



December 13, 2023  
Disability Conversions

## FINAL PROPOSAL

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### 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”.

**Data from Department of Retirement System**

The Department of Retirement System (DRS) 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.

**Actuarial Analysis**

The Office of the State Actuary (OSA) completed an analysis of the bill draft based on the policy option the board requested (see Appendix A). For their analysis OSA assumed that all four of the non-duty disability retirees identified by DRS as potentially suffering from PTSD would qualify for duty disability retirement. OSA assumed none of them would qualify for catastrophic disability retirement. Based on these assumptions, and the other assumptions outlined in Appendix B, OSA identified the following preliminary pricing results of the policy option put forward by the Board:

<b>Preliminary Pricing Results</b>	
<b>Impact on Present Value of Future Benefits</b>	
Future Pension Benefits	\$0.9
Lump Sum Retroactive Pension Payments	\$0.2
<b>Total</b>	<b>\$1.1</b>
<b>Impact on Contribution Rates</b>	<b>0.0019%</b>

*Note: Dollars in millions*

OSA also identified that these pricing results would not result in a rounded supplemental rate impact to LEOFF Plan 2.

## **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: Bill Draft

Appendix B: Email from OSA re LEOFF 2 Non-duty to Duty Benefit Proposal

## APPENDIX A

An act related to LEOFF 2 duty disability pension benefits

Sec. 1: RCW 41.26.470 is amended to read:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW [41.26.410](#) through [41.26.550](#). Such member shall receive a monthly disability allowance computed as provided for in RCW [41.26.420](#) and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title [51](#) RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter [34.05](#) RCW, the administrative procedure act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW [41.04.500](#) through [41.04.530](#) or similar benefits under RCW [41.04.535](#) shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

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(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW [41.45.060](#) and [41.45.067](#).

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse or domestic partner, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse or domestic partner, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW [41.50.165](#)(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's

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final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(8) A member who became disabled in the line of duty before January 1, 2001, and is receiving an allowance under RCW [41.26.430](#) or subsection (1) of this section shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five, and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three. An additional benefit shall not result in a total monthly benefit greater than that provided in subsection (1) of this section.

(9) A member who is totally disabled in the line of duty is entitled to receive a retirement allowance equal to seventy percent of the member's final average salary. The allowance provided under this subsection shall be offset by:

(a) Temporary disability wage-replacement benefits or permanent total disability benefits provided to the member under Title [51](#) RCW; and

(b) Federal social security disability benefits, if any;

so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line-of-duty disability retirement allowance as provided in subsection (7) of this section.

Any person in receipt of an allowance under the provisions of this section is subject to comprehensive medical examinations as may be required by the department under subsection (2) of this section in order to determine continued eligibility for such an allowance.

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(10)(a) In addition to the retirement allowance provided in subsection (9) of this section, the retirement allowance of a member who is totally disabled in the line of duty shall include reimbursement for any payments made by the member after June 10, 2010, for premiums on employer-provided medical insurance, insurance authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA), medicare part A (hospital insurance), and medicare part B (medical insurance). A member who is entitled to medicare must enroll and maintain enrollment in both medicare part A and medicare part B in order to remain eligible for the reimbursement provided in this subsection. The legislature reserves the right to amend or repeal the benefits provided in this subsection in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time.

(b) The retirement allowance of a member who is not eligible for reimbursement provided in (a) of this subsection shall include reimbursement for any payments made after June 30, 2013, for premiums on other medical insurance. However, in no instance shall the reimbursement exceed the amount reimbursed for premiums authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA).

