



December 13, 2023
Firefighter Definition

FINAL PROPOSAL

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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.

OSA Analysis

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

Appendix B: Bill Draft

Appendix C: OSA Email regarding LEOFF 2 Definition of Firefighter Proposal

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An act related to the definition of firefighter; amending RCW 41.26.030

Sec. 1. RCW 41.26.030 is amended as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW [41.50.165](#)(2), plus accrued interest credited thereon.

(2) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(3) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(4)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is

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greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

- (i) A natural born child;
- (ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;
- (iii) A posthumous child;
- (iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or
- (v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(7) "Department" means the department of retirement systems created in chapter [41.50](#) RCW.

(8) "Director" means the director of the department.

(9) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW [41.26.110](#).

(10) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(11) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

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(12) "Domestic partners" means two adults who have registered as domestic partners under RCW [26.60.020](#).

(13) "Employee" means any law enforcement officer or firefighter as defined in subsections (17) and (19) of this section.

(14)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, district, or regional fire protection service authority or the elected officials of any municipal corporation that employs any law enforcement officer and/or firefighter, any authorized association of such municipalities, and, except for the purposes of RCW [41.26.150](#), any labor guild, association, or organization, which represents the firefighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or firefighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or firefighter:

(i) The legislative authority of any city, town, county, district, public corporation, or regional fire protection service authority established under RCW [35.21.730](#) to provide emergency medical services as defined in RCW [18.73.030](#);

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency;

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996; or

(v) The department of social and health services or the department of corrections when employing firefighters serving at a prison or civil commitment center on an island.

(c) Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an "employer." The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an "employer," but is based solely on the relationship between a government contractor's employee and an "employer" under this chapter.

(15)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time

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of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW [41.26.090](#), the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(c) In calculating final average salary under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer;

(ii) Any compensation forgone by a member employed by the state or a local government employer during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases; and

(iii) Any compensation forgone by a member employed by the state or a local government employer during the 2019-2021 and 2021-2023 fiscal biennia as a result of reduced work hours, mandatory leave without pay, temporary layoffs, furloughs, reductions to current pay, or other similar measures resulting from the COVID-19 budgetary crisis, if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

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(16) "Fire department" includes a fire station operated by the department of social and health services or the department of corrections when employing firefighters serving a prison or civil commitment center on an island.

(17) "Firefighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination;

(c) Supervisory firefighter personnel;

(d) Personnel serving on a full-time, fully compensated basis as an employee of a fire department in positions that necessitate experience as a firefighter to perform the essential functions of those positions;

(e) Any full time executive secretary of an association of fire protection districts authorized under RCW [52.12.031](#). The provisions of this subsection (17)(d) shall not apply to plan 2 members;

(f) The executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section), if such individual has five years previous membership in a retirement system established in chapter [41.16](#) or [41.18](#) RCW. The provisions of this subsection (17)(e) shall not apply to plan 2 members;

(g) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for firefighter;

(h) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter [41.16](#) or [41.18](#) RCW; and

(i) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician that meets the requirements of RCW [18.71.200](#) or * [18.73.030](#)(12), and whose duties include providing emergency medical services as defined in RCW [18.73.030](#).

(18) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as

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one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor and cannabis board, and the state department of corrections. A general authority law enforcement agency under this chapter does not include a government contractor.

(19) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW [41.14.070](#) except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section) if that individual has five years previous membership in the retirement system established in chapter [41.20](#) RCW. The provisions of this subsection (19)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (19)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

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(20) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW [41.26.150](#).

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses," provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter [18.71](#) RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter [18.57](#) RCW;

(C) A chiropractor licensed under the provisions of chapter [18.25](#) RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic X-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter [18.53](#) RCW.

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(21) "Member" means any firefighter, law enforcement officer, or other person as would apply under subsection (17) or (19) of this section whose membership is transferred to the Washington law enforcement officers' and firefighters' retirement system on or after March 1, 1970, and every law enforcement officer and firefighter who is employed in that capacity on or after such date.

