SSB 6168, you asked us to consider the employment status and plan eligibility status for certain individuals who provided emergency medical services ("EMS") in King County through Evergreen Hospital before 2003. As we understand it, there is an interest in providing retroactive service credit for such EMS employees. As set forth below, we have considered the following questions and provide the following short answers:

1. Whether the EMS employees can be considered employees of an employer other than Evergreen Hospital? **No. Based on the extensive information provided to us, it appears that the EMS employees were properly classified as Evergreen Hospital employees using analysis provided by the Internal Revenue Service ("IRS").**
2. Whether the employees may receive retroactive coverage in LEOFF or PERS if Evergreen Hospital opts to become a participating employer retroactively? **Yes. Federal law would not prevent the EMT employees from receiving retroactive coverage. However, PERS or LEOFF 2 would need to collect the retroactive mandatory employer and employee contributions with interest. This could prove administratively complicated and burdensome on the retirement systems, the employer, and the employee.**
3. Whether the employees may purchase service credit for the pre-2003 employment time? **Yes. If the employees are members in PERS or LEOFF 2, the**

members may be eligible to purchase some or all of their respective pre-2003 EMT employment service.

II. BACKGROUND¹

- Since the 1970s, mobile Advance Life Support (ALS) services in King County have been delivered to county residents through local jurisdiction consortiums that provide those services with funding and administrative support from King County.
- In 1973, the King County Emergency Medical Services ("EMS") Division was created to develop implement and administer a mobile ALS program throughout the county.
- King County Medic One was established in 1976, with six ALS provider groups designated to serve specific geographical coverage areas.
- The Evergreen Provider Group was the contractually established EMS consortium in Northeast King County. It served Redmond, Bothell, King County Hospital District No. 2 (Evergreen Hospital) and King County Fire Districts 34, 36, 41, and 42.
- King County provided significant funding to the consortium through local levies.
- Evergreen Hospital was the lead agency for the Evergreen Provider Group consortium.
- Even though Evergreen Hospital is a PERS-*eligible* employer, it never elected to be a PERS employer. Instead, Evergreen Hospital offered an employer-sponsored defined benefit retirement plan managed by Fidelity Investments.
- In 2002, the EMS contract with the Evergreen Provider Group was discontinued. A new consortium, Redmond Medic One, was contractually created by Redmond, Kirkland, King County Fire Districts 45 and 47, and Woodinville Fire and Life Safety Districts, to continue providing ALS services to a part of the geographic area that had formerly been served by the Evergreen Hospital paramedics.
- The City of Redmond is the lead agency for Redmond Medic One. ALS services to the remainder of the geographic areas formerly served by the Evergreen Provider Group were assumed by the Shoreline Medic One consortium.
- Evergreen Paramedics chose, by seniority, whether they would work for Redmond or for Shoreline. Upon starting as paramedics for Redmond Medic One or Shoreline Medic One, the former Evergreen Paramedics became members of the Law Enforcement Officers' and Fire Fighters' Retirement System, Plan 2

¹ For purposes of this Memorandum, we have considered the facts as described in the Washington State Department of Retirement Systems Petition Decision (August 25, 2015).

(“LEOFF 2”) – because both Redmond and Shoreline are LEOFF 2 participating employers.

III. INFORMATION CONSIDERED

As part of our analysis, we also have considered the following information provided to us by LEOFF 2 and/or the Department of Retirement Services (“DRS”):

- Letter from Mr. Paul Neal to Mr. Dave Nelson (DRS) dated April 3, 2013 regarding PERS eligibility for Evergreen Consortium Emergency Medical Technicians and supporting documentation.
- DRS determination issued by Mr. Ted Taylor, Plan Administrator dated January 7, 2014 to Mr. Michael Hilley.
- Petition for Redress filed by King County dated February 26, 2014.
- Supplemental information submitted by Mr. Michael Hilley to DRS dated April 3, 2014.
- King County’s Brief in Opposition to the Plan Administrator’s January 7, 2014 Decision, dated July 1, 2014.
- Mr. Michael Hilley’s letter in Response to Petition of King County dated September 23, 2014.
- DRS’ Petition Decision dated August 25, 2015 (referred to as the “Petition Decision”).
- According to the Petition Decision, Mr. Hilley contacted DRS in September 2007 to request that he and other Evergreen paramedics be granted PERS service credit for their employment with the Evergreen Provider Group. On August 19, 2008, DRS entered an administrative decision which denied Mr. Hilley’s request for PERS service credit because Evergreen Hospital was not a PERS employer.²
- The Petition Decision reflects the finding that King County did not supervise, direct, control, hire, fire, discipline, pay and/or instruct Mr. Hilley. Instead, those functions were performed by Evergreen Hospital.
- Ultimately, the Petition Decision determined that Mr. Hilley was not an employee of a PERS employer during the period relevant to the Petition and, therefore, he was not eligible to be a PERS member for the years in question.

² Although we received extensive materials as part of our review, we did not receive either Mr. Hilley’s request from September 2007 or DRS’ Administrative Decision dated August 19, 2008.

- Indeed, the Petition Decision notes that if Mr. Hilley was a King County employee when he provided the services in question, he would have been mandated into PERS membership because King County was a PERS employer.

