

BOARD MEETING AGENDA

NOVEMBER 15, 2023 • 9:30AM



LOCATION - Hybrid Meeting

In-Person:

Washington State Investment Board
2100 Evergreen Park Drive SW, Suite 100
Olympia, WA 98502

Or Virtual Meeting Information at
www.leoff.wa.gov

TRUSTEES

DENNIS LAWSON, CHAIR
Central Pierce Fire and Rescue

JASON GRANNEMAN, VICE CHAIR
Clark County Sheriff's Office

MARK JOHNSTON
Vancouver Fire Department

AJ JOHNSON
Snohomish County Fire

SENATOR JEFF HOLY
Spokane Police Department (Ret)

TARINA ROSE-WATSON
Spokane Int'l Airport Police Dept

PAT MCELLIGOTT
East Pierce County Fire

JAY BURNEY
City of Olympia

WOLF OPITZ
Pierce County

REPRESENTATIVE STEVE BERGQUIST
WA State Representative

SENATOR ANN RIVERS
WA State Senator

STAFF

Steve Nelsen, Executive Director
Tim Valencia, Deputy Director
Chloe Drawsby, Executive Assistant
Jessie Jackson, Administrative Services Manager
Jacob White, Senior Research and Policy Manager
Karen Durant, Senior Research and Policy Manager
Tammy Sadler, Benefits Ombudsman
Jessica Burkhart, Benefits Ombudsman
Tor Jernudd, Assistant Attorney General

**THEY KEEP US SAFE,
WE KEEP THEM SECURE.**

- | | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------|----------|
| 1. | Approval of Minutes
September and October 2023 | 9:30 AM |
| 2. | Secure Act 2.0 Review
Shawn Merchant, Legislative & Stakeholder Relations
Director, DRS | 9:35 AM |
| 3. | Department of Retirement Systems Annual Update
Shawn Merchant, Legislative & Stakeholder Relations
Director, DRS | 10:00 AM |
| 4. | Lump Sum Special Death Benefits - Comprehensive
Jacob White, Sr. Research & Policy Manager | 10:30 AM |
| 5. | Firefighter Definition - Comprehensive
Jacob White, Sr. Research & Policy Manager | 10:50 AM |
| 6. | Disability Conversions - Comprehensive
Jacob White, Sr. Research & Policy Manager | 11:10 AM |
| 7. | Succession Planning Follow-Up
Karen Durant, Sr. Research & Policy Manager | 11:30 AM |
| 8. | DRS Appeal Deadlines - Comprehensive
Jacob White, Sr. Research & Policy Manager | 12:00 PM |
| 9. | 2024 Meeting Calendar Adoption
Dennis Lawson, Chair | 12:20 PM |
| 10. | Administrative Update <ul style="list-style-type: none">• Ice Miller Advice | 12:30 PM |
| 11. | Public Comment | 12:40 PM |

*Public comment can be provided to the Board in writing 24 hours prior to the meeting via our reception mailbox: recep@leoff.wa.gov.

**Lunch is served as an integral part of the meeting.*

In accordance with RCW 42.30.110, the Board may call an Executive Session for the purpose of deliberating such matters as provided by law. Final actions contemplated by the Board in Executive Session will be taken in open session. The Board may elect to take action on any item appearing on this agenda.

Department of Retirement Systems

Annual Update

Shawn Merchant

Legislative and Community Relations Director

LEOFF Board Meeting

Nov. 8, 2023



Pensions at a Glance

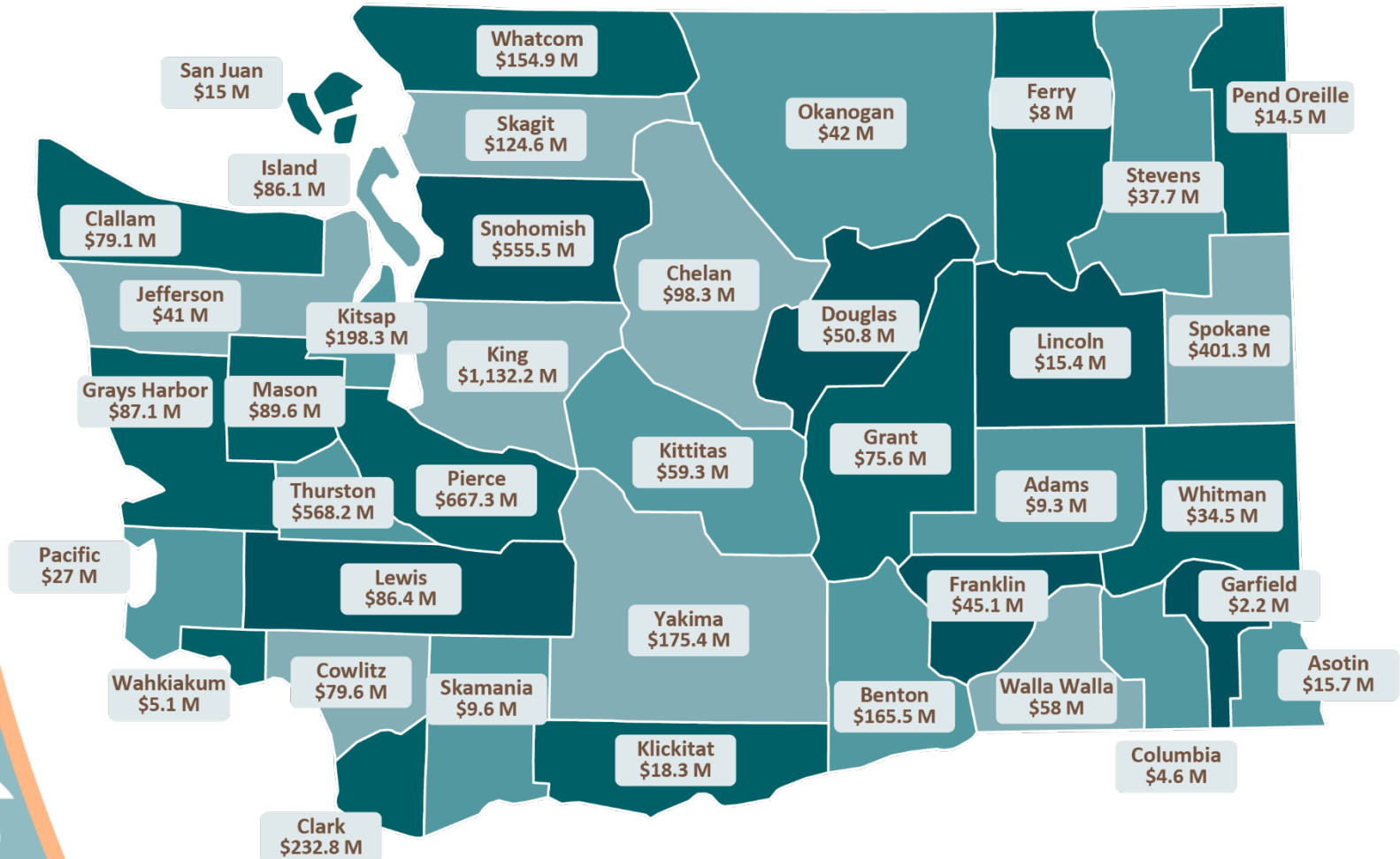
Membership

- 912,948 members

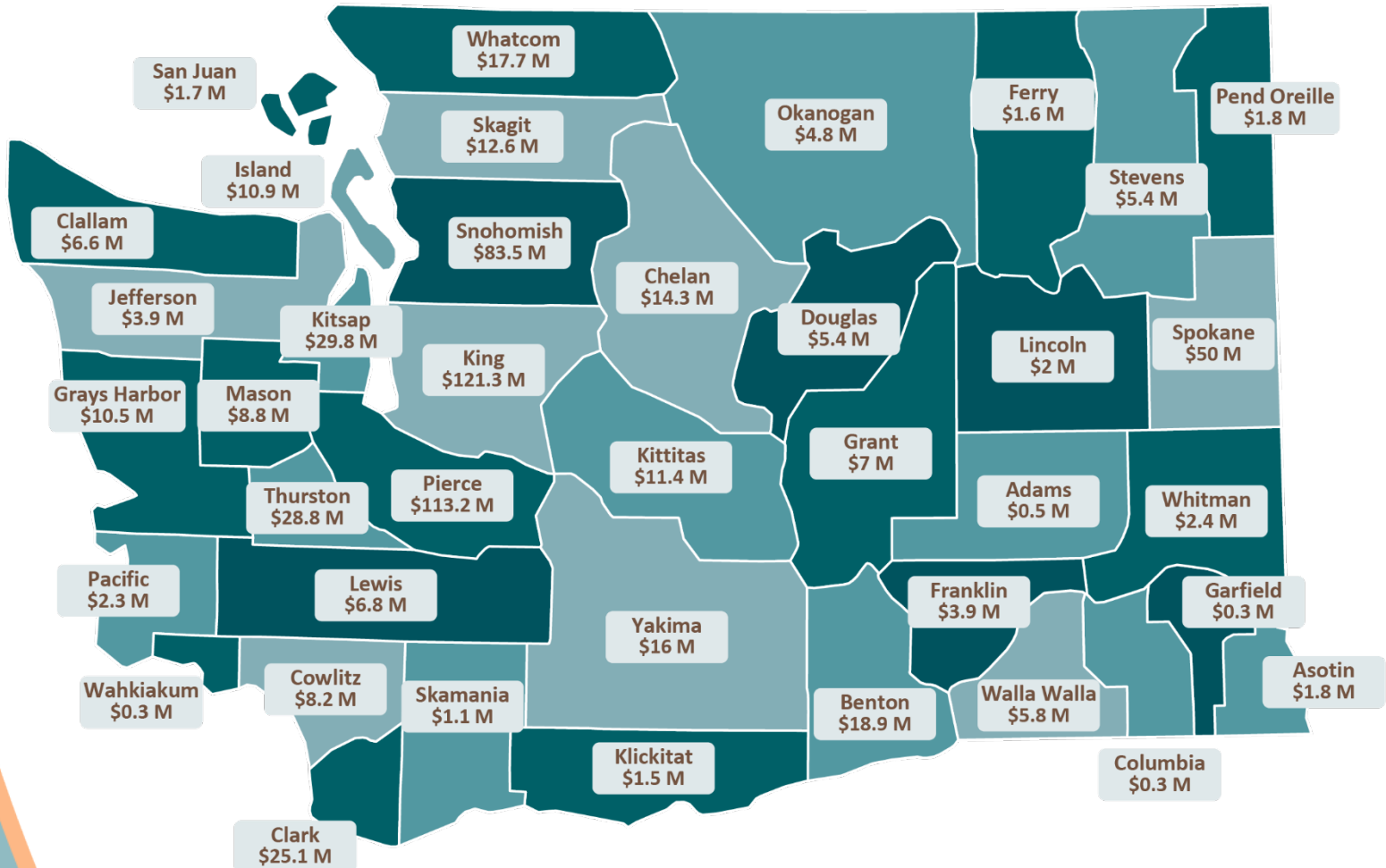
Financial

- \$189 billion held in retirement trust fund assets
- \$5.5 billion collected annually in contributions
- \$7.9 billion paid annually in benefits and contribution refunds

Benefits by County – FY 2023



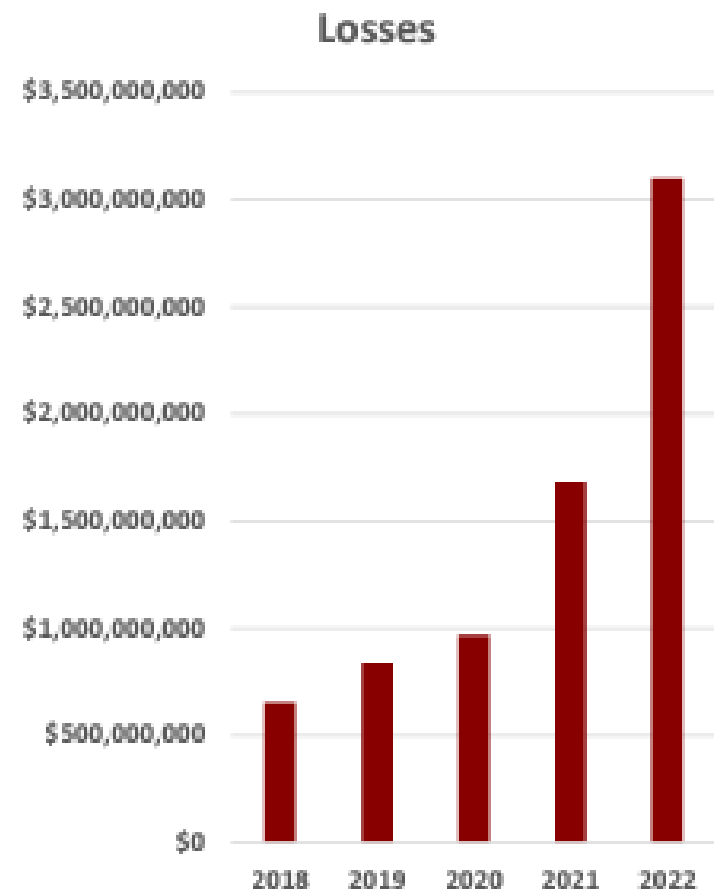
L2 Benefits by County – FY 2023



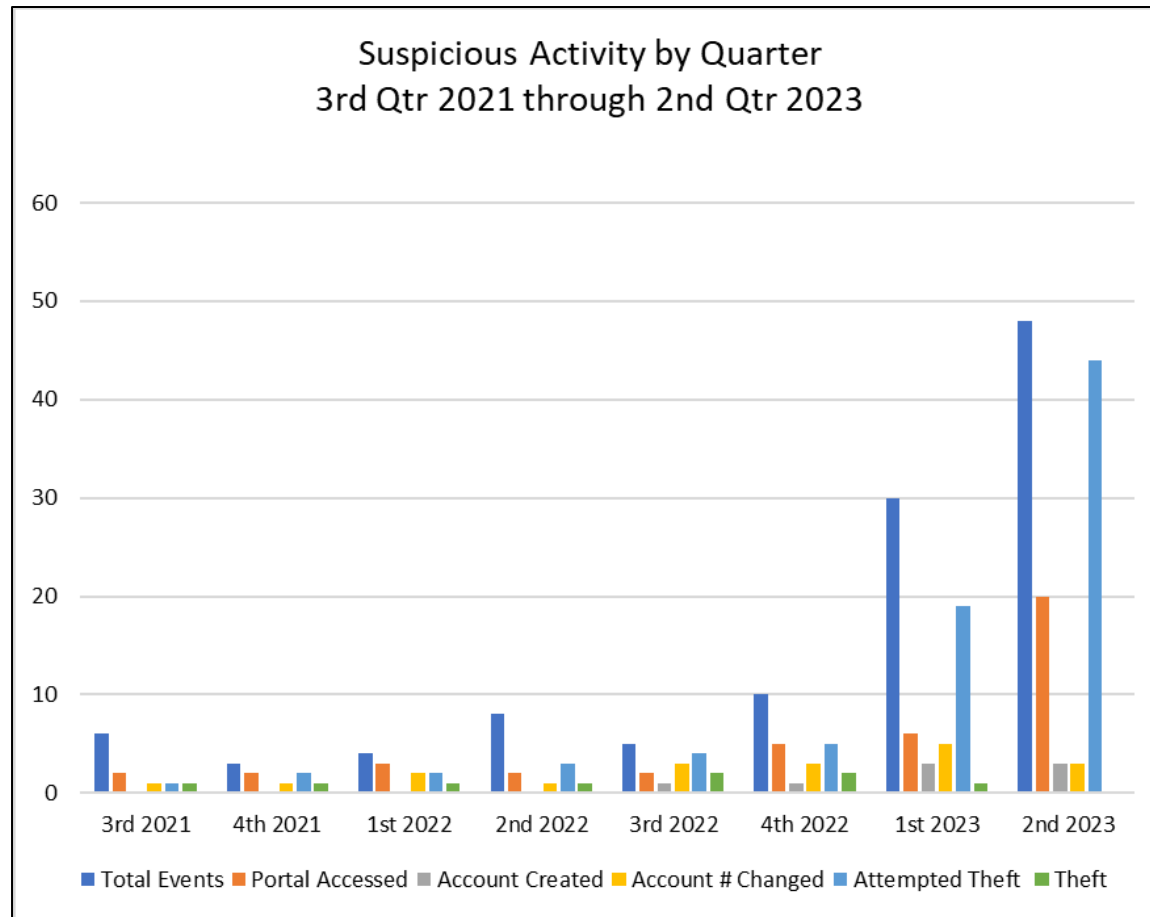
Workload Growth

Year	Estimates	Calcs	Recalcs	Withdrawals	ACD Calls	Emails	Scheduled Zooms	Completed Zooms
2018	31,758	12,137	4,754	4,826	164,112	22,452	N/A	N/A
2019	31,498	12,185	7,443	5,398	147,202	7,928	N/A	N/A
2020	29,945	12,818	7,894	4,625	126,065	36,647	N/A	N/A
2021	29,262	13,935	6,587	5,039	132,848	50,248	1,583	1,360
2022	29,153	14,309	8,965	7,213	161,467	62,128	1,972	1,625
2023	23,532	10,024	5,041	5,861	118,844	51,990	1,697	1,390
Total	175,148	75,408	40,684	32,962	850,538	231,393	5,252	4,375

