BOARD MEETING AGENDA

DECEMBER 13, 2023 • 9:30AM

LEOFF Plan 2 Retirement Board

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

THEY KEEP US SAFE,
WE KEEP THEM SECURE.

1.	**Approval of Minutes**	**9:30 AM**
2.	**Financial Audit Results** Laura Shackley, Asst State Auditor, SAO Stephanie Garza, Asst Audit Manager, SAO Cavan Busch, Program Manager, SAO	**9:35 AM**
3.	**WSIB Annual Update** Allyson Tucker, Chief Executive Officer, WSIB	**10:00 AM**
4.	**Firefighter Definition – Final** Jacob White, Sr. Research & Policy Manager	**10:30 AM**
5.	**Duty Related Death Benefits – Final** Jacob White, Sr. Research & Policy Manager	**10:50 AM**
6.	**Overpayment Responsibility – Final** Jacob White, Sr. Research & Policy Manager	**11:10 AM**
7.	**Disability Conversions – Final** Jacob White, Sr. Research & Policy Manager	**11:30 AM**
8.	**Board Salary Setting Authority – Final** Karen Durant, Sr. Research & Policy Manager	**11:50 PM**
9.	**Non-Duty Disability Leave – Comprehensive** Jacob White, Sr. Research & Policy Manager	**12:20 PM**
10.	**Month of Death – Final** Jacob White, Sr. Research & Policy Manager	**12:40 PM**
11.	**DRS Appeal Deadlines – Final** Jacob White, Sr. Research & Policy Manager	**1:00 PM**
12.	**Administrative Update**	**1:20 PM**
13.	**Public Comment**	**1:30 PM**
14.	**Executive Session** *For the purpose of reviewing the performance of a public employee*	**1:40 PM**

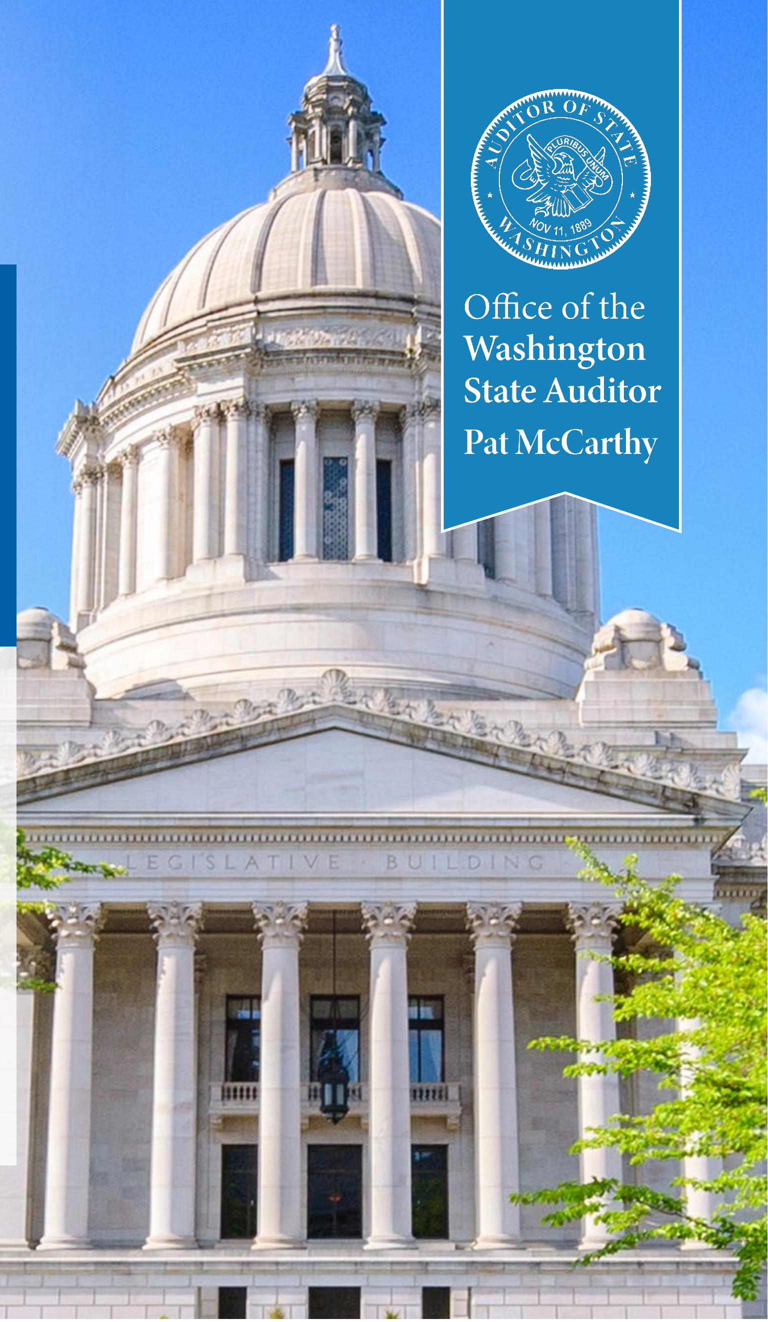
**Public comment can be provided to the Board in writing 24 hours prior to the meeting via our reception mailbox: recep@leoff.wa.gov.*

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.

Office of the
Washington
State Auditor
Pat McCarthy

Exit Conference

Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board



Cavan Busch
Audit Manager

Stephanie Garza
Audit Supervisor

Laura Shackley
Audit Lead

December 13th, 2023

Disclaimer: This presentation is intended to be viewed in conjunction with the complete packet of exit materials provided. A copy of those materials may be requested by contacting the presenters listed or by emailing PublicRecords@sao.wa.gov.

Results that Matter

Increased trust in government

Independent, transparent examinations

Improved efficiency and effectiveness of government

Financial Audit Results

July 1st, 2022, through June 30th, 2023

Unmodified Opinion Issued

- Opinion issued in accordance with U.S. GAAP/Regulatory Basis of Accounting
- Audit conducted in accordance with Government Auditing Standards

Internal Control and Compliance over Financial Reporting

- We reported no significant deficiencies in internal control
- We identified no deficiencies that we consider to be material weaknesses.
- We noted no instances of noncompliance that were material to the financial statements of the Board

Areas of Financial Audit Emphasis

Completeness- Were all expenses recorded in the financial statement?

- ❑Testing of Salaries & Wages

Classification- Were expenses properly classified in the financial statement?

- ❑Testing of Contractual Services
- ❑Testing of Employee Training and Development

Areas of Financial Audit Emphasis

Presentation and disclosures

- ❑ Was the financial statement clearly and appropriately presented?
- ❑ Were note disclosures complete and accurate?
- ❑ If significant financial events occurred, were they properly disclosed in the statement notes?

Financial Audit Results

Required Communications

- There were no significant uncorrected misstatements

Closing Remarks

- Audit costs are in alignment with our original estimate
- Next audit: Should the Board choose to contract with our Office next year, we estimate the number of hours to be the same as this year

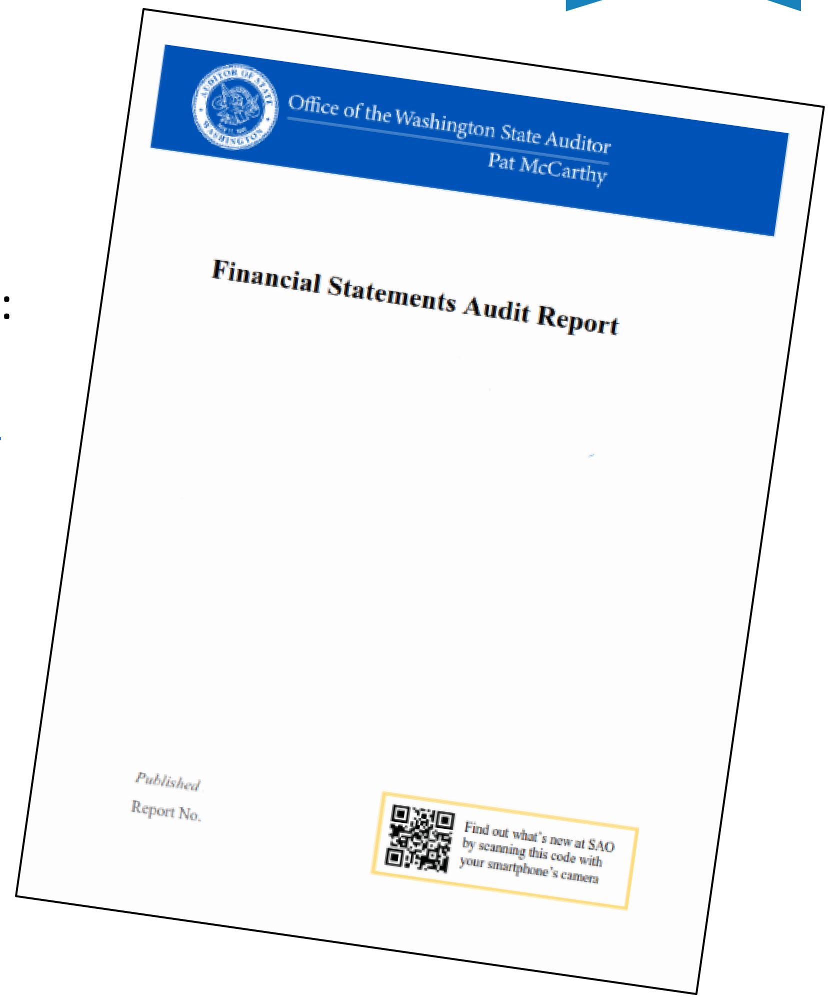
Report Publication

- ✓ Audit reports are published on our website.
- ✓ Sign up to be notified by email when audit reports are posted to our website:

  [https://sao.wa.gov/about- sao/sign-up-for-news-alerts/](https://sao.wa.gov/about-sao/sign-up-for-news-alerts/)

Audit Survey

When your report is released, you will receive an audit survey from us.
We value your opinions on our audit services and hope you provide feedback.



Thank You!

- We thank officials and staff for timely communications throughout the audit process.

- In particular, we would like to thank Seth Flory at DES, as well as Tim Valencia and Jessie Jackson for responding to all our requests promptly.

Questions?

Contact Cavan Busch, Audit Manager

Cavan.Busch@sao.wa.gov

(564) 999-0786

State Audit Team Contacts

Cavan Busch, Audit Manager

Cavan has been with the Washington State Auditor’s Office since 2008. Notable work experiences include supervising the Statewide Single Audit for six years, supervising the Medicaid single audit and acting as a sampling specialist for the Office.

(564) 999-0786 | Cavan.Busch@sao.wa.gov

Stephanie Garza, Assistant Audit Manager

Stephanie has been with the Washington State Auditor’s Office since 2015. Notable work experiences include auditing the Annual Financial Comprehensive Report (ACFR), Statewide Single Audit including Medicaid, and various accountability audits. She graduated from Eastern Washington University with Bachelor's Degrees in Accounting, Finance, and General Business. She also serves as a state agency subject matter expert.

(564) 999-0504 | Stephanie.Garza@sao.wa.gov

Laura Shackley, Audit Lead

Laura has been with the Washington State Auditor’s Office since 2021. Notable work experiences include working for three years at a CPA firm as a federal income tax preparer and staff accountant. She graduated from Saint Martin's University in 2020 with a Bachelor's Degree in Finance and in 2022 with a Masters in Business Administration.

(564) 999-0982| Laura.Shackley@sao.wa.gov

SAO Executive Management

Pat McCarthy

State Auditor

Pat McCarthy is the 11th Washington State Auditor and became the first woman elected to the position when she took the oath of office in 2017. Previously, Pat was twice elected Pierce County Executive; she is also the first woman to hold that role. Over more than 30 years of her public service career, Pat has served as Pierce County Auditor and Deputy Auditor, and Board President for the Tacoma School District.

SAO Executive Management

Sadie Armijo, CFE, Director of State Audit – Sadie has been with the Washington State Auditor's Office since 1998. She oversees most of the state audits our Office performs. Teams under her direction include the Financial Audit team, which conducts accountability audits, as well as the annual audit of the State of Washington Comprehensive Annual Financial Report and other financial statement audits. The Single Audit team performs accountability audits and the State of Washington Single Audit, which examines state agencies' compliance with federal grant requirements. The third team Sadie leads is the Whistleblower team, which investigates assertions of improper governmental actions at state agencies. She previously was an Assistant Director of Local Audit for five years.

Jim Brownell, Assistant Director of State Audit and Special Investigations – Jim has been with the Office of the Washington State Auditor since 2005. He and the Director of State Audit and Special Investigations oversees most of the state audits our Office performs. The most notable audits that Jim oversees are the ACFR and Single Audit for the State of Washington. He also oversees the State Whistleblower program, which is responsible for investigating alleged improper governmental actions by state agency employees. Jim is also the Office's program manager over Commodity Commission financial and accountability audits.

Office of the Washington State Auditor
Pat McCarthy

Schedule of Expenditures Audit Report

Law Enforcement Officers and Fire Fighters Plan 2 Retirement Board

(LEOFF Plan 2 Retirement Board)

For the period July 1, 2022 through June 30, 2023

Published (Inserted by OS)

Report No. 1033801

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Office of the Washington State Auditor
Pat McCarthy

Issue Date – (Inserted by OS)

Steve Nelsen, Executive Director
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board
Olympia, Washington

Report on Schedule of Expenditures

Please find attached our report on the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board's Schedule of Expenditures- Budget Allotment to Actual.

We are issuing this report in order to provide information on the Board's financial activities and condition.

Sincerely,

Pat McCarthy

Pat McCarthy, State Auditor

Olympia, WA

Americans with Disabilities

In accordance with the Americans with Disabilities Act, we will make this document available in alternative formats. For more information, please contact our Office at (564) 999-0950, TDD Relay at (800) 833-6388, or email our webmaster at webmaster@sao.wa.gov.

TABLE OF CONTENTS

INDEPENDENT AUDITOR'S REPORT

Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Schedule of Expenditures Performed in Accordance with *Government Auditing Standards*

Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board
July 1, 2022 through June 30, 2023

Steve Nelsen, Executive Director
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board
Olympia, Washington

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States, the Schedule of Expenditures-Budget Allotment to Actual and related notes (the schedule) of the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board, as of and for the year ended June 30, 2023, and have issued our report thereon dated December 13, 2023.

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

In planning and performing our audit of the schedule of expenditures, we considered the Board's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the schedule of expenditures, but not for the purpose of expressing an opinion on the effectiveness of the Board's internal control. Accordingly, we do not express an opinion on the effectiveness of the Board's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Board's schedule will not be prevented or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described above and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified.

Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses.

REPORT ON COMPLIANCE AND OTHER MATTERS

As part of obtaining reasonable assurance about whether the Board's schedule is free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the schedule of expenditures. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

PURPOSE OF THIS REPORT

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Board's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Board's internal control and compliance. Accordingly, this communication is not suitable for any other purpose. However, this report is a matter of public record and its distribution is not limited. It also serves to disseminate information to the public as a reporting tool to help citizens assess government operations.

Pat McCarthy

Pat McCarthy, State Auditor

Olympia, WA

December 13, 2023

INDEPENDENT AUDITOR'S REPORT

Report on the Audit of the Schedule of Expenditures

Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board
July 1, 2022 through June 30, 2023

Steve Nelson, Executive Director
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board
Olympia, Washington

REPORT ON THE AUDIT OF THE SCHEDULE OF EXPENDITURES

Opinion

We have audited the accompanying Schedule of Expenditures - Budget Allotment to Actual of Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board, as of and for the year ended June 30, 2023, and the related notes to the schedule of expenditures, which collectively comprise the Board's schedule as listed in the financial section of our report.

In our opinion, the accompanying schedule of expenditures referred to above present fairly, in all material respects, the financial position of LEOFF Plan 2 Retirement Board, as of June 30, 2023, and the changes in financial position thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis of Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Schedule of expenditures section of our report. We are required to be independent of the Board and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Matters of Emphasis

As discussed in Note 4 to the 2023 schedule of expenditures, the full extent of the COVID-19 pandemic's direct or indirect financial impact on the Board is unknown. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Schedule of Expenditures

Management is responsible for the preparation and fair presentation of this schedule in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of schedule of expenditures that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility for the Audit of the Schedule of Expenditures

Our objectives are to obtain reasonable assurance about whether the schedule of expenditures as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the schedule of expenditures.

Performing an audit in accordance with GAAS and *Government Auditing Standards* includes the following responsibilities:

- Exercise professional judgment and maintain professional skepticism throughout the audit;
- Identify and assess the risks of material misstatement of the schedule of expenditures, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the schedule of expenditures;
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Board's internal control. Accordingly, no such opinion is expressed;
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the schedule of expenditures;
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Board's ability to continue as a going concern for a reasonable period of time; and

- We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Other Information

Our audit was conducted for the purpose of forming an opinion on the schedule as a whole. The Supplemental Table-Prior Year Expenditure Comparison is presented for purposes of additional analysis and is not a required part of the schedule. Such information has not been subjected to the auditing procedures applied in the audit of schedule, and accordingly, we do not express an opinion or provide any assurance on it.

OTHER REPORTING REQUIRED BY GOVERNMENT AUDITING STANDARDS

In accordance with *Government Auditing Standards*, we have also issued our report dated December 13, 2023 on our consideration of the Board's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Board's internal control over financial reporting and compliance.