We also considered the following pieces of legislation:

- SSB 6168 adopted February 27, 2020.
- HB 2902 (2020 regular session).
- SB 6616 (2020 regular session).
- Substitute Senate Bill 6523 (effective June 9, 2016).
- Engrossed House Bill 2771 (filed March 30, 2012).
- Substitute House Bill 1936 (filed May 13, 2005).
- Substitute House Bill 2202 (filed May 16, 2017).

IV. EMPLOYEE CLASSIFICATION UNDER FEDERAL LAW

While respecting the analysis reflected in the Petition Decision, we have been asked to consider these issues under federal tax law pertinent to qualified plans. In this regard, a qualified plan may provide benefits only for employees and their beneficiaries. Treasury Regulation § 1.401-1(a)(2). If a plan covers an individual, but the individual is not actually the common law employee of the participating employer, the coverage of such individual can result in the disqualification of the plan. Specifically, Internal Revenue Code ("Code") § 401(a)(2), the exclusive benefit rule, requires that the trust cannot be used for any purpose "other than for the exclusive benefit of . . . employees or their beneficiaries" (Emphasis added). In addition, Code Section 414(d) defines a governmental plan as one which is "established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing." Code § 414(d). Thus, unless there is a Code exception that permits coverage of an individual who is not a common law employee of the employer (*see* Code § 401(c) (regarding self-employed individuals and Code § 414(n) (regarding leased employees)), the individual is not permitted to participate in the employer's plan.

Effective in 2015, the Internal Revenue Service ("IRS") no longer will allow a determination letter application with respect to a request for a determination regarding the existence of an employer-employee relationship. *See* Rev. Proc. 2015-6, § 6.12.

A. Federal Law Regarding Common Law Employee

The IRS has developed a list of twenty factors to help determine whether sufficient control is present to establish an employer-employee relationship, the degree of importance of each factor varying depending on the occupation and the factual context in which the services are

performed. The employee-employer relationship is determined under common law principles. Rev. Rul. 87-41, 1987 1 C.B. 296.³ The receipt of compensation is not the only measure of whether an individual is an employee.

The IRS factors are as follows:

1. *Instructions.* A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. *See e.g.*, Rev. Rul. 68-598, 1968-2 C.B. 464; Rev. Rul. 66-381, 1966-2 C.B. 449.
2. *Training.* Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed wants the services performed in a particular method or manner. *See* Rev. Rul. 70-630, 1970-2 C.B. 229.
3. *Integration.* Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. *See United States v. Silk*, 331 U.S. 704 (1947), 1947-2 C.B. 167.
4. *Services Rendered Personally.* If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. *See* Rev. Rul. 55-695, 1955-2 C.B. 410.
5. *Hiring, Supervising, and Paying Assistants.* If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status. *Cf.* Rev. Rul. 63-115, 1963-1 C.B. 178; Rev. Rul. 55-593, 1955-2 C.B. 610.
6. *Continuing Relationship.* A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals. *See United States v. Silk*, 331 U.S. 704 (1947).

³ Although this 20-factor test is often used to determine whether the individual is an employee or an independent contractor, we think it also can be useful in determining what entity is the proper employer of the employee.

7. *Set Hours of Work.* The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. *See* Rev. Rul. 73-591, 1973-2 C.B. 337.
8. *Full Time Required.* If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses. *See* Rev. Rul. 56-694, 1956-2 C.B. 694.
9. *Doing Work on Employer's Premises.* If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. *Rev. Rul. 56-660, 1956-2 C.B. 693; see also* Rev. Rul. 56-694.
10. *Order or Sequence Set.* If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so. *See* Rev. Rul. 56-694.
11. *Oral or Written Reports.* A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. *See* Rev. Rul. 70-309, 1970-1 C.B. 199; Rev. Rul. 68-248, 1968-1 C.B. 431.
12. *Payment by Hour, Week, Month.* Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor. *See* Rev. Rul. 74-389, 1974-2 C.B. 330.
13. *Payment of Business and/or Traveling Expenses.* If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. *See* Rev. Rul. 55-144, 1955-1 C.B. 483.
14. *Furnishing of Tools and Materials.* The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

See Rev. Rul. 71-524, 1971-2 C.B. 346.

15. *Significant Investment.* If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. *See Rev. Rul. 71-524.* Special scrutiny is required with respect to certain types of facilities, such as home offices.
16. *Realization of Profit or Loss.* A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. *See Rev. Rul. 70-309.* For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.
17. *Working for More Than One Firm at a Time.* If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. *See Rev. Rul. 70-572, 1970-2 C.B. 221.* However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.
18. *Making Service Available to General Public.* The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship. *See Rev. Rul. 56-660.*
19. *Right to Discharge.* The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. *Rev. Rul. 75-41, 1975-1 C.B. 323.*
20. *Right to Terminate.* If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. *See Rev. Rul. 70-309.*

See also, IRS Pub. 15-A, Employer's Supplemental Tax Guide, p. 5 (For use in 2020) (stating "anyone who performs services for you is generally your employee if you have the right to control what will be done and how it will be done. . . . What matters is that you have the right to control the details of how the services are performed.").