Elder Fraud in the US



Suspicious Activity at DRS



Supplemental Budget Request

- ❑ Lexis-Nexis fraud prevention software and integration with existing systems
- ❑ Add 1 FTE for fraud prevention
- ❑ Add 1 FTE for cybersecurity
- ❑ Temporary project staff for implementation
- ❑ \$1.25 million in 23-25, \$1.07 million in 25-27

Month of Death

❑ Current situation

- Member dies partway through the month.
- DRS reclaims full benefit payment per banking (Automated Clearing House) rules.
- Estate has to file paperwork for pro-rata benefit.
- Confusing to members and delays payment.

❑ Proposed legislation

- Member dies partway through the month.
- Estate receives full month payment.

Roth - October Rollout

- ❑ DCP page traffic up 65% month-to-month
- ❑ 1,384 attended live Roth webinars and Q&As
- ❑ 10,280 watched Roth videos at drs.wa.gov
- ❑ In-Plan Conversions: \$1,242,874
- ❑ Rollovers: \$325,121
- ❑ Deferrals: 2,052 participants

CORE: PAM

We're implementing a scalable, modernized system that makes data easily accessible and creates an excellent user experience for team members and customers. This CORE: PAM phase of ongoing technology upgrades will replace our legacy technology in these areas:

Calculating benefits

Maintaining member info

Paying benefits

Document management

Accounting for retirement funds

Project features:



Modernized system to accelerate responsiveness



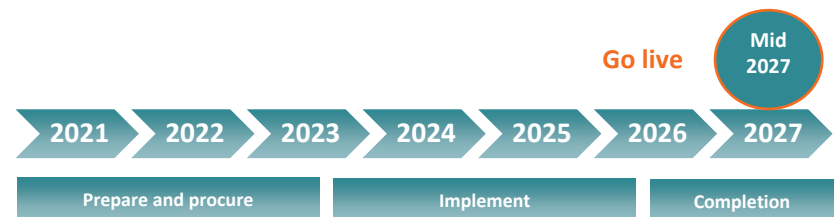
Enable data-driven decisions



Offer personalized experiences to align with customer needs



Scalable, easy-to-use tools



Questions?





November 15, 2023

Lump Sum Special Death Benefit

COMPREHENSIVE REPORT

By Jacob White

Senior Research & Policy Manager

360-586-2327

jacob.white@leoff.wa.gov

ISSUE STATEMENT

LEOFF Plan 2 beneficiaries have been denied a one-time special death benefit because they missed the Department of Labor and Industries deadline for application.

OVERVIEW

LEOFF Plan 2 beneficiaries are eligible for a one-time lump sum special death benefit if the member died because of a workplace injury or occupational disease. The Department of Labor and Industries (LNI) determines the beneficiary's eligibility for this benefit while the Department of Retirement Systems (DRS) pays the benefit. LEOFF 2 beneficiaries have been denied this benefit because they missed LNI's application deadline.

BACKGROUND AND POLICY ISSUES

Beneficiaries of LEOFF 2 members have several benefits available to them should the member die in the line of duty. One benefit is the "special death benefit," a one-time, lump sum payment established in 1996 and payable to the member's estate or person (or persons) designated by the member as beneficiary.¹ If the member did not designate a beneficiary in writing, then the surviving spouse or legal representative receives payment. This benefit was initially paid only if the member sustained workplace injuries that resulted in death but, with the Board's endorsement, expanded in 2006 to include deaths from occupational disease or infection.²

¹ [1996 Wash. Laws ch. 226](#).

² [2006 Wash. Laws ch. 351](#).

For several years the benefit amount was \$150,000, but in 2010 the Board endorsed legislation to increase the minimum benefit to \$214,000, with an annual cost of living adjustment.³ The benefit payout is currently \$287,781.⁴

When the special death benefit was initially created and the eligibility determination was given to LNI, duty disability benefits did not exist for LEOFF 2. Now that DRS makes duty disability determinations for LEOFF 2, the Board may consider it more appropriate for DRS to also make the determination whether a death was duty related or not for purposes of a LEOFF 2 survivor receiving the special death benefit. This is the only pension benefit paid out of the pension system in which the eligibility is determined by an agency other than DRS.

Procedurally, DRS provides the application for this benefit to the beneficiary or survivor only when it is notified of a potential line of duty death. The beneficiary must return the completed application to DRS along with the death certificate and if available, autopsy report or other medical records supporting the claim that the death resulted from a workplace injury or illness. DRS forwards the application and supporting documents to LNI for review and determination of eligibility. LNI determines eligibility “consistent with Title 51 RCW”.⁵ LNI then provides written notice of its decision to both DRS and the beneficiary.

If the application is approved, DRS provides payment to the beneficiary or surviving spouse. If the application is denied, the beneficiary may protest or appeal the decision through LNI’s administrative process. LNI provides notice of its appeal process with its denial.

The issue brought to the Board’s attention is that unlike other pension benefits this benefit has a one-year statute of limitations (from the date of death) for deaths resulting from a workplace injury and a two-year statute of limitations for deaths resulting from occupational diseases. This statute of limitations is not explicitly in the special death benefit statute; however, it has been applied by LNI as being “consistent with Title 51 RCW”.

According to DRS, who has been in communication with LNI to attempt to resolve these denials, LNI has cited *Cordova v. City of Seattle and LNI, Case No. 81947-0-1*, in support of their decisions to deny this benefit for beneficiaries who do not apply within the statute of limitations under Title 51 RCW. In *Cordova*, the court did not decide on whether the LNI statute

³ [2010 Wash. Laws ch. 261](#)

⁴ For deaths occurring after July 1, 2023. For deaths occurring July 1, 2022 through June 30, 2023, the benefit payout was \$279,399.

⁵ [RCW 41.26.048\(2\)](#).

of limitations should apply to the LEOFF 2 special death benefit. The issue with the court was whether a widow who had made a claim with DRS for the Special Death Benefit, which was then forwarded to LNI by DRS, had filed timely for LNI benefits separate from the Special Death Benefit. The Court held that *Cordova* had not filed for LNI benefits timely. According to DRS,

LNI has pointed it out as the case they are using to support their contention that:

1. 1 year time limit in RCW 51. RCW 51.32.040(2)(c) is applicable to all death claims, including the DRS one-time lump sum death benefit, and
2. Applying for one benefit, whether DRS death benefit or LNI benefits, is not notice that you are applying for the other independent benefit.

In the dissenting opinion for *Cordova*, Judge Dwyer, discusses how in a similar case he “urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue [...]”. He added that:

As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.

Judge Dwyer explains why he believes that LNI receiving the filing from DRS should have been enough to meet the statutory requirement to file with LNI. He concludes his dissent by stating that: “Widows are not supposed to have to hire lawyers in order to receive widow’s benefits. This area of law is confused enough without conflating the issues at hand.”

Earlier this year, at the request of the LEOFF 2 Board, DRS agreed to discuss these denials and their current practice of applying the statute of limitations to the Special Death Benefit. Since then, Board staff has been informed that LNI will continue to apply its statute of limitations to the Special Death Benefit and that they were willing to review the current denials to see if they could reverse any of them. LNI has reversed one of its denials so far (See Appendix B). The minor and his guardian grandmother in this case hired an attorney who successfully pursued the appeal with LNI. In this case the grandmother filed with LNI within 1 year of LNI deciding that her daughter’s death was in the line of duty. LNI had initially denied the grandmother because she did not file within 1 year of her daughter’s death.

There is no requirement for LNI or DRS to notify beneficiaries that they may be eligible for the benefit and that there is a statute of limitations to apply. Also, there is no standardized process for beneficiaries to be notified of their potential eligibility for this benefit. There is a patchwork of ways in which a beneficiaries could find out that they may be eligible for this benefit,

including the LEOFF 2 Board Benefit Ombuds, DRS Death and Disability staff, employers, unions, and others. In previous years this patchwork has appeared to work successfully, but in the last year there have been multiple instances of survivors being denied benefits for missing LNI deadlines.

The LEOFF 2 Board requested data from DRS on the number of Special Death Benefit from 2010 to the present that were approved and the number that were denied. For the denials DRS provided the reason for denial. During this time 72 out of 85 applications were approved, while 13 were denied. Three of those denials were for timeliness. For the data provided, prior to 2022, no beneficiaries were denied a Special Lump Sum Death Benefit for timeliness. It is unclear from the information LEOFF 2 staff have gathered why timeliness has become an issue in the last year.

LEOFF 2 staff has been unable to locate a data source that identifies the number of survivors that were eligible for this benefit but never applied for it. DRS does not have data on the number of retirees whose death was duty related and LEOFF 2 staff has been unable to identify a data source that would identify the potential number of survivors who may have been eligible for this benefit but did not apply for it. If a beneficiary calls DRS and lets DRS know that they believe the member death was duty related, DRS sends a packet of information to the beneficiary, which includes information about the Special Death Benefit. DRS has a form that survivors or beneficiaries may fill out notifying DRS of a member death. This form has a box to identify if they believe the death was duty related. However, this data field is not inputted into any DRS IT systems and is instead used to provide additional information to the survivor/beneficiaries. Moreover, the form is not required to be filled out and most survivors/beneficiaries do not fill out the form. Instead, DRS typically receives notice of a death either through data share agreements with Department of Health and Social Security or with a phone call from a beneficiary. DRS does have a data field in the member IT system that identifies duty death, but it is only identified in the system when LNI provides notification to DRS that the death was duty related.

POLICY OPTIONS

Option 1: Shift determination of benefit eligibility from LNI to DRS

This policy option would align the special death benefit with the rest of the LEOFF 2 pension benefits, which are administered by DRS.

Option 2: Remove statute of limitations and keep LNI responsible for determination

The statute of limitations for LNI applies to other LNI benefits not just special death benefits for LEOFF 2 and the other pension systems. Therefore, if this statute of limitations was going to be removed it would need to clearly identify that it is only for purposes of the LEOFF 2 Special Death Benefit.

SUPPORTING INFORMATION

Appendix A: *Cordova v. City of Seattle and LNI, Case No. 81947-0-1.*

Appendix B: Report of Proceeding Agreement Elizabeth Hoover 9-27-23.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONALD CORDOVA, DEC'D,)	No. 81947-0-I
)	
Appellant,)	DIVISION ONE
)	
v.)	
)	
CITY OF SEATTLE and THE)	
DEPARTMENT OF LABOR AND)	UNPUBLISHED OPINION
INDUSTRIES OF THE STATE OF)	
WASHINGTON,)	
)	
Respondents.)	

BOWMAN, J. — A workers' compensation application need not be formal or highly technical but it must, within a year of a worker's injury or death, notify the Department of Labor and Industries (DLI) that the applicant seeks workers' compensation benefits. Because Tracy Cordova's application to the Department of Retirement Services (DRS) for a one-time death benefit did not notify DLI that she also sought workers' compensation, we conclude that the Board of Industrial Insurance Appeals (BIIA) properly denied her subsequent DLI claim as untimely. We affirm the superior court's order on summary judgment affirming the decision of the BIIA.

FACTS

Ronald Cordova worked for the city of Seattle (City) as a police detective. He died at home on April 30, 2017 from a ruptured cerebral aneurysm. His wife

No. 81947-0-I/2

Tracy¹ believed “unusual stress” from Ronald’s job led to his aneurysm, so she timely applied for a “lump sum benefit payment” through DRS under the Washington Law Enforcement Officers’ and Fire Fighters’ Retirement System Act (LEOFF), chapter 41.26 RCW. The application titled “One-Time Duty-Related Death Benefit” bore the DRS logo and “Washington State Department of Retirement Systems” on the first page and identified DRS on each subsequent page.

Per statute, DRS sent Tracy’s application to DLI to process on its behalf.² DLI through its “Pension Adjudicator Section” denied Tracy’s claim. In its December 2017 order, pension adjudicator Noreen Carrier denied the application for the one-time death benefit “because the cause of death is not related to either an injury sustained in the course of employment or an occupational disease.” The order displays DRS claim number “DRS0202.”

Tracy hired an attorney, who wrote a letter in January 2018 protesting the denial of DRS benefits. The letter identified Tracy’s DRS application by claim number DRS0202 but described the retirement benefits application as a “Labor and Industries claim.” The attorney mailed the letter to the general DLI post-office box address but did not identify the Pension Adjudication Section as the intended recipient.

¹ For clarity, we refer to Tracy Cordova and Ronald Cordova by their first names. We intend no disrespect.

² DLI determines an individual’s eligibility for a one-time death benefit claim under RCW 41.26.048 and WAC 415-02-710(3).

No. 81947-0-I/3

DLI responded that it was “unable to locate a claim for this injured worker” and requested Tracy’s attorney add a “current state fund claim number” and provide a “report of accident.” Tracy’s attorney replied by resending his original letter with the DRS0202 claim number but added “Attn: Noreen” in the upper right corner. The DLI Pension Adjudicator Section confirmed receipt of the second letter and on May 9, 2018, affirmed the December 2017 order denying Tracy’s claim “for death benefits provided under RCW 41.26.048,” finding Ronald’s death was not duty-related. Tracy timely appealed the ruling to the BIIA.

Tracy asserts that on September 11, 2018, she realized for the first time that she had not applied for Title 51 RCW workers’ compensation benefits with either the City or DLI. So on September 25, 2018, nearly 17 months after Ronald died, Tracy applied to the City for Title 51 RCW benefits.³ On October 30, 2018, DLI denied Tracy’s claim because she did not file it within the one-year statutory period and because she did not establish an employment-related injury.⁴

Tracy protested the decision and the BIIA assigned her case to an industrial appeals judge (IAJ). Tracy and the City cross moved for summary judgment on timeliness grounds. DLI joined the City’s motion. The IAJ granted summary judgment for the City and DLI. The IAJ also rejected Tracy’s argument that the BIIA should equitably estop DLI from rejecting her application for Title 51 RCW benefits as untimely.