Pat McCarthy

Pat McCarthy, State Auditor

Olympia, WA

December 13, 2023

FINANCIAL SECTION

Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board
July 1, 2022 through June 30, 2023

SCHEDULE OF EXPENDITURES

Schedule of Expenditures – Budget Allotment to Actual– 2023
Notes to Schedule of Expenditures – 2023

OTHER INFORMATION

Supplemental Table-Prior Year Expenditures for Comparison – 2022

LAW ENFORCEMENT OFFICERS FIRE FIGHTERS PLAN 2 RETIREMENT BOARD

SCHEDULE OF EXPENDITURES – BUDGET ALLOTMENT TO ACTUAL

For the State Fiscal Year Ending June 30, 2023

FISCAL YEAR 2023 EXPENDITURES (Actuals versus Budgeted):

Expenditure Title:	Budgeted	Actual	Variance
Salaries & Wages	$952,502	$927,553	$24,949
Employee Benefits & Payroll Taxes	$283,864	$281,744	$2,120
Professional Service Contracts	$58,800	$34,780	$24,020
Supplies and Materials	$7,560	$3,653	$3,907
Communications/Telecommunications	$33,560	$23,620	$9,940
Utilities	$4,800	$6,210	($1,410)
Rentals and Leases - Land & Buildings	$55,188	$55,184	$4
Repairs, Alterations & Maintenance	$0	$1,385	($1,385)
Printing and Reproduction	$10,000	$9,263	$737
Employee Prof Dev & Training	$50,418	$37,303	$13,115
Rental & Leases - Furniture & Equipment	$3,800	$3,554	$246
Subscriptions	$3,680	$1,540	$2,140
Facilities and Services	$43,376	$42,442	$934
Data Processing Services (Interagency)	$118,116	$121,691	($3,575)
Attorney General Services	$12,580	$9,676	$2,904
Personnel & HR Services	$13,872	$16,333	($2,461)
Insurance	$1,961	$2,013	($52)
Other Contractual Services	$125,636	$124,650	$986
State Auditor Services	$16,261	$4,785	$11,476
Archives & Records Management Services	$912	$328	$584
Software Licenses and Maintenance	$2,400	$4,012	($1,612)
Other Goods and Services (*Note 1 Section B)*	($3,200)	($4,345)	$1,145
Travel, Lodging & Subsistence	$69,720	$28,027	$41,693
Non-capitalized Assets	$7,500	$1,566	$5,934
Other Grants & Benefits	$1,600	$1,600	$0
TOTALS	**$1,874,906**	**$1,738,567**	**$136,339**

Note: A positive variance represents an underspend in the category, while a (negative) variance represents an overspend.

LAW ENFORCEMENT OFFICERS & FIRE FIGHTERS PLAN 2 RETIREMENT BOARD
NOTES TO SCHEDULE OF EXPENDITURES
For the Fiscal Year Ending June 30, 2023

Note 1 – Agency Description & Summary of Significant Accounting Policies

A. Agency Description, Background, & Activities

The Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement (the Board) was created through taxpayer initiative 790 in November of 2002. In 2003, the Board was created as a state agency governed by its board of trustees. The Board exists to research, develop, and execute broad policies beneficial to the members of the Law Enforcement Officers' and Firefighters' Plan 2 Pension Fund's present and future recipients. The Board employs eight full time employees to act as administrative, technical, and advisory experts to aid in carrying out the Board's mission and Strategic Plan.

The eleven-member board of trustees is appointed by the Governor of the State of Washington. Board members are appointed from the following groups:

- Three must be active law enforcement officers who participate in the plan and one of the members may be a retired law enforcement officer and a member of the plan.
- Three must be active fire fighters who participate in the plan and one of the members may be a retired fire fighter that participates in the plan.
- Three must be representatives of employers.
- One must be a member of the State House of Representatives.
- One must be a member of the State Senate.

The Board is empowered to oversee the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF Plan 2). They do not maintain custody or manage the investments in the plan. The custody and investment function is the responsibility of the Washington State Investment Board (WSIB). The Board is required to; (1) adopt actuarial tables, assumptions, and cost methodologies, (2) adopt contribution rates for LEOFF Plan 2, (3) and other related duties. The other related duties the Board incurs expenditures for include:

Professionals & Technical Advisors – Retain professionals and technical advisors necessary to accomplish the Board's duties. As provided by RCW 41.26.720, the board shall make an annual report to the governor, legislature, and state auditor setting forth a summary of the costs and expenditures of the plan for the preceding year. The Board shall also retain the services of an independent certified public accountant who shall annually audit the expenses of the fund and whose report shall be included in the board's annual report.

Actuary – Consulting with an enrolled actuary retained by the Board (the State Actuary shall provide assistance when the Board requests). The actuary used must provide the State Actuary with copies of its valuations, assumptions, and cost methodology for a reasonableness review. If the two actuaries do not agree, a third actuary must be appointed by the Board and State Actuary.

Other Costs – Retain administrative staff and acquire office space for operations. Process travel reimbursements for board members as provided by RCW 43.03.050 and 43.03.060.

B. Basis of Accounting and Reporting

The expense account used by the LEOFF Plan 2 Board is a governmental fund. The Board uses the modified-accrual basis of accounting with a measurement focus on current financial resources. The Schedule of Expenditures-Budget and Actual is not intended to be a complete presentation of the Board's assets, liabilities, and revenues nor does it constitute a complete set of financial statements in accordance with generally accepted accounting principles.

The Board's general accounting, reporting, payroll, and budget functions are managed by the Washington State Department of Enterprise Service's Small Agency Financial Services and Human Resources Teams. All accounting data is maintained in the statewide Accounting & Financial Reporting System (AFRS) under agency 341.

The Board relies heavily on the State Administrative and Accounting Manual (SAAM) in the development and execution of its accounting related policies.

Note for negative expenditure data: The "Other Goods and Services" category is reporting a negative balance for actual fiscal year 2023 results. This negative amount is caused by expense reimbursements from the U.S. Bank Purchase Card Rebate program. Rebate amounts are based on a fraction of expenditures from various expense categories and are consolidated into this category for reporting purposes.

Expenditure Authority (RCW 41.26.732):

The authority to establish all policies relating to the expense fund, other than the investment policies of the Washington State Investment Board (WSIB), resides with the Board. With the exception of investments by, and expenses of, the WSIB, disbursements from the expense fund may only be made with the authorization of the board.

Expenditures of the Board are paid out of a singular operation account (LEOFF Plan 2 Board Expense Account / Account Number: 548). This expense account is administered by the state treasury. The Board retains no other accounts for official Board business.

Expenditures from the expense account may only be used in the execution of Board duties. Allowable expenses include, but are not limited to:

- Salaries, benefits, and related payroll costs of personnel
- Lease Payments
- Travel
- Good & Services
- Audits
- Other general and reasonable costs of conducting board business

C. Budgetary Process

The Board must develop an annual budget consistent with the requirements of chapter 43.88 of the Revised Code of Washington. The budget for the Board is funded from the investment income of the LEOFF trust fund held by the WSIB.

The budget for the agency is subject to the allotment process directed by the Office of Financial Management (OFM) but is not subject to legislative appropriation. Allotments may be updated as needed however, they are non-binding and are used as an expense monitoring tool so that biennial budgets are not exceeded.

Note 2 Commitments & Non-Current Liabilities

D. Major Lease Payments and Commitments

The lease expenses incurred in fiscal year 2023 totaled $55,184.

In 2021, the Board, acting through the Washington State Department of Enterprise Services (DES), entered a five-year operating lease for office space which is effective until January 31, 2026. The agreement obligates the Board to monthly lease payments of $4,598.69. In addition to the monthly lease payments, the agency is also required to pay the landlord for its prorated share (currently 75%) of the building's water, sewer, garbage, and electricity utility charges. The agency is also required to pay a 50% share of the building's alarm monitoring fees. Reimbursements to the landlord totaled $6,210 in fiscal year 2023.

E. Compensated Absences

Consistent with statewide employment practices the Board maintains an ongoing cost of compensated absences for employees that accrue sick and vacation leave on a monthly basis. Costs associated with compensated absences are not recorded as expenditures until absences are taken. The agency then records the future liability related to compensated leave.

The below table summarized the changes in compensated absences expenses for the year ended June 30, 2023, and reflects the potential cost of compensated leave.

Compensated Absences Summary	**Vacation Leave Liability**	**Sick Leave Liability**	**Total**
Current Year Opening Balance	$ 98,851	$ 53,660	$ 152,511
Net Increase in Liability for the Year	$ 10,299	$ 9,507	$ 19,806
Balance at year ending June 30, 2023	**$ 109,150**	**$ 63,167**	**$ 172,317**

Note 3 – Related Party Transactions

The Board obtains a significant amount of goods and services from other agencies within the state of Washington in the form of interagency agreements. The costs of these agreements are developed during the State's budget process and are generally structured to recover the cost of providing goods and services. The following table summarizes the most significant agreements/services provided with other state agencies and the cost of these agreements in fiscal year 2023.

Interagency & Central Services Billing (State Rendered Services)

Agency	**Service**	**FY23 Charges**	**% of Total**
Office of the State Actuary	Actuary Services	$ 119,860	25.87%
Department of Enterprise Services (DES)	Multiple Services**	$ 79,139	17.08%
WaTech/OCIO	IT Services	$121,231	26.17%
Office of the Attorney General	Legal Services	$ 9,676	2.09%
State Auditor's Office	Audit Services	$4,785	1.03%
Office of Financial Management	Multiple Services**	$ 8,692	1.88%
	TOTALS	**$ 343,383**	**74.12%***

*Note % of total is a comparison of all E - Goods & Services expenditures for FY23 ($463,298).
**DES & OFM charges includes charges for: Financial Services, Training Services, Real Estate Contracting Services, Statewide systems charges, Mail Services, Personnel Services, Parking Services, and Risk Management Services.

Note 4 – COVID-19 Pandemic

The Board and agency continue to comply with all health and policy recommendations from the Centers for Disease Control and Prevention, the Washington State Department of Health, and State Human Resources.

LAW ENFORCEMENT OFFICERS & FIRE FIGHTERS PLAN 2 RETIREMENT BOARD
NOTES TO SCHEDULE OF EXPENDITURES
For the Fiscal Year Ending June 30, 2023

SUPPLEMENTAL TABLE:
PRIOR YEAR (FISCAL YEAR 2022) EXPENDITURES FOR COMPARISION

Expenditure Title:	Budgeted	Actual	Variance
Salaries & Wages	$919,084	$868,924	$50,160
Employee Benefits & Payroll Taxes	$260,609	$255,810	$4,799
Professional Service Contracts	$35,000	$2,600	$32,400
Supplies and Materials	$8,040	$2,460	$5,580
Communications/Telecommunications	$33,960	$23,271	$10,689
Utilities	$4,800	$6,903	($2,103)
Rentals and Leases - Land & Buildings	$55,188	$55,184	$4
Repairs, Alterations & Maintenance	$1,700	$307	$1,393
Printing and Reproduction	$10,000	$4,858	$5,142
Employee Prof Dev & Training	$18,616	$22,947	($4,331)
Rental & Leases - Furniture & Equipment	$3,000	$2,997	$3
Subscriptions	$3,098	$1,855	$1,243
Facilities and Services	$38,076	$37,951	$125
Data Processing Services (Interagency)	$121,208	$125,116	($3,908)
Attorney General Services	$11,604	$10,825	$779
Personnel & HR Services	$13,560	$14,604	($1,044)
Insurance	$1,961	$1,977	($16)
Other Contractual Services	$124,676	$124,262	$414
State Auditor Services	$17,881	$25,960	($8,079)
Archives & Records Management Services	$936	$308	$628
Software Licenses and Maintenance	$2,400	$4,298	($1,898)
Other Goods and Services (*Note 1 Section B)*	($3,200)	($3,266)	$66
Travel, Lodging & Subsistence	$51,497	$16,534	$34,963
Non-capitalized Assets	$8,000	$3,591	$4,409
Other Grants & Benefits	1400	$1,794	($394)
TOTALS	**$1,743,094**	**$1,612,070**	**$131,024**

Note: A positive variance represents an underspend in the category, while a (negative) variance represents an overspend.

ABOUT THE STATE AUDITOR'S OFFICE

The State Auditor's Office is established in the Washington State Constitution and is part of the executive branch of state government. The State Auditor is elected by the people of Washington and serves four-year terms.

We work with state agencies, local governments and the public to achieve our vision of increasing trust in government by helping governments work better and deliver higher value.

In fulfilling our mission to provide citizens with independent and transparent examinations of how state and local governments use public funds, we hold ourselves to those same standards by continually improving our audit quality and operational efficiency, and by developing highly engaged and committed employees.

As an agency, the State Auditor's Office has the independence necessary to objectively perform audits, attestation engagements and investigations. Our work is designed to comply with professional standards as well as to satisfy the requirements of federal, state and local laws. The Office also has an extensive quality control program and undergoes regular external peer review to ensure our work meets the highest possible standards of accuracy, objectivity and clarity.

Our audits look at financial information and compliance with federal, state and local laws for all local governments, including schools, and all state agencies, including institutions of higher education. In addition, we conduct performance audits and cybersecurity audits of state agencies and local governments, as well as state whistleblower, fraud and citizen hotline investigations.

The results of our work are available to everyone through the more than 2,000 reports we publish each year on our website, www.sao.wa.gov. Additionally, we share regular news and other information via an email subscription service and social media channels.

We take our role as partners in accountability seriously. The Office provides training and technical assistance to governments both directly and through partnerships with other governmental support organizations.

Stay connected at sao.wa.gov

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- Email: webmaster@sao.wa.gov

WASHINGTON STATE INVESTMENT BOARD ANNUAL UPDATE – 2023 LEOFF 2 BOARD

DECEMBER 13, 2023

Allyson Tucker, CFA, CAIA
Chief Executive Officer

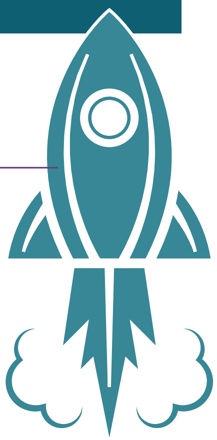
WHO WE ARE

VISION, MISSION, AND VALUES

VISION

As a leading institutional investor, we utilize diverse skillsets and perspectives to achieve investment and operational excellence with global and innovative approaches in service to our beneficiaries, state, communities, and one another.

We invest the funds entrusted to us with integrity, care, and skill to maximize return over the long term at a prudent level of risk for the exclusive benefit of beneficiaries.



MISSION

VALUES

Integrity

Patience

Openness

Belonging

Excellence

Service

Innovation

- Washington's strategic advantage – established in 1981
- Board comprised of 15 members
  - 10 voting members identified in statute
  - 5 non-voting investment professionals to advise, each selected by the voting members

3 EX-OFFICIO MEMBERS			2 LEGISLATORS	
Tracy Guerin DRS Director	**Joel Sacks** L&I Director	**Mike Pellicciotti** State Treasurer	**Mark Mullet** Member of the Senate	**Mia Gregerson** Member of the House of Representatives

5 REPRESENTATIVES OF THE PUBLIC EMPLOYEE PENSION SYSTEMS				
Greg Markley Member of LEOFF (Chair)	**Yona Makowski** Retired Member of State Pension System (Vice-Chair)	**Judy Kuschel** Active Member of PERS	**Sara Ketelsen** Member of TRS	**Liz Lewis** Member of SERS

5 NON-VOTING MEMBERS				
David Nierenberg	**Mary Pugh**	**William A. Longbrake**	**Ada Healey**	**George Zinn**

WHO WE ARE – SIZE, SCOPE, AND SCALE

Asset Management Profile

- $188.5 billion in assets under management as of September 30, 2023
- 18 pension funds
- 5 Labor and Industries funds
- 16 permanent and other trust funds

Global investment program scope and scale

- 93 countries
- Across 6 continents and 52 currencies
- More than 17,000 investment holdings
- 130+ external investment managers and partners across five asset classes

Local organizational size and scale

- Staffing: 113 employees
- Two offices: Headquarters in Olympia and Satellite in Seattle
- Hybrid 60/40 workplace plan in place as of September 2022
- 51 investment professionals
- 62 financial/accounting professionals and executive/administrative staff

WSIB INVESTMENT RESPONSIBILITY (39 FUNDS MANAGED)

Retirement Funds 18

- Public Employees' Plans 1, 2, 3
- School Employees' Plans 2, 3
- Teachers' Plans 1, 2, 3
- Law Enforcement Officers' and Firefighters' Plans 1, 2
- Judicial Retirement Account – Defined Contribution
- Washington State Patrol Plans 1, 2
- Deferred Compensation Program
- Public Service Employees' Plan 2
- Higher Education Retirement Plan Supplemental Benefit
- Volunteer Firefighters' and Reserve Officers' Relief and Pension (VFFRO)

Labor & Industries' Funds 5

- Accident
- Medical Aid
- Pension Reserve
- Supplemental Pension
- Industrial Insurance Rainy Day (unfunded)

Permanent Funds 7

- Agricultural College
- Common School
- Normal School
- Scientific
- State University
- American Indian Endowed Scholarship
- Foster Care Endowed Scholarship (unfunded)

Other Funds 9

- Guaranteed Education Tuition
- Developmental Disabilities Endowment (private and state)
- Washington State Opportunity Scholarship (Scholarship, Endowment, Tech Pathway, and Degree Pathway)
- Long-Term Services and Support (unfunded)
- Dan Thompson Memorial

- **DB plans and hybrid DB/DC plans commingled into one investment fund (CTF) run by the WSIB**

Defined Benefit and Hybrid Defined Benefit/Defined Contribution Plans	Market Value
Public Employees' Retirement System Plan 1 (PERS)	$8,914,897,780
Public Employees' Retirement System Plan 2/3	$64,068,044,490
Teachers' Retirement System Plan 1 (TRS)	$7,010,032,123
Teachers' Retirement System Plan 2/3	$32,461,570,745
Washington State Patrol Retirement System Plan 1 (WSPRS)	$1,525,131,231
Washington State Patrol Retirement System Plan 2	$227,961,233
Law Enforcement Officers' & Fire Fighters' Plan 1 (LEOFF)	$6,675,863,433
Law Enforcement Officers' & Fire Fighters' Plan 2	$20,267,331,884
School Employees' Retirement System Plan 2/3 (SERS)	$11,232,206,581
Public Safety Employees' Retirement System Plan 2 (PSERS)	$1,442,056,600
Higher Education Supplemental Insurance Plan	$184,266,708
Target Date Funds (TDF)	$1,371,076,027
Total	$155,380,438,833

Retirement Plan(s) Outside the CTF	Market Value
Volunteer Fire Fighters' and Relief Officers' Pension Fund (VFFRO)	$223,539,739
Total	$223,539,739

Defined Contribution Plans (Less TDF money that is in the CTF)	Market Value
Plans 3 Outside of the CTF (TAP)	$6,175,796,928
Deferred Compensation Program (DCP)	$5,449,823,691
Judicial Retirement Account (JRA)	$7,126,439
Total	$11,632,747,058

DB – Defined Benefit, DC – Defined Contribution, TAP – Total Allocation Portfolio