B. Federal Law Regarding Leased Employees

Code § 414(n), which addresses "leased employees", was added by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). Code § 414(n) provides that for certain retirement plan purposes, a leased employee is treated as an employee of the recipient of the leased employee's services, even though the leased employee is not the recipient's common law employee. A leased employee will be treated as the employee of the recipient under Code § 414(n) if the following four conditions are met:

- (1) the recipient pays a fee to the leasing organization for the services of the individual,
- (2) the individual provides services to the recipient on a substantially full-time basis for at least one year (this includes any time that the individual provided to the recipient as a common law employee),
- (3) the recipient has primary direction or control over the individual's services, and
- (4) the leasing organization, not the recipient, is the common law employer of the individual.

Code § 414(n). If an individual is determined to be a leased employee under Code § 414(n), then that leased employee will be treated as the employee of the recipient for a number of retirement plan qualification requirements. Most of these qualification requirements do not apply to governmental retirement plans. The qualification requirements that do apply to governmental plans include (i) the minimum vesting rules under Code §§ 401(a)(7) and 411, (ii) the compensation limit under Code § 401(a)(17), and (iii) the contribution limits under Code § 415.

Please note that although Code § 414(n) requires that a leased employee be treated as an employee for certain retirement plan purposes, it is not required that the leased employee participate in the recipient's retirement plan. *See* Notice 84-11, Q&A-14. The IRS guidance provides that a plan should explicitly provide for the treatment of leased employees under Code § 414(n). *Id.*, Q&A-16 (stating that "if an organization utilizes the services of leased employees, the plan must specifically provide how leased employees will be treated under the recipient's plan").

C. Analysis

Based on the facts we have identified through our review of the information outlined in Section III of this Memorandum, including the Petition Decision, it appears that Evergreen Hospital was the common law employer for the EMS employees prior to 2003. In this regard, the

facts establish that Evergreen Hospital was the lead agency for the EMS consortium. As a result, we presume (based on one of the findings in the Petition Decision) that Evergreen Hospital withheld and paid all employer taxes. Although we have not reviewed the contract, we understand that, in 2002, the EMS contract with Evergreen Hospital was discontinued. If the EMS employees were not employees of Evergreen Hospital, then it is difficult to understand how the discontinuance of the contract with the hospital would have impacted those employees. Accordingly, we conclude that this fact (and the record) supports that the EMS employees were the common law employees of Evergreen Hospital. After the discontinuance of the EMS contract, a new consortium was created by the City of Redmond and the Shoreline Medic One consortium. We understand this to mean that the EMS employees became employees of either the City of Redmond or Shoreline Medic One. As a result of the change in the employer, after 2002, the EMS employees were covered by LEOFF because they were employed by the City of Redmond and Shoreline Medic One, both which are participating employers in LEOFF.

If the EMS employees were, in fact, employees of the County or other agency, then the discontinuance of the EMS contract with Evergreen Hospital should not have impacted the employment status of the EMS employees. Given that it did, in fact, impact the employment status and the EMS employees became employees of the City of Redmond and Shoreline Medic One, it seems logical to conclude the EMS employees were employees of Evergreen Hospital; this is consistent with the finding in DRS' Petition Decision.

Based on the legislative history, we understand that there has been some desire for the EMS employees to be "deemed" County employees solely for purposes of participation in LEOFF or PERS. As stated above, pursuant to federal law, a qualified plan generally may only provide benefits for employees and their beneficiaries. As we understand it, pre-2003, the EMS employees were participants in a defined benefit plan sponsored by Evergreen Hospital. Notably, Evergreen Hospital, although a PERS-eligible employer, never elected to be a PERS employer. Given that the EMS employees were participating in the Evergreen Hospital plan as Evergreen Hospital employees, they are not eligible to participate in PERS or LEOFF 2 as County employees for the same service period.

Finally, it does not appear that the EMS employees could be classified as "leased employees" of the County or any other employer because neither the County nor any other employer (aside from Evergreen Hospital) had primary control over the EMS employees. We also note that there is no record of any leasing fee being paid to Evergreen Hospital for the use of the EMS employees.

For these reasons, and based upon the records provided to us, it appears that the EMS employees were properly classified as Evergreen Hospital employees for the period prior to 2003. Accordingly, the EMS employees cannot be reclassified as employees of another governmental entity for the sole purpose of providing PERS or LEOFF eligibility.

V. ALTERNATIVE OPTIONS

As noted above, we advise against classifying the EMS employees as County employees solely for purposes of eligibility in PERS or LEOFF. However, there are a couple other options

to consider which would provide service coverage in PERS or LEOFF for the EMS employees for their pre-2003 service.

A. Retroactive Coverage

PERS or LEOFF could allow Evergreen Hospital to retroactively become a participating employer during the pre-2003 time period. Evergreen Hospital's participation could be limited to the EMS employees. However, in order to receive coverage, the employer and employee contributions for the coverage period would need to be made to the retirement system with interest (we believe this requirement is consistent with the requirements under Substitute House Bill 2202 (effective July 23, 2017) for service rendered on or after July 24, 2005). Given the expansive time period from the 70s – 2003, the cost could be quite expensive for both the employer and employee. Additionally, to avoid an impermissible cash or deferred arrangement ("CODA"), the employee contributions would need to be made with after-tax dollars. If pre-tax dollars were accepted, this would be considered a "pick-up" and would require mandatory contributions from the eligible employees.