³ Because Ronald worked for the City, a self-insured employer, the DLI oversees applications for workers’ compensation, though the City is directly responsible for the costs. RCW 51.14.010, .020; RCW 41.26.048.

⁴ The issue of whether Ronald’s death was employment-related is not before us.

APPENDIX A

No. 81947-0-I/4

The BIIA also denied Tracy's petition for review. Tracy then appealed to the Snohomish County Superior Court. Tracy and the City again cross moved for summary judgment on timeliness grounds. DLI responded to both motions, arguing the court should grant the City's motion and deny Tracy's. The superior court granted summary judgment for the City, affirming the BIIA and dismissing Tracy's appeal. The superior court determined that Tracy's claim was untimely and such untimeliness "cannot be excused under the doctrine of equity."

Tracy appeals.

ANALYSIS

Timeliness

Tracy argues the superior court erred in granting the City's summary judgment motion because the BIIA erred by rejecting her claim for Title 51 RCW benefits as untimely. She claims the "information and documents [she] submitted to DRS and delivered to DLI, along with her counsel's subsequent letters to DLI," amount to a timely application for workers' compensation benefits under RCW 51.28.020. We disagree.

We review a superior court's grant of summary judgment de novo, engaging in the same inquiry as the superior court. Hill v. Dep't of Labor & Indus., 161 Wn. App. 286, 292, 253 P.3d 430 (2011); Rabey v. Dep't of Labor & Indus., 101 Wn. App. 390, 393-94, 3 P.3d 217 (2000). A party is entitled to summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The moving party must establish its right to judgment as a matter of law, and we view

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the facts in the light most favorable to the nonmoving party. Romo v. Dep't of Labor & Indus., 92 Wn. App. 348, 354, 962 P.2d 844 (1998). In our review, we rely exclusively on the certified BIIA record. Watson v. Dep't of Labor & Indus., 133 Wn. App. 903, 909, 138 P.3d 177 (2006); RCW 51.52.115. We accept the BIIA's decision as prima facie correct, and the party challenging the decision must support its challenge by a preponderance of the evidence. Watson, 133 Wn. App. at 909; Hill, 161 Wn. App. at 291.

Title 51 RCW governs claims for industrial insurance and workers' compensation. Under RCW 51.28.030, a party making a workers' compensation claim "shall make application for the same . . . accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation." Under RCW 51.28.050, "[n]o application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued."

We construe Title 51 RCW liberally "for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010. In that regard, we have determined that an application for Title 51 RCW benefits need not be as formal and highly technical as a pleading. Magee v. Rite Aid, 144 Wn. App. 1, 8, 182 P.3d 429 (2008). Any writing seeking Title 51 RCW benefits "filed with the Industrial Commission that challenges its attention, and causes it to act, is sufficient to put in motion the process of the Industrial Commission to see that

No. 81947-0-I/6

compensation is paid.” Magee, 144 Wn. App. at 9 (citing Nelson v. Dep’t of Labor & Indus., 9 Wn.2d 621, 630, 115 P.2d 1014 (1941)).

Citing Nelson, Tracy argues her May 4, 2017 DRS LEOFF application along with her attorney’s letters notified DLI that she was also seeking workers’ compensation benefits. In Nelson, a logger broke his ankle and fell on his neck and upper back while working in the forest. Nelson, 9 Wn.2d at 623. The logger timely applied for workers’ compensation related to his broken ankle and DLI approved his claim. Nelson, 9 Wn.2d at 623. Less than a year after his injury, the logger petitioned DLI for a rehearing, seeking additional compensation for “increasing pain in his spine and head, dizziness and weakness in his back due to said injury and the fall upon his back.” Nelson, 9 Wn.2d at 624-25.⁵

Our Supreme Court held that the logger’s petition amounted to an application for additional Title 51 RCW benefits. Nelson, 9 Wn.2d at 628-29. It reasoned that the petition was a writing “filed with the department” that “reasonably directs its attention to the fact that an injury with its particulars has been sustained and that compensation is claimed.” Nelson, 9 Wn.2d at 629. Because the logger first notified DLI of his injuries within the one-year statute of limitations, he timely “challenged the attention of the department.” Nelson, 9 Wn.2d at 629-30.

Tracy’s claim is distinguishable from the petition in Nelson. In Nelson, the logger petitioned for additional compensation in an existing Title 51 RCW claim. But here, Tracy had no existing Title 51 RCW claim. Her May 2017 application was titled “One-Time Duty-Related Death Benefit” and bore either the DRS logo

⁵ Emphasis omitted.

No. 81947-0-I/7

and/or “Department of Retirement Systems” on each page. It made no mention of workers’ compensation benefits and sought only an LEOFF one-time death payout—a separate benefit from a different government agency.

Neither did the protest letters sent by Tracy’s attorney notify DLI that she was also claiming workers’ compensation.⁶ Though her attorney asserted that he “represents Tracy . . . with regard to the Labor and Industries claim referenced above,” the “claim referenced” was DRS0202, the case number DRS assigned to her one-time death benefit application. In trying to clarify the discrepancy, DLI told the attorney that it was “unable to locate a claim for this injured worker” and requested a current state fund claim number and a copy of an accident report. Still, Tracy’s attorney made no effort to explain that Tracy was seeking both LEOFF and Title 51 RCW benefits. Instead, he sent his original protest letter again but wrote “Attn: Noreen”—the first name of the DLI pension adjudicator who processes DRS death benefit claims—on the upper right corner. As a result, DLI forwarded the letter to their Pension Adjudication Section and processed the claim for only DRS benefits.

We agree with DLI that this case is more like Magee. In that case, Rite Aid employee Magee claimed her supervisor sexually assaulted her. Magee, 144 Wn. App. at 4. She petitioned for an antiharassment order against her supervisor and sued him civilly. Magee, 144 Wn. App. at 4-5. Rite Aid was not a named party to either civil action but it received copies of the antiharassment

⁶ As much as Tracy argues that applications for an LEOFF payout and workers’ compensation benefits are coextensive, her argument is unsupported by citation to legal authority, so we do not consider it. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by reference to the record or citation to authority will not be considered).

No. 81947-0-I/8

order and Magee's answer to the supervisor's counter suit and participated in settling the lawsuit. Magee, 144 Wn. App. at 5-6. Magee later sought workers' compensation for her injuries and claimed that Rite Aid's receipt of the antiharassment order and her answer was sufficient timely notice that she would be seeking workers' compensation under Title 51 RCW.⁷ Magee, 144 Wn. App. at 9. We concluded that under Nelson, the documents did not amount to an application for Title 51 RCW benefits. Magee, 144 Wn. App. at 11.⁸ Because the documents sought only civil damages for Magee's injuries, Rite Aid could not "reasonably infer that a claim for workers' compensation [wa]s being made." Magee, 144 Wn. App. at 11.

Like the documents in Magee, Tracy's DRS application did not notify DLI that she was seeking workers' compensation. She filed her application with DRS seeking an LEOFF one-time death benefit. Nothing in the application would reasonably cause DLI in their role as DRS pension adjudicator to conclude that Tracy was also seeking workers' compensation benefits.

Tracy argues that Magee "is readily distinguishable" because notice of the claim there was "wholly unrelated to statutory benefits," while her application sought a specific, though different, statutory benefit. But she fails to explain how notice of Ronald's death in the form of a DRS application for a one-time death benefit differs in any meaningful way from notice of Magee's injury in the form of

⁷ Rite Aid was a self-insured employer under RCW 51.14.020. Magee, 144 Wn. App. at 13.

⁸ We expressed our concern that the notice requirement established in Nelson is outdated given "the many changes to workers' compensation law that have taken place over the past seven decades" and urged legislative review of the statutory scheme to prevent future similar outcomes. Magee, 144 Wn. App. at 15-16 (Dwyer, J., concurring). To date, neither the Supreme Court nor the legislature has acted.

No. 81947-0-I/9

a civil lawsuit seeking money damages. Neither notifies the insurer of a claim for Title 51 RCW benefits. We conclude that the BIIA properly determined that the sum of Tracy's communications with DLI did not amount to an application for workers' compensation benefits and the superior court did not err in granting the City's summary judgment motion.

Equitable Estoppel

Tracy argues that even if the information she submitted to DRS did not amount to an application for benefits under Title 51 RCW, "DLI should be [equitably] estopped from denying that her claim was timely made." We disagree.

The trial court has broad discretion, exercised in light of the facts and circumstances of a particular case, to determine whether a party is entitled to equitable relief. Rabey, 101 Wn. App. at 396; Heckman Motors, Inc. v. Gunn, 73 Wn. App. 84, 88, 867 P.2d 683 (1994). In industrial insurance cases, a trial court may grant equitable relief only in the limited circumstances where (1) a claimant's competency to understand orders, procedures, and time limits affects the communication process and (2) DLI engaged in misconduct. Rabey, 101 Wn. App. at 395 (citing Kingery v. Dep't of Labor & Indus., 132 Wn.2d 162, 174, 937 P.2d 565 (1997)); Lynn v. Dep't of Labor & Indus., 130 Wn. App. 829, 839, 125 P.3d 202 (2005); Harman v. Dep't of Labor & Indus., 111 Wn. App. 920, 924, 47 P.3d 169 (2002). We review a superior court's decision whether to fashion an equitable remedy for an abuse of discretion. Harman, 111 Wn. App. at 923.

No. 81947-0-I/10

Tracy contends that DLI engaged in misconduct because it failed to notify her of her rights under RCW 51.28.010. That statute compels DLI to notify workers or beneficiaries of their statutory rights after receiving an accident report from an employer:

(1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer . . . and of the employer to at once report such accident and the injury resulting therefrom to [DLI]

(2) Upon receipt of such notice of accident, [DLI] shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title.

RCW 51.28.010. But DLI did not receive an accident report from Ronald's employer. Instead, it received notice of his death in the form of an application for DRS benefits provided to its Pension Adjudication Section. As a result, the application did not trigger the notice requirement under RCW 51.28.010. And even if we construed the statute so broadly as to trigger a duty to notify on receipt of a report of injury from any source, DLI's failure to interpret the statute likewise does not amount to misconduct.

Tracy also asserts that DLI engaged in misconduct by obscuring from her its role in processing DRS applications. The record does not support her assertion.

DLI's letter accompanying its order denying Tracy's application for LEOFF benefits identifies Noreen Currier as the "Pension Adjudicator" and explains that DLI "received your application for death benefits through the Department of Retirement Systems." It then explains that DLI "determines eligibility for the

APPENDIX A

No. 81947-0-I/11

death benefit you have filed for.” And the order itself states that “[t]he application for the death benefit provided under RCW 41.26.048 . . . is hereby denied.” The order displays DRS claim number DRS0202. And it includes addresses for both the “Dept. of Retirement Systems LEOFF” and “Dept. of Labor and Industries Pension Adjudicator Section.” The record shows that DLI adequately identified its role as Pension Adjudicator for DRS when communicating with Tracy.

Because Tracy’s DRS application did not also amount to an application for Title 51 RCW benefits and she was not entitled to equitable relief, the BIIA did not err in concluding her application for workers’ compensation was untimely. We affirm the superior court order granting the City’s summary judgment motion to dismiss Tracy’s appeal.

A handwritten signature in black ink, appearing to read "Benjamin J. Smith", written over a horizontal line.

I CONCUR:

A handwritten signature in black ink, appearing to read "Smith, J.", written over a horizontal line.

APPENDIX A

Cordova v. City of Seattle, No. 81947-0-I

DWYER, J. (concurring and dissenting) — More than a dozen years ago, in a case referenced in the majority opinion, I expressed my dismay at the state of the law concerning the requirement that a writing be filed with the Department of Labor and Industries in order to pursue a workers' compensation claim. See Magee v. Rite Aid, 144 Wn. App. 1, 12, 182 P.3d 429 (2008) (Dwyer, J., concurring). My premise then was simple: the legislature had not chosen to define a "claim" or to delineate that which was required to constitute a "claim," and the Supreme Court's formulations of such requirements as explicated in Nelson v. Dep't of Labor & Industries, 9 Wn.2d 621, 115 P.2d 1014 (1941), were anti-worker, inconsistent with the evolution of workers' compensation law, and unjust. I urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue and alter its Nelson decision.

As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.

As to the content of the notices given to the Department of Labor and Industries herein, the majority imposes an injustice by correctly applying the law. As I observed 13 years ago, "[t]hus, with a reluctance outweighed only by my obligation to the law, I concur"¹ in that decision.

¹ Magee, 144 Wn. App. at 16 (Dwyer, J., concurring).

No. 81947-0-I/2

However, there is more to this case. Both the Board of Industrial Insurance Appeals and the superior court ruled that Tracy Cordova did not file a writing with the Department of Labor and Industries within one year of Detective Ronald Cordova's death, as required by statute. See RCW 51.28.050. To reach its decision, the majority does not need to address this issue and understandably does not do so.

But I disagree with both the Board and the superior court on this question. And here is why.

The statutory requirement is merely that a writing be filed with the Department of Labor and Industries. See RCW 51.28.010. As conceded at oral argument in this court, *any* employee of the Department of Labor and Industries can be the recipient of the filing. The statute does not provide otherwise. Moreover, to "file" the writing does not require action akin to service of process in a civil action. To the contrary, the writing can be mailed to *anyone* employed by the Department of Labor and Industries or to the Department itself.

Here, such a filing happened twice. It first happened when an employee of the Department of Retirement Systems transmitted documents sent to them by Tracy Cordova to the Department of Labor and Industries for claim handling. It happened a second time when Tracy Cordova's attorney wrote and mailed his January 2018 letter, which was received by an employee of the Department of Labor and Industries.

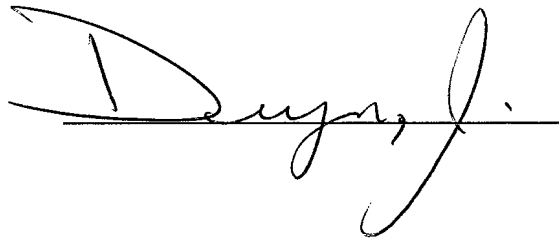
I recognize that the majority rejects these filings as insufficient in their *content*—but that is a separate question. Tracy Cordova unquestionably filed—

No. 81947-0-I/3

twice—a writing with the Department of Labor and Industries in a timely manner. Her claims were *timely* even if their content was insufficient under the Nelson requirements.

It is important that we recognize this distinction. Widows are not supposed to have to hire lawyers in order to receive widow's benefits. This area of law is confused enough without conflating the issues at hand.

Both the Board and the superior court erred in their rulings on this question.

A handwritten signature in black ink, appearing to read "D. J. Dwyer", is written over a horizontal line. The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

IN RE: ELIZABETH A. HOOVER, DEC'D CLAIM NO. DRS0269)))))	DOCKET NO. 23 L0000 REPORT OF PROCEEDING . AGREEMENT OF PARTIES
------------------------------------------------------------------------------------	-----------------------	------------------------------------------------------------------------------------------------

Appearances:

Beneficiary, Corran K Hanley, by Putnam Lieb Potvin Dailey, per Dustin J. Dailey
 Department of Retirement Systems, LEOFF (did not appear)
 Department of Labor and Industries, by Office of the Attorney General,
 per Alexandra Syssoeva Fair, Paralegal

I, Industrial Appeals Judge David W. Swan or the Board of Industrial Insurance, held a conference on August 30, 2023, with notice to all parties. Dustin J. Dailey and Alexandra Syssoeva Fair have provided additional communications by electronic mail requesting the Board issue this Order on Agreement of Parties

INTRODUCTION

The beneficiary, Corran K Hanley, filed a timely protest with the Department of Labor and Industries. The Department forwarded this to the Board of Industrial Insurance Appeals as an appeal on April 6, 2023 Corran K. Hanley appeals January 11, 2023 Department of Labor and Industries order that affirmed denial of Corran K Hanley's request for a special death benefit under RCW 41.26.048 on grounds the request was untimely pursuant to RCW 51.32.040(2)(c). The Department order is **REVERSED AND REMANDED**.