(11) A member who has left the employ of an employer due to service in the national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States department of health and human services and who becomes totally incapacitated for continued employment by an employer as determined by the director while performing service in response to a disaster, major emergency, special event, federal exercise, or official training on or after March 22, 2014, shall be eligible to receive an allowance under the provisions of RCW [41.26.410](#) through [41.26.550](#). Such member shall receive a monthly disability allowance computed as provided for in RCW [41.26.420](#) except such allowance is not subject to an actuarial reduction for early retirement as provided in RCW [41.26.430](#). The member's retirement allowance is computed under RCW [41.26.420](#), except that the member shall be entitled to a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(12) A member who is in receipt of a non-duty disability benefit under subsection (1), for a disabling condition of post-traumatic stress disorder that was not considered an occupational disease by the department of labor and industries at the time the member retired but is now considered an occupational disease in accordance with the definition of post-traumatic stress disorder in RCW 51.08.165, may file a new application with the department for a determination of their

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eligibility for an in the line of duty disability retirement benefit under subsections (7) and (9) with the current occupational disease eligibility applied to their application. If the department finds that the member is eligible for an in the line of duty disability retirement the benefit must be paid retroactive to the disabling condition being made eligible as an occupational disease under RCW 51.08.165.



# APPENDIX B

**From:** [Dyer, Graham](#)  
**To:** [White, Jacob \(LEOFF\)](#)  
**Cc:** [Stineman, Kyle](#); [DeCamp, Mitch](#); [Nelsen, Steve \(LEOFF\)](#)  
**Subject:** LEOFF 2 Non-duty to Duty Benefit Proposal  
**Date:** Monday, December 4, 2023 10:08:20 AM  
**Attachments:** [Bill Draft - Non-Duty to Duty Benefit.docx](#)

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## External Email

Jacob,

As requested, please see below for preliminary pricing results for the non-duty to duty disability benefit proposal for members with post-traumatic stress disorder (PTSD).

### Pricing Request

We priced the attached draft bill language provided to OSA on November 17, 2023. The draft bill modifies RCW [41.26.470](#) related to duty-disablement benefits. We prepared this preliminary analysis to assist the LEOFF 2 Retirement Board in evaluating this proposal at their December 2023 meeting.

### Summary of Proposal

This proposal would allow certain LEOFF 2 retirees the opportunity to re-apply for a duty-related benefit. The retirees eligible for this benefit must currently be in receipt of non-duty disability benefits and retired with PTSD prior to the effective date of [SSB 6214 \(C 264, L 2018\)](#).

If a member is found to qualify for a line of duty disability benefit, the member's on-going benefit would be adjusted to reflect provisions consistent with their qualifying disablement. Further, the benefit would be paid retroactive to the disabling condition being made eligible as an occupational disease under RCW [51.08.142](#). Where applicable, enhanced benefits include:

- If a member is reclassified as duty-disability [not totally disabled], their disability benefit is unreduced based on a 2% accrual of service and average final compensation (AFC).
- If a member is reclassified as totally disabled, their disability benefit is 70% of AFC and premium reimbursement for health insurance.
- Retroactive pension payments to the date *SSB 6214* became effective (6/7/2018).

### Highlights of Actuarial Analysis

<b>Preliminary Pricing Results</b>	
<b>Impact on Present Value of Future Benefits</b>	
Future Pension Benefits	\$0.9
Lump Sum Retroactive Pension Payments	\$0.2
<b>Total</b>	<b>\$1.1</b>
<b>Impact on Contribution Rates</b>	<b>0.0019%</b>

*Note: Dollars in millions*

- The preliminary pricing impacts do not result in a rounded supplemental rate impact.

Our analysis assumes impacted members would be reclassified to duty disability and receive an unreduced retirement benefit prospectively. We also assumed these members would receive retroactive pension payments to June 7<sup>th</sup>, 2018.

- The actual cost of this proposal could be higher or lower than calculated in our analysis depending on the disability determinations made by the Department of Retirement Systems (DRS) and the number of members reclassified under this proposal. The costs would be larger if members are re-classified as totally disabled and receive larger ongoing and retroactive pension payments or if additional eligible members are identified by DRS. However, costs could be lower if members identified by DRS do not receive a duty or total disability determination when reapplying for benefits under this proposal. We will discuss the sensitivity of the results to changes in our assumptions/data in a full fiscal note if this proposal becomes a bill during the 2024 Legislative Session.

#### Assumptions, Methods, and Data

Unless otherwise noted below, we relied on the same assumptions, methods, assets, and data as the [2022 Actuarial Valuation Report](#).