(22) "Plan 1" means the law enforcement officers' and firefighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(23) "Plan 2" means the law enforcement officers' and firefighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(24) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(25) "Regular interest" means such rate as the director may determine.

(26) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(27) "Retirement fund" means the "Washington law enforcement officers' and firefighters' retirement system fund" as provided for herein.

(28) "Retirement system" means the "Washington law enforcement officers' and firefighters' retirement system" provided herein.

(29)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW [41.26.190](#). Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a firefighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the

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provisions of RCW [41.18.165](#), [41.20.160](#), or [41.20.170](#). However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(iii) Reduction efforts such as furloughs, reduced work hours, mandatory leave without pay, temporary layoffs, or other similar situations as contemplated by subsection (15)(c)(iii) of this section do not result in a reduction in service credit that otherwise would have been earned for that month of work, and the member shall receive the full service credit for the hours that were scheduled to be worked before the reduction.

(b)(i) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

(ii) Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

(iii) Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

(iv) If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(v) Reduction efforts such as furloughs, reduced work hours, mandatory leave without pay, temporary layoffs, or other similar situations as contemplated by subsection (15)(c)(iii) of this section do not result in a reduction in service credit that

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otherwise would have been earned for that month of work, and the member shall receive the full service credit for the hours that were scheduled to be worked before the reduction.

(30) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(31) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW [44.44.010](#)(2).

(33) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(34) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW [41.26.162](#).

APPENDIX A

Multiple Agency Fiscal Note Summary

Bill Number: 5468 SB	Title: Firefighters/LEOFF
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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

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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

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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

APPENDIX C

From: [DeCamp, Mitch](#)
To: [White, Jacob \(LEOFF\)](#)
Cc: [Nelsen, Steve \(LEOFF\)](#); [Stineman, Kyle](#); [Won, Lisa](#)
Subject: LEOFF 2 Definition of Firefighter Proposal
Date: Monday, December 4, 2023 10:30:27 AM
Attachments: [1279.HB.5468.SB.pdf](#)
[FF definition Bill Draft.docx](#)

External Email

Jacob,

As requested, we reviewed the attached draft bill language on the definition of firefighter proposal under consideration by the Board. This proposal expands the definition of a firefighter for LEOFF membership to positions that necessitate firefighting experience.

The draft language is similar to HB 1279 from the 2023 Legislative Session. See attached for our indeterminate actuarial fiscal note (AFN) on the bill. We do not believe our analysis would differ between the draft bill and HB 1279. Please rely on the HB 1279 AFN for takeaways under the current proposal.

The results of an AFN in the 2024 Legislative Session could change from our HB 1279 analysis if data on members who may be impacted under the proposal were provided. If data becomes available then we may be able to quantify the impact of the proposal.

Kyle Stineman, ASA, MAAA served as the reviewing and certifying actuary for this communication and is available to answer any questions.

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

Mitch DeCamp | *Senior Actuarial Analyst*
Office of the State Actuary
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[OSA website](#)

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Firefighter Definition

Final Proposal
December 13, 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**

Issue History

- SB 5468 (2022) - Passed through Senate Ways and Means
- Initial Briefing in June
- Comprehensive Briefing in November
- Board requested final briefing on amending definition of firefighter 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

Types of Positions of Concern

- Positions within a fire department:
 - That do not supervise fire fighters
 - With job duties require experience as a fire fighter to perform the essential functions of those positions
- Examples may include:
 - Fire Fighter trainers that do not respond to calls
 - Management Positions (i.e. in charge of logistics - purchasing firefighting equipment, supplies, etc.)

OSA Analysis

- Cost is indeterminate
- Lack of data on members who may be impacted
- A cost or savings could arise if the change in plan membership includes individuals significantly different from average LEOFF 2 or PERS members regarding age, service, salary, or behavior (termination, retirement, etc.)

Next Steps

1. Motion to endorse legislation

- 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



Thank You

Jacob White

Senior Research and Policy Manager

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