AGREEMENT

The requesting special death benefit beneficiary, Corran Hanley, and the Department of Labor and Industries agree: (1) The one-year limitations period for death benefits claims stated in RCW 51.32.040(2) is not separately applicable in this matter to Corran Hanley's special death benefit claim under RCW 41.26.048, (2) Corran K Hanley was, within a year of Elizabeth Hoover's death, recognized by the Department of Retirement Systems as having a cognizable claim for special death benefits under RCW 41.26.048, and this claim should be further adjudicated as a timely claim by the Department of Labor and Industries as directed by RCW 41.26.048(2), and, (3) the parties request the Board issue the following Order

ORDER

The Board of Industrial Insurance Appeals has jurisdiction in this timely appeal The January 11, 2023 Department of Labor and Industries order is reversed and remanded to the Department of Labor and Industries with directions to determine the request of Corran Hanley for a

APPENDIX B

1 special death benefit under RCW 41 26 048 was timely and with directions to determine on the
2 merits whether Corran K Hanley's request should be granted
3

4 I certify that this is a true and accurate report of proceedings
5

6 Dated September 20, 2023, at Centralia, Washington
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10 

11 David W. Swan
12 Industrial Appeals Judge
13 Board of Industrial Insurance Appeals
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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

**IN RE: ELIZABETH A. HOOVER,
DEC'D**

DOCKET NO. 23 L0000

CLAIM NO. DRS0269

ORDER ON AGREEMENT OF PARTIES

The parties to this appeal have reached an agreement that is set out in the attached. ***Report of Proceeding Agreement of Parties dated September 20, 2023*** The parties have requested that the Board issue an Order on Agreement of Parties

The appeal was timely filed The agreement is in conformity with the facts and the law. Therefore, the Board issues this order in accordance with the parties' agreement The agreement is incorporated as part of this order.

Dated September 20, 2023.

BOARD OF INDUSTRIAL INSURANCE APPEALS



HOLLY A. KESSLER, Chairperson



ISABELA M. COLE, Member



JACK S. ENG, Member



Lump Sum Special Death Benefit

Comprehensive Report
November 15, 2023

Issue

- **LEOFF Plan 2 beneficiaries have been denied a one-time special death benefit because they missed the Department of Labor and Industries (LNI) deadline for application**

Special Death Benefit

- **LEOFF Plan 2 beneficiaries are eligible for a one-time lump sum special death benefit (currently \$287,781) if the member died because of a workplace injury or occupational disease**
 - **LNI determines the beneficiary's eligibility for this benefit**
 - **Department of Retirement Systems (DRS) pays the benefit out of the pension**
- **Beneficiaries have been denied this benefit because they missed LNI's application deadline**

DRS Data

- Since 2010, 72 out of 85 applications were approved
- 13 were denied
- 3 denied for timeliness
- 1 denial has been reversed
- Prior to 2022 no beneficiaries were denied a Special Lump Sum Death Benefit for timeliness

Legislative History

- Established in 1996
- Board endorsed 2006 legislation that expanded the benefit to include deaths from occupational disease or infection
- Board endorsed 2010 legislation increased the minimum benefit from \$150k to \$214k, with an annual COLA

Statute of Limitations

- “The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by [...]” LNI
- Pension benefits typically do not have deadlines, you are paid what you have earned
 - Special Death Benefit is paid out of pension trust fund not LNI
- LNI Benefits typically have a statute of limitations to apply for the benefit, in part due to the increasing difficulty of determining the cause of an injury the further away from it occurring

Update on LNI/DRS

- In July, the Board was told that DRS and LNI were reviewing their current practices to determine if LNI deadlines should apply to this pension benefit or if a legislative change would be needed to correct the issue
- Since then, the Board has been informed that:
 - LNI will continue to apply its statute of limitations to the Special Death Benefit
 - LNI has reversed its initial decision on one of the previous denials
 - Required minor and his grandma hiring an attorney and pursuing an appeal with LNI

Cordova v. City of Seattle and LNI

- “Widows are not supposed to have to hire lawyers in order to receive widow’s benefits.” – Judge Dwyer, dissenting opinion
- LNI has told DRS they are using *Cordova* to support their contention that:
 - 1 year time limit in RCW 51. [...] is applicable to all death claims, including the DRS one-time lump sum death benefit
 - Applying for one benefit, whether DRS death benefit or LNI benefits, is not notice that you are applying for the other independent benefit

Cordova, continued

- Judge Dwyer cited a previous decision where he “urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue [...]”.
- He lamented in *Cordova*: “As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.”

Policy Options

1. **Shift determination of benefit eligibility from LNI to DRS**
 - No statute of limitations
 - Apply retroactively to beneficiaries that have been denied special death benefits for not meeting LNI statute of limitations
2. **Remove statute of limitations for special death benefit and keep LNI responsible for determination**

Pros/Cons – Option 1

- **Pros**

- Similar to other pension benefits would remove statute of limitations, and ensure members and their beneficiaries receive the benefits they have earned
- Aligns the special death benefit with the rest of the LEOFF 2 pension benefits administered by DRS
- Simplifies pension benefit process for beneficiaries by only working with one state agency

Cons

- Minor increase in costs to pay beneficiaries denied benefits for not meeting LNI statute of limitations

Pros/Cons – Option 2

- **Pros**

- Determining whether a death was duty related or not is within the existing scope of LNI's work

- **Cons**

- LNI would continue making a determination for a pension benefit which is outside their typical scope of work
- Would need to ensure that removing statute of limitations for pension benefit does not impact other LNI benefits

Next Steps - Options

1. Motion for final briefing on Policy Option 1
2. Motion for final briefing on Policy Option 2
3. No action



Thank You

Jacob White

Senior Research and Policy Manager

(360) 586-2327

jacob.white@leoff.wa.gov



November 15, 2023
Firefighter Definition

COMPREHENSIVE REPORT

By Jacob White

Senior Research & Policy Manager

360-586-2327

jacob.white@leoff.wa.gov

ISSUE STATEMENT

Some promotional positions within a fire department may be considered PERS positions by DRS, which may limit the employer's ability to fill those positions.

OVERVIEW

As fire departments grow and change in structure (i.e., larger Regional Fire Authorities become more common place) the types of positions within fire departments also continue to evolve. This has created a concern that there may be positions which are best served by having experienced firefighters in them, but those firefighters may be found to no longer meet the definition of "firefighter" for membership in LEOFF Plan 2. This could result in recruitment issues for employers, unable to find firefighters willing to take a PERS position.

BACKGROUND AND POLICY ISSUES

Establishing LEOFF 2 membership as a firefighter

All persons who meet the definition of "firefighter" under RCW 41.26.030(17) are mandated into LEOFF membership. Whether a person qualifies as a firefighter depends on their employer and the nature of the position. Generally, "firefighter" means any person who is serving on a full-time, fully compensated basis as a member of a fire department and who is serving in a position that requires passing a firefighter civil service examination or who is actively employed as a firefighter. If a position supervises firefighters, it is also considered a firefighter.

The definition of firefighter is further clarified by the Department of Retirement Systems (DRS) in WAC 415-104-225, which requires that: "as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires."

To determine whether a position meets the WAC definition of "preventing, controlling and extinguishing fires," DRS looks at an employee's position description to see if it requires them to respond to fires. They do not need to be required to respond to fires on a regular basis, but

there must at least be the potential that they are required to do so, and therefore have the necessary training, equipment, and certifications to do so.

2022 Rule Development with DRS

LEOFF 2 Board staff worked with DRS on potentially updating WAC 415-104-225 to broaden the definition of firefighter to include positions that were not required to respond to fires but required an experienced firefighter due to their expertise and experience.

Board staff provided status updates to the Board during the 2022 interim on the progress of this work with DRS. Towards the end of the 2022 interim DRS informed LEOFF 2 Board staff that they believed the WAC could not be broadened to include these types of positions and that a change in law would be required.

2023 Legislative Session

During the 2023 legislative session SB 5468 and its companion bill HB 1279 were introduced to address this issue.¹ These bills sought to amend the definition of firefighter to include “[a]ny person who is serving on a full-time, fully compensated basis as an employee of a fire department and who is serving in a position that requires an experienced firefighter [...]”.

SB 5468 passed out of Senate Ways and Means but did not receive further action. HB 1279 was referred to House Appropriations but did not receive a hearing.

Potential Cost

There is not an available data source to provide the number of current positions which would be impacted by legislation changing the definition of firefighter to include personnel who serve in positions as described above and would potentially be moved from PERS to LEOFF 2. Furthermore, it is not possible to identify the number of future positions that would be impacted by this legislation. Due to the lack of data the actuarial fiscal note for SB 5468 (see Appendix A) found the costs to be indeterminate.

POLICY OPTIONS

1. Amend definition of Firefighter

Amend definition to include personnel serving on a full-time, fully compensated basis as an employee of a fire department in positions that necessitate firefighting experience to perform the essential functions of those positions.

¹ These bills were not endorsed by the LEOFF 2 Board.

2. No action

Employers would be able to continue to make promotional positions that require firefighting experience eligible for LEOFF 2 by including in their job duties the requirement that they may respond to fight fires.

SUPPORTING INFORMATION

Appendix A: SB 5468 Fiscal Note

Multiple Agency Fiscal Note Summary

Bill Number: 5468 SB	Title: Firefighters/LEOFF
-----------------------------	----------------------------------

Estimated Cash Receipts

NONE

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other	No fiscal impact					
Local Gov. Total						

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Department of Retirement Systems	.0	0	0	0	.0	0	0	0	.0	0	0	0
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board	.0	0	0	0	.0	0	0	0	.0	0	0	0
Actuarial Fiscal Note - State Actuary	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Total \$	0.0	0	0	0	0.0	0	0	0	0.0	0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	No fiscal impact								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Retirement Systems	.0	0	0	.0	0	0	.0	0	0
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board	.0	0	0	.0	0	0	.0	0	0
Actuarial Fiscal Note - State Actuary	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

APPENDIX A

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	No fiscal impact								
Local Gov. Total									

Estimated Capital Budget Breakout

NONE

Prepared by: Marcus Ehrlander, OFM	Phone: (360) 489-4327	Date Published: Final
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Individual State Agency Fiscal Note

Bill Number: 5468 SB	Title: Firefighters/LEOFF	Agency: 124-Department of Retirement Systems
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Part I: Estimates

☒ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/18/2023
Agency Preparation: Mike Ricchio	Phone: 360-664-7227	Date: 01/26/2023
Agency Approval: Mark Feldhausen	Phone: 360-664-7194	Date: 01/26/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 01/27/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

This bill is an act relating to ensuring that firefighters who accept promotional firefighter positions within a fire department remain members of the Law Enforcement Officers' and Firefighters' (LEOFF) Retirement System. It amends the definition of "firefighter" in RCW 41.26.030(17) to include "any person who is serving on a full-time, fully compensated basis as an employee of a fire department and who is serving in a position that requires an experienced firefighter."

This change does not have a cost impact on the Department of Retirement Systems (DRS) as DRS relies on public employers to make determinations on whether or not a position is eligible for membership in a retirement system/plan, and this represents a small subset of potential LEOFF members.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

APPENDIX A

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 5468 SB	Title: Firefighters/LEOFF	Agency: 341-Law Enforcement Officer and Fire Fighters' Plan 2 Retirement Board
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Part I: Estimates

☒ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/18/2023
Agency Preparation: Seth Flory	Phone: (360) 407-8165	Date: 01/23/2023
Agency Approval: Seth Flory	Phone: (360) 407-8165	Date: 01/23/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 01/27/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Senate Bill 5468 seeks to amend RCW 41.26.030 to ensuring that firefighters who accept promotional firefighter positions within a fire department remain members of the law enforcement officers' and firefighters' retirement system. If adopted, the proposed amendment will have no fiscal impact on the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board's operations.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 5468 SB	Title: Firefighters/LEOFF	Agency: AFN-Actuarial Fiscal Note - State Actuary
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/18/2023
Agency Preparation: Melinda Aslakson	Phone: 360-786-6161	Date: 01/30/2023
Agency Approval: Lisa Won	Phone: 360-786-6150	Date: 01/30/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 01/30/2023

APPENDIX A

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

SUMMARY OF RESULTS

BRIEF SUMMARY OF BILL: Expands the definition of firefighter to ensure firefighters who promote into a position requiring an experienced firefighter remain in the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) Plan 2.

COST SUMMARY

- ❖ There is an **INDETERMINATE** cost or savings to the Public Employees' Retirement System (PERS) and LEOFF 2.
- ❖ The cost or savings that could arise from this bill is indeterminate due to lack of data on members who may be impacted under this change. Please note that this does not reflect the magnitude of the costs or savings from this bill. Rather, we are unable to quantify the impact given current data.

HIGHLIGHTS OF ACTUARIAL ANALYSIS

- ❖ Current LEOFF 2 and PERS employees, employers and the state may pay higher or lower contribution rates as a result of this bill.
- ❖ We are unable to quantify the impacts of this bill due to lack of data on the number of members impacted and their demographic profile.
- ❖ A cost or savings could arise from this bill if the change in plan membership includes individuals significantly different from average LEOFF 2 or PERS members in regard to age, service, salary, or behavior (termination, retirement, etc.).
- ❖ We assume members who promote into a position requiring an experienced firefighter, who don't otherwise meet LEOFF 2 membership eligibility, are members of PERS under current law and would be members of LEOFF prospectively under this bill.
 - Additional costs may be incurred under this bill if it allows retroactive membership changes since LEOFF 2 benefits are more costly than PERS benefits.
- ❖ In terms of risk, we expect minimal impacts to overall plan affordability or solvency compared to current law.

See the remainder of this fiscal note for additional details on the summary and highlights presented here.

WHAT IS THE PROPOSED CHANGE?**Summary of Bill**

This bill impacts PERS and LEOFF 2.

This bill modifies the definition of firefighter in [Revised Code of Washington \(RCW\) 41.26.030](#) to allow an employee serving on a full-time, fully compensated basis with a fire department in a position that requires an experienced firefighter to be in LEOFF 2.

Effective Date: 90 days after session.

In this summary, we only include changes pertinent to our Actuarial Fiscal Note (AFN). See the legislative bill report for a complete summary of the bill.

What Is the Current Situation?

The Department of Retirement Systems' (DRS) [Washington Administrative Code \(WAC\) 415-104-011](#) designates that a firefighter only qualifies as a uniformed firefighter position if the employer has identified it as such for all purposes.

RCW 41.26.030 currently defines firefighter as any person serving on a full-time, fully compensated basis, both non-supervisory and supervisory, as a member of a fire department of an employer who is employed as such.

Employers have the discretion to write position descriptions, classify such positions, and generally manage their workforce according to WAC and statute.

DRS, as the retirement system plan administrator, conducts compliance and audit reviews of positions periodically to ensure proper retirement plan designation.

It is possible positions within a fire department could require firefighting experience, however, may not be expected to carry out all expectations of a firefighter as defined in WAC or statute. In this case, under current law these positions would likely be PERS eligible instead of LEOFF 2 eligible.

ACTUARY'S CERTIFICATION

The undersigned certifies that:

1. We prepared this AFN based on our current understanding of the bill as of the date shown in the footer. If the bill or our understanding of the bill changes, the results of a future AFN based on those changes may vary from this AFN. Additionally, the results of this AFN may change after our next annual update of the underlying actuarial measurements.
2. We prepared this AFN and provided opinions in accordance with Washington State law and accepted actuarial standards of practice as of the date shown in the footer of this AFN.