WHAT WE DO – MANAGE PUBLIC AND PRIVATE ASSETS IN RETIREMENT FUNDS

Public Equity

Objective

- Capital appreciation
- Liquidity

Approach

- Externally managed
- Significant passive management
- Globally oriented
- Scale creates significant cost advantages

Fixed Income

Objective

- Diversification
- Liquidity

Approach

- Actively internally managed
- High quality portfolio
- Credit oriented
- Emerging markets exposure

Private Equity

- Well diversified by fund, general partner, geography, strategy sub-sector, industry, vintage year
- Primarily composed of private equity/buyouts and very little exposure to venture capital, which is a higher risk sub-class
- Allocation to distressed debt, a subclass that generally performs well when equity strategies perform poorly, provides somewhat of a hedge during market downturns

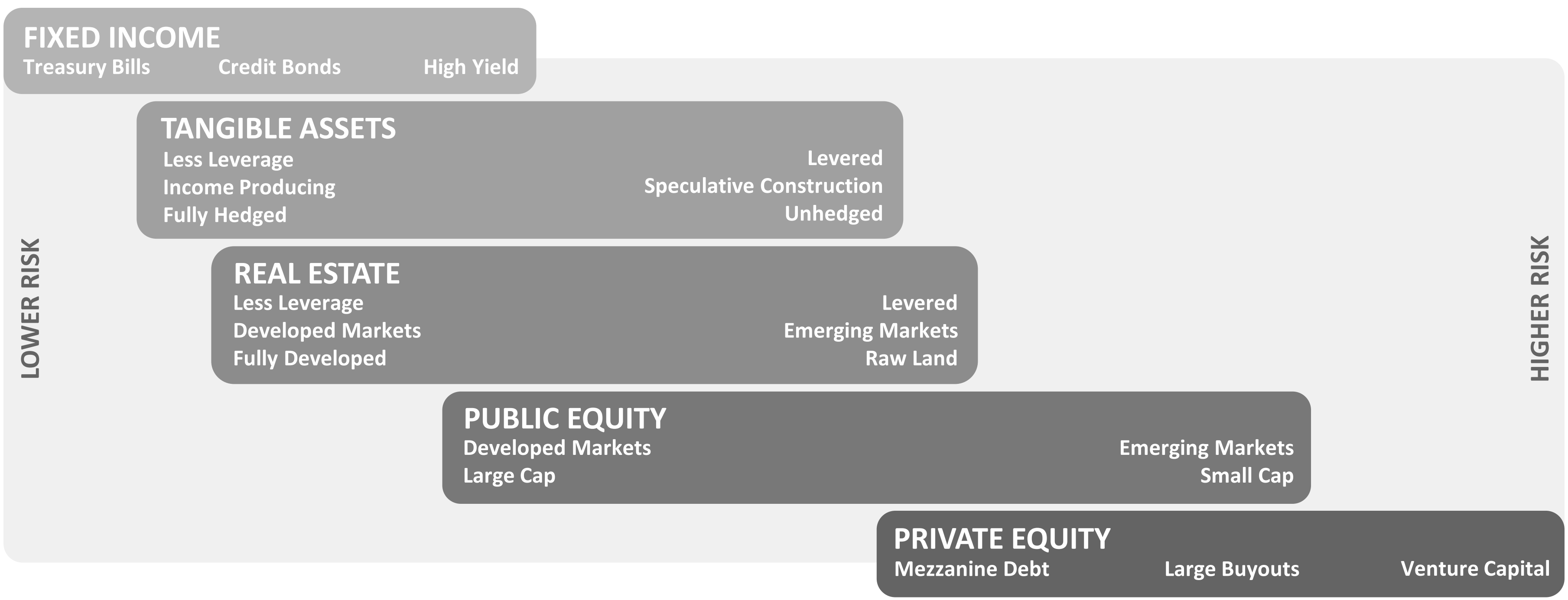
Real Estate

- Broadly diversified across multiple investment partners, property types, and geographies
- Direct stake in hundreds of properties in a diversity of markets
- Assets weighted toward long term, income producing, lower leverage, and necessity-based

Tangible Assets

- Physical assets used in the production or supply of goods and services
- Focus on upstream and midstream segments in four main industries: Minerals and Mining, Energy, Agriculture, and Society Essentials
- Strong focus on fundamental human needs – agriculture, energy, and social essentials

- **WSIB seeks diversification across the portfolio and within each asset class**
- **Implementation within each asset class will determine how risk is concentrated**
- **Weight of each asset class must match risk profile**

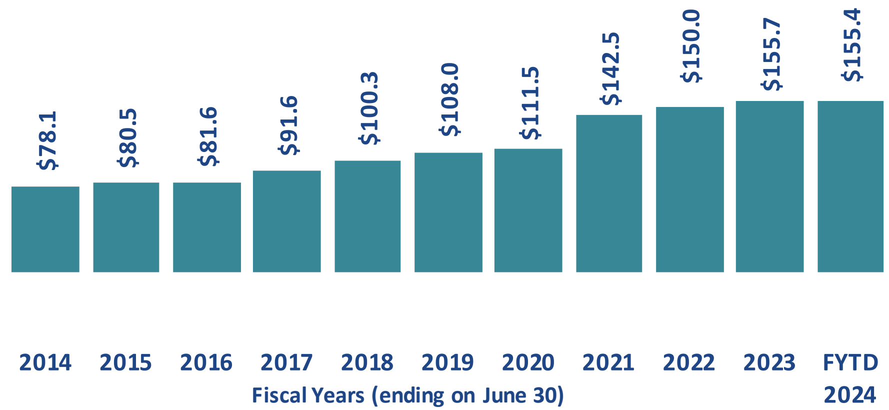


Representative Only, Not to Scale

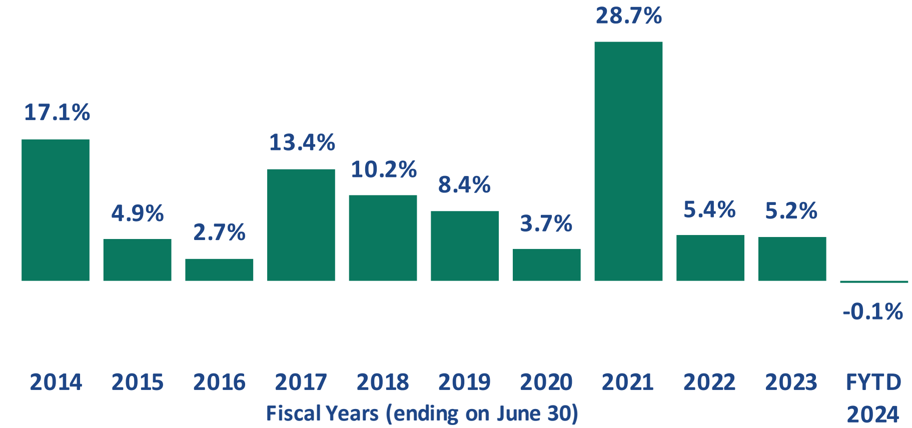
HOW WE HAVE PERFORMED – OUR RESULTS

COMMINGLED TRUST FUND (CTF) PERFORMANCE AND MARKET VALUES (SEPTEMBER 30, 2023)

Historical Market Value ($ Billions)

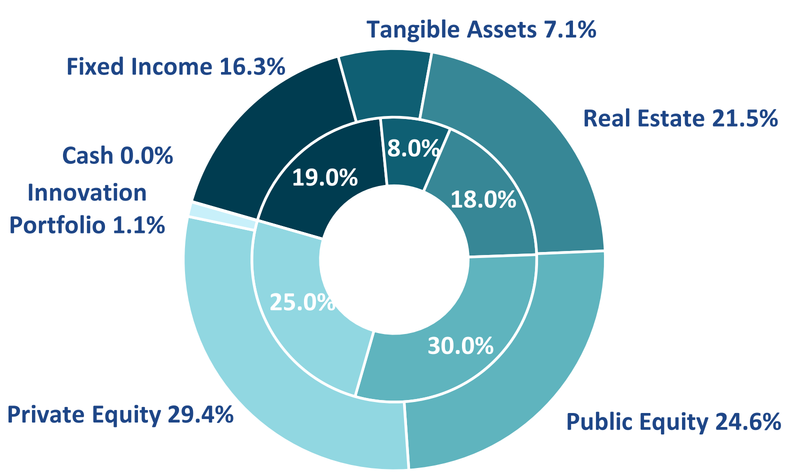


Historical Fund Returns



Asset Allocation

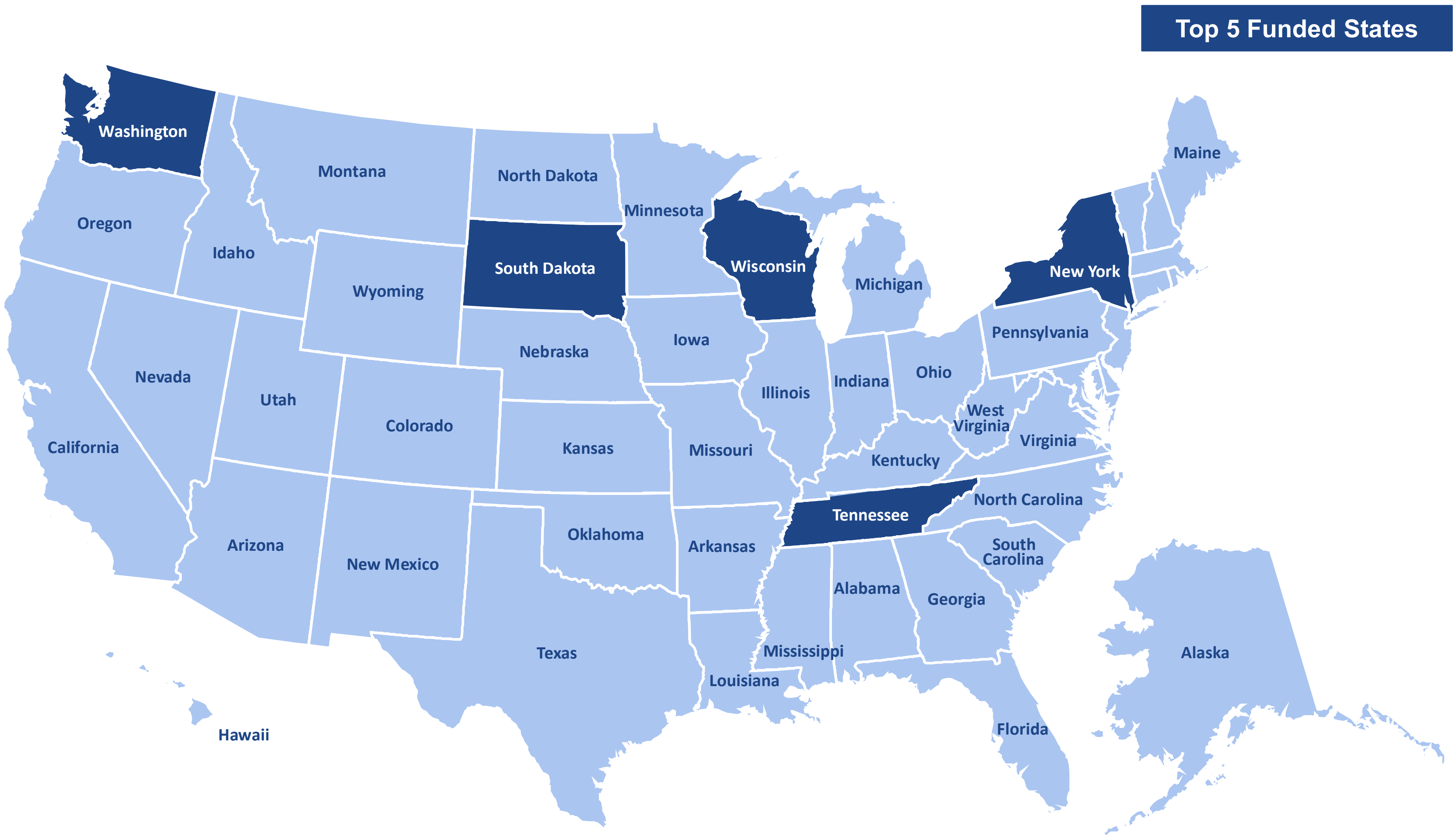
Outer Circle – Actual, Inner Circle – Long-Term Target



Market Values and Returns

Commingled Trust Fund (CTF)		1 Year	3 Year	5 Year	10 Year	20 Year
Total CTF	$155.4 B	8.7%	10.5%	9.4%	9.2%	8.8%
Fixed Income	$23.2 B	3.7%	-3.8%	1.4%	2.0%	3.8%
Tangible Assets	$11.1 B	7.8%	11.3%	7.4%	6.4%	N/A
Real Estate	$33.4 B	3.6%	19.4%	15.4%	13.7%	11.5%
Public Equity	$38.4 B	21.9%	7.6%	6.5%	8.0%	8.0%
Private Equity	$45.7 B	4.8%	18.5%	14.5%	14.2%	14.0%
Innovation Portfolio	$1.7 B	8.3%	14.3%	12.0%	-1.4%	N/A
Cash	$1.9 B	4.9%	1.9%	1.8%	1.3%	1.5%

ONE OF THE BEST FUNDED PENSION SYSTEMS IN THE NATION



Source: The PEW Charitable Trusts, Fiscal Year 2019

Historical Performance is…Historical

We are experiencing a sea change in both the investment landscape and the workplace

Market Conditions are Rapidly Evolving

Interest rates declined for 40 years, equity markets delivered a long, sustained run of strong returns, and inflation had been held at bay

Value Will be Tougher to Deliver

Forward expectations for returns are lower than historical returns experienced

Board Turnover

This cannot always be anticipated and could accelerate within a few years

External Interest

Pressures across the pension industry bring heightened risks, especially related to environmental, social, and governance (ESG) factors in investing

Staff Changes

The combination of planned retirements, unplanned resignations, and new recruitments may challenge the effectiveness of our organization

Pandemic Conditions

They have persisted longer than forecast, and hybrid working arrangements come with a unique set of challenges

FACTORS OF IMPACT, INFLUENCE, OR CONTROL

EXTERNAL FACTORS THAT IMPACT THE WSIB

- Financial Markets
- Geopolitical Events
- Demographics
- Financial Regulation
- Labor Market
- Interest Rates
- Monetary Policy
- GDP Growth
- Exchange Rates
- Inflation Rates
- Behavior of Investors
- International Trade
- Accounting Standards

STATE-CONTROLLED FACTORS THAT INFLUENCE THE WSIB

- WSIB Budget
- Salary Ranges
- Number of FTEs
- Level of Benefits
- Contribution Rates
- Actuarial Assumptions
- Investment Directives
- Retirement Plans Offered
- Legislative Priorities
- Appointment of Voting Board Members
- Chief Executive Officer Confirmation

INTERNAL FACTORS THAT WSIB CAN CONTROL OR INFLUENCE

- Non-Voting Board Member Selection
- Chief Executive Officer Appointment
- Effective Board Governance
- Investment Strategy
- Asset Allocation
- Organizational Structure
- Staff Selection
- Manager Selection
- Employee Workplace Experience

KEY INITIATIVES

Implementing Board-approved Climate and Diversity, Equity, and Inclusion (DEI) Blueprints

- Climate: a guiding roadmap to help navigate climate risk within investment process
- DEI: keep building accountability both internally and externally
- Environmental, social, and governance (ESG) factors are viewed through fiduciary lens and investment outcomes

Embedding the agency's new Vision, Mission and Values statements into practice

Managing transition risk at staff and Board with a focus on growth through education and career development opportunities

Transitioning to a new custodian bank (Bank of New York Mellon)

Continuing disciplined approach amid multiple market uncertainties

- Prudent investment process: capital market assumptions, asset allocation studies, transactions, and innovation
- Strong partnerships: Investment and Operations Partners, Office of the State Actuary, Department of Retirement Systems, Office of Financial Management, Office of the State Treasurer, Attorney General's Office
- Service to stakeholders, including several governing bodies of trust funds

IN SUMMARY

Fulfillment of mission and fiduciary duty will remain front and center:

"The Board shall establish investment policies and procedures designed exclusively to maximize return at a prudent level of risk." **(RCW 43.33A.110)**

The WSIB has many strengths yet cannot afford to be complacent in a complex world

- **We always remain focused on:**
  - **Delivering and sustaining value by generating exceptional long-term results**
  - **Ensuring that we are adequately resourced to support complex investment program, asset growth, and productivity improvements**
  - **Building and maintaining support for our mission, including public confidence**

FINAL PROPOSAL

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.

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

APPENDIX B

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 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.

(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 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.

(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

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.

(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.

(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 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 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

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

APPENDIX A

Individual State Agency Fiscal Note

Bill Number: 5468 SB	**Title:** Firefighters/LEOFF	**Agency:** 124-Department of Retiremen Systems

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

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.

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

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

Part I: Estimates

- [X] **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

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 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

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: 5468 SB	Title: Firefighters/LEOFF	Agency: AFN-Actuarial Fiscal Note - State Actuary

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

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 administer, 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.

APPENDIX A

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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APPENDIX A

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:

- [X] Cities: Fire departments
- [X] Counties: Fire departments
- [X] Special Districts: Fire protection districts.
- [ ] Specific jurisdictions only:
- [ ] Variance occurs due to:

Part II: Estimates

- [X] 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.

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"Supporting financial security for generations."

LEOFF
Plan 2 Retirement Board

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

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December 13, 2023

Duty Related Death Benefit

FINAL PROPOSAL

By Jacob White
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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. Beneficiaries and survivors who are denied this benefit by LNI for timeliness are also denied corresponding duty death related benefits administered by DRS.

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. DRS uses the determination by LNI for the lump sum special death benefit to determine other duty death related LEOFF 2 benefits that a survivor or beneficiary may be eligible for if the member has died in the line of duty. These other benefits include, but may not be limited to:

- The option to select an unreduced survivor pension benefit;
- Benefit enhancement minimum lump sum payment of $20,000;
- Access to PEBB health insurance with premium reimbursement; and
- Tuition reimbursement.

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

[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).

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 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 with LNI these denials and the current practice of applying the statute of limitations to the Special Death Benefit. Since then, Board staff has been informed by DRS 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 one 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.