- DRS identified four members potentially impacted under this proposal. We relied on these four members to determine the preliminary pricing results in the above table.
- For this analysis, we assumed the four members identified by DRS would qualify for reclassification from non-duty to duty disablement and receive enhanced benefits, and that these members constitute the full scope of reclassifications. We assumed these members would qualify for a benefit under RCW 41.25.470 (7).
  - In our valuation software, we increased the on-going benefit of these members by removing the reduction from the Early Retirement Factors (ERFs).
  - We used Excel to estimate the lump sum of retroactive payments. We estimated this lump sum by adding the higher payments from the effective date of SSB 6214 to June 30, 2022 which is approximately 4 years of higher benefit payments.
  - We did not assume any of these 4 identified members would qualify for total disablement benefit under RCW 41.25.470 (9), however, if this proposal becomes law, a member may become eligible for total disablement benefits.
  - If this proposal becomes a bill during session, we will request DRS calculate the disability benefit and retroactive payments for the impacted members. The results may change from the analysis presented here.

#### Disclosures

We prepared this analysis based on the draft bill language provided to our office in November 2023. Any changes to the draft bill language or data relied on for this analysis may result in materially different pricing results than provided here.

We believe the actuarial assumptions, methods, and data are reasonable for the purposes of this pricing exercise. We checked the data provided by DRS for reasonableness and found it appropriate for this analysis. If this bill were to advance during session, we would create an Actuarial Fiscal Note (AFN) with sensitivity and commentary on analysis. The results of that AFN may change from what we have shown above, but we do not expect any changes to be significant.

The actual costs under this proposal could differ from our estimate as discussed in the Highlights of Actuarial Analysis section. This analysis does not assume any other proposed changes to the retirement plan. The combined effect of several changes could exceed the sum of the individual components.

We prepared this analysis to assist the LEOFF Plan 2 Retirement Board in evaluating the costs of this proposal at their December 2023 meeting. Do not use these results for other purposes. Please replace this analysis if a 2024 Legislative Session fiscal note becomes available.

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

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

**Graham Dyer** | *Senior Actuarial Analyst* | [graham.dyer@leg.wa.gov](mailto:graham.dyer@leg.wa.gov)  
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*This e-mail, related attachments, and any response may be subject to public disclosure under state law (Chapter 42.56 RCW).*



# Disability Conversions

Final Proposal  
December 13, 2023

# Issue

- **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**

# Issue History

- Part of DRS Ombuds bill last session
- Initial Briefing in September
- Comprehensive Briefing in November, Board requested a final briefing on policy option requiring:
  - DRS to review non-duty disability retirements with a disabling condition of PTSD 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
  - Retroactive to effective date of disabling condition becoming eligible for duty disability

# Bill Draft

- Requires non-duty PTSD disability retirees to reapply for duty disability for reconsideration
- Does not guarantee that any non-duty disability retirees will qualify for duty disability
- DRS will be required to reconsider under current PTSD law, instead of law at the time the member retired
- If approved, retroactive pension payments to the date SSB 6214 became effective (6/7/2018).

# DRS Data

- 56 LEOFF 2 non-duty disability retirees prior to effective date of PTSD law
- Approximately 4 of those may have suffered from PTSD (either not duty related or multiple exposure)
  - Possible these members did not suffer from PTSD but other mental conditions (i.e. depression or anxiety)



# OSA Fiscal Analysis

<b>Preliminary Pricing Results</b>	
<b>Impact on Present Value of Future Benefits</b>	
Future Pension Benefits	\$0.9
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<b>Impact on Contribution Rates</b>	<b>0.0019%</b>

*Note: Dollars in millions*

- Assumes that 4 retirees are reclassified from non-duty to duty disability
- Does not result in a rounded supplemental rate impact
- Actuarial disclosures, assumptions, and other detail included in Board materials

# Next Steps

## 1. Motion to endorse legislation

- DRS required to review non-duty disability retirements with a disabling condition of PTSD 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
- Retroactive to effective date of disabling condition becoming eligible for duty disability

## 2. No action



**Thank You**

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