We prepared this AFN to support legislative deliberations during the 2023 Legislative Session. This AFN may not be appropriate for other purposes.

We advise readers of this AFN 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 AFN as a whole. Distribution of, or reliance on, only parts of this AFN could result in its misuse and may mislead others.

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

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



Lisa A. Won, ASA, FCA, MAAA
Deputy State Actuary

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LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5468 SB**Title:** Firefighters/LEOFF**Part I: Jurisdiction**—Location, type or status of political subdivision defines range of fiscal impacts.**Legislation Impacts:**

- ☒ Cities: Fire departments
- ☒ Counties: Fire departments
- ☒ Special Districts: Fire protection districts.
- ☐ Specific jurisdictions only:
- ☐ Variance occurs due to:

Part II: Estimates

- ☒ No fiscal impacts.
- ☐ Expenditures represent one-time costs:
- ☐ Legislation provides local option:
- ☐ Key variables cannot be estimated with certainty at this time:

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

None

Part III: Preparation and Approval

Fiscal Note Analyst: Kristine Williams	Phone: (564) 669-3002	Date: 01/25/2023
Leg. Committee Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/18/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 01/25/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 01/27/2023

APPENDIX A
Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

This bill would amend the definition of 'firefighter' listed in RCW 41.26.030 to include any fire department employee whose position requires firefighting experience. This will allow firefighters the option to remain in the LEOFF retirement system if they accept a promotion.

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

This bill would not impact local government expenditures. The legislation provides an option for firefighters to remain in the LEOFF retirement system if they accept a promotion requiring firefighting experience.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

This bill would not impact local government revenues.

SOURCES:

Law Enforcement Officers' and Fire Fighters' Retirement System Board
Washington State Association of Counties



Firefighter Definition

Comprehensive Briefing
November 15, 2023

Issue

- **Some promotional positions within a fire department may be considered PERS positions by DRS, which may limit the employer's ability to fill those positions**

What is a firefighter?

- Whether a person qualifies as a firefighter depends on who the employer is and the nature of the position
- Must work at a fire department
- Must be actively employed as a full-time firefighter
 - Must “direct or perform fire protection activities required for and directly concerned with preventing, controlling and extinguishing fires”
- Or must supervise firefighters

Legislation - Promotional Firefighter Positions

- Sought to amend the definition of firefighter to include positions within a fire department that require an experienced firefighter
- SB 5468 - Passed through Senate Ways and Means
 - Indeterminate Fiscal Note from OSA
- HB 1279 – Did not receive a hearing

Hypothetical Example 1 – Firefighter Trainers

- A Fire Department has full time firefighter trainer positions
- These positions do not supervise any LEOFF employees
- These positions are not required to respond to fire calls; however, they do have equipment assigned to them and are required to have an up-to-date mask fit test

Hypothetical Example 2 – Management Position

- A regional fire authority has a position in charge of logistics (purchasing firefighting equipment, supplies, etc.) and supervising a group of non-LEOFF employees. The position requires an experienced firefighter due to their expertise of fire fighting
- The position is not required to respond to fire calls and therefore, does not have firefighting equipment assigned to them and has not completed a mask fit test

Policy Options

1. Amend definition of firefighter

Amend definition to include personnel serving on a full-time, fully compensated basis as an employee of a fire department in positions that necessitate firefighting experience to perform the essential functions of those positions

2. No action

Employers would be able to continue to make promotional positions that require firefighting experience eligible for LEOFF 2 by including in their job duties the requirement that they may respond to fight fires

Next Steps

1. Motion for a final briefing on policy option 1
2. No action



Thank You

Jacob White

Senior Research and Policy Manager

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November 15, 2023
Disability Conversions

COMPREHENSIVE REPORT

By Jacob White

Senior Research & Policy Manager

360-586-2327

jacob.white@leoff.wa.gov

ISSUE STATEMENT

The criteria for duty disabilities have changed over time so there may be LEOFF 2 members who were approved for non-duty disability with conditions that would qualify as duty related if the injury occurred today.

OVERVIEW

Since the creation of the LEOFF 2 duty disability benefit what is considered a workplace injury or occupational disease has broadened. Because these changes were not retroactive, this has created a situation where it is possible that two members suffering from the same disabling condition caused by the workplace events, qualify for different LEOFF 2 benefits.

BACKGROUND AND POLICY ISSUES

In 2018, SB 6214 *Allowing industrial insurance coverage for PTSD of law enforcement and firefighters*, was enacted into law. In addition to making PTSD a presumptive disease for LEOFF members, this law also allowed for claims resulting from repeated exposure to qualify for PTSD.

Prior to the passage of this law PTSD claims were required to be caused by a single workplace event. The PTSD would not be considered occupational if directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer. The bill also states that to be considered presumptive, the PTSD must have developed or manifested after the employee has served at least 10 years.

This change in LNI law also resulted in a change to pension benefits. LEOFF 2 members who suffered from PTSD because of multiple workplace exposures were now eligible for duty disability benefits, instead of only non-duty disability benefits. Non-duty disability benefits allow for a member to retire early but require the member to take an actuarially reduced benefit based on the number of years they are retiring early. A duty disability benefit allows the member to retire early without taking a reduction in their benefit.

During the 2023 legislative session SB 5625, *Concerning public employee retirees*, was proposed but failed to pass. This bill sought to address multiple concerns related to the administration of pension benefits, including requiring DRS to review past duty disability denials and determine if the disability was incurred “in the line of duty”. This section of this bill sought to address the concern regarding PTSD claims that had been denied for duty based on the previous definition of “in the line of duty”.

The Department of Retirement System identified that there have been 64 LEOFF 2 members approved for non-duty disability benefits. Fifty-six of those members were approved prior to June 7, 2018, the effective date of SB 6214. The Department’s data systems do not track detailed information about the disabling condition of these non-duty disability members. Therefore, a review of the records would be required to identify how many of these 56 members would need to be reviewed to determine the potential financial impacts of a change in the law allowing these members to be eligible to have their benefit converted to duty disability. However, based on a preliminary review of the 56 members, DRS believes that approximately four of those members qualified for a non-duty disability that was found to be for a mental condition not a physical condition. It is unclear from the preliminary review if those four suffered from PTSD because of multiple exposure. DRS would need to conduct a more detailed review to make that determination.

POLICY OPTIONS

1. Require DRS to review non-duty disability retirements with a disabling condition that were not eligible for duty disability at time of retirement but have since become eligible for duty disability. If the retiree’s disabling condition was incurred in the line of duty DRS must convert their retirement to duty disability.
 - a. Retroactive to effective date of disabling condition becoming eligible for duty disability.
 - b. Prospective only
2. No action

SUPPORTING INFORMATION

Appendix A: Fiscal Note SB 5625

APPENDIX A

Multiple Agency Fiscal Note Summary

Bill Number: 5625 SB	Title: Public employee retirees
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Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Office of Attorney General	0	0	133,000	0	0	94,000	0	0	94,000
Total \$	0	0	133,000	0	0	94,000	0	0	94,000

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Office of the State Actuary	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Attorney General	.4	0	0	133,000	.3	0	0	94,000	.3	0	0	94,000
Washington State Health Care Authority	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Department of Retirement Systems	4.1	0	0	1,063,160	4.0	0	0	966,960	4.0	0	0	966,960
Department of Retirement Systems	In addition to the estimate above,there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board	.0	0	0	0	.0	0	0	0	.0	0	0	0
Actuarial Fiscal Note - State Actuary	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Total \$	4.5	0	0	1,196,160	4.3	0	0	1,060,960	4.3	0	0	1,060,960

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Office of the State Actuary	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Washington State Health Care Authority	.0	0	0	.0	0	0	.0	0	0
Department of Retirement Systems	.0	0	0	.0	0	0	.0	0	0
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board	.0	0	0	.0	0	0	.0	0	0
Actuarial Fiscal Note - State Actuary	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

Prepared by: Marcus Ehrlander, OFM	Phone: (360) 489-4327	Date Published: Final 2/ 6/2023
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Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 035-Office of the State Actuary
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Part I: Estimates
☒ **No Fiscal Impact**
Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Cristina Diaz	Phone: 3607866100	Date: 01/31/2023
Agency Approval: Lisa Won	Phone: 360-786-6150	Date: 01/31/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 01/31/2023

APPENDIX A

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

While this bill impacts some service credit purchase factors, they are not the factors that OSA calculates for DRS. Thus, as written it does not impact our actuarial services, and the bill has no impact on OSA resources or expenditures.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

APPENDIX A

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 100-Office of Attorney General
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Part I: Estimates☐

No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2024	FY 2025	2023-25	2025-27	2027-29
Legal Services Revolving Account-State 405-1	86,000	47,000	133,000	94,000	94,000
Total \$	86,000	47,000	133,000	94,000	94,000

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	0.3	0.4	0.3	0.3
Account					
Legal Services Revolving Account-State 405-1	86,000	47,000	133,000	94,000	94,000
Total \$	86,000	47,000	133,000	94,000	94,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒

If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐

If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐

Capital budget impact, complete Part IV.

☐

Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 02/01/2023
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 02/01/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 02/01/2023

APPENDIX A

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 1: Creates an Office of Ombuds for Retiree Benefits (OORB) for retiree benefits for individuals covered by a system administered by the Department of Retirement Systems (DRS). The Ombuds is appointed by the Governor and reports directly to the Director of DRS. The OORB may be contracted by the Governor in accordance with RCW 39.26.

Section 2: Provides a term of office for the Ombuds of six years, addresses removal and vacancy for the Ombuds.

Section 3: Provides training and experience requirements for the Ombuds.

Section 4: Provides staffing level for the OORB.

Section 5: Provides powers and duties for the Ombuds.

Section 6: Requires procedures for the Ombuds to refer complaints by members and retirees of the retirement systems and retiree health care.

Section 7: Provides miscellaneous provisions relating to the liability of the Ombuds.

Section 8: Provides that records and files of the Ombuds relating to complaints are confidential unless disclosure is authorized pursuant to this section.

Section 9: Requires a link to the Ombuds program on the DRS website.

Section 10: Provides funding for OORB.

Section 11: Requires an annual report by the Ombuds.

Section 12: Requires the Ombuds to have an Assistant Attorney General separate from DRS.

Section 13: Tolls the appeal time period under RCW 34.05 during the time a complaint is under review by the Ombuds.

Section 14: Technical amendment to RCW 41.50.110.

Section 15: Provides for a deadline of no less than 90 days for appeals filed by members or retirees under RCW 34.05.

Section 16: Technical amendment to RCW 41.40.660.

Section 17: Amends RCW 41.26.030, makes amendments to certain definitions.

This bill is assumed effective 90 days after the end of the 2023 legislative session.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

Cash receipts are assumed to equal the Legal Services Revolving Account (LSRA) cost estimates. These will be billed through the revolving account to the client agency.

APPENDIX A

The client agency is the Department of Retirement Systems (DRS). The Attorney General's Office (AGO) will bill all clients for legal services rendered.

These cash receipts represent the AGO's authority to bill and are not a direct appropriation to the AGO. The direct appropriation is reflected in the client agency's fiscal note. Appropriation authority is necessary in the AGO budget.

AGO AGENCY ASSUMPTIONS:

DRS will be billed for non-Seattle rates:

FY 2024: \$86,000 for 0.3 Assistant Attorney General (AAG) and 0.15 Legal Assistant 3 (LA), this includes direct litigation costs of \$10,000.

FY 2025: \$47,000 for 0.15 AAG and 0.08 LA, this includes direct litigation costs of \$10,000 and in each FY thereafter.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Attorney General's Office (AGO) Agency Assumptions:

This bill is assumed effective 90 days after the end of the 2023 legislative session.

Location of staffing is assumed to be in a non-Seattle office building.

Total workload impact in this request includes standard assumption costs for goods & services, travel, and capital outlays for all FTE identified.

Agency administration support FTE are included in the tables, for every 1.0 Assistant Attorney General FTE (AAG), the AGO includes 0.5 FTE for a Legal Assistant 3 (LA) and 0.25 FTE of a Management Analyst 5 (MA). The MA is used as a representative classification.

Assumptions for the AGO Revenue and Finance Division's (REV) legal services for the Department of Retirement Systems (DRS):

The AGO will bill DRS for legal services based on the enactment of this bill.

REV assumes Office of Ombuds for Retiree Benefits (OORB) and DRS do not require legal services until FY 2024 with the Governor's appointment of the Ombuds.

Section 12 requires that the AAG advising OORB is separate from the AAG advising DRS.

In FY 2024, REV anticipates that it will need to provide initial legal advice and guidance to OORB on the rights, duties, powers, liabilities, privileges, and immunities outlined in sections 5-8, 12, 13, and 16 of the bill as well as other aspects of administrative law such as the public records act and administrative procedures act.

In FY 2025 and subsequent years, REV anticipates it will be need to provide ongoing legal advice and guidance to OORB on the rights, duties, powers, liabilities, privileges, and immunities outlined in sections 5-8, 12, 13, and 16 of the bill as well as other aspects of administrative law such as the public records act and administrative procedure act.

OORB's work likely results in an increase in the overall number of administrative appeals at DRS on an ongoing basis.

APPENDIX A

REV assumes the increase in total administrative appeals will not be fully offset by OORB efforts at dispute resolution.

Accordingly, beginning in FY 2024 and subsequent years, OORB referrals are expected to increase net number of administrative appeals that reach DRS's presiding officer with AAG representation by one to two per FY, resulting in an average of 160 additional AAG hours per FY for litigation.

Beginning in FY 2024 and subsequent years, the AGO anticipates 20 hours of advice and guidance annually to DRS on OORB's referrals and actions, and the new requirements provided in sections 6, 13, 14, 16, and 17.

FY 2024: 0.2 AAG to advise the Ombuds on initial startup type questions; and 0.1 AAG to advise DRS on Ombuds actions and providing representation in one to two new Law Enforcement Officers' and Fire Fighters' (LOEFF) Plan 2 appeals per FY.

FY 2025: 0.05 AAG to advise the Ombuds; and 0.1 AAG to advise DRS on Ombuds actions and providing representation in one to two new LOEFF 2 appeals per FY and in each FY thereafter.

REV anticipates \$10,000 per FY in direct costs per FY to retain medical experts for additional administrative appeals on disability denial cases.

REV: Total non-Seattle workload impact:

FY 2024: \$86,000 for 0.30 AAG and 0.15 LA, (this includes direct litigation costs of \$10,000).

FY 2025: \$47,000 for 0.15 AAG and 0.08 LA (this includes direct litigation costs of \$10,000) and in each FY thereafter.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
405-1	Legal Services Revolving Account	State	86,000	47,000	133,000	94,000	94,000
Total \$			86,000	47,000	133,000	94,000	94,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	0.3	0.4	0.3	0.3
A-Salaries and Wages	50,000	25,000	75,000	50,000	50,000
B-Employee Benefits	16,000	8,000	24,000	16,000	16,000
C-Professional Service Contracts	10,000	10,000	20,000	20,000	20,000
E-Goods and Other Services	9,000	4,000	13,000	8,000	8,000
G-Travel	1,000		1,000		
Total \$	86,000	47,000	133,000	94,000	94,000

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Assistant Attorney General	118,700	0.3	0.2	0.2	0.2	0.2
Legal Assistant 3	55,872	0.2	0.1	0.1	0.1	0.1
Management Analyst 5	91,524	0.1	0.0	0.1	0.0	0.0
Total FTEs		0.5	0.3	0.4	0.3	0.3

III. D - Expenditures By Program (optional)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Revenue & Finance Division (REV)	86,000	47,000	133,000	94,000	94,000
Total \$	86,000	47,000	133,000	94,000	94,000

APPENDIX A

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

APPENDIX A
Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 107-Washington State Health Care Authority
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Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Sara Whitley	Phone: 360-725-0944	Date: 02/03/2023
Agency Approval: Tanya Deuel	Phone: 360-725-0908	Date: 02/03/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/06/2023

APPENDIX A

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

See attached narrative.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

See attached narrative.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

See attached narrative.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

APPENDIX A

See attached narrative.