Data

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 at 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 provided 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.

Actuarial Analysis

OSA provided the Board with analysis (see Appendix C), based on the bill draft and additional data on the beneficiaries' denied benefits by LNI for not filing their claim timely. OSA identified the following impacts of the bill draft:

> Under current law, survivors must file for duty-related death benefits within one year of a member's death. The proposal removes the one-year deadline to provide current survivors a second opportunity to apply for duty-related death benefits. Where applicable, enhanced benefits include:
>
> - a lump sum payment ($279,398.54 as of June 30, 2022)
> - the option to select an unreduced survivor pension by repaying any prior return of contributions received in lieu of a pension;
> - retroactive pension payments to the member's date of death;
> - access to PEBB health insurance with premium reimbursement; and,
> - benefits available under SHB 1701.
>
> The proposal also shifts determination of eligibility for duty-related death benefits paid from the LEOFF 2 trust from LNI to DRS.

Preliminary Pricing Results *(Dollars in Millions)*	
Change in Present Value of Benefits (PVFB)	$1.5
Net Lump Sum Payments*	1.1
Change in Unfunded PVFB	**$2.6**
Unrounded Employee Rate Impact	**0.0045%**

**Includes the duty-death lump sum, retroactive pension payments, lump sum from SHB 1701, and repayment of past return of contributions.*

Highlights of Actuarial Analysis

- The preliminary pricing impacts do not result in a rounded supplemental rate impact. However, any additional costs that may arise from clarifications in benefit administration, changes to the proposal, or additional eligible survivors beyond those we priced, could result in a supplemental rate.

- The lump sum death benefit provided to survivors is approximately 30 percent of the total estimated cost. The remaining 70 percent of the cost consists of a combination of monthly pension and OPEB premium reimbursement benefits.
- The proposal modifies statutes for death benefits administered by DRS and paid from the LEOFF 2 trust. Our analysis captures the cost increase in these benefits and does not consider benefits paid outside the trust.

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. This would apply retroactively to beneficiaries who were denied by LNI for timeliness.

Option 2: Remove LNI statute of limitations for the LEOFF 2 death benefits

This policy option would keep the determination of a death being duty related with LNI; however, it would remove the LNI statute of limitations. This would apply retroactively to beneficiaries who were denied by LNI for timeliness.

Option 3: No action

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.

Appendix C: Email from OSA analysis of LEOFF 2 Duty Death Benefit Proposal.

Appendix D: LNI Pension and Survivor Benefits.

Appendix E: Bill Draft – Duty Related Death Benefits – DRS.

Appendix F: Bill Draft – Duty Related Death Benefits – LNI.

FILED
11/22/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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

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

Tracy[1] 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 Currier 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.

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[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).

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.

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 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 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.

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

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[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).

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.

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.

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 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.

I CONCUR:

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).

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—

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.

Dwyer, J.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ELIZABETH A. HOOVER, DEC'D	**DOCKET NO. 23 L0000**
CLAIM NO. DRS0269	**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 special death benefit under RCW 41 26 048 was timely and with directions to determine on the merits whether Corran K Hanley's request should be granted

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

Dated September 20, 2023, at Centralia, Washington

David W. Swan
Industrial Appeals Judge
Board of Industrial Insurance Appeals

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

ISABEL A M COLE, Member

JACK S ENG, Member

APPENDIX C

From: DeCamp, Mitch
To: White, Jacob (LEOFF)
Cc: Won, Lisa; Nelsen, Steve (LEOFF); Harbour, Michael
Subject: LEOFF 2 Duty-Death Benefit Proposal
Date: Friday, December 1, 2023 3:17:30 PM
Attachments: Bill Draft - Lump Sum Special Death Benefit.docx

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External Email

Jacob,

As requested, please see below for preliminary pricing results for the duty-death benefit proposal under consideration by the Board.

Pricing Request
We priced the attached draft bill language provided to OSA on November 17, 2023. The draft bill modifies RCWs 41.26.048 and 41.26.510 related to duty-death lump sum and annuity benefits, respectively. We prepared this preliminary analysis to assist the LEOFF 2 Retirement Board in evaluating this proposal at their December 2023 meeting.

Summary and Highlights
This proposal provides eligible survivors of LEOFF 2 members with enhanced duty-related death benefits if denied by LNI for failing to meet the statute of limitations. Under current law, survivors must file for duty-related death benefits within one year of a member's death. The proposal removes the one-year deadline to provide current survivors a second opportunity to apply for duty-related death benefits. Where applicable, enhanced benefits include:

- a lump sum payment ($279,398.54 as of June 30, 2022)
- the option to select an unreduced survivor pension by repaying any prior return of contributions received in lieu of a pension
- retroactive pension payments to the member's date of death
- access to PEBB health insurance with premium reimbursement
- benefits available under SHB 1701

The proposal also shifts determination of eligibility for duty-related death benefits paid from the LEOFF 2 trust from LNI to DRS.

Preliminary Pricing Results *(Dollars in Millions)*	
Change in Present Value of Benefits (PVFB)	$1.5
Net Lump Sum Payments*	1.1
Change in Unfunded PVFB	**$2.6**
Unrounded Employee Rate Impact	**0.0045%**

**Includes the duty-death lump sum, retroactive pension payments, lump sum from SHB 1701, and repayment of past return of contributions.*

Highlights of Actuarial Analysis

- The preliminary pricing impacts do not result in a rounded supplemental rate impact. However, any additional costs that may arise from clarifications in benefit administration, changes to the proposal, or additional eligible survivors beyond those we priced, could result in a supplemental rate.
- The lump sum death benefit provided to survivors is approximately 30 percent of the total estimated cost. The remaining 70 percent of the cost consists of a combination of monthly pension and OPEB premium reimbursement benefits.
- The proposal modifies statutes for death benefits administered by DRS and paid from the LEOFF 2 trust. Our analysis captures the cost increase in these benefits and does not consider benefits paid outside the trust.

Assumptions, Methods, and Data

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

- DRS provided data on three survivors potentially impacted by this proposal. We relied on the data file as complete and accurate.
- We assumed the three survivors identified by DRS would receive the lump sum payment. We also assumed the two records with eligible surviving spouses would elect the unreduced survivor pension, retroactive to the member's date of death, and receive PEBB health insurance with premium reimbursement prospectively under this proposal. We assumed the record without an eligible spouse will only receive the lump sum payment.
- This analysis considers the cost increases from benefits under the RCWs identified in the bill draft, which are administered by DRS and paid from the LEOFF 2 trust. If other benefits are identified that will also be paid by the trust, then the costs would be higher than what is noted in this communication.
- We assumed shifting the duty-related death determination from LNI to DRS would not change the number of future deaths considered duty-related. However, actual experience could be higher or lower if DRS administration differs from LNI. We will consider the impact of more or less duty-related deaths in a full fiscal note under the sensitivity section.

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). 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. For example, costs would increase if additional survivors not included in the data were eligible for duty-related benefits under this proposal. 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 Session fiscal note becomes available.

Lisa Won, ASA, FCA, 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.

Mitch DeCamp | *Senior Actuarial Analyst*
Office of the State Actuary
PO Box 40914 | Olympia, WA 98504
mitch.decamp@leg.wa.gov | Office 360.786.6157 | Cell 509.679.7931
OSA website
"Supporting financial security for generations."

APPENDIX D

Pension and Survivor Benefits

In Washington State's Workers' Compensation Program

A summary for workers and families needing these benefits

Washington State Department of
Labor & Industries
Workers' Compensation Services

This booklet is a guide to our services. While it tells you how to file for pension benefits, explains your rights and responsibilities and what to expect from us, it is not a legal interpretation of the law.

Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 711. L&I is an equal opportunity employer.

PUBLICATION F242-352-909 [01-2023]

Introduction

If you are reading this booklet it very likely means that you were seriously injured on the job and no longer can work, or someone you love died from a work-related injury or illness. This can be a very emotional time. However, it's also a time when you will be making crucial decisions about your future, so it's important that you understand the pension system.

This booklet answers the most commonly asked questions people have about pension and survivor benefits from Washington's workers' compensation program.

- The first part describes benefits for people who no longer can work because of a workplace injury or occupational disease.
- The second part explains benefits for survivors of workers who died from a workplace injury or occupational disease. Many of the questions are the same or similar in both sections.

If you are an injured worker with a spouse and/or dependent children, you may want to read through this brochure together. That's because some of the decisions you make about the level of pension benefits you will receive could very well impact the benefits your survivors would be entitled to should you die.

If, after reading the booklet, you have further questions, please contact us at:

360-902-5119

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281

Injured Worker's Pension

What does a pension award mean to me?

A pension is a monthly payment made to you if you are permanently and totally disabled from a workplace injury or occupational disease.

Now that I am receiving a pension, are there any forms I must sign?

Yes. Once a year, the Department of Labor & Industries (L&I) will send a "Declaration of Entitlement" form to you. It asks for updated marital status and dependent information and asks if you have returned to work. To continue receiving pension payments, you must completely fill out the form, have it notarized and return it to L&I.

You must answer truthfully. If you do not and you continue to accept pension benefit checks, you could face severe penalties or criminal charges.

Will I still be entitled to medical coverage for my injury?

In general, coverage for medical treatment ends on the date your pension goes into effect. An exception can be made in cases where continued treatment is needed to protect an injured worker's life. You will be notified in writing if we grant discretionary treatment.

Will my family be entitled to medical coverage?

No. There is no provision in the law for providing medical coverage for dependents through workers' compensation.

Do I have to pay federal income tax on my pension?

Not under current federal law. Refer to the section of your income tax form under "Examples of Income You Do Not Report." As long as it continues to list "workers' compensation," your pension benefits are considered non-reportable income.

What is my pension reserve?

This is the amount of money set aside by L&I or the self-insurer as necessary to cover the anticipated cost of your pension.

Do I have the option to request my pension reserve in a lump sum instead of monthly payments?

No. The reserve amount cannot be paid in a lump sum.

Can I cash out my pension?

You can request in writing that your pension be cashed out at any time. If approved by the department and you accept the cash-out, no further benefits will be payable under the claim. By law, the maximum cash-out amount for a pension is $8,500. In most cases, cashing out for $8,500, or less, is not in your best interest when compared to a guaranteed income for the remainder of your life. The department grants cash-outs in very limited circumstances.

If the money reserved for my pension is used up before I die, will my benefits stop?

No. The benefits are payable as long as you remain totally disabled.

Can I receive my pension payment by direct deposit or onto an L&I debit card?

Yes, as long as your financial institution is in the United States and is a member of the Automated Clearing House. We will provide you with a Payment Method Authorization form when we notify you that pension has been granted. If you would like more information regarding electronic payments, please contact Electronic Benefit Payment Services at 360-902-4675 or 1-844-728-5204.

When will I receive my check?

You should receive your first payment about the 15th of the month following the effective date of the pension, as long as L&I has received all necessary documents and information. This includes a copy of your marriage certificate, information regarding birth dates for you and your spouse, birth certificates for any minor children, verification of full-time school enrollment for dependent children between the ages of 18 and 23, and a copy of your legal documents awarding custody of minor children, if applicable.

Your first payment will include the period from the effective date of the pension through the 15th of the month it is being paid. Thereafter, pension payments should be received by you on or about the 16th of each month.

Delivery of mail is sometimes delayed. Call if you haven't received the check by the end of the month it is due. The replacement of lost or stolen checks takes up to 30 days.

Will my monthly pension check be the same amount as I received for time-loss compensation?

If your claim was filed on or after July 1, 1986, your compensation rate may be reduced depending on your chosen option. See "Pension Options" on Page 8 for further information. There may be some reduction, however, if you previously received awards for permanent partial disability.

To avoid mail delay or possible stolen checks, consider having your pension check deposited directly into your bank account or onto an L&I debit card. Call Electronic Benefit Payment Services at 360-902-4675 or 1-844-728-5204 for assistance.

Will receiving Social Security affect my pension benefits?

If you begin receiving Social Security disability or retirement benefits you should immediately notify our Pension Benefits Section in Tumwater. Your future benefits may be reduced depending upon the effective date of your pension and your highest year's wages. Even if you are drawing benefits from both agencies, the total amount you receive will not be less than you would be entitled to receive from Labor & Industries alone. (Social Security survivor benefits do not affect your pension rate.)

If I receive Social Security and my pension benefits are reduced, what happens if my Social Security is terminated?

Your full pension benefits will be restored. Send us a copy of the "Social Security Termination Notice" and your rate will be corrected effective the month following termination of the federal benefits.

Will my pension increase in future years?

Cost-of-living increases are considered each July 1 and are based on the increase in the average wage in the State of Washington for the previous calendar year. Any increase appears on the August check.

Not all pensions increase. For example, if your benefits are partially offset because of Social Security income, you may not be entitled to the cost-of-living adjustment. However, you will receive all of the Social Security cost-of-living increases. If you do not receive the increase, your pension will be reviewed every three years to determine whether these federal increases have kept your combined benefit amount in line with the increase in the national wage level.

Will my pension benefits be affected if I return to part- or full-time work?

Yes. You should notify our Pension Benefits Section immediately if you go back to work. In the event you return to some type of work, we may suspend or terminate the pension award. Failure to notify us about returning to work could result in severe penalties and/or criminal charges.

Will my pension benefits be affected if I am incarcerated?

Yes. You cannot receive pension benefits if you are confined in an institution under conviction and sentence.

If I marry while I am receiving pension benefits, are my benefits increased?

No.

Will my benefits change if I get a divorce?

They might.

- Your benefits could change if your spouse was awarded custody of minor children. The children's portion of the benefit will be sent to the individual who has legal custody. A copy of the legal documents awarding custody should be furnished to us.
- If your former spouse was your beneficiary and you had selected Pension Option II or III, you may change to Pension Option I. (See Pages 8–9.) You must apply for the change and provide certified documentation of your marriage dissolution. This is a one-time, **permanent** adjustment and does not benefit everyone. You should contact your pension benefits specialist for details.

- The date the change takes effect is:
  - The date of the marriage dissolution. OR
  - Up to one year prior to the date L&I receives the application if the dissolution occurred more than one year before the application.

Will my benefits change if my spouse dies?

If your spouse was your beneficiary and you had selected Pension Option II or III, you may change to Pension Option I. (See Pages 8–9.) You must apply for the change and provide a certified copy of the death certificate. This is a one-time, **permanent** adjustment and does not benefit everyone. You should contact your pension benefits specialist for details.

The date the change takes effect is:

- The date of death. OR
- Up to one year prior to the date L&I receives the application if the death occurred more than one year before the application.

If I am no longer able to handle my own affairs, what should I do?

You can give someone you trust a written authorization called a "power of attorney." This person can sign checks on your behalf. A copy of the "power of attorney" should be sent to us. The other alternative is to have a legal guardian appointed. Upon receipt of guardianship papers, we would make the check payable to your appointed guardian.

If I die, will my spouse be entitled to benefits?

The pension paid to you ends with your death and does not automatically transfer to your spouse or dependents. It is the responsibility of your spouse or family member to notify us of your death. We will assist them in applying for further benefits under their own entitlement.

A spouse who continues to accept a worker's pension checks after the worker's death without notifying us may be subject to severe penalties or even criminal charges.

To be considered for payment, your spouse would need to submit an application for benefits within one year of your death (two years from a physician's written notice of the right to file if death was due to an occupational disease) together with copies of your certified marriage and death certificates.

If your death is due to the covered injury or occupational disease, pension benefits continue to your spouse and/or eligible dependent children (under 18, or up to 23 while a full-time student). If your death is due to a cause unrelated to the covered injury or occupational disease, and:

- Your claim was filed prior to July 1, 1986, your spouse and/or eligible dependent children (under 18 or under 23 while a full-time student) are eligible to apply to continue receiving pension benefits.
- Your claim was filed on or after July 1, 1986, your spouse or eligible beneficiary may be entitled, depending on which option you selected at the time you began receiving your pension. Refer to the "Pension Options" section below for further clarification.

Pension options for claims filed on or after July 1, 1986

If your claim was filed on or after July 1, 1986, you will be required to select a pension option. The pension option selected determines the benefit amount payable to you and your designated beneficiary upon your death, if your death was not related to your injury or occupational disease.

The option you choose is final 60 days after L&I sends you written confirmation of the choice you made.

Three options currently exist. Before you receive your first pension payment, you will be given additional information including details about the amount you and your designated eligible beneficiary would be paid under each of these options. You must choose one of the following:

- Full rate paid to the worker. No survivor benefits are payable.
- A reduced rate paid to the worker. The same rate is paid to the designated beneficiary.
- A reduced rate paid to the worker, with one-half of the reduced rate paid to the designated beneficiary.

For all options, the rate could change if the worker received Social Security benefits.

If you die before choosing an option, the department will choose Pension Option II for any qualified beneficiaries.

The pension option applies only if your death is unrelated to the accepted injury or occupational disease.

What if I have questions that have not been answered?

If you have other questions, please contact us at:

360-902-5119

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281

Be sure to include the claim number and pension folio number in all correspondence.

Survivor Benefits

If you are the surviving spouse or dependent of a worker who has died from a workplace injury or occupational disease, you may be eligible for a monthly survivor pension.

This section answers the most commonly asked questions about your survivor benefits.

It is important to note that workplace injury or occupational disease claims filed on or after July 1, 1986, have a survivor's benefit option even if the death is not related to the accepted injury or occupational disease.

Do I have to apply to receive survivor's benefits?

Yes. A survivor must submit an application for benefits within one year from the date of the worker's death due to an injury, or within two years of receiving written notice from a physician that death was due to an occupational disease and that a claim may be filed.

We also will need the following documentation: certified marriage certificate, death certificate, certified state birth certificates of minor children, and, if applicable, legal documents showing custody of any minor children.

Are survivors' medical bills covered?

No. Survivors do not receive medical benefits.

What is the 'first survivor benefit paid'?

We make a one-time "immediate" payment after approving a beneficiary's application — if the worker's death resulted from the workplace injury or disease. (For workers' compensation claims filed on or before July 1, 1986, this payment is made regardless of the cause of death.)

The amount of the immediate payment depends on the date of the injury.

Are burial benefits paid?

A burial benefit is paid when death is directly related to the workplace injury or occupational disease. The amount is determined by the date of death.