Providing retroactive coverage may prove to be administratively challenging. Furthermore, there may be resistance from Evergreen Hospital. Certainly, Evergreen Hospital may be reluctant to provide the employer contribution for the EMS employees, who are all former employees, and for whom, presumably, Evergreen Hospital has already made contributions on behalf of the EMS employees to the defined benefit plan sponsored by Evergreen Hospital with Fidelity. In addition, locating the participants or beneficiaries who are entitled to additional service credit may be time consuming and difficult. In fact, based on the expansive time period, and the fact many of the affected employees have retired (or may have deceased), this likely would create a substantive group of lost/missing participants.

B. Service Purchase

1. *Code Section 415(n)*

Code § 415(n), added by the Taxpayer Relief Act of 1997 ("TRA '97"), improved the flexibility of governmental plans to offer service purchase programs and established a new limitation structure for "permissive service credit." Specifically, permissive service credit can be categorized into two types. First, the Code defines "non-qualified service credit" as all permissive service credit that does not fall within one of the itemized types listed in Code Section 415(n)(3)(C), below (although the Code does not use this term, we refer to the types of service included in this list as "qualified permissive service"):

- Service (including parental, medical, sabbatical, and similar leave) for the US government, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing.
- Service (including parental, medical, sabbatical, and similar leave) for an educational organization which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12) as determined under state laws.

- Service for an association of employees of the U.S., state or political subdivision thereof, or an agency or instrumentality of the foregoing.
- Military service (non-USERRA covered) recognized by the governmental plan.

However, the first three types of qualified permissive service listed above will be nonqualified service if recognition of the service would cause the member to receive a retirement benefit for the same service under more than one plan (this provision does not apply to military service).

In addition, **if a member is making the service purchase with after-tax dollars**, Code Section 415(n) does not permit a plan to take more than 5 years of nonqualified service into account, or to give members credit for any nonqualified service before the member has at least 5 years of participation in the plan. Thus, only 5 years of non-qualified service can be purchased under Code § 415(n) and only by an individual with 5 years or more of service in the plan (the "5-5 Rule"). The 5-5 Rule does **not** apply to rollovers or 403(b)/457(b) trustee-to-trustee transfers.

2. *Rollovers*

Effective in 2002, the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") eliminated many of the restrictions on rollovers to qualified retirement plans like LEOFF and PERS. Thus, LEOFF and PERS could permit members to roll over eligible distributions from various retirement plans, including 403(b) plans, 457 governmental deferred compensation plans, and IRAs, in order to purchase service credit. Additionally, EGTRRA permits direct trustee-to-trustee transfers from a 403(b) plan or a governmental 457 plan to a governmental defined benefit plan if the transferred amount is used to purchase permissive service credit (as defined in section 415(n)(3)(A)) or to repay previously withdrawn contributions. Thus, there are a variety of options available under the new tax law to enhance the ability of members to purchase service credit. Although the records are incomplete, there is some discussion of the LEOFF plan prohibiting the Evergreen EMTs from being able to roll over funds from the Evergreen retirement plan. This should be further evaluated if a rollover to LEOFF is a desired option.

3. *Potential Permissive Service Credit Options*

Current Members of PERS or LEOFF

Current EMT employees who are members of PERF or LEOFF can be provided the option to purchase the service credit for the pre-2003 EMT time. With respect to a rollover or direct trustee-to-trustee transfer, we do not think that a member would have to be currently employed by a PERS or LEOFF covered employer in order to make a rollover or transfer to PERS or LEOFF. If the service purchase is made via a rollover or trustee to trustee transfer, then the 5-5 Rule will not apply. However, if the service purchase is made with after-tax dollars, then the service purchase will be limited by the 5-5 Rule if the member(s) also is(are) eligible for a retirement benefit under Evergreen's defined benefit plan.

In lieu of the member making the service purchase, the current employer (Redmond Medic One or Shoreline Medic One) could pay for the service purchase on behalf of the eligible employees or former employees.

Former EMTs – Not Members in PERF or LEOFF

We do think that an individual would have to be a member of PERS or LEOFF—either active or inactive—in order to make a rollover or transfer to PERS or LEOFF. While the rollover provisions of the Code do not spell out this requirement, we think that the general qualification requirements for 401(a) plans—that the plan be for the exclusive benefit of employees or their beneficiaries, that contributions be made by the employer or employees, etc.—require this result.

Thus, an individual who is not a member of PERS or LEOFF would not be eligible to purchase the EMT service in PERS or LEOFF.

VI. CONCLUSION

Based on the period of coverage which predates 2003, the fact the EMTs were provided with a defined benefit from Evergreen Hospital, and the fact that Evergreen Hospital was a PERS *eligible* employer but did not opt in to PERS, we do not believe that the employees in question should be considered employees of King County. We also note that seeking to provide additional service to these individuals is unconventional if they already are receiving a retirement benefit from Evergreen Hospital. However, as set forth in this Memorandum, there are a couple alternative that may be considered. Of course, each alternative has administrative challenges. After you have had a chance to review this Memorandum, we would be happy to discuss potential legislative changes and any other facts that you would like us to consider.



Office of the State Actuary

“Supporting financial security for generations.”

December 9, 2020

Steve Nelsen
Executive Director
LEOFF Plan 2 Retirement Board
P.O. Box 40918
Olympia, Washington 98504-0918

SUBJECT: EVERGREEN HOSPITAL PRICING REQUEST

Dear Steve:

At the request of the Law Enforcement Officers’ and Fire Fighters’ Retirement System (LEOFF) Plan 2 Board, we have calculated the total liability added to the Washington State retirement plans if past Public Employees’ Retirement System (PERS) service is granted to Evergreen Hospital Emergency Medical Technicians (EMTs) for the time period October 1, 1978 to January 1, 2003. Per your request, we determined whether the additional service results in a contribution rate impact to the retirement systems, assuming past contributions without interest are paid to the corresponding PERS system in which that service is granted. For your reference, LEOFF Plan 2’s written work request to the Office of the State Actuary (OSA) can be found in **Appendix A**.