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

APPENDIX A

HCA Fiscal Note

Bill Number: SB 5625

HCA Request #: 23-084

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

This legislation adds fifteen sections to RCW 41.50 (Department of Retirement Systems) and creates the Office of the Ombuds, that shall act as an advocate for retirees and members covered by a system administered by Department of Retirement Systems (DRS). The following sections directly impact the Health Care Authority (HCA):

Section 5 establishes the Ombuds powers and duties to include:

- Acting as an advocate for retirees and members of DRS administered retirement systems;
- Offer and provide information on DRS administered retirement systems;
- Identify, investigate, and facilitate resolution of complaints from members and retirees;
- Maintain a statewide toll-free telephone number for the receipt of complaints and inquiries;
- Refer complaints to the relevant department when appropriate.

Section 6(1) requires a relevant agency, referred to by the ombuds, to respond to any complaint as quickly as possible and forward the office a summary of the results of the investigation and any actions taken.

Section 10 designates funding for the Office of the Ombuds shall be paid through the DRS expense fund (600) under RCW 41.50.110 (Expenses of administration paid from department of retirement systems expense fund) and through the state Health Care Authority administrative account (418) under RCW 41.05.130 (State health care authority administrative account).

II. B - Cash Receipts Impact

None.

II. C – Expenditures

Public Employees Benefits Board (PEBB) and School Employees Benefits Board (SEBB) Program Impacts

Indeterminate fiscal impact, assumed to be greater than \$50,000. Assumed expenditures for the State Health Care Authority Administrative Account (418) are reflected in the DRS fiscal note.

This legislation adds fifteen sections to RCW 41.50 (Department of Retirement Systems) which creates the office of the ombuds; this office is directed to act as an advocate for retirees and members covered by a system administered by Department of Retirement Systems (DRS). While this office is to be housed within DRS, there are assumed impacts to HCA operations and administrative expenses.

Section 5 establishes the responsibility of the ombuds, and Section 6 requires any agency referred to by the office of the ombuds to address a retiree or member concern respond as quickly as possible. HCA's Employees and Retiree Benefits (ERB) Division, which services both PEBB and SEBB programs, has a designated customer service team that currently answers phone calls and responds to written inquiries and complaints received from PEBB retiree insurance coverage subscribers or potential subscribers. At times, this may include complaints about processes, and eligibility and procedural requirements. It is assumed that additional inquiries and complaints would be sent to ERB

APPENDIX A

HCA Fiscal Note

Bill Number: SB 5625

HCA Request #: 23-084

from the office of the ombuds following the referral procedure developed by the office, requiring a quick response from ERB along with a summary of the action proposed or taken. HCA also assumes there may be assistance required from HCA staff to provide training and support for the ombuds office during the initial phases of implementation, which could increase workload for current staff.

It is currently assumed this increase in workload can be managed with no additional HCA FTEs; however, HCA intends to reassess any additional needs after any increases to ERB staff workloads are known and can be assessed.

Section 10 of this bill designates funding for the office of the ombuds to be paid through the DRS expense fund under RCW 41.50.110 (Expenses of administration paid from department of retirement systems expense fund) and through the state Health Care Authority administrative account 418 under RCW 41.05.130 (State health care authority administrative account). As described in Section 4 of this bill, for the first two years this includes no more than four staff, which have been identified in the DRS fiscal note. It is unknown if additional staffing will be required after the initial two years, resulting in increased funding needs.

HCA and DRS assume an initial equal (50/50) share in payroll costs, to be split between the DRS Administrative Account (600) and the State Health Care Authority Administrative Account (418); HCA intends to reassess this assumption, and make adjustments in consultation with DRS and the ombud's office, following the initial year(s) of the ombud's office implementation to determine if this equal share of costs reflects the actual split of the workload being performed attributable to the two accounts.

The assumed expenditures for the State Health Care Authority Administrative Account (418) are reflected in the DRS fiscal note. PEBB fund 418 expenditures are assumed to be \$269,820 in FY 2024 and \$237,720 in FY 2025. The revenue requirements for fund 418 are supplied via cash transferred from the Public Employees' and Retirees Insurance Account (721). If additional funding for 418 should be required as a result of this legislation, increased revenue will be required in fund 721, resulting in an increase to the state funding rate.

Medicaid

No impacts to Medicaid lines of business.

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.

APPENDIX A Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 124-Department of Retirement Systems
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	4.1	4.0	4.1	4.0	4.0
Account					
St Health Care Authority Admin Acct-State 418-1	269,820	237,720	507,540	475,440	475,440
Department of Retirement Systems Expense Account-State 600-1	281,160	218,560	499,720	437,120	437,120
Public Employees' Retirement System Plan I Account-Non-Appropriated 631-6	1,300	1,200	2,500	2,400	2,400
School Employees Combined Plan 2 & 3-Non-Appropriated 633-6	1,300	1,200	2,500	2,400	2,400
Public Employees' Retirement System Combined Plan 2 and 3 Account-Non-Appropriated 641-6	5,900	5,400	11,300	10,800	10,800
Teachers' Combined Retirement Plan II and III-Non-Appropriated 642-6	4,400	4,100	8,500	8,200	8,200
Washington Law Enforcement Officers & Firefighters' System Plan II Retirement Ac-Non-Appropriated 829-6	15,800	15,300	31,100	30,600	30,600
Total \$	579,680	483,480	1,063,160	966,960	966,960

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

APPENDIX A

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☒ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Mark Feldhausen	Phone: 360-664-7194	Date: 02/02/2023
Agency Approval: Tracy Guerin	Phone: 360-664-7312	Date: 02/02/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/03/2023

APPENDIX A

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Sec. 1 of the bill creates the office of the ombuds for retiree benefits. The ombuds shall be appointed by the governor and report directly to the director of the Department of Retirement Systems (DRS).

Sec. 3 identifies that the ombuds shall have training and/or experience in the retirement systems administered by DRS, the retiree health care administered by the Health Care Authority (HCA), the Washington state legal system and dispute resolution techniques.

Sec. 4 limits the office to 4.0 FTEs for the first two years.

Sec. 5 requires the office to maintain a statewide toll-free telephone number.

Sec. 6 requires the office to develop referral procedures for complaints and requires DRS or HCA to forward a summary of their results of an investigation and action proposed or taken (which could include complaints against employers).

Sec. 9 requires DRS and HCA to clearly provide a link to the ombuds program on the front page of their website.

Sec. 10 identifies that the office shall be funded out of both DRS' and HCA's administrative accounts.

Sec. 11 identifies the requirement for an annual report to the Governor, the Select Committee on Pension Policy (SCPP) and the LEOFF Plan 2 Retirement Board.

Sec. 12 identifies that the ombuds shall have an Assistant Attorney General separate from DRS' assigned to them for legal advice.

Sec. 13 provides that if an issue is raised to the office, the time to file an appeal is "tolled" (put on pause).

Sec. 14 provides that for the Law Enforcement Officers' and Fire Fighters' (LEOFF) Retirement System and Public Safety Employees' Retirement System (PSERS), "in the line of duty" has the same meaning as "in the course of employment" as with the Department of Labor and Industries (LNI). Any LEOFF Plan 2 disability retirement that has been denied by DRS prior to this bill will be re-reviewed to determine if the disability was in the line of duty. Additionally, if DRS denied a catastrophic disability in LEOFF or PSERS, because the applicant is capable of employment, DRS or LNI are required to have an occupational assessment completed.

Sec. 15 amends RCW 41.50.110(7) to exclude DRS' administrative fee and any employer charge for the unfunded liability in a plan from the charge to a member for optional service credit purchases.

Sec. 16 provides that the deadline to file an appeal to DRS under the Administrative Procedures Act (APA) cannot be less than 90 days. If DRS requests a member or retiree to provide additional information then the days in that deadline are tolled (i.e., put on pause). Any appeal that was previously dismissed for timeliness can be re-filed, if DRS had requested additional information.

Sec. 17 amends RCW 41.40.660(6) to identify that if a person in Plan 2 of the Public Employees' Retirement System (PERS) made a request after June 11, 2020, but prior to the determination from the Internal Revenue Service that a survivorship change within 90 days was acceptable (i.e., August 2, 2021), their request is considered timely, and that person can change their survivorship option prospectively.

APPENDIX A

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

ADMINISTRATIVE ASSUMPTIONS:

- The ombuds and their team will work remotely but also will have access to touch down space in the DRS building in Tumwater as the ombuds reports directly to the director of DRS per Sec. 1.
- The new office will operate at 4.0 FTEs per Sec. 4. The anticipated classifications are identified in Part III.B.
- The computer hardware/software cost for hybrid work is estimated at \$6,800 per FTE, while the cost to operate the toll-free line required by Sec. 5(4) is estimated at \$1,800 per year and the cost for phone lines and equipment is estimated at \$1,300 per year.
- This fiscal note assumes an initial 50:50 split between the administrative funds identified in Sec. 10 for the operating cost of the new office. The ombuds may analyze workload after the first year or biennia of operation to determine if a different split is more accurate.
- Support from the Attorney General's Office (AGO) for general legal advice to the ombuds, per Sec. 12, is estimated in the AGO's fiscal note. The total estimated cost to the AGO for all sections of the bill was identified as \$133,000 in the 2023-25 biennium and \$94,000 per biennium ongoing. The legal costs have been allocated to the appropriate fund sources based on the nature of the service.
- The cost to administer Sec. 13 is indeterminate. DRS is not able to estimate the number of agency decisions that will be raised to the ombuds, the resulting average duration of a pause to current process timelines nor the potential cost associated with a pause.
- The cost to implement and administer Sec. 14 is indeterminate. DRS would need to review applications for disability retirement, that were denied prior to the effective date of the bill, and have occupational assessments conducted in specific cases. While the cost is estimated at \$5,000 per case, it is not possible to identify how many disability retirement applications would qualify for this re-review as some would have already been archived so they're not currently in the agency's database.
- DRS identified a cost of \$30,000 to implement Sec. 15. Specific system-generated invoices will need to be modified to remove components of the employer charge for optional service credit purchases. Additional assumptions related to this project include:
 - The bill is prospective only,
 - DRS will cancel, recreate, and reissue any open optional bills that have not been paid in full (representing approximately 140 bills),
 - DRS will not make adjustment to bills that have previously been paid in full,
 - Changes to relieve members from paying the unfunded liability and administrative fee will only apply when the member is paying the employer fee, employers will still pay these costs on all other optional bills,
 - There will be no changes to the system transfer bill calculations, and
 - No other entity will be responsible for paying the unfunded liability amount or DRS admin fee for these optional bills (e.g., it will not be billed to the employer).
- The cost to implement Sec. 16 is indeterminate as the agency cannot estimate the number of prior claims that have been dismissed that will be refiled, nor the impact of the proposed adjustment to the Administrative Procedure Act contained in 34.05 RCW.
- The cost to implement Sec. 17 is indeterminate. The language would provide retirees of Plan 2 of the Public Employees' Retirement System (PERS) the ability to change their survivorship option if they made such a request between the dates provided in Sec. 17(6). It is not possible to query the agency's automated system to identify how many the agency received during the specified timeframe.

APPENDIX A

- There is no cost to implement Sec. 18 as it adds clarity that holiday payments or used sick/vacation leave are included in the definition of salary in LEOFF Plan 2.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
418-1	St Health Care Authority Admin Acct	State	269,820	237,720	507,540	475,440	475,440
600-1	Department of Retirement Systems Expense Account	State	281,160	218,560	499,720	437,120	437,120
631-6	Public Employees' Retirement System Plan I Account	Non-Appropriated	1,300	1,200	2,500	2,400	2,400
633-6	School Employees Combined Plan 2 & 3	Non-Appropriated	1,300	1,200	2,500	2,400	2,400
641-6	Public Employees' Retirement System Combined Plan 2 and 3 Account	Non-Appropriated	5,900	5,400	11,300	10,800	10,800
642-6	Teachers' Combined Retirement Plan II and III	Non-Appropriated	4,400	4,100	8,500	8,200	8,200
829-6	Washington Law Enforcement Officers & Firefighters' System Plan II Retirement Ac	Non-Appropriated	15,800	15,300	31,100	30,600	30,600
Total \$			579,680	483,480	1,063,160	966,960	966,960

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	4.1	4.0	4.1	4.0	4.0
A-Salaries and Wages	329,220	320,220	649,440	640,440	640,440
B-Employee Benefits	116,160	113,160	229,320	226,320	226,320
C-Professional Service Contracts	18,000		18,000		
E-Goods and Other Services	89,100	50,100	139,200	100,200	100,200
G-Travel					
J-Capital Outlays	27,200		27,200		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	579,680	483,480	1,063,160	966,960	966,960

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

APPENDIX A

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Administrative Assistant 4	58,704	1.0	1.0	1.0	1.0	1.0
Benefits Ombudsman	105,000	1.0	1.0	1.0	1.0	1.0
Communications Consultant 4	72,756	0.0		0.0		
Fiscal Analyst 2	54,108	0.0		0.0		
IT Business Analyst - Journey	96,888	0.0		0.0		
Management Analyst 4	88,800	1.0	1.0	1.0	1.0	1.0
Retirement Specialist 3	67,716	1.1	1.0	1.0	1.0	1.0
Total FTEs		4.1	4.0	4.1	4.0	4.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

The ombuds may develop rules and some existing agency rules may need to be revised.

APPENDIX A
Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 341-Law Enforcement Officer and Fire Fighters' Plan 2 Retirement Board
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Part I: Estimates

☒ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Seth Flory	Phone: (360) 407-8165	Date: 02/02/2023
Agency Approval: Seth Flory	Phone: (360) 407-8165	Date: 02/02/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/03/2023

APPENDIX A

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Senate Bill 5625, regarding public employee retirees, creates the Office of the Ombuds within the Department of Retirement Services (DRS). The Office of the Ombuds will have certain obligations to the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board (LEOFF), but the relationship created by these obligations will not significantly impact LEOFF's operations. Therefore, no fiscal impact expected to result from the adoption of this legislation.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

APPENDIX A

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

APPENDIX A
Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: AFN-Actuarial Fiscal Note - State Actuary
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Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☒ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Aaron Gutierrez	Phone: 360-786-6152	Date: 02/06/2023
Agency Approval: Michael Harbour	Phone: 360-786-6151	Date: 02/06/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/06/2023

APPENDIX A

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

APPENDIX A

Actuary's Fiscal Note for SB 5625

SUMMARY OF RESULTS

BRIEF SUMMARY OF BILL: This bill creates the Office of Ombuds within the Department of Retirement Systems (DRS) and makes other changes, some of which, according to DRS, codify current administrative practice.

COST SUMMARY

The cost/savings that could arise from this bill is **INDETERMINATE** for the reasons outlined in the following section. Please note that this does not reflect the magnitude of the costs/savings from this bill; rather, we are unable to quantify the potential impact.