How long does a survivor pension last?

Several factors affect this answer:

- If the worker's death was related to the condition that resulted in a pension, the surviving spouse's benefit is for life, unless he or she remarries.
- If a worker dies from causes other than the condition that resulted in a pension, and a survivor option was chosen, the surviving spouse's benefit is for life even if he or she remarries.
- For claims filed before July 1, 1986, a surviving spouse's benefit ends if he or she remarries, otherwise it continues for life.

For surviving children, benefits cease at age 18 (they may continue up to age 23 if the child is enrolled full-time in an accredited school). For other dependents, benefits cease when the need that caused dependency ends.

How is the monthly survivor pension determined?

The amount varies depending upon whether there is a surviving spouse, children or other dependents, and whether or not a survivor benefit option has been chosen. The benefits also can be different if the worker's death was unrelated to the workplace injury or occupational disease. The variations are:

Survivor pension options

When an injured worker begins receiving a pension, and the claim was filed on or after July 1, 1986, the worker is required to select a pension option. The option selected determines the benefit level payable to the worker and designated beneficiary upon the worker's death if the death is not related to the workplace injury or occupational disease. The pension option selected at that time is final and cannot be changed at a later date.

Pension options apply only when the worker's death was unrelated to the injury or occupational disease. If death was due to the injury or occupational disease, benefits are paid at the full beneficiary rate.

If the worker's claim was filed on or after July 1, 1986, one of the following three survivor options was chosen:

- Full rate paid to the worker. No survivor benefits are payable.
- A reduced rate paid to the worker. The same rate is paid to the designated beneficiary.
- A reduced rate paid to the worker, with one-half of the reduced rate paid to the designated beneficiary.

All three of the above options only apply if the death was not related to the workplace injury or occupational disease.

Surviving spouse
(where pension option does not apply)

For recent injuries, a surviving spouse receives 60% of the worker's wage at the time of injury up to the maximum level allowed by law. If the worker had minor children, an additional 2% per child is paid, up to an additional maximum of 10%.

Minor children of the worker living in another household are entitled to 5% of the total entitlement per child up to a maximum of 25%.

The remainder of the benefit is paid to the surviving spouse and children residing in the deceased worker's household.

Children's benefits
(where there is not an eligible spouse and where pension options don't apply)

A monthly benefit of 35% of the worker's wage is paid to the guardian of a minor dependent. Another 15% of the wage is paid for each additional child up to a maximum benefit equal to 65% of the wage at the time of injury. Where there is more than one child, benefits are divided equally among them.

What is the maximum benefit?

The maximum benefit is a percentage of the statewide average wage for the year prior to the pension award. The date of injury affects the percentage. See table below.

Date of Injury	Percentage
July 1, 1988, through June 30, 1993	100%
July 1, 1993, through June 30, 1994	105%
July 1, 1994, through June 30, 1995	110%
July 1, 1995, through June 30, 1996	115%
On or after July 1, 1996	120%

Are benefits payable to other dependents?

If the pension option does not apply, qualified dependents can receive payments if they were necessarily dependent on the worker's earnings. Dependents can include a father, mother, grandparents, grandchildren, brothers, sisters, nieces and nephews.

The benefit is equal to half of the average monthly support received by the dependent during the year preceding the injury. The benefit limit is 65% of the worker's wage or the maximum benefit level, whichever is less.

The payments end when the necessity that created the dependency would have ended had the injury not occurred. Benefits also end for minor dependents when they reach age 18 (up to 23 if they are full-time students in an accredited school).

Are my survivor pension benefits affected if I am working?

No. A surviving spouse or children can work and earn wages and continue to receive survivor benefits.

If a survivor pension option doesn't apply, are my benefits affected if I remarry?

You would receive benefits through the end of the month in which you remarry. You then have the option to receive a final settlement, or to leave the settlement in trust with us. If you accept the settlement, no further benefits are paid to you under this claim. If you leave your settlement in trust with us and your new marriage ends in death, annulment or divorce, you can apply to reinstate the pension as of the date of death or date the divorce becomes final.

Should you die while your settlement is in trust with us, your estate is paid 50% of the remaining pension reserve or the settlement amount, whichever is less.

You must notify us immediately if you remarry. If you do not, and you continue to accept pension benefit checks after remarriage, you could face severe penalties or even criminal charges.

What effect does remarriage have on our children's benefit?

Where the pension option does not apply and remarriage settlement is paid, children generally are entitled to benefits until they reach the age of 18. They still may be eligible until age 23 if they are enrolled in an accredited school as a full-time student.

Will my survivor pension increase in the future?

Cost-of-living increases are based on the increase in the average wage in the State of Washington for the previous calendar year. The adjustment is considered each July 1 and any increase appears on the August check.

Will receiving Social Security affect my survivor pension?

No.

Will my survivor pension be affected if I am incarcerated?

Yes. You cannot receive pension benefits if you are confined in an institution under conviction and sentence.

If I no longer am able to handle my own affairs, what should I do?

You may give someone you trust a written authorization called a "power of attorney."

This person can sign your checks. A copy of the power of attorney should be sent to the Pension Benefits Section.

Another alternative is to have a legal guardian appointed.

Upon receipt of the guardian papers, however, the check will be made out to the appointed guardian.

Can I receive my survivor pension payment by direct deposit or onto an L&I debit card?

Yes, as long as your financial institution is in the United States and is a member of the Automated Clearing House.

We will provide you with a Payment Method Authorization form when we notify you that pension has been granted. If you would like more information regarding electronic payments, please contact Electronic Benefit Payment Services at 360-902-4675 or 1-844-728-5204.

When will I receive survivor pension payments?

Survivor payments are made once a month and should be received by you on or about the 16th of each month. Delivery of mail is sometimes delayed, but call us if you haven't received payment by the end of the month it is due.

To avoid mail delay or possible stolen checks, consider having your pension check deposited directly into your bank account or onto an L&I debit card. Call Electronic Benefit Payment Services at 360-902-4675 or 1-844-728-5204 for assistance.

Do I have to pay federal income tax on my pension benefits?

Under current federal law, survivors' benefits are not taxable. Refer to the section of your income tax form under "Examples of Income You Do Not Report." As long as it lists "workers' compensation," it is considered non-reportable income.

360-902-5119

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia, WA 98504-4281

Beneficios de pensión y para sobrevivientes

del Programa de compensación para trabajadores de Washington

Un resumen para los trabajadores y las familias que necesiten estos beneficios

Washington State Department of
Labor & Industries
Workers' Compensation Services

Esta es una guía de nuestros servicios. Aunque le indica cómo hacer una solicitud para beneficios de pensión, le explica sus derechos y responsabilidades y que es lo que puede esperar de nosotros, no es una interpretación legal de la ley.

A petición del cliente, hay ayuda disponible para personas que hablan otros idiomas y otros formatos alternos de comunicación para personas con discapacidades. Llame al 1-800-547-8367. Usuarios de dispositivos de telecomunicaciones para sordos (TDD, por su sigla en inglés) llamen al 711. L&I es un empleador con igualdad de oportunidades.

PUBLICACIÓN F242-352-909 [01-2023]

Introducción

Si está leyendo esta guía es probable que usted haya sido gravemente lesionado en el trabajo y que ya no pueda trabajar o que alguien a quien ama haya muerto debido a una lesión o enfermedad relacionada con el trabajo. Este puede ser un tiempo muy difícil emocionalmente. Sin embargo, también es un tiempo en el que tomará decisiones importantes sobre su futuro, así que es importante que usted entienda como funciona el sistema de pensión.

Esta guía responde a las preguntas más comunes que hacen las personas sobre los beneficios de pensión y para sobrevivientes del programa de compensación para trabajadores de Washington.

- La primera sección describe los beneficios para las personas que ya no pueden trabajar debido a una lesión en el lugar de trabajo o por una enfermedad ocupacional.
- La segunda parte explica los beneficios para los sobrevivientes de los trabajadores que murieron debido a una lesión en el lugar de trabajo o enfermedad ocupacional. Muchas de las preguntas en las dos secciones son iguales o muy similares.

Si usted es un trabajador lesionado con un cónyuge y/o hijos dependientes, sería útil si ustedes leen esta guía juntos. Esto es porque algunas de las decisiones que tome sobre el nivel de beneficios de pensión que recibirá pueden afectar los beneficios a los cuales sus sobrevivientes podrían tener derecho si usted muriera.

Si tiene otras preguntas después de leer la guía, por favor comuníquese con nosotros al:

360-902-5119

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281

Pensión del trabajador lesionado

¿Qué significa para mí una indemnización de pensión?

Una pensión es un pago mensual para usted si está discapacitado permanente y totalmente por una lesión en el lugar de trabajo o por una enfermedad ocupacional.

Ahora que estoy recibiendo una pensión, ¿existen algunos formularios que yo debo firmar?

Sí. El Departamento de Labor e Industrias (L&I) le enviará un formulario de "Declaración de Derechos" (Declaration of Entitlement) una vez al año. Este requiere información actualizada sobre su estado civil y sus dependientes y pide que nos informe si ha regresado a trabajar. Para continuar recibiendo los pagos de pensión, debe completar el formulario, legalizarlo ante un notario y devolverlo a L&I.

Usted debe responder con la verdad. Si no lo hace y continúa recibiendo pagos de beneficios de pensión, usted podría enfrentar sanciones severas o cargos criminales.

¿Continuaré teniendo derecho a la cobertura médica por mi lesión?

En general, la cobertura para tratamiento médico termina cuando su pensión entra en vigencia. Se podría hacer una excepción en ciertos casos donde se necesite tratamiento continuo a fin de proteger la vida del trabajador lesionado. Se le notificará por escrito si se aprueba la cobertura discrecional.

¿Tendrá mi familia derecho a cobertura médica?

No. No hay estipulación alguna de la ley para proporcionar cobertura médica para dependientes a través de la compensación del trabajador.

¿Tengo que pagar impuestos federales por ingresos (income tax) sobre mi pensión?

No bajo las leyes federales actuales. Revise la sección de su formulario de impuestos sobre los ingresos "Ejemplos de ingresos que usted no necesita reportar" (Examples of Income You Do Not Report). Siempre y cuando continúe indicando "compensación para los trabajadores," sus beneficios de pensión serán considerados como ingresos que no tienen que ser reportados.

¿Qué es mi reserva de pensión?

Es la cantidad de dinero establecida por L&I o el seguro privado del empleador, según sea necesario para cubrir el costo previsto de su pensión.

¿Puedo solicitar mi reserva de pensión en un solo pago en vez de pagos mensuales?

No. La cantidad de la reserva no puede pagarse en un solo pago.

¿Puedo cobrar mi pensión en una liquidación final?

Usted puede solicitar por escrito que se le pague su pensión en una liquidación final en cualquier momento. Si es aprobado por el Departamento y usted acepta la liquidación final, no se pagarán otros beneficios bajo el reclamo. Por ley, la máxima cantidad en efectivo para una pensión es de $8,500 dólares. En la mayoría de los casos, el cobrar los $8,500 dólares, o menos, no es lo más conveniente si se compara con un ingreso garantizado por el resto de su vida. El departamento concede liquidaciones finales en situaciones muy limitadas.

Si el dinero reservado para mi pensión se usa antes de que yo muera, ¿se detendrán mis beneficios?

No. Los beneficios se pagarán mientras usted permanezca totalmente discapacitado.

¿Puedo recibir mi pago de pensión por depósito directo en una tarjeta de débito de L&I?

Sí, siempre y cuando su institución financiera esté en los Estados Unidos y sea miembro del "Automated Clearing House." Le proporcionaremos un formulario de Autorización de método de pago cuando le notifiquemos sobre la concesión de la pensión. Si desea recibir más información sobre los pagos electrónicos, comuníquese con los Servicios de Pago de Beneficios Electrónicos al 360-902-4675 o al 1-844-728-5204.

¿Cuándo recibiré mi cheque?

Usted deberá recibir su primer pago alrededor del día 15 del mes después de la fecha en que la pensión sea efectiva, siempre y cuando L&I haya recibido toda la documentación e información necesaria. Esto incluye una copia de su acta de matrimonio, fechas de nacimiento de usted y de su cónyuge, actas de nacimiento de sus hijos menores de edad, comprobante de que sus hijos dependientes, entre 18 y 23 años de edad están inscritos en la escuela tiempo completo y una copia de sus documentos legales en los cuales se le concede la custodia de sus hijos menores, si es el caso.

Su primer pago incluirá el período desde la fecha de vigencia de la pensión hasta el día 15 del mes que esté siendo pagado. A partir de entonces, deberá recibir los pagos de pensión en o alrededor del día 16 de cada mes.

La entrega del correo algunas veces se retrasa. Llámenos si no ha recibido su cheque a fin de mes. El reemplazo de cheques robados o perdidos toma hasta 30 días.

¿Mi cheque mensual de pensión será por la misma cantidad que recibí por compensación de tiempo perdido?

Si su reclamo se registró en o después del 1 de julio de 1986, su tarifa de compensación podría reducirse dependiendo de la opción que usted eligió. Para más información, vea las “Opciones de Pensión” en la página 8. Sin embargo podría existir alguna reducción si recibió indemnizaciones anteriormente por discapacidades parciales permanentes.

Para evitar retrasos en el correo o posibles robos de cheques, considere solicitar que el cheque de su pensión se deposite directamente en su cuenta de banco o en una tarjeta de débito de L&I. Llame a Servicios de Pago de Beneficios Electrónicos al 360-902-4675 o al 1-844-728-5204 para recibir ayuda.

¿Afectará mis beneficios de pensión el recibir Seguro Social?

Si usted empieza a recibir beneficios de discapacidad o jubilación del Seguro Social, debe notificarle a nuestra Sección de Beneficios de Pensión (Pension Benefit Section) en Tumwater inmediatamente. Sus beneficios futuros podrían reducirse, dependiendo de la fecha de vigencia de su pensión y de sus ingresos anuales más altos. Incluso si recibe beneficios de ambas agencias, la cantidad total que reciba no será menor de la que tenga derecho a recibir de Labor & Industrias. (Los beneficios de Seguro Social para los familiares de una persona fallecida no afectarán la tarifa de su pensión).

Si recibo Seguro Social y se reducen mis beneficios de pensión, ¿qué sucederá si se termina mi Seguro Social?

Se restituirán todos sus beneficios de pensión. Envíenos una copia de la "Notificación que termina los beneficios del Seguro Social" (Social Security Termination Notice) y se corregirá su tarifa al mes siguiente de que terminen los beneficios federales.

¿Se incrementará mi pensión en los próximos años?

Los ajustes de costo de vida se evalúan cada 1 de julio y se basan en el incremento del salario promedio del estado de Washington del año (entre enero y diciembre) anterior. Cualquier ajuste se agregará en el cheque de agosto.

No todas las pensiones aumentan. Por ejemplo, si sus beneficios de pensión se ajustan parcialmente debido a su ingreso del Seguro Social, es posible que usted no tenga derecho al ajuste de costo de vida. Sin embargo usted recibirá todos los incrementos de costo de vida del Seguro Social. Si usted no recibe el aumento, su pensión se revisará cada tres años para determinar si estos incrementos federales han mantenido su cantidad de beneficio combinado de acuerdo con el aumento del nivel de salario nacional.

¿Serán afectados mis beneficios de pensión si vuelvo a trabajar por tiempo parcial o tiempo completo?

Sí. Debe notificar inmediatamente a nuestra Sección de Beneficios de Pensión si regresa al trabajo. En caso de que vuelva a algún tipo de trabajo, podríamos suspender o terminar su indemnización de pensión. Si no nos notifica sobre su regreso al trabajo, puede ocasionar severas penalidades y/o cargos criminales.

¿Serán afectados mis beneficios de pensión si estoy encarcelado?

Sí. Usted no puede recibir beneficios de pensión si está encarcelado bajo sentencia condenatoria.

Si me caso mientras estoy recibiendo beneficios de pensión, ¿se incrementarán mis beneficios?

No.

¿Cambiarán mis beneficios si me divorcio?

Es posible.

- Sus beneficios pueden cambiar si su cónyuge obtiene custodia de los hijos menores de edad. La porción de beneficios de los niños se enviará a la persona que tenga la custodia legal. Deberá proporcionarnos una copia de los documentos legales que otorguen custodia si están involucrados niños menores de edad.
- Si su cónyuge anterior era su beneficiario y usted seleccionó la Opción de pensión II o III, usted puede cambiarse a la Opción I. (Vea las páginas 8–9). Usted debe solicitar el cambio y proporcionar documentos certificados de su disolución de matrimonio. Este es un ajuste **permanente** de una sola vez y no beneficia a todos. Usted debe comunicarse con su especialista de beneficios de pensión para más detalles.
- La fecha en la que toma efecto el cambio es:
  - Fecha de disolución del matrimonio. O
  - Hasta un año antes de la fecha en que L&I reciba la solicitud si la disolución ocurrió más de un año antes de la solicitud.

¿Cambiarán mis beneficios si muere mi cónyuge?

Si su cónyuge era su beneficiario y usted seleccionó la Opción de pensión II o III, usted puede cambiar a la Opción I. (Vea las páginas 8–9). Usted deberá solicitar el cambio y proporcionar una copia certificada del certificado de defunción. Este es un ajuste **permanente** de una sola vez y no beneficia a todos. Usted debe comunicarse con su especialista de beneficios de pensión para más detalles.

La fecha en la que toma efecto el cambio es:

- La fecha de muerte. O
- Hasta un año antes de la fecha en que L&I reciba la solicitud, si la muerte ocurrió más de un año antes de la solicitud.

Si ya no puedo manejar mis propios asuntos, ¿qué debo hacer?

Usted puede darle a alguien de confianza una autorización por escrito llamada "poder notarial" (Power of Attorney). Esta persona puede firmar los cheques a su nombre. Deberá enviarnos una copia del "poder notarial." La otra alternativa sería nombrar a un tutor legal. Después de recibir los documentos de custodia, enviaremos los cheques a nombre de su tutor legal designado.

Si muero, ¿tendrá mi cónyuge derecho a los beneficios?