Summary of Results

We estimate PERS liabilities increase by \$12.2 million as a result of past service granted to Evergreen Hospital EMTs measured at June 30, 2019, our most recent Actuarial Valuation Report (AVR). We further assumed past contributions, without interest, of \$2.60 million are contributed to the PERS trust fund on June 30, 2021. The Department of Retirement Systems (DRS) calculated and provided the past contributions for each impacted PERS plan. We discounted the contributions two years to the measurement date of June 30, 2019, using the investment return assumption of 7.5 percent. Based on this information, we estimate a one basis point contribution rate increase in PERS Plan 2/3 charged to all employers and Plan 2 members to fund the cost of benefit improvements measured at June 30, 2019. We found the contribution impact to the PERS 1 UAAL did not round to a basis point, however, the unfunded liability created would be paid for in future PERS 1 UAAL rate adoptions.

Costs arise from granting this past service because the past contributions are provided without the investment returns that they would have earned over time. Contributions provided to the trust fund are expected to be made at the time the service is earned and then grow by 7.5 percent annually. The amount of the lost investment earnings is collected as additional contribution rates charged to all members and employers of PERS.



We also expect that LEOFF Plan 2 will experience a liability reduction of \$0.3 million as of our 2019 AVR if past service is granted to Evergreen Hospital EMTs. This occurs because many of these EMTs are currently active in LEOFF 2. By providing them with past service in PERS, their total years of service worked will increase, and our valuation model will apply a different set of assumptions, yielding a small savings. For more information on the impacts to LEOFF 2, see **Appendix C**.

The table below summarizes the expected liability impact (increase) to the PERS system as of the measurement date, June 30, 2019. We present this liability as two components: (1) the expected value of benefits payable from the measurement date forward; and (2) the expected value of benefits paid from the members' normal retirement date in PERS to the measurement date (retroactive payments).

Impact on Pension Liability (PERS) as of June 30, 2019			
(Dollars in Millions)	Current	Increase	Total
Present Value of Future Benefits	\$63,168	\$10.2	\$63,179
Retroactive Payments	0	2.0	2.0
Value of All Liabilities	\$63,168	\$12.2	\$63,181

This pricing rounds to a one basis point contribution rate impact for PERS 2/3, which results in a supplemental rate collected in the 2021-23 Biennium. However, if past contributions provided to the PERS trust fund were greater than the amount calculated by DRS, a supplemental rate may not be charged. See **Appendix C** and **D** for more information on the contribution rate impacts.

The actuarial results presented in this letter were based on data provided by DRS in the fall of 2020. If the Evergreen Hospital EMTs in this data are eligible for more/less past service or if more/fewer EMTs are found to be eligible for past service, the results of this pricing would increase/decrease. Also, if the amount of past contributions paid into the trust fund for this group is more/less than expected, the net impact will be lower/higher than what is presented in this communication.

If other groups are added to PERS in a similar manner, the aggregate impact could result in additional contribution rate increases for all employers and Plan 2 members in PERS.

How the Results Change When the Assumptions Change

We estimate the total liability added at June 30, 2019, is \$12.2 million if actual experience occurs as expected. If actual experience doesn't occur as expected, the actual liabilities will be more or less. Please see **Appendix E** for sensitivity analysis and additional context on how the results of this pricing could vary under a different set of assumptions.

Please see **Appendix B** for supporting information including a description of the data, assumptions, and methods we used to prepare this analysis.



Actuarial Disclosures and Certification

We intend this analysis to assist the LEOFF 2 Board in studying the fiscal impacts of providing past PERS service to Evergreen Hospital EMTs as required in the 2020 Supplemental Budget. This analysis should not be used for other purposes.

In my opinion, the data, assumptions, and methods we used to prepare this actuarial analysis are reasonable and appropriate for the purpose stated above. The use of another set of data, assumptions, and methods could also be reasonable and could result in materially different results. To the extent that future experience varies from the assumptions we used in this analysis, the actual costs will vary from the expected costs provided in this letter.

This analysis, like most actuarial analysis, will quickly become outdated. Changes to the demographics of the impacted plans, the assets, or the assumptions used to develop this analysis can impact the results presented here. To that end, we do not advise the use of this analysis once a new actuarial valuation or updated data is available. If a bill is introduced during the 2021 Session, we would request updated data and calculate impacts consistent with the language of the bill. The results of that analysis could vary materially from the results documented in this letter.

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

We prepared this analysis and provided opinions in accordance with Washington State law and accepted actuarial standards of practice as of the date shown above.

The undersigned, with actuarial credentials, meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.

Please let me know if you have any questions or need additional information.

Sincerely,

Lisa Won, ASA, FCA, MAAA
Deputy State Actuary

cc: Jacob White, Senior Research and Policy Manager
LEOFF Plan 2 Retirement Board
Matt Smith, FCA, EA, MAAA, State Actuary
Office of the State Actuary

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APPENDIX A – WORK REQUEST TO OSA

On September 11, 2020, OSA received the following work request from the LEOFF 2 Board (Jacob White).