HIGHLIGHTS OF ACTUARIAL ANALYSIS

- ❖ From the perspective of funding the DRS retirement systems, each of the six main changes identified in this bill is expected to have either no impact or result in an indeterminate cost/savings.
 1. Creating the DRS Office of Ombuds is expected to have **no impact** to the retirement systems, since associated expenses will be paid from the DRS and HCA administrative accounts.
 2. Establishing a retroactive effective date for PERS 2 survivor option re-elections is expected to result in an **indeterminate cost/savings**. Consistent with our AFN on [SB 6417](#) from the 2020 Legislative Session, we believe the impact of survivor option re-elections will be limited due to the 90-day post-retirement window; also, this bill's retroactive provision only applies to those who previously requested a survivor option change.
 3. Changing the PSERS 2 and LEOFF 2 qualification of a duty-related disability, and the corresponding re-assessment of past disability claims, is expected to have **no impact** since, according to DRS, this change matches the current administrative practice.
 - Any changes to the claims could result in a cost to these plans from paying larger/subsidized benefits.
 4. Including used sick and vacation leave in the LEOFF 2 definition of "basic salary" is expected to have **no impact**, since we understand this codifies current administrative practice.
 5. Allowing administrative claims to be re-filed that were denied for failing to file a timely appeal is expected to result in an **indeterminate cost**, as re-filed claims could increase benefits.
 6. Excluding the Plan 1 Unfunded Actuarial Accrued Liability (UAAL) contribution rate when calculating a member's cost to purchase past service credit is expected to result in an **indeterminate cost**, as fewer PERS/TRS Plans 1 contributions would be collected. We expect no impact to projected UAAL rates or Plan 1 payoff dates.
- ❖ We relied on DRS for information regarding the administration of this bill. Differences between this understanding and actual administration will likely change the expected impacts outlined in this AFN.

See the remainder of this fiscal note for additional details on the summary and highlights presented here.

WHAT IS THE PROPOSED CHANGE?**Summary of Bill**

This bill impacts the following systems:

- ❖ Public Employees' Retirement System (PERS).
- ❖ Teachers' Retirement System (TRS).
- ❖ School Employees' Retirement System.
- ❖ Public Safety Employees' Retirement System (PSERS).
- ❖ Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF).
- ❖ Washington State Patrol Retirement System.

This bill makes the following changes:

- 1. DRS Ombuds** – Creates the Office of Ombuds within DRS; pays associated expenses from the DRS and the Health Care Authority (HCA) administrative accounts; requires the Ombuds to give regular reports to various entities including the Select Committee on Pension Policy.
- 2. Survivor Option Re-Election (PERS Plan 2)** – Applies a retroactive effective date to a current law provision that allows members 90 days to change survivor options. This bill backdates effectiveness to June 11, 2020, noting that the Internal Revenue Service (IRS) made a determination regarding these survivor option re-elections on August 1, 2021.
- 3. Duty Disability Benefits (PSERS Plan 2 and LEOFF Plan 2)** – Clarifies the criteria to qualify for duty disability benefits; requires DRS to review all denied claims using the new criteria; requires an occupational assessment if the claim was denied due to the member being capable of employment.
- 4. “Basic Salary” Definition (LEOFF Plan 2)** – Includes used sick and vacation leave in the definition of “basic salary.”
- 5. Administrative Claims (All Plans)** – Allows claims to be re-filed that were denied for failing to file a timely appeal.
- 6. Service Credit Purchases (All Plans)** – Changes how service credit purchases are calculated. More specifically, it states that when calculating the fee for service credit purchase, the fee paid by the member cannot consider the DRS administrative fee or any unfunded liability in the plan.

We relied on DRS' statement that provisions 3 and 4 are codifying current administrative practice.

Effective Date: 90 days after session.

In this summary, we only include changes pertinent to our Actuarial Fiscal Note (AFN). See the legislative bill report for a complete summary of the bill.

What Is the Current Situation?

1. **DRS Ombuds** – DRS does not currently have a position of Ombuds.
2. **Survivor Option Re-Election (PERS Plan 2)** – At retirement, plan members make an irrevocable choice of their survivor option. In 2020, Senate Bill (SB) 6417 provided members of all plans the option of changing their survivor option up to 90 days after retirement, but included a requirement that the IRS must first approve of this adjustment to the plan design.
3. **Duty Disability Benefits (PSERS Plan 2 and LEOFF Plan 2)** – All DRS retirement systems offer disability benefits. For most systems, the benefits are equivalent to what the member would have earned if they had retired on the date of injury (including any reduction in benefits due to being under the normal retirement age).

PSERS 2 and LEOFF 2 are the only plans open to new hires that offer enhanced disability benefits for duty-related injuries that result in “total incapacitation” as defined in statute. Furthermore, LEOFF 2 is the only open plan that offers enhanced benefits if an injury is considered duty-related (but does not result in “total incapacitation”).

Under current law, to qualify for a duty-related disability, the injury must occur “in the line of duty,” per the Washington Administrative Code [415-104-479](#). This bill clarifies the qualification to occurring “in the course of employment,” per the Revised Code of Washington (RCW) [51.08.013](#).
4. **“Basic Salary” Definition (LEOFF Plan 2)** – “Basic salary” is defined in RCW [41.26.030\(4\)\(b\)](#) as a component of Final Average Salary (FAS). FAS is defined in RCW [41.26.030\(15\)\(b\)](#) to be the member’s highest consecutive 60 months of basic salary.
5. **Administrative Claims (All Plans)** – Members of the retirement systems who feel they’ve been adversely impacted by a DRS decision may file an administrative claim. This includes, but is not limited to, denials that an injury was duty related.
6. **Service Credit Purchases (All Plans)** – Based on conversations with DRS, we understand that there are three primary types of service credit purchases for which members may pay DRS administrative fees and Plan 1 UAAL contribution rates. These purchases are Authorized Leave of Absence, New Employer Billings, and Elected Official Billings.

This bill expressly mentions the DRS administrative fee, which is defined in RCW [41.45.110](#) and is currently set at 0.18 percent.

WHY THIS BILL HAS AN INDETERMINATE COST/SAVINGS

From the perspective of funding the DRS retirement systems, each of the six changes outlined above is expected to have either no impact or result in an indeterminate cost/savings. Below, we explain why this is the case, the actuarial impacts that could result, and some of the risks to consider. These takeaways are based on our [June 30, 2021, Actuarial Valuation Report](#).

1. **DRS Ombuds** – We expect **no impact** to the retirement systems due to the creation and ongoing funding of the Office of Ombuds within DRS, since associated expenses will be paid from the DRS and HCA administrative accounts.
2. **Survivor Option Re-Election (PERS Plan 2)** – Based on information from DRS, we understand that a small number of PERS 2 members will be impacted under this bill. This group is limited to those who submitted their request to change their survivor option within the 90-day period and during the historical timeframe noted earlier. Members who are able to do so will see an increase/decrease in their pension prospectively due to a change in the survivor option factor that is applied to their benefit.

This provision results in an **indeterminate cost/savings** to PERS 2/3. While the administrative factors used to convert a member's pension amount between different forms of payment are intended to be actuarial equivalent, a member may have changed their selection to a survivor option that is more costly based on new health information for either themselves or their designated beneficiary (often referred to as anti-selection).

However, members must have selected the new survivor option within the original 90-day window of retirement. We believe members will have gained limited information within this window and expect small costs or savings will arise from a new survivor option. We also understand that this request to change their survivor option cannot now be revoked under this bill.

3. **Duty Disability Benefits (PSERS Plan 2 and LEOFF¹ Plan 2)** – Based on information from DRS, we understand that changing the qualification of a duty-related disability from an injury that occurs “in the line of duty” to one that occurs “in the course of employment” codifies current administrative practice and that the two terms are interpreted the same administratively.

With this understanding, we expect **no impact** on PSERS 2 and LEOFF 2 due to this change and the corresponding re-assessment of past disability claims. However, if this bill were to result in more injuries being qualified as duty related or determined to be “total incapacitation,” it would result in a cost to these retirement plans from paying larger/subsidized benefits.

¹The bill does not explicitly exclude LEOFF Plan 1. However, the LEOFF 1 Disability Boards review disability claims for their members (not DRS), so we assume there is no impact.

APPENDIX A

Actuary's Fiscal Note for SB 5625

4. **“Basic Salary” Definition (LEOFF Plan 2)** – Based on information from DRS, we understand that including sick and vacation leave in the definition of “basic salary” codifies current administrative practice. We also understand that the salary over which a member’s pension is calculated excludes sick and vacation leave that may be cashed out at the time of a member’s retirement or termination.

With this understanding, we expect **no impact** on LEOFF 2 due to this change. However, if administration differs from our above understanding, it could lead to a cost to LEOFF 2, as members’ pensionable salaries (and thus pension benefit calculations) would increase.

5. **Administrative Claims (All Plans)** – We expect this change to result in an **indeterminate cost** to the retirement system, as re-filed claims have the potential to result in pension benefit increases.
6. **Service Credit Purchases (All Plans)** – This bill will exclude the DRS administrative fee and the “unfunded liability in a plan” when calculating a member’s cost to purchase past service credit. Based on input from DRS, we understand that this language is specifically referring to the PERS/TRS Plans 1 UAAL and not the general unfunded liability of the retirement plans.

In 2022, there were 74 such purchases for an average of 4.6 years of service credit. Excluding the Plan 1 UAAL contribution rate when calculating a member’s cost to purchase service credit is expected to result in an **indeterminate cost** to PERS/TRS Plans 1, as fewer Plan 1 contributions would be collected.

However, we do not anticipate this loss will increase Plan 1 UAAL contribution rates or materially impact the projected payoff dates; rather, PERS/TRS Plans 1 will simply have a slightly lower funded ratio in the future. The impact is further diminished since, based upon our most recent [Projections](#), the Plans 1 UAAL are expected to be fully funded within a few years at which point UAAL contribution rates cease.

ACTUARY'S CERTIFICATION

The undersigned certifies that:

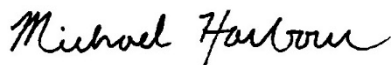
1. The actuarial assumptions, methods, and data used are reasonable for the purposes of this pricing exercise. The use of another set of assumptions, methods, and data may also be reasonable and might produce different results.
2. The risk analysis summarized in this AFN involves the interpretation of many factors and the application of professional judgment.
3. We prepared this AFN based on our current understanding of the bill as of the date shown in the footer. If the bill or our understanding of the bill changes, the results of a future AFN based on those changes may vary from this AFN. Additionally, the results of this AFN may change after our next annual update of the underlying actuarial measurements.
4. We prepared this AFN and provided opinions in accordance with Washington State law and accepted Actuarial Standards of Practice as of the date shown in the footer of this AFN.

We prepared this AFN to support legislative deliberations during the 2023 Legislative Session. This AFN may not be appropriate for other purposes.

We advise readers of this AFN 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 AFN as a whole. Distribution of, or reliance on, only parts of this AFN could result in its misuse and may mislead others.

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

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



Michael T. Harbour, ASA, MAAA
Actuary

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Disability Conversions

Comprehensive Report
November 15, 2023

Issue

- The criteria for duty disabilities have changed over time, as a result there may be LEOFF 2 members who were approved for non-duty disability with conditions that would qualify as duty related if the injury occurred today

Example - Hypothetical

- Prior to 2018 a LEOFF 2 member makes a claim of PTSD from multiple exposures as the cause of their injury
- DRS agrees the member has a disabling condition preventing them continuing to work as a firefighter. However, the injury was not caused by a single event and therefore the injury is not duty related and the member is approved for non-duty instead of duty disability
- Should the law be changed to allow for members who retired prior to 2018 and who were approved for non-duty disability to be eligible for duty disability in scenarios like the one above?

Legislative History

- **SB 5615 (2005) – Created Duty Disability Benefit for LEOFF 2**
- **HB 2932 (2006) – Created Catastrophic Disability Benefit for LEOFF 2**
- **SB 6214 (2018) – Allowed industrial insurance coverage for PTSD of law enforcement and firefighters**
 - Allowed for claims resulting from repeated exposure
 - Established PTSD as a presumptive disease for LEOFF members
- **SB 5625 (2023) - DRS Ombuds Bill (Did not pass legislature)**
 - DRS must review past duty disability denials and determine if the disability was incurred “in the line of duty”

Presumptive Occupational Diseases

- A condition being identified under LNI law as a presumptive diseases makes it easier for a LEOFF member to qualify for a duty disability benefit
- The list of conditions that qualify as presumptive diseases continues to change
 - Includes various types of cancers, heart and respiratory diseases, certain infectious diseases, and PTSD
 - Not the exact same list for FF and LEO
 - Process for conditions to be added to presumptive disease list
- Different issue than a condition not qualifying as duty related

DRS Data

- Fifty-six (56) LEOFF 2 non-duty disability retirees prior to effective date of PTSD law
- Working with DRS to determine how many of those were approved for PTSD, or similar condition, prior to the 2018 law being effective

Policy Options

1. Require DRS to review non-duty disability retirements with a disabling condition that was not eligible for duty disability at time of retirement but has since become eligible for duty disability. If the retiree's disabling condition was incurred in the line of duty DRS must convert their retirement to duty disability.
 - a) Retroactive to effective date of disabling condition becoming eligible for duty disability
 - b) Prospective only
2. No action

Next Steps

1. Motion to receive final briefing on policy option 1(a)
2. Motion to receive final briefing on policy option 1(b)
3. No action



Thank You

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Succession Planning Follow-Up

Research and Policy

November 15, 2023

Background

- Succession planning discussion revealed interest in an additional research and policy position
- Board adopted 2023-25 budget at June 2023 meeting

Process

- New positions and funding requests are submitted through budget decision packages
- Deadline to submit decision packages for the 2024 Supplemental Budget to OFM was 9/13/2023
- Next opportunity for decision package will be September 2024 for the 2025 legislative session
- Additional LEOFF Ombuds position was created through a proviso in the 2021-23 Biennial Budget



Thank You

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Succession Planning Follow-Up

Salary Setting

November 15, 2023

Background

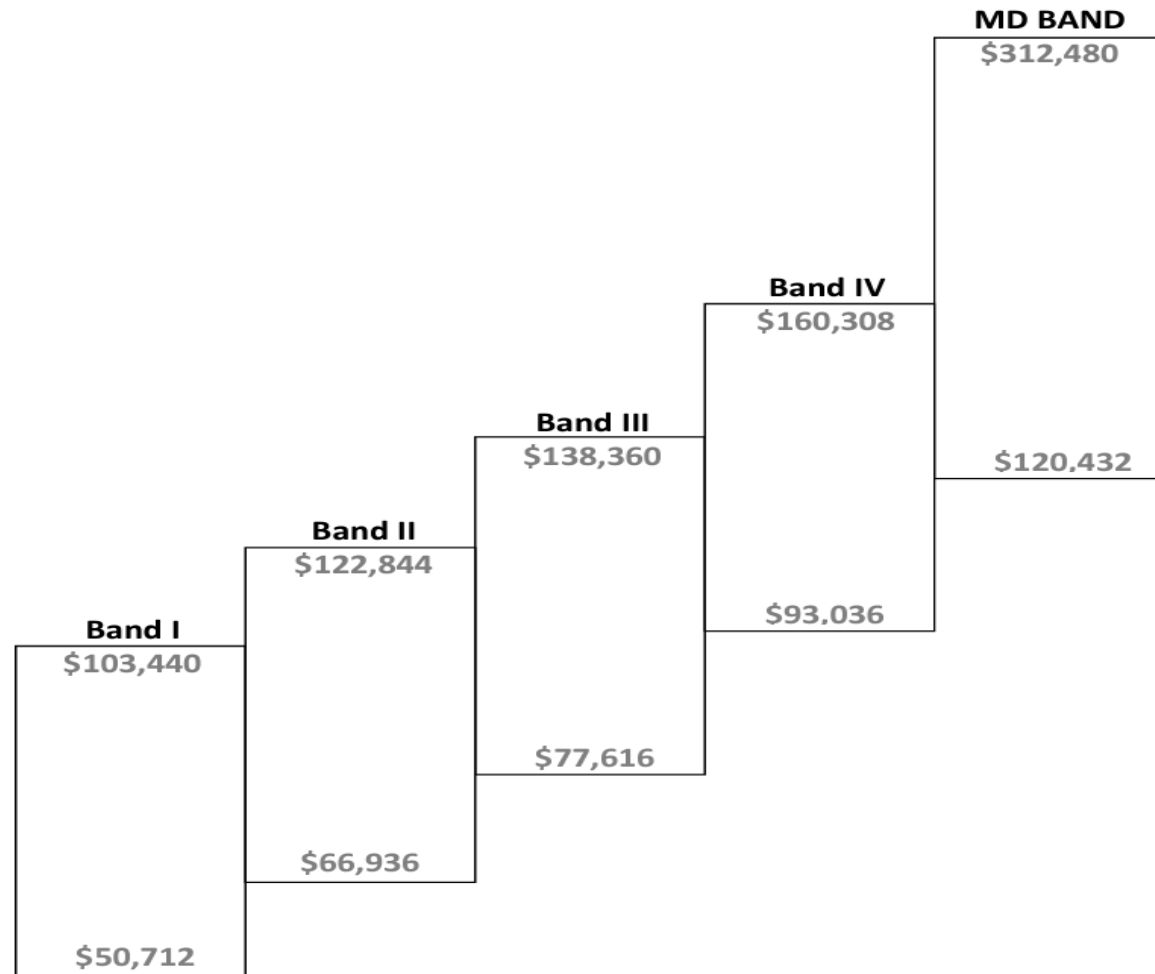
- Succession planning discussion revealed interest in additional information regarding salary setting
- Two Exempt positions
- Six Washington Management Service positions