La pensión pagada a usted termina con su muerte y no se transfiere automáticamente a su cónyuge o a sus dependientes. Es responsabilidad de su cónyuge o familiares notificarnos sobre su muerte. Nosotros les ayudaremos a solicitar otros beneficios a los cuales tengan derecho. Un cónyuge que continúe aceptando cheques de pensión de un trabajador después de su muerte sin notificarnos podría estar sujeto a penalidades severas o también a cargos criminales.

Para que pueda ser considerado para recibir pagos, su cónyuge deberá presentar una solicitud de beneficios dentro de un año a partir de su muerte (dentro de dos años de la notificación escrita del médico sobre el derecho de registrar si la muerte ocurrió por causa de una enfermedad ocupacional), junto con copias de sus actas de matrimonio y de defunción.

Si su muerte ocurrió debido a la enfermedad ocupacional o lesión que estaba cubierta, los beneficios de pensión continuarán con su cónyuge y/o sus hijos dependientes que reunan los requisitos (menores de 18 años o hasta 23 años, si son estudiantes de tiempo completo). Si su muerte se debe a una causa no relacionada con la lesión o enfermedad ocupacional y:

- Si registró su reclamo antes del 1 de julio de 1986, su cónyuge y/o hijos dependientes que reuna los requisitos (menores de 18 años o menores de 23, si son estudiantes de tiempo completo) pueden solicitar continuar recibiendo beneficios de pensión.
- Si registró su reclamo en o después del 1 de julio de 1986, su cónyuge o beneficiario que reuna los requisitos podría tener derecho, dependiendo de la opción que eligió en el momento de empezar a recibir su pensión. Refiérase a la sección de "Opciones de Pensión" en la siguiente página para mayores aclaraciones.

Opciones de pensión para reclamos registrados en o después del 1 de julio de 1986.

Si se registró su reclamo en o después del 1 de julio de 1986, tendrá que elegir una opción de pensión. La opción de pensión seleccionada determina la cantidad de beneficios que se le pagará a usted y a su beneficiario designado después de su muerte, si su muerte no está relacionada con su lesión o enfermedad ocupacional.

Su elección de opciones será final 60 días después de que Labor e Industrias le envíe su confirmación escrita de la elección que hizo.

Actualmente existen tres opciones. Antes de recibir su primer pago de pensión, recibirá información adicional que incluye detalles sobre la cantidad que usted y su beneficiario (que reuna los requisitos) designado recibirán bajo cada una de esas opciones. Debe elegir una de las siguientes:

- La tarifa completa se le pagará al trabajador. No se pagará beneficios a los sobrevivientes.
- Se le pagará una tarifa reducida al trabajador. Se le pagará la misma tarifa al beneficiario designado.
- Se le pagará al trabajador una tarifa reducida, con la mitad de la tarifa reducida pagada al beneficiario designado.

Para todas las opciones, la tarifa podría cambiar si el trabajador recibe beneficios de Seguro Social.

Si usted muere antes de elegir una opción, el departamento designará la Opción II de pensión para cualquier beneficiario que reuna los requisitos.

La opción de pensión se aplica solamente si su muerte no está relacionada con la lesión o la enfermedad ocupacional aceptada.

¿Qué sucede si tengo preguntas que no han sido respondidas?

Si tiene otras preguntas, por favor llámenos al 360-902-5119 o escriba a:

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281.

Asegúrese de incluir el número de reclamo y el número de la pensión en toda la correspondencia.

Beneficios para los sobrevivientes de un trabajador fallecido

Si usted es el cónyuge sobreviviente o dependiente de un trabajador que murió por una lesión en el trabajo o enfermedad ocupacional, podría tener derecho a una pensión mensual.

Esta sección responde a las preguntas más comunes acerca de sus beneficios como sobreviviente.

Es importante saber que los reclamos de lesiones en el trabajo o enfermedades ocupacionales registrados en o después del 1 de julio de 1986 tienen una opción de beneficios para sobrevivientes, aunque la muerte no esté relacionada con la lesión o enfermedad ocupacional aceptada.

¿Tengo que presentar una solicitud para recibir beneficios que se le pagan a los familiares de una persona fallecida?

Sí. Un sobreviviente debe presentar una solicitud de beneficios dentro del plazo de un año desde la fecha de la muerte del trabajador por causa de una lesión o dentro del plazo de dos años de recibir una notificación escrita de un médico en la cual se estipule que la muerte se debió a una enfermedad ocupacional y que se puede registrar un reclamo.

También necesitaremos los siguientes documentos: acta de matrimonio certificado, acta de defunción, acta(s) de nacimiento certificado (estatal) de los niños menores de edad y si se aplica, los documentos legales que demuestre la custodia de cualquier niño menor de edad.

¿Están las facturas médicas de los sobrevivientes cubiertas?

No. No se pagan beneficios médicos para los sobrevivientes.

¿Cuál es el primer beneficio que se le paga al sobreviviente?

Nosotros hacemos un pago único “inmediato” después de haber aprobado la solicitud del beneficiario — si la muerte del trabajador se debió a una lesión o enfermedad del trabajo. (Para los reclamos de compensación a los trabajadores en o antes del 1 de julio de 1986, este pago se hace sin importar la causa de la muerte).

La cantidad del pago inmediato depende de la fecha de la lesión.

¿Se pagan beneficios por gastos funerarios?

Se pagan beneficios por gastos funerarios cuando la muerte está relacionada directamente con una lesión en el trabajo o enfermedad ocupacional. La cantidad se determina por la fecha de fallecimiento.

¿Cuánto dura una pensión de sobreviviente?

Hay varios factores que afectan esta respuesta:

- Si la muerte del trabajador estaba relacionada con la condición que resultó en una pensión, los beneficios para el cónyuge sobreviviente serán de por vida a menos que el/ella se vuelva a casar.
- Si el trabajador muere por causas no relacionadas a la condición que resultó en una pensión y se ha escogido una opción de sobreviente, el beneficio para el cónyuge sobreviviente será de por vida aunque el o ella se vuelva a casar.
- Para reclamos presentados antes del 1 de julio de 1986, el beneficio del cónyuge sobreviviente terminará si el o ella se vuelve a casar, de otra manera continuará de por vida.

Para los hijos sobrevivientes, los beneficios terminan a la edad de 18 años (podrían continuar hasta los 23 si el hijo está matriculado de tiempo completo en una escuela acreditada). Para otros dependientes, los beneficios terminan cuando termine la necesidad que causó la dependencia.

¿Cómo se determinan los beneficios mensuales de sobrevivientes?

La cantidad de los beneficios mensuales de sobreviviente varía, dependiendo de si existe un cónyuge sobreviviente, hijos u otros dependientes y si se ha elegido o no una opción de beneficios de sobrevivientes. Asimismo, los beneficios pueden variar si la muerte del trabajador no estuvo relacionada con una lesión en el trabajo o con una enfermedad ocupacional. Las variaciones son:

Opciones de pensión de sobrevivientes

Cuando un trabajador lesionado empieza a recibir una pensión y se registró el reclamo en o después del 1 de julio de 1986, el trabajador debe seleccionar una opción de pensión. La opción seleccionada determina el nivel de beneficios que se le paga al trabajador y a su beneficiario designado cuando muere el trabajador, si la muerte no se relaciona con una lesión en el trabajo o con una enfermedad ocupacional. La opción de pensión elegida en ese momento es final y no puede ser cambiada después.

Las opciones de pensión se aplican solamente cuando la muerte del trabajador no está relacionada con la lesión o enfermedad ocupacional. Si la muerte se debió a la lesión o enfermedad ocupacional, se pagan los beneficios completos al beneficiario.

Si el reclamo del trabajador se registró a partir del 1 de julio de 1986, se elige una de las siguientes tres opciones:

- Cantidad total pagada al trabajador. No se pagan beneficios a los sobrevivientes.
- Una cantidad reducida pagada al trabajador. La misma cantidad se paga al beneficiario designado.

- Una cantidad reducida pagada al trabajador, con una mitad de la cantidad reducida pagada al beneficiario designado.

Las tres opciones mencionadas solamente se aplican si la muerte no está relacionada con una lesión en el trabajo o enfermedad ocupacional.

Cónyuge sobreviviente
(cuando no se aplique la opción de pensión)

Para lesiones recientes, el cónyuge sobreviviente recibe el 60% del ingreso del trabajador en el momento de la lesión, hasta el máximo nivel permitido por ley. Si el trabajador tiene hijos menores de edad, se paga un 2% adicional por cada hijo, hasta un máximo adicional de 10%.

Los hijos menores de edad del trabajador que vivan en otro hogar tienen derecho a un 5% de la cantidad total por cada hijo, hasta un máximo de 25%. El resto del beneficio se paga al cónyuge sobreviviente y a los hijos que vivan en el hogar del trabajador fallecido.

Beneficios para los hijos
(cuando no existe un cónyuge que cumpla con los requisitos y no se apliquen las opciones de pensión)

Un beneficio mensual del 35% del salario del trabajador se pagará al tutor legal de un dependiente menor de edad. Otro 15% del salario se pagará por cada hijo adicional, hasta un beneficio máximo igual al 65% del salario en el momento de la lesión. Cuando hay más de un hijo, los beneficios se dividen en cantidades iguales entre ellos.

¿Cuál es el beneficio máximo?

El beneficio máximo es un porcentaje del salario promedio estatal del año anterior a la indemnización de pensión. La fecha de la lesión afecta el porcentaje. Vea la siguiente tabla.

Fecha de la lesión	Porcentaje
1 de julio de 1988 hasta junio 30 de 1993	100%
1 de julio de 1993 hasta junio 30 de 1994	105%
1 de julio de 1994 hasta junio 30 de 1995	110%
1 de julio de 1995 hasta junio 30 de 1996	115%
En o después del 1 de julio de 1996	120%

¿Se pagan beneficios a otros dependientes?

Si la opción de pensión no se aplica, los dependientes con derecho a recibir beneficios pueden recibir pagos si son necesariamente dependientes de los ingresos del trabajador. Los dependientes pueden ser parientes, como el padre, madre, abuelos, nietos, hermanos, hermanas, sobrinas y sobrinos.

El beneficio es igual a la mitad del apoyo económico mensual promedio recibido por el dependiente durante el año anterior a la lesión. El límite del beneficio es de 65% del salario del trabajador o el nivel máximo de beneficios, lo que sea menor.

Los pagos terminan cuando hubiera terminado la necesidad que creó la dependencia, si es que no hubiera ocurrido la lesión. Asimismo, los beneficios terminan para los dependientes menores de edad cuando cumplan la edad de 18 años (o 23 años, si son estudiantes de tiempo completo en una escuela acreditada).

¿Serán afectados mis beneficios de pensión si trabajo?

No. Un cónyuge sobreviviente o los hijos pueden trabajar y tener ingresos y continuar recibiendo beneficios de sobreviviente.

Si una opción de pensión no se aplica, ¿serán afectados mis beneficios si vuelvo a casarme?

Usted recibirá beneficios hasta el fin del mes en el cual se vuelva a casar. Después, tendrá la opción de recibir una liquidación final o dejar la liquidación a nuestro cargo. Si acepta la liquidación, ya no se le pagarán beneficios bajo este reclamo. Si deja su liquidación a nuestro cargo y su nuevo matrimonio termina en muerte, anulación o divorcio, puede solicitar reinstituir la pensión a partir de la fecha de defunción o del divorcio.

Si usted muere mientras su liquidación esté a nuestro cargo, pagaremos a sus herederos un 50% de la reserva restante de pensión o la cantidad de la liquidación, lo que sea menor.

Usted debe notificarnos inmediatamente si se vuelve a casar. Si no lo hace y continúa aceptando los cheques de beneficios de pensión después de su matrimonio, podría tener penalidades severas o incluso cargos criminales.

¿Qué efecto tendrá un nuevo matrimonio en los beneficios de nuestros hijos?

Cuando no se aplique la opción de pensión y se pague indemnización por un nuevo matrimonio generalmente los hijos menores de edad tienen derecho a los beneficios hasta los 18 años de edad. Aún podrían tener derecho a beneficios hasta los 23 años si están matriculados en una escuela acreditada como estudiantes de tiempo completo.

¿Se incrementarán en el futuro mis beneficios de pensión?

Los ajustes del costo de vida se basan en el incremento del salario promedio del estado de Washington del año anterior (entre enero y diciembre). Cada 1 de julio se efectúa un ajuste y se agregará a su cheque de agosto.

Afectará mis beneficios de pensión el recibir Seguro Social?

No.

¿Serán afectados mis beneficios de pensión si estoy en la cárcel?

Sí. Usted no puede recibir beneficios de pensión si está encarcelado en una institución bajo sentencia condenatoria.

Si ya no puedo manejar mis propios asuntos, ¿qué debo hacer?

Usted puede darle a alguien de confianza una autorización por escrito llamada “poder notarial” (power of attorney).

Esta persona puede firmar sus cheques. Deberá enviarnos una copia del poder notarial a la Sección de Beneficios de Pensión (Pension Benefits Section).

Otra alternativa será nombrar a un tutor legal.

Sin embargo, después de recibir los documentos del tutor legal, el cheque será enviado a nombre del tutor legal designado.

¿Puedo recibir mi pago de pensión de sobreviviente por depósito directo o en una tarjeta de débito de L&I?

Sí, siempre y cuando su institución financiera esté en los Estados Unidos y sea miembro del “Automated Clearing House.”

Le proporcionaremos un formulario de Autorización de método de pago cuando le notifiquemos sobre la concesión de la pensión. Si desea recibir más información sobre los pagos electrónicos, comuníquese con los Servicios de Pago de Beneficios Electrónicos al 360-902-4675 o al 1-844-728-5204.

¿Cuándo recibiré mis pagos de pensión?

Los pagos de sobreviviente se efectúan una vez por mes y usted los debe recibir alrededor del día 16 de cada mes. El correo a veces se retrasa, pero llámenos si no ha recibido el pago a fin de mes.

Para evitar retrasos en el correo o posibles robos de cheques, considere solicitar que el cheque de su pensión se deposite directamente en su cuenta de banco o en una tarjeta de débito de L&I. Llame a Servicios de Pago de Beneficios Electrónicos al 360-902-4675 o al 1-844-728-5204 para recibir ayuda.

¿Tengo que pagar impuestos federales por ingresos (income tax) sobre mis beneficios de pensión?

Bajo las leyes federales actuales, no hay impuestos sobre los beneficios de sobrevivientes. Refiérase a la sección de su formulario de impuestos por ingresos bajo "Ejemplos de ingresos que no necesita reportar" (Examples of Income You Do Not Report). Siempre y cuando continúe indicando "compensación para trabajadores," se considera como ingresos que no tienen que ser reportados.

360-902-5119

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281

APPENDIX E

An act related to the LEOFF Plan 2 special death benefit;

Sec. 1. RCW 41.26.048 is amended to read as follows:

(1) A two hundred fourteen thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title **51** RCW, except without a statute of limitations for applying for the benefit, by the department ~~of labor and industries~~. ~~The department of labor and industries shall notify the department of retirement systems by order under RCW **51.52.050**~~.

(3) The department shall determine eligibility under subsection (2) for the special death benefit for any beneficiaries who were denied the special death benefit for failing to meet the statute of limitations under Title 51 RCW. If the department of labor and industries determines the beneficiary is eligible for the special death benefit the department must provide the beneficiary an option to reelect their pension benefit under RCW 41.26.510(2) and if the member elects an ongoing pension benefit the department must pay the beneficiary retroactive to the date of the member's death.

(3)(a) Beginning July 1, 2010, and every year thereafter, the department shall determine the following information:

(i) The index for the 2008 calendar year, to be known as "index A;"

(ii) The index for the calendar year prior to the date of determination, to be known as "index B;" and

(iii) The ratio obtained when index B is divided by index A.

(b) The value of the ratio obtained shall be the annual adjustment to the original death benefit and shall be applied beginning every July 1st. In no event, however, shall the annual adjustment:

(i) Produce a benefit which is lower than two hundred fourteen thousand dollars;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

(c) For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index — Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

Sec. 2. RCW 41.26.510 is amended to read as follows:

(1) Except as provided in RCW **11.07.010**, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW **41.50.670**, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW **41.50.670**, shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) Except as provided in subsection (4) of this section, if a member who is killed in the course of employment or a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse, domestic partner, or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW **41.26.430**, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW **41.50.670** and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW **41.26.460** and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW **41.26.430**; if a surviving spouse or domestic partner who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse or domestic partner, share and share alike, until such child or children reach the age of majority;

if there is no surviving spouse or domestic partner eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse or domestic partner and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW **41.50.670**; or

(ii) If the member dies on or after July 25, 1993, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW **41.50.670**. Any accumulated contributions attributable to restorations made under RCW **41.50.165**(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse, domestic partner, or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW **41.50.670**, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) The retirement allowance of a member:

(a) Who is killed in the course of employment consistent with Title 51 RCW, except without a statute of limitations for applying for the benefit, as determined by the department ~~director of the department of labor and industries~~,

(b) Who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW **41.04.005**, or

(c) 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 dies while performing service in response to a disaster, major emergency, special event, federal exercise, or official training on or after March 22, 2014, is not subject to an actuarial reduction for early retirement as provided in RCW **41.26.430** or an actuarial reduction to reflect a joint and one hundred percent survivor option under RCW 41.26.460. 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.

(5) The retirement allowance paid to the spouse or domestic partner and dependent children of a member who is killed in the course of employment consistent with Title 51 RCW, except without a statute of limitations for applying for the benefit, as determined by the department ~~set forth in RCW 41.05.011(5)~~, shall include reimbursement for any payments of premium rates to the Washington state health care authority pursuant to RCW 41.05.080.

(6) In addition to the benefits provided in subsection (4) of this section, if the surviving spouse or domestic partner of a member who is killed in the course of employment is not eligible to receive industrial insurance payments pursuant to RCW 51.32.050 due to remarriage, the surviving spouse or domestic partner shall receive an amount equal to the benefit they would receive pursuant to RCW 51.32.050 but for the remarriage. This subsection applies to surviving spouses and domestic partners whose benefits pursuant to RCW 51.32.050 were suspended or terminated due to remarriage prior to July 24, 2015. The monthly payments to any surviving spouse or domestic partner who received a lump sum payment pursuant to RCW 51.32.050 shall be actuarially reduced to reflect the amount of the lump sum payment.