The 2020 Supplemental Budget included a proviso of \$50,000 for the LEOFF Plan 2 Board to complete a ‘study of the pension benefits provided to emergency medical technicians providing services in King county between October 1, 1978 and January 1, 2003. The board shall examine the legal and fiscal implications of extending membership in the plan for these periods, including King county employers that might be included, the benefits that would be paid to members on a prospective and retroactive basis, and the contribution requirements and plan liability that would be created for employers, employees, and the state.’

The LEOFF 2 Board would like the following price request in order to complete our study:

- ❖ *The increase in liabilities to PERS of adding EMTs, who were employed at the intergovernmental consortium between King County and Evergreen Public Hospital District between October 1, 1978 and January 1, 2003, to PERS.*
- ❖ *If the employer and member contributions are paid for by the employer and/or member does the interest (lost investment earnings) being paid by the system trigger a contribution rate increase?*



APPENDIX B - DATA, ASSETS, ASSUMPTIONS, AND METHODS WE USED

Data

All data was provided to us by DRS, and we relied on their expertise as the plan administrator. We did not audit the data, but we did review it for reasonableness and found it to be appropriate for the purposes of this analysis.

DRS provided us with information on which EMTs are impacted, the amount of past PERS service they may be eligible to receive, and the PERS plan in which they may receive this service. Since most of these EMTs are currently in LEOFF 2, we were able to pull their demographic information from our 2019 AVR data. OSA worked with DRS to determine the PERS employment statuses of these EMTs. DRS calculated, and OSA reviewed, the potential prospective and retroactive PERS annual benefits of these EMTs.

Five individuals were not found in the 2019 AVR data. For these members, we added them to the AVR for purposes of this pricing exercise and relied on DRS for their plan, employment status, benefit, and demographic information.

One individual eligible for past PERS 1 service has passed away. This member's beneficiary or estate may be eligible for a refund of their contributions, or the amount of contributions that the employer pays on behalf of the member.

Nine individuals are eligible for a lump sum retroactive benefit for missed pension payments from first retirement eligibility to the measurement date. The average lump sum benefit is approximately \$225,000 at June 30, 2019.

The results of this pricing are based on a measurement date of June 30, 2019, the date of our most recent actuarial valuation. We did not reflect changes to the impacted population which may have occurred after the measurement date.

Summary of Demographics for Impacted Evergreen Hospital Members										
	Count	Age	Before Pricing			After Pricing				
			Avg PERS Service	Avg Total Service	Avg Annual Benefit	Count	Age	Avg PERS Service	Avg Total Service	Avg Annual Benefit
Actives										
Plan 2	1	59	1.3	16.5	N/A	1	59	9.6	24.7	N/A
Terminated Vested**										
Plan 2	4	58	10.7	16.8	\$23,500	30	56	10.7	23.1	\$25,600
Plan 3	1	54	9.3	14.4	*	1	54	18.8	23.8	*
Annuitants										
Plan 1	0	N/A	N/A	N/A	N/A	3	69	19.5	29.3	\$51,500
Plan 2	0	N/A	N/A	N/A	N/A	6	71	15.9	25.8	\$34,800

*Benefit amount omitted for privacy reasons.

**For some terminated vested individuals, annual benefits at retirement were approximated based on the last reported salary and service level.



Assets

At the time of this analysis, DRS has indicated that the payment for past employee and employer contributions, excluding interest, would total approximately \$2.60 million, with \$0.96 million allocated to PERS 1 and \$1.64 million allocated to PERS 2/3.

Assumptions

We assumed past service would be granted in PERS, per the work request in **Appendix A**.

We assumed all new PERS retirees will receive a Single Life benefit form.

We assumed all impacted members and surviving beneficiaries would select a retirement annuity instead of a return of contributions, except for the one PERS 1 member who has passed away. For this reason, we did not estimate a PERS savings fund for these members.

We assumed no future Evergreen EMTs will enter PERS so there is no change in the current PERS Entry Age Normal Cost contribution rates.

We assumed contributions for the past service granted to the eligible EMTs will be paid to the trust fund on June 30, 2021, in the amount calculated by DRS. We discounted the contributions two years to the measurement date of June 30, 2019, using the investment returns assumption of 7.5 percent. This adjustment reduced the past contributions from \$2.60 to \$2.25 million.

Otherwise, we developed these costs using the same assumptions as disclosed in the [June 30, 2019, Actuarial Valuation Report](#).

Methods

We calculated the liabilities for the base and pricing as follows. The base liabilities reflect the AVR results before granting any past service to Evergreen Hospital EMTs. The pricing liabilities reflect both the value of benefits payable in the future to EMTs if they receive past PERS service and the value of retroactive payments that may be made to eligible EMTs. The difference between the pricing and base represents the impact of granting past service benefits to Evergreen Hospital EMTs. The pricing also includes an increase to the PERS assets to reflect the payment of past employee and employer contributions.

We did not include any impact of potential payments for a legal order payee. We expect the impact of reflecting this to be immaterial.

Unless noted otherwise, the participant and financial data, assets, assumptions, and methods we used to prepare this analysis are consistent with those used to prepare the 2019 AVR. Please see the AVR for complete disclosures.