Washington Management Service (WMS)

- WMS created in 1993
- Broad band salary structure is centralized under authority of OFM
- Banding evaluations are decentralized conducted by a committee
- LEOFF positions are evaluated by the Department of Enterprise Services

WMS Salary Structure

- Effective July 1, 2023
- Range of consideration
- 25% position increase limit
- Internal alignment



Agency Authority

Within the Salary Band

- Adjust salaries to reflect changes in the position's responsibilities
- Meet documented recruitment and/or retention problems
- Resolve documented internal salary relationship problems
- Recognize an employee's demonstrated growth and development

Agency Detail

Eight Positions

- Two Exempt positions – Executive Director, Executive Assistant
- Six WMS positions
 - One WMS Band III
 - Four WMS Band II
 - One WMS Band I
- Current Status

WMS Collective Bargaining

- WMS collective bargaining passed in 2023 session (HB 1122)
- Effective January 1, 2024, to allow bargaining
- Band III and IV excluded and role exclusions
- Scope of bargaining limited to salary band levels
- Collective bargaining agreement not effective prior to July 1, 2025



Thank You

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November 15, 2023
DRS Appeal Deadlines

COMPREHENSIVE REPORT

By Jacob White

Senior Research & Policy Manager

360-586-2327

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ISSUE STATEMENT

Some LEOFF 2 members have missed their deadline to file an administrative appeal with DRS and expressed concerns regarding a lack of clarity on the deadline.

OVERVIEW

Recently there have been two instances of LEOFF 2 members missing the deadline to appeal a DRS administrative decision. During the 2023 legislative session there was a bill which in part sought to remedy this issue by extending the deadline to file an appeal and requiring tolling of the deadline when DRS requests the member provide additional records in support of their appeal.

BACKGROUND AND POLICY ISSUES

Background

The Administrative Procedures Act (APA) sets the minimum agency requirements for adjudicative proceedings. Regarding the deadline to file an appeal of an agency decision, the APA reads: "The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application."

The process of requesting an administrative appeal with DRS is typically a multi-step process. The first step of that process is requesting an administrative decision. There is no deadline for a member to request an administrative decision. An administrative decision is usually signed by a Plan Administrator at DRS. Administrative decisions for members typically are made within the Retirement Services Division and administrative decisions impacting employers are made by the Employer Support Division. Earlier this month DRS began a reorganization splitting what has traditionally been the Retirement Services Division into two separate divisions: Member Experience Division, and Member Operations Division.

Once a member receives an administrative decision, they must “Petition” that decision before they can request an administrative appeal. The administrative decision issued by the Plan Administrator includes language identifying the deadline to file what is called a Petition:

If you believe this decision was reached in error or you have new information that was not available when the Administrative Decision was made, you have a right to file a petition asking for further review. Your petition must be filed within 120 days from the date you receive this decision. For information about the petition process, including a description of the information you must include in your petition, you should review Ch. 415-04 WAC. Send your petition to: Petitions Coordinator, Department of Retirement Systems, PO Box 48380, Olympia, WA 98504-8380 or email your petition to: drs.petitions@drs.wa.gov.

The Petition process is not required by the APA and has been put into rule by DRS.¹ Members have 120 days to file a Petition. A Petition is similar to an alternative dispute resolution process, designed to help resolve issues in a format that is intended to be less formal and easier for members without legal representation to navigate. Instead of filing legal motions and briefs, the member can simply provide a letter to the Petition’s Officer explaining their situation and why they believe DRS has erred in their administrative decision. The member can also provide additional records that support their case. DRS has given a 120-day deadline to help facilitate a more collaborative process of assisting members with gathering records and providing information to the Petitions Officer. This process helps DRS ensure they are making the legally correct decision, while also helping the member better understand why DRS has reached their conclusion.

The DRS Petition decision includes the following language identifying that the member has 60 days to file an administrative decision:

YOU HAVE THE RIGHT TO APPEAL THIS DECISION

If you disagree with this petition decision, you may file an appeal with the DRS Presiding Officer within 60 days of the date of this decision. DRS must receive your notice of appeal within that 60-day timeframe. The DRS appeal rules are in chapter 415-08 WAC. For questions about the appeal process, contact the DRS Presiding Officer at (360) 664-7294.

Send your notice of appeal ATTN: DRS PRESIDING OFFICER using one of the following methods:
Mail: **Department of Retirement Systems / PO Box 48380 / Olympia, WA 98504-8380**

¹ Chapter 415-04 WAC

In addition to this notice regarding the right to appeal an administrative decision, the information is available on the DRS website at <https://www.drs.wa.gov/sitemap/appeals>.

Policy Issues

During the 2023 legislative session SB 5625 was proposed. This bill sought to address multiple concerns, including instances where LEOFF 2 members missed their deadline to file an appeal with DRS. If passed, SB 5625 would have:

- Increased the deadline to file an appeal from 60 days to 90 days;
- Allowed for tolling no less than 90 additional days when DRS requests additional records from members; and,
- Allowed retirees to refile a claim that previously dismissed for failing to file a timely notice after additional information was requested.

SB 5625 received a public hearing in the Senate Ways and Means Committee but did not move forward to executive action in the committee.

In the last 5 years DRS has received 75 petition requests, 25 of those were from LEOFF 2 members. None of those petitions were denied for not being filed timely. In the last 5 years DRS has received 37 appeal of petition decisions, 14 of those were from LEOFF 2 members. There is only one instance of a member being denied an appeal based on missing the deadline to file the appeal; that member was in LEOFF 2. This denial for timeliness was appealed by the member to the Court of Appeals, where the department's dismissal for untimeliness was upheld. There is an additional case that is currently with the DRS Appeals Officer with the issue of whether it was filed timely; that member is also in LEOFF 2.

POLICY OPTIONS

Option 1: Require tolling

This option would toll the time to file an appeal when DRS requests the member provide additional information.

Option 2: Extend time to file an appeal to 120 days

This option would extend the time members have to file an appeal, which is a minimum of 20 days under the APA (currently 60 days in DRS WAC), to match the time members must file a petition of administrative decision (currently 120 days in DRS WAC).

Option 3: Both Option 1 and 2



DRS Appeals Deadlines

Comprehensive Report
November 15, 2023

Issue

- **Some LEOFF 2 members have missed their deadline to file an administrative appeal with DRS and expressed concerns regarding a lack of clarity on the deadline**

Administrative Procedures Act

- Minimum of 20 days to file an appeal
 - No tolling required
- Superior Court (30 days to file)

DRS's APA Process

- Initial decision from DRS (member or employer)
- Administrative decision (no deadline to file)
- Petition decision (120 days to file)
- Appeal decision (60 days to file)

History

- 60-day timeframe to file an appeal has been in place since at least 1993
- 120-day timeframe to file a petition has been in place since 2001

DRS Data

- In the last 5 years how many petitions has DRS received? 75 (25 LEOFF 2)
- How many of those petitions were denied for not being timely? 0
- In the last 5 years how many appeals of petition decisions has DRS received? 37 (14 LEOFF 2)
- How many of those appeals were denied for not being timely? 2

Policy Options

1. Require tolling

This option would toll the time to file an appeal when DRS requests the member provide additional information

2. Extend time to file an appeal to 120 days

This option would extend the time to match the current DRS petition deadline

3. Both option 1 and 2

Pros/Cons - Options 1 and 2

- **Pros**

- Gives members, employers, and DRS more time to get all the necessary information
- Help prevent members/employers from missing deadline

- **Cons**

- Concerns may be dealt with in rule-making or changes to procedure instead of law

Next Steps

1. Motion for final briefing on:

- Option 1 - Tolling
- Option 2 – 120 days
- Option 3 - Both

2. No action



Thank You

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2024 Board Meetings



January

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
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28	29	30	31			

February

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25	26	27	28	29		

March

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31						

April

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28	29	30				

May

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June

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July

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August

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September

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October

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November

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December

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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

MEETING LOCATION: Hybrid meetings will be held at 2100 Evergreen Park Dr SW Olympia, WA 98502 and virtually via Microsoft Teams
CONTACT: Phone: 360.586.2320 Recep@leoff.wa.gov

Meeting Dates

State Holidays

2024 CONFERENCES/MEETINGS/EVENTS

CONFERENCES	STARTING	ENDING	STAKEHOLDER EVENTS/MTGS	STARTING	ENDING
IFEBP ANNUAL (SAN DIEGO CA)	11/9/2024	11/13/2024	WACOPS WINTER GEN MEM MTG (OLYMPIA)	2/21/2024	2/23/2024
ISCEBS SYMPOSIUM (NASHVILLE)	9/15/2024	9/18/2024	WACOPS SPRING MTG (VANCOUVER)	5/8/2024	5/10/2024
NCPERS ANNUAL (SEATTLE)	5/19/2024	05/22/2024	WACOPS FALL GEN MEM MTG (KENNEWICK)	9/11/2024	9/13/2024
NCPERS PUBLIC SAFETY (PALM SPRINGS CA)	10/27/2024	10/30/2024	WSCFF LEG CONFERENCE (OLYMPIA)	2/6/2024	2/7/2024
NASRA ANNUAL (PITTSBURGH)	8/3/2024	8/7/2024	WSCFF EDU SEMINAR (VANCOUVER)	4/16/2024	4/18/2024
			WSCFF ANNUAL CONVENTION	6/25/2024	6/27/2024
STATE HOLIDAYS					
LEOFF 2 BOARD DATES					
LEGISLATIVE SESSION	1/8/2024	3/7/2024			

JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
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From: [Barry Pomeroy](#)
To: [LEOFF Reception \(LEOFF\)](#)
Subject: Request for board opinion & intervention.
Date: Monday, October 23, 2023 2:42:57 PM

External Email

Hello,

My name is Barry Pomeroy and I am a member of IAFF Local 46, and Fire Captain on disability leave from the Everett Fire Department. While researching retirement options this year, I have discovered some troubling rule interpretations through written and verbal communications with DRS staff. A few of these will affect my retirement substantially, and a few will not, but I was aghast to learn of the negative implications to LEOFF plan 2 members. I will cite my concerns and suggest a resolution that only the board has the authority or ability to pursue. These issues are critical considering the injuries, illnesses, and stress of COVID related changes to our professions.

1. Members who are disabled and must retire early are not being given full credit for their EARNED service. If a member is disabled off duty, DRS has changed their rules incrementally over the past 7 years and now immorally applies a benefit reduction factor to their EARNED pension service. I know they say it's because a member will draw for a longer period of time, however, they're disabled! Loss of income earning potential is terrible enough at a critical point in their lives! Why in the world would we not give members full-credit for time served when disabled for ANY reason?! A partial career length benefit also takes a smaller amount of money out of the benefit fund anyway, and will not make or break the fund. Consider that these are vulnerable members! Why would we agree to reduce the amount of any earned pension years of service? This is unjust considering the plethora of long term mental, emotional, and physical affects of this job, and worse to do it to members incapable of continuing to work on the job.

Please discuss and instruct DRS to change their rule to provide full service credit pension calculations without reduction factors for all disabled members who are forced off the job early. Please also consider applying the full credit standard to all early retirements due to the harsh working conditions and onerous demands that police and fire are living with during and after Covid.

2. Dual plan members who are retiring with a Duty-Disability can combine service credits to be eligible to retire from both plans, however, DRS will then re-segregate the service credits and apply an unfair Reduction factor to the non plan 2 service credits in the amount of years prior to that plan's usual retirement age. For LEOFF members, this denial of full credit cancels out those years of service if a FF or LEO who is injured on the job. The opinion of a DRS planner is that if PSERS doesn't have a disability retirement, then it doesn't matter if you get disabled from your current pension plan. You either have to withdraw a lump sum, or wait (13 years in my case) for full credit in my pension amount.

Please discuss and direct the DRS to apply a reasonable rule that service credits remain combined, and that the combined amount of service credits uses the FAC in total (current practice) but Remove the cross plan early retirement factor for duty-disability retirements.

3. DRS is not have a rule that LEOFF employers who are self-insured for L&I must report your total compensation during workers comp disability injuries as part of our Final Average Compensation. Instead, when on disability prior to DRS retirement, employers are being allowed to simply enter your labor contract base pay for rank. Even L&I rules state that employers must make us whole for missed earning potential based on our prior service levels and performance while on disability. Final average compensation includes our combined sick-leave through the employer and the L&I income replacement (a percentage split) that makes us whole. DRS is not requiring that compensation be reported as paid and documentation is easily verifiable.

Please discuss and direct DRS to include total Final Average Compensation as actually paid to LEOFF members on disability via the employer & L&I (or self insured plan managers.)

Thank you for your time. In this time of looking for member incentives, return to work options, and recruiting challenges, these issues may also work well in discussions for attracting employees and retaining employees as possible at the state programs level.

Respectfully,
Barry Pomeroy
1fireguy@whidbey.com
206-321-7997

This e-mail address may have a response within 24 hours. Please contact me via mobile phone if you need a more immediate response.

From: [Roy Orlando](#)
To: [Nelsen, Steve \(LEOFF\)](#)
Cc: [Valencia, Tim \(LEOFF\)](#)
Subject: Surviving Spouse Benefits
Date: Monday, October 30, 2023 4:53:47 PM

External Email

Hi Steve,

After our phone conversation today I attempted to email the LEOFF 2 Board using the web site. I was not able to send the email we discussed using Windows Live Mail. I've included the email I wrote below. Would you please see to it that the Board receives my request for a legislative remedy? If I need to do anything else to get my request to the Board please let me know.

Thanks,
Roy Orlando

LEOFF-2 Board Members,

The surviving spouse of a Line of Duty Death Firefighter has been denied the presumptive death benefit. I urge the Board to seek a legislative remedy that will provide a surviving spouse or family member/s with the lump sum Line of Duty Death Benefit. I plan on attending the November 15th LEOFF 2 Board meeting if you have any questions.

Respectfully,
Roy Orlando

WSCFF Retiree Assoc. Vice Chair