APPENDIX F

An act related to the LEOFF Plan 2 special death benefit;

Sec. 1. RCW 41.26.048 is amended to read as follows:

(1) A two hundred fourteen thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title **51** RCW, except without a statute of limitations for applying for the benefit, by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW **51.52.050**.

(3) The department of labor and industries shall determine eligibility under subsection (2) for the special death benefit for any beneficiaries who were denied the special death benefit for failing to meet the statute of limitations under Title 51 RCW. If the department of labor and industries determines the beneficiary is eligible for the special death benefit the department must provide the beneficiary an option to reelect their pension benefit under RCW 41.26.510(2) and if the member elects an ongoing pension benefit the department must pay the beneficiary retroactive to the date of the member’s death.

(3)(a) Beginning July 1, 2010, and every year thereafter, the department shall determine the following information:

(i) The index for the 2008 calendar year, to be known as "index A;"

(ii) The index for the calendar year prior to the date of determination, to be known as "index B;" and

(iii) The ratio obtained when index B is divided by index A.

(b) The value of the ratio obtained shall be the annual adjustment to the original death benefit and shall be applied beginning every July 1st. In no event, however, shall the annual adjustment:

(i) Produce a benefit which is lower than two hundred fourteen thousand dollars;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

(c) For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index — Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

LEOFF

Plan 2 Retirement Board

Duty Related Death Benefits

Final Proposal

December 13, 2023

Issue

- LEOFF Plan 2 beneficiaries have been denied a one-time special death benefit because they missed the LNI deadline for application

Issue History

- Brought to the Board’s attention by impacted beneficiaries
- Initial Briefing in July
- Comprehensive Briefing in November, Board motioned for final briefing on policy option to:
  - Shift determination of duty death LEOFF 2 benefit eligibility from LNI to DRS so that the LNI statute of limitations would no longer apply and the LEOFF 2 plan administrator, DRS, would be responsible for these LEOFF 2 benefit eligibility determinations
  - Apply this change retroactively to beneficiaries that have been denied special death benefits for not meeting LNI statute of limitations

Other Benefits Impacted

- LEOFF 2 benefits impacted by a death being determined duty related
  - The option to select an unreduced survivor pension benefit
  - Benefit enhancement minimum lump sum payment of $20,000
  - Access to PEBB health insurance with premium reimbursement

DRS Data

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

OSA Analysis

Preliminary Pricing Results *(Dollars in Millions)*	
Change in Present Value of Benefits (PVFB)	$1.5
Net Lump Sum Payments*	1.1
Change in Unfunded PVFB	**$2.6**
Unrounded Employee Rate Impact	**0.0045%**

**Includes the duty-death lump sum, retroactive pension payments, lump sum from SHB 1701, and repayment of past return of contributions.*

- **Based on 3 beneficiaries DRS provided to OSA**
- **Does not result in supplemental rate impact**
- **Actuarial assumptions and disclosures are included in Board materials**

LNI/DRS Update

- Update on ongoing discussions between LNI, DRS, and LEOFF 2 Board staff

Next Steps

1. Motion to endorse legislation (Option 1) shifting 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. This would apply retroactively to beneficiaries who were denied by LNI for timeliness.
2. Motion to endorse legislation (Option 2) removing LNI statute of limitations for the LEOFF 2 death benefits, keep determination of eligibility with LNI
   - This policy option would keep the determination of a death being duty related with LNI; however, it would remove the LNI statute of limitations. This would apply retroactively to beneficiaries who were denied by LNI for timeliness.
3. Motion for (Option 3) No action

LEOFF Plan 2 Retirement Board

Thank You

Jacob White

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Overpayment Responsibility

FINAL PROPOSAL

By Jacob White
Senior Research & Policy Manager
360-586-2327
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ISSUE STATEMENT

When employers make an error that causes a retiree to receive an overpayment, the member is responsible for paying back the overpayment they incorrectly received.

OVERVIEW

In most cases members are responsible for paying back any overpayments they receive. However, there are situations where the employer is responsible for paying back overpayments, as well circumstances where portions of the overpayment, or other financial impacts caused by the employer misreporting information to DRS, is subsidized by the pension plan.

BACKGROUND AND POLICY

When DRS receives additional information about an employee's final average salary or service credit, they are required under RCW 41.50.130 to recalculate the retiree's retirement benefit. This is referred to as a "recalc". A recalc may result in either an increase or a decrease to a retiree's benefit. The recalc is both retrospective and prospective. As a result, two things occur: first, the retiree's monthly benefit changes moving forward. Second, DRS must either pay the retiree an additional payment of the difference in pension payments the retiree received and should have received; or collect from the retiree the difference in the pension payments they have received, and the recalculated benefit amount they should have received.

DRS prioritizes recalcs that are a result of an audit finding, as those are most likely to have the largest impacts on members. However, DRS does not audit employers on a regular basis. In fact, there are some employers who have never been audited by DRS. Instead, DRS relies on its Employer Support Division to answer employer questions and provide employer education and outreach to ensure that reporting is as accurate as possible.

When a recalc occurs and a retiree's benefit is lowered, the retiree may also owe DRS an overpayment for the pension benefits they were incorrectly paid. The determination of whether the member or employer must pay the overpayment is governed by RCW 41.50.130 – 139.

Typically, employers are only required to pay an overpayment in the following situations:

- Failure to properly report retiree return to work hours[1]; and,
- Erroneously reporting that an employee has separated from service.[2]

There is a statute of limitations of three years, under RCW 41.50.130. Under this statute of limitations, DRS can only bill the member for three years of overpayments from the discovery of the overpayment. For example, if on January 1, 2022, DRS discovered that a retiree received 10 years of overpayments. These overpayments total $10,000, $1,000 a year. DRS cannot collect the full $10,000. Instead, they may only collect $3,000, for the last three years of overpayments. The remaining portion of the overpayment, as well as any lost investment earnings, is subsidized by the plan.

Waiver of Overpayments

In most instances, the member is responsible for repaying the overpayment. This includes overpayments for an employer misreporting earnable compensation to DRS. The Director of DRS, in certain instances, may waive the collection of an overpayment under RCW 41.50.138. However, this is limited to instances of “manifest injustice”.

DRS has not defined the term “manifest injustice” in WAC or in administrative policy. Generally, “manifest injustice” is used in criminal proceedings and “means something which is 'obviously unfair' or 'shocking to the conscience.' It refers to an unfairness that is direct, obvious, and observable.”[3] DRS has only utilized their ability to waive collection in limited circumstances. Below is a chart of the number of times they have granted waiver of overpayment in recent years:

[1] RCW 41. 50.139

[2] RCW 41.50.139

[3] https://definitions.uslegal.com/m/manifest-injustice

Year	Approvals
1998	1
2006	2
2008	12
2010	1
2011	1
2012	4
2014	15
2015	2
2016	2
2017	11
2018	4
2021	2

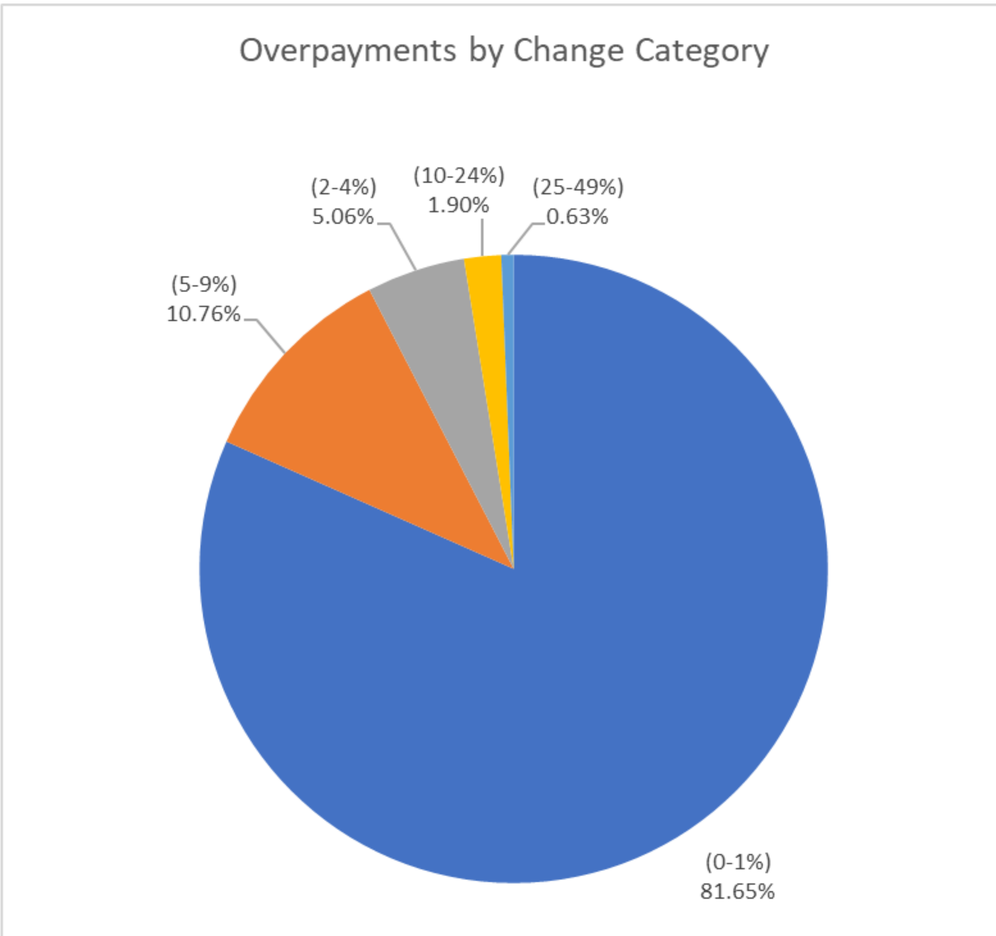
While the term is common in criminal law, it is also used in administrative law. For example, the Washington State Department of Social and Health Services (DSHS) uses the “manifest injustice” standard as an element of multi-factor test for waiving collection of certain client overpayments. DSHS has defined the term as:

> The overpayment is clearly unfair to the client based on the way that it occurred, and repayment would compromise the client's ability to meet basic needs.
>
> Factors which can be used as evidence […]:
>
> The client cannot repay the overpayment without drawing on funds needed for basic requirements. Document income and expenditures. Verify only questionable amounts.
>
> It is clear the client acted in good faith by following the rules required to maintain eligibility for public assistance.
>
> > a) The client reported income timely and accurately
> > b) The overpayment was solely due to department error; and
> > c) The client has "clean hands". That is, without fault. The client fulfilled all their responsibility to inform the department of changes in their circumstances.[4]

[4] https://www.dshs.wa.gov/book/export/html/21

Overpayment Data

DRS provided the Board with five years of LEOFF 2 Member overpayment data. The data showed that there were 3,485 recalcs that resulted in a benefit change. Of those, 150 resulted in overpayments. Twenty-Seven (27) of those recalcs had an impact to the members ongoing monthly benefit greater than 1%. Below is a chart of the 150 overpayments percentage impact on member's benefits:



Office of the State Actuary Analysis

During the November 2023 Board meeting, the Board motioned to receive a final briefing on the policy option to amend the law so that employers must pay back member overpayments when the overpayment is due to an employer error and for the statute of limitations for collecting overpayments to be shortened from three years to one year

OSA provided an analysis of the Board's proposal (see Appendix A). As part of that analysis OSA identified that shifting responsibility for paying the overpayments from the member to the employer has no expected impact on the LEOFF 2 trust fund, though it will impact employer budgets. OSA found that shortening the statute of limitation for collecting overpayments from three years to one year will result in a cost to the pension system if future overpayments continue beyond one year, because the trust fund will recover less overpaid benefits than under current law. Based on data supplied by DRS, OSA estimated that over the next 25 years, the trust fund will recover approximately $1 million less than under current law. OSA stated that this impact will not result in a supplemental contribution rate for this bill (see Appendix B).

POLICY OPTIONS

Option 1: Employer responsible and shorten statute of limitations

Employer must pay back overpayments when the overpayment is due to an employer error and the statute of limitations for collecting overpayments is shortened from 3 years to 1 year.

Option 2: Employer responsible, no change to statute of limitations

Option 3: Further study issue next interim

SUPPORTING INFORMATION

Appendix A: Bill Draft

Appendix B: OSA Email – Analysis of LEOFF 2 Overpayments Proposal, 12/1/23.

APPENDIX A

Bill Draft

AN ACT relating to pension overpayment responsibility; amending RCW 41.50.130 and adding a new section to chapter 41.50 RCW.

Sec. 1. RCW 41.50.130 is amended to read as follows:

(1) The director may at any time correct errors appearing in the records of the retirement systems listed in RCW 41.50.030. Should any error in such records result in any member, beneficiary, or other person or entity receiving more or less than he or she would have been entitled to had the records been correct, the director, subject to the conditions set forth in this section, shall adjust the payment in such a manner that the benefit to which such member, beneficiary, or other person or entity was correctly entitled shall be paid in accordance with the following:

(a) In the case of underpayments to a member or beneficiary, the retirement system shall correct all future payments from the point of error detection, and shall compute the additional payment due for the allowable prior period which shall be paid in a lump sum by the appropriate retirement system.

(b) In the case of overpayments to a retiree or other beneficiary, the retirement system shall adjust the payment so that the retiree or beneficiary receives the benefit to which he or she is correctly entitled. The retiree or beneficiary shall either repay the overpayment in a lump sum within ninety days of notification or, if he or she is entitled to a continuing benefit, elect to have that benefit actuarially reduced by an amount equal to the overpayment. The retiree or beneficiary is not responsible for repaying the overpayment if the employer is liable under RCW 41.50.139 **or New Section**.

(c) In the case of overpayments to a person or entity other than a member or beneficiary, the overpayment shall constitute a debt from the person or entity to the department, recovery of which shall not be barred by laches or statute of limitations.

(2) Except in the case of actual fraud **or overpayments under Sec 2**, in the case of overpayments to a member or beneficiary, the benefits shall be adjusted to reflect only the amount of overpayments made within three years of discovery of the error, notwithstanding any provision to the contrary in chapter 4.16 RCW.

(3) Except in the case of actual fraud, no monthly benefit shall be reduced by more than fifty percent of the member's or beneficiary's corrected benefit. Any overpayment not recovered due to the inability to actuarially reduce a member's benefit due to: (a) The provisions of this subsection; or (b) the fact that the retiree's monthly retirement allowance is less than the monthly payment required to effectuate an actuarial reduction, shall constitute a claim against the estate of a

member, beneficiary, or other person or entity in receipt of an overpayment.

(4) Except as provided in subsection (2) of this section, obligations of employers or members until paid to the department shall constitute a debt from the employer or member to the department, recovery of which shall not be barred by laches or statutes of limitation.

NEW SECTION. Sec. 2. (1) If an overpayment for a LEOFF 2 retiree was due to an employer erroneously reporting LEOFF 2 member information to the department, and the erroneous reporting was not the result of the member’s nondisclosure, fraud, misrepresentation, or other fault, the employer is liable for the resulting overpayment.

(2) Upon receipt of a billing from the department, the employer shall pay into the LEOFF 2 retirement system trust fund the amount of the overpayment plus interest as determined by the director. The employer's liability under this section shall not exceed the amount of overpayments plus interest received by the retiree within one year of the date of discovery, except in the case of fraud committed by the employer. In the case of fraud committed by the employer, the employer is liable for the entire overpayment plus interest.

From:	Masselink, Luke
To:	White, Jacob (LEOFF)
Cc:	Nelsen, Steve (LEOFF); Won, Lisa; DeCamp, Mitch; Serra, Frank
Subject:	LEOFF 2 Overpayments Proposal
Date:	Friday, December 1, 2023 10:36:22 AM
Attachments:	Bill Draft.docx

External Email

Jacob,

As requested, we reviewed the impact on LEOFF 2 plan funding associated with the benefit overpayment change outlined in the attached bill draft. Below is a summary of our preliminary analysis.

-

Summary of Proposed Change

This change is comprised of two components, both of which are applied in the event an overpayment is due to an employer's reporting error.

1. The employer would now be responsible for the reimbursement of the overpayments, rather than the annuitant.
2. Current law requires reimbursement of overpayments received by the annuitant, plus applicable interest, within three years of the date of discovery. This proposed change will reduce the reimbursement requirement from three years to one year from the date of discovery.

Summary of Cost Impacts

- Component 1 has no expected impact on the LEOFF 2 trust fund, though it will impact employer budgets.
- Component 2 will result in a cost to the pension system if future overpayments continue beyond 1 year, because the trust fund will recover less overpaid benefits than under current law. **Based on data supplied by DRS, we estimate that over the next 25 years, the trust fund will recover approximately $1 million less than under current law. This impact will not result in a supplemental contribution rate for this bill.**

Special Data

- DRS provided data containing all corrected LEOFF 2 overpayments that occurred over the past five years. Most of these overpayments were the result of an employer initially misreporting a retiree's salary or service. For example, an employer may have mistakenly reported a portion of a member's salary as pensionable, when in fact it was not.
- The data showed that approximately 30 overpayments were corrected each year, or 158 over the entire timeframe listed above. On average, overpayments were corrected within 20 months of the original benefit calculation date. Once the benefit was recalculated with the correct data, the average monthly benefit reduction was $62 per month.

Assumptions and Methods

- We relied on the DRS-provided data to estimate the frequency and severity of historical overpayments. We assume this experience will continue to occur in the same manner in the future. Actual overpayments could be more or less than assumed.
- To estimate the cost of this proposal, we calculated the annual expected difference between the overpayment reimbursements that the LEOFF 2 trust fund would have received under a one-year cap versus a three-year cap, based on the data provided by DRS. This annual amount was roughly $16,000. We then assumed this same loss over each of the next 25 years, grown annually with assumed salary and membership growth. This resulted in a 25-year future value cost of approximately $1 million.
- This calculation assumes salary growth of 3.25%, consistent with our 2023 Economic Experience Study. It also assumes annual membership growth of 0.80%, consistent with the Projection and Risk Assumptions Study System Growth assumption.
- Unless otherwise noted in this email, we relied on the same assumptions, methods, and data as the 2022 Actuarial Valuation Report.