APPENDIX C - ACTUARIAL RESULTS

How the Liabilities Changed

Granting past service to Evergreen Hospital EMTs will impact the actuarial liabilities of PERS and LEOFF 2 as detailed in the following table.

Impact on Pension Liability				
<i>(Dollars in Millions)</i>	Current	Future Benefits	Retroactive Payments	Total
Actuarial Present Value of Projected Benefits <i>(The Value of the Total Commitment to All Current Members)</i>				
PERS 1	\$11,575	\$1.4	\$0.6	\$11,577
PERS 2/3	\$51,593	\$8.8	\$1.4	\$51,603
PERS Total	\$63,168	\$10.2	\$2.0	\$63,181
LEOFF 2	\$16,096	(\$0.3)	\$0.0	\$16,096
Unfunded Actuarial Accrued Liability <i>(The Portion of the Plan 1 Liability that is Amortized According to Funding Policy)*</i>				
PERS 1	\$3,759	\$0.6	\$0.6	\$3,761
Unfunded Entry Age Accrued Liability <i>(The Value of the Total Commitment to All Current Members Attributable to Past Service that is Not Covered by Current Assets)</i>				
PERS 1	\$4,074	\$0.6	\$0.0	\$4,074
PERS 2/3	\$1,833	\$7.2	\$0.0	\$1,841
PERS Total	\$5,907	\$7.8	\$0.0	\$5,915
LEOFF 2	(\$1,302)	(\$0.0)	\$0.0	(\$1,302)

Note: Totals may not agree due to rounding.

*PERS 1 is amortized over a ten-year period.

How the Assets Changed

Past contributions made into the PERS trust fund on behalf of Evergreen Hospital EMTs increases the plan assets. The amount of these contributions is an approximation based on data provided by DRS and discounted two years to the measurement date of June 30, 2019. See **Appendix D** for alternative funding scenarios.

Actuarial Value of Assets			
<i>(Dollars in Millions)</i>	Current	Increase	Total
Actuarial Value of Assets <i>(The Smoothed Value of Assets Used in Contribution Rate Calculations)</i>			
PERS 1	\$7,461	\$0.8	\$7,462
PERS 2/3	40,766	\$1.4	40,768
PERS Total	\$48,228	\$2.2	\$48,230

Note: Totals may not agree due to rounding.



How the Present Value of Future Salaries (PVFS) Changed

PVFS is today’s value of all future salaries over a member’s working lifetime which reflects future salary increases, as well as the likelihood of remaining in the plan. This measure is used to calculate the contribution rates to fund all future benefits not covered by today’s assets.

Present Value of Future Salaries			
<i>(Dollars in Millions)</i>	Current	Increase	Total
Actuarial Present Value of Future Salaries			
<i>(The Value of the Future Salaries Expected to be Paid to Current Members)</i>			
PERS 2	\$73,788	(\$0.1)	\$73,788
PERS 3	22,565	0.0	22,565
PERS 2/3	\$96,352	(\$0.1)	\$96,352
LEOFF 2	\$24,130	(\$0.5)	\$24,130
UAAL Present Value of Future Salaries			
<i>(The Value of the Future Salaries Used to Fund the UAAL)</i>			
PERS	\$127,043	(\$0.0)	\$127,043

Note: Totals may not agree due to rounding.

PVFS may increase or decrease for each impacted member due to the recognition of past service. For example, members with fewer years of service are expected to receive larger salary merit increases at the beginning of their career, so adding service will reduce their expected future salary increases which results in a decrease in PVFS.

Assumed exits from the plan (such as terminations) will have an impact on PVFS as well. Members with fewer years of service are less likely to reach retirement due to higher termination rates. We would expect the members to be more likely to reach retirement if they added additional service. However, a member may also become eligible for retirement earlier under this pricing, so they may be expected to work fewer years. These exits from the plan may increase or decrease the PVFS depending on the member’s age and service.

How Contribution Rates Changed

The following tables show the Normal Cost and Unfunded Actuarial Accrued Liability (UAAL) contribution rate impacts from this pricing. PERS, SERS, and PSERS employers all contribute toward the PERS 1 UAAL.



Impact on Contribution Rates				
System/Plan	PERS	SERS	PSERS	LEOFF
Current Members				
Employee (Plan 2)	0.0051%	0.0000%	0.0000%	(0.0004%)
Employer				
Normal Cost	0.0051%	0.0000%	0.0000%	(0.0003%)
Plan 1 UAAL	0.0010%	0.0010%	0.0010%	0.0000%
Total	0.0061%	0.0010%	0.0010%	(0.0003%)
New Entrants*				
Employee (Plan 2)	0.0000%	0.0000%	0.0000%	0.0000%
Employer				
Normal Cost	0.0000%	0.0000%	0.0000%	0.0000%
Plan 1 UAAL	0.0010%	0.0010%	0.0010%	0.0000%
Total	0.0010%	0.0010%	0.0010%	0.0000%

*Rate change applied to future new entrant payroll and used to determine budget impacts only. Current members and new entrants pay the same contribution rate.

How this Impacts Budgets and Employees

The following table shows the impact to Employer and Employee budgets from this pricing. Since this pricing does not round to a basis point, no supplemental rate will be charged, and thus there are no budget impacts for the 2021-23 Biennium.

Budget Impacts			
(Dollars in Millions)	PERS	LEOFF	Total
2021-2023			
General Fund	\$0.5	\$0.0	\$0.5
Non-General Fund	0.7	0.0	0.7
Total State	\$1.1	\$0.0	\$1.1
Local Government	1.1	0.0	1.1
Total Employer	\$2.3	\$0.0	\$2.3
Total Employee	\$1.8	\$0.0	\$1.8
2023-2025			
General Fund	\$0.2	(\$0.0)	\$0.2
Non-General Fund	0.3	0.0	0.3
Total State	\$0.5	(\$0.0)	\$0.5
Local Government	0.5	(0.0)	0.5
Total Employer	\$1.0	(\$0.0)	\$1.0
Total Employee	\$0.8	(\$0.0)	\$0.7
2021-2046			
General Fund	\$1.9	(\$0.1)	\$1.9
Non-General Fund	2.9	0.0	2.9
Total State	\$4.9	(\$0.1)	\$4.8
Local Government	4.9	(0.1)	4.8
Total Employer	\$9.7	(\$0.2)	\$9.5
Total Employee	\$7.4	(\$0.2)	\$7.2

Note: Totals may not agree due to rounding. We use long-term assumptions to produce our short-term budget impacts. Therefore, our short-term budget impacts will likely vary from estimates produced from other short-term budget models.



APPENDIX D - FUNDING SCENARIOS

At the time of this analysis, the payment of past employee and employer contributions, excluding interest, would total approximately \$2.25 million, with \$0.83 million allocated to PERS 1 and \$1.42 million allocated to PERS 2/3, measured at June 30, 2019. The past contributions partially offset the liability increase of this pricing, resulting in a lower unfunded liability. The unfunded liability is the increased liability not covered by contributions (assets), and it will be paid for through contribution rate increases to all members and employers of the plan. Based on our analysis, a one basis point supplemental rate for PERS 2/3 would be collected in the 2021-23 Biennium to pay for the increased unfunded liability. The unfunded liability in PERS 1 falls below the threshold to trigger a one basis point supplemental rate. Instead, the unfunded liability of about \$0.43 million (\$1.26 m - \$0.83 m) is paid for with contribution rate increases in future PERS 1 UAAL rate adoption cycles.

If the past contributions received by DRS are greater than expected, then this pricing would result in a lower unfunded liability and may result in no supplemental contribution rate impact in the 2021-23 Biennium. For example, if the full contributions and past interest of \$4.03 million, as estimated by DRS and measured at June 30, 2019, were collected for the PERS 2/3 service granted in this pricing, then we estimate that a supplemental rate would no longer be necessary.



APPENDIX E – SENSITIVITY ANALYSIS

Our best estimate results presented above can vary under a different set of assumptions. We considered the impact of changes to the investment returns, mortality rates, and salary increases assumptions on the best estimate results. We found the investment returns assumption had the most significant impact on the liability estimate. Increasing or decreasing the investment returns assumption by 1.0 percent changed the liability estimate by approximately 10 percent. Decreasing the liability by 10 percent resulted in no supplemental contribution rate increase in the 2021-23 Biennium for PERS 2/3. The sensitivity to the other assumptions we considered had significantly smaller impacts.



King County EMT Study

Final Report
December 16, 2020

Study

- The 2020 budget included a proviso of \$50,000 for the LEOFF Plan 2 Board to complete a study of the pension benefits provided to emergency medical technicians providing services in King county between October 1, 1978 and January 1, 2003
- The Board shall examine the legal and fiscal implications of extending membership in the plan for these periods, including:
 - King county employers that might be included
 - Benefits that would be paid to members on a prospective and retroactive basis
 - Contribution requirements and plan liability that would be created for employers, employees, and the state

EMT LEOFF Plan 2 History

- In 2005, definition of "fire fighter" in LEOFF was amended to include EMTs employed by a city, town, county or district
 - Prior to 2005, EMTs employed by local governments in health departments or other divisions of local governments were members of PERS if their employer was either mandated or opted into PERS membership

Key Issue

- **For the King County/Evergreen Public Hospital District intergovernmental consortium who is the employer?**
 - King County – PERS Employer
 - Evergreen Public Hospital – Not a PERS Employer

Ice Miller Analysis

- Ice Miller advised that “based on the extensive information provided to [them], it appears that the EMS employees were properly classified as Evergreen Hospital employees using analysis provided by the Internal Revenue Service (“IRS”)”
 - Employer/Independent Contractor Test – Weigh multiple factors to determine who the employer is

Request for Actuarial Analysis

- The LEOFF 2 Board requested OSA to provide:
 - The increase in liabilities to PERS of adding EMTs, who were employed at the intergovernmental consortium between King County and Evergreen Public Hospital District between October 1, 1978 and January 1, 2003, to PERS
 - If the employer and member contributions are paid for by the employer and/or member does the interest (lost investment earnings) being paid by the system trigger a contribution rate increase?

Actuarial Analysis

- PERS liabilities increase by \$12.2 million
- Past employer and member contributions total \$2.6 million
- One basis point contribution rate increase in PERS Plan 2/3 charged to all employers and Plan 2 members to fund the cost of lost investment earnings on the past employer and member contributions

Next Steps

- **LEOFF 2 Board Study is due to the Legislature January 2021**
 - Draft study is included in your materials
 - The Board is not required to recommend a bill



Thank You

Jacob White

Senior Research & Policy Manager

(360) 586-2327

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