Disclosures

We prepared this analysis to support LEOFF 2 deliberations during the 2023 Interim. This analysis may not be appropriate for other purposes. In my opinion, the actuarial assumptions, methods, and data used are reasonable for the purposes of this pricing exercise. However, the use of another set of assumptions, methods, and data may also be reasonable and might produce different results.

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.

-
If this bill were to advance during session, we would create an Actuarial Fiscal Note (AFN). The results of that AFN may change from what we have shown above, but we do not expect any changes to be significant. We may also prepare sensitivity analysis as part of that AFN, illustrating how the costs of this proposal could look different than our preliminary best estimate.

We are available to answer any questions,
Luke

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OSA website
"Supporting financial security for generations."
Pronouns (He/Him)

LEOFF
Plan 2 Retirement Board

Overpayment Responsibility

Final Proposal
December 13, 2023

Issue

- When employers make an error that causes a retiree to receive an overpayment the member is responsible for paying back the overpayment they incorrectly received

Issue History

- Initial Briefing in July
- Comprehensive Briefing in September
- Board requested a Final briefing on policy option to have:
  - Employer pay the overpayment when the overpayment is due to an employer error
  - Shorten the Statute of Limitations (SOL) from three (3) years to one (1) year when collecting overpayments

DRS Data

- Approximately 30 overpayments corrected each year
- Overpayments corrected within 20 months (average) of original benefit calculation date
- Average monthly benefit reduction was $62 per month after recalculation

OSA Analysis

- Shifting overpayment responsibility to the employer has no expected impact to LEOFF 2 Trust Fund
- Changing SOL from 3 years to 1-year:
  - Over 25 years, LEOFF 2 Trust Fund will recover approximately $1 million (estimated) less than under current law
  - This impact will not result in a supplemental contribution rate for this bill
- OSA Assumptions and Methods are included in the Board Materials (Appendix B)

Next Steps

1. Motion to endorse legislation making employer responsible and shortening statute of limitations from 3 years to 1 year

2. Motion to endorse legislation to have employer responsible for overpayment, but no changes to statute of limitations

3. No action

LEOFF
Plan 2 Retirement Board

Thank You

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LEOFF Plan 2 Retirement Board

December 13, 2023

Disability Conversions

FINAL PROPOSAL

By Jacob White

Senior Research & Policy Manager

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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:

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

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.

(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

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.

(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

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

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

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

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 7th, 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
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Phone 360.786.6144 | Fax 360.586.8135 | *Supporting financial security for generations.*

LEOFF
Plan 2 Retirement Board

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

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

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

LEOFF Plan 2 Retirement Board

Thank You

Jacob White

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LEOFF

Plan 2 Retirement Board

Board Salary Setting Authority

December 13, 2023

Background

- November briefing on succession planning discussed staff salaries and WMS structure
- Interest in options regarding salary setting authority – fiduciary responsibility

Policy Option 1

- Stay within current salary structure with changes to process and notification requirements
  - Board has authority to band positions
  - Board has authority to grant exceptions to band maximums

Pros/Cons – Option 1

- Pros
  - Utilizes familiar WMS process
  - Allows the Board slightly more flexibility in setting salaries to support fiduciary responsibilities
  - Streamlines approval process
- Cons
  - Legislation is required
  - Salary setting restricted by band maximums
  - May have unintended consequences across state service

Policy Option 2

- Board provided full salary setting authority with notification requirements to OFM and Legislature

Pros/Cons – Option 2

- Pros
  - Board would have full authority for setting salaries in support of fiduciary responsibilities
  - Most flexibility for future succession planning (OFM and Legislative staff)
  - Structure would be more consistent with similarly situated boards like WSIB
- Cons
  - Legislation is required

Next Steps - Options

1. Motion for Policy Option 1
2. Motion for Policy Option 2
3. No action

LEOFF
Plan 2 Retirement Board

Thank You

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Option 2

AN ACT Relating to LEOFF board authority for agency compensation; and amending RCW 41.06.070 and 41.26.717.

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

Sec. 1. RCW 41.06.070 is amended to read as follows:

Exemptions to chapter—Right of reversion. (1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

(k) Commissioned and enlisted personnel in the military service of the state;

(l) Inmate, student, and temporary employees, and part-time professional consultants, as defined by the director;

(m) Officers and employees of the Washington state fruit commission;

(n) Officers and employees of the Washington apple commission;

(o) Officers and employees of the Washington state dairy products commission;

(p) Officers and employees of the Washington tree fruit research commission;

(q) Officers and employees of the Washington state beef commission;

(r) Officers and employees of the Washington grain commission;

(s) Officers and employees of any commission formed under chapter 15.66 RCW;

(t) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(u) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(v) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(w) Staff employed by the department of commerce to administer energy policy functions;

(x) The manager of the energy facility site evaluation council;

(y) A maximum of ten staff employed by the department of commerce to administer innovation and policy functions, including the three principal policy assistants exempted under (v) of this subsection;

(z) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5);

(aa) Officers and employees of the consolidated technology services agency created in RCW 43.105.006 that perform the following functions or duties: Systems integration; data center engineering and management; network systems engineering and management; information technology contracting; information technology customer relations management; and network and systems security;

(bb) The executive director of the Washington statewide reentry council.

<u>(cc) Employees of the law enforcement officers' and fire fighters' plan 2 retirement board</u>

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(c) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the director may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the office of financial management stating the reasons for requesting such exemptions. The director shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, or is a senior expert in enterprise information technology

infrastructure, engineering, or systems, the director shall grant the request. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

(4) The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (t) and (2) of this section, shall be determined by the director. Changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

(5)(a) Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

(b) Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

(c) A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

(6)(a) Notwithstanding the provisions of subsection (5) of this section, a person cannot exercise the right of reversion to a classified position if the employee has been given written notice that they are the subject of an active workplace investigation in which the allegations being investigated, if founded, could result in a finding of gross misconduct or malfeasance. The right of reversion is suspended during the pendency of the investigation. For the purposes of this subsection, written notice includes notice sent by email to the employee's work email address.

(b) The office of financial management must adopt rules implementing this section.

Sec. 2. RCW 41.26.717 is amended to read as follows:

Option 2

Additional duties and powers of board. The law enforcement officers' and firefighters' plan 2 retirement board established in section 4, chapter 2, Laws of 2003 has the following duties and powers in addition to any other duties or powers authorized or required by law. The board:

(1) Shall hire an executive director, and shall fix the salary of the executive director subject to periodic review by the board and ~~in consultation with~~ shall provide notice to the director of the office of financial management and ((~~shall provide notice to~~)) the chairs of the house of representatives and senate fiscal committees of changes;

~~(2)~~ Shall employ other staff as necessary to implement the purposes of chapter 2, Laws of 2003. The board shall set staff salaries subject to periodic review by the board and shall provide notice to the director of the office of financial management and the chair of the house of representatives and senate fiscal committees of changes; ((~~Staff must be state employees under Title 41 RCW~~))

(3) Shall adopt an annual budget as provided in section 5, chapter 2, Laws of 2003. Expenses of the board are paid from the expense fund created in RCW 41.26.732;

(4) May make, execute, and deliver contracts, conveyances, and other instruments necessary to exercise and discharge its powers and duties;

(5) May contract for all or part of the services necessary for the management and operation of the board with other state or nonstate entities authorized to do business in the state; and

(6) May contract with actuaries, auditors, and other consultants as necessary to carry out its responsibilities. [2018 c 272 § 2; 2003 c 92 § 1.]

OPTION 1

AN ACT Relating to LEOFF board authority for agency compensation; and amending 41.26.717.

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

Sec. 2. RCW 41.26.717 is amended to read as follows:

Additional duties and powers of board. The law enforcement officers' and firefighters' plan 2 retirement board established in section 4, chapter 2, Laws of 2003 has the following duties and powers in addition to any other duties or powers authorized or required by law. The board:

(1) Shall hire an executive director, and shall fix the salary of the executive director subject to periodic review by the board ((~~and in consultation with the director of the office of financial management~~)) <u>and shall provide notice to the director of the office of financial management and</u> chairs of the house of representatives and senate fiscal committees of changes;

(2) Shall employ other staff as necessary to implement the purposes of chapter 2, Laws of 2003. <u>Notwithstanding the provisions of RCW 41.06, the board will determine the appropriate salary banding of positions and any exceptions to band maximums.</u> Staff must be state employees under Title 41 RCW;

(3) Shall adopt an annual budget as provided in section 5, chapter 2, Laws of 2003. Expenses of the board are paid from the expense fund created in RCW 41.26.732;

(4) May make, execute, and deliver contracts, conveyances, and other instruments necessary to exercise and discharge its powers and duties;

(5) May contract for all or part of the services necessary for the management and operation of the board with other state or nonstate entities authorized to do business in the state; and

(6) May contract with actuaries, auditors, and other consultants as necessary to carry out its responsibilities. [2018 c 272 § 2; 2003 c 92 § 1.]

LEOFF Plan 2 Retirement Board

December 13, 2023

Non-Duty Disability Leave

COMPREHENSIVE REPORT

By Jacob White

Senior Research & Policy Manager

360-586-2327

jacob.white@leoff.wa.gov

ISSUE STATEMENT

There were concerns raised that the Department of Retirement Systems (DRS) was not always treating temporary non-duty and temporary duty disability leave consistently for purposes of basic salary in situations where members utilized leave "buy-back".

OVERVIEW

There was concern brought to the Board that DRS may be treating basic salary differently based on whether the member was out on temporary duty versus temporary non-duty leave. Specifically, in instances where the member was injured, took paid leave, and then utilized the employer's "buy-back" program by providing their disability or worker's compensation check to the employer in exchange for having their annual leave backed out of the system and put back into their leave bank.

After researching the concern further, DRS is treating members' basic salary the same in both situations. The service credit and basic salary for the leave that has been "bought back" is not reportable compensation in either situation. The confusion stems from how DRS is applying the Temporary Duty Disability (TDD) purchase service credit versus the Authorized Leave of Absence (ALOA) purchase service credit. One of the options that DRS provides to employers for TDD purchase service credit gives the impression that the member's service credit and basic salary for the personal leave they bought back is being reported. Instead, what has occurred is the member has purchased service credit with their workers-compensation or disability insurance money, not bought-back their annual leave.

Nonetheless, there remains a scenario where LEOFF 2 members are unable to receive service credit when they are out on temporary non-duty disability because of the interplay between their Collective Bargaining Agreement, the definition of basic salary, and the requirements of purchasing service credit.

BACKGROUND AND POLICY ISSUES

In 2023, SB 5625, Concerning public employee retirees, was proposed but did not pass out of the legislature. Section 18 of that bill sought to address a concern that DRS was treating what is considered basic salary different based on whether the member was out on temporary duty versus temporary non-duty leave. The law does not differentiate between duty and non-duty in this respect, so the bill sought to clarify that basic salary should be treated the same for purposes of sick leave or vacation leave used by the member. However, DRS is treating basic salary the same for temporary duty and non-duty disability. Instead, the procedure for temporary duty and non-duty disability to purchase service for a break in service due to their disability is different. This procedural difference is due to differences between the type of purchase service credit that members on duty disability are eligible for purchasing versus the type that members on non-duty disability are eligible for purchasing.

In 1989, SB 5353 was enacted into law. This allowed for members of LEOFF 2 to purchase up to 6 consecutive months of service credit for periods of temporary duty-related disability without paying interest. The member was responsible for paying the member contributions and the employer paying the employer contributions.

In 2017, SHB 1271 was enacted into law. This allowed for members of LEOFF 2 (and other DRS administered retirement plans) to purchase up to 24 consecutive months of service credit for periods of temporary duty-related disability with interest. The member was responsible for paying the member contributions plus any interest incurred and the employer paying the employer contributions. During the implementation of SHB 1271 DRS issued an Employer Notice (see Appendix A) providing two methods for employers to report to DRS member's purchasing TDD service credit.

Method 1 allowed the employer to report to DRS the regular compensation the member would have earned if not on TDD. Under method 2 the employer reports the leave used, then makes adjustments to back-out and restore the member's leave and allow the member to contact DRS directly to purchase TDD service credit. After the member contacted DRS, DRS would create an invoice of contributions and interest for the employer, compounded monthly until the employee purchases their share of the service credit.

In developing "Method 1" it appears DRS sought to simplify the process for members, employers, and DRS, while also limiting the amount of interest members would potentially incur. This method does not increase costs for the retirement systems because the contributions would be the same under either method and “Method 1” helps prevent lost investment earnings from occurring due to delayed contribution payments.

Members who have a break in service due to temporary non-duty disability are not eligible for TDD Purchase Service Credit. Instead, they are eligible for Authorized Leave of Absence (ALOA) Purchase Service Credit. ALOA purchase service credit is paid for completely by the member to DRS, both member and employer contributions. If the member does not purchase the service credit within 5 years, they must pay the full actuarial value of the service credit. ALOA may apply to many different situations that could result in a member having a break in service, not just temporary non-duty disability. For example, it is commonly used for maternity or paternity leave.

A member who is injured and unable to work may choose to use paid leave instead of purchasing service credit. Since paid leave is considered basic salary the member would earn service credit for that time. Workers’ compensation or disability payments are not considered basic salary. Below is a chart from DRS identifying what types of payments are or are not basic salary and the corresponding WAC for each type of payment.

Type of Payment	LEOFF 1 Basic Salary?	LEOFF 2 Basic Salary?
Additional Duty Pay	Yes - WAC **415-104-3205**	Yes - WAC **415-104-360**
Allowances (i.e. uniform)	No - WAC **415-104-3404**	No - WAC **415-104-390**
Basic Monthly Rate	Yes - WAC **415-104-3200**	Yes - WAC **415-104-360**
Cafeteria Plans	No - WAC **415-104-3303**	Yes - WAC **415-104-367**
Deferred Wages Attached to Position	Yes - WAC **415-104-3201**(1)	Yes - WAC **415-104-363**(1)
Deferred Wages not attached to a Position	No - WAC **415-104-3306**	No - WAC **415-104-363**(2)
Disability Payments	No - WAC **415-104-340**	No - WAC **415-104-380**
Education Attainment Pay	No - WAC **415-104-3301**	Yes - WAC **415-104-375**
Employer taxes/contributions	No - WAC **415-104-3401**	No - WAC **415-104-383**
Fringe Benefits, including insurance	No - WAC **415-104-3402**	No - WAC **415-104-385**
Illegal Payments	No - WAC **415-104-3403**	No - WAC **415-104-387**
Leave Cash Outs/Severance	No - WAC **415-104-3304**	No - WAC **415-104-401**
Longevity	Yes - WAC **415-104-311**	Yes - WAC **415-104-375**
Overtime	No - WAC **415-104-3305**	Yes - WAC **415-104-370**
Paid Leave	Yes - WAC **415-104-3203**	Yes - WAC **415-104-373**
Payments in Lieu of Excluded Items	No - WAC **415-104-350**	No - WAC **415-104-405**
Performance Bonuses	No - WAC **415-104-3302**	Yes - WAC **415-104-377**
Retroactive Salary Increase	Yes - WAC **415-104-3202**	Yes - WAC **415-104-365**
Reimbursements	No - WAC **415-104-3404**	No - WAC **415-104-390**
Retirement or Termination Bonuses	No - WAC **415-104-3406**	No - WAC **415-104-395**
Shift Differential	Yes - WAC **415-104-3204**	Yes - WAC **415-104-379**
Special Salary or Wages	No - WAC **415-104-330**	Yes - WAC **415-104-375**
Standby Pay	No - WAC **415-104-3405**	No - WAC **415-104-393**
Tuition/Fee Reimbursement	No - WAC **415-104-3404**	No - WAC **415-104-390**
Workers' Compensation	Not Applicable	No - WAC **415-104-380**

The potential issue initially raised was regarding the treatment of the salary and service credit for a member out on temporary duty or non-duty disability who used paid leave, but through their employer "buy-back" program had that paid leave backed out of the system in exchange for providing their employer with their worker's compensation or disability insurance payment. In this situation DRS does not consider whether the member was out on duty or non-duty disability, in either instance the time would not be reportable as basic salary because the member no longer used paid leave for that period.

The scenario that results in a member being unable to receive service credit for the time they were out on temporary duty disability occurs when the member has a CBA that requires them to utilize the buy-back program, and the member retires instead of returning to work. If the member's CBA made the buy-back optional they could choose to not utilize that and instead use paid leave. However, since they are required to use the buy-back program and because they are ineligible for ALOA purchase service credit because they never returned to work, they cannot receive service credit for this time.

POLICY OPTIONS

Option 1: Amend authorized leave of absence law to allow members retiring immediately after being out on temporary non-duty disability to be eligible to purchase service credit.

SUPPORTING INFORMATION

Appendix A: DRS Employer Notice 17-007, Employer Reporting Related to Workers' Compensation/Temporary Duty Disability.

APPENDIX A

DRS Email 17-007, Employer Reporting Related to Workers' Compensation/Temporary Duty Disability

Posted on March 28, 2017

Notice No.: 17-007
Date: March 28, 2017
Applies to: All Employers Except WSPRS
Subject: Employer Reporting Related to Workers' Compensation/Temporary Duty Disability

Workers' compensation, also known as temporary duty disability (TDD), can be a complex payroll issue. This notice provides information on reporting data to DRS for members in TDD status.

Some employers may allow employees to:

- use accrued leave while waiting for workers' compensation/TDD determinations
- use accrued leave to supplement their workers' compensation/TDD payments
- use their worker's compensation/TDD payments to restore leave balances through a buy-back program
- use shared leave while on TDD
- be made whole without using accrued leave

There are two methods for reporting data to DRS for members in TDD status.

Method 1 – Employer reports the regular compensation the employee would have earned if not on TDD.

Steps to complete:

1. Employers should enter into a written agreement with the employee regarding the obligation to repay the member contributions to the employer.
2. Employers must report the regular compensation the employee would have earned. This must be reported on the current transmittal and cannot be reported retroactively.

Note: Buy back/restoration of accrued leave remains an internal accounting function and does not affect retirement reporting.

Method 2 – Employer reports the leave used, and makes adjustments to reverse leave restored and allows employee to contact DRS directly to purchase service, creating an invoice of contributions and interest for the employer and compounded monthly until the employee purchases their share of the service credit.

Steps to complete:

1. Employer reports leave used to DRS, if reportable compensation (shared leave is not reportable for some plans).
2. Employee turns in worker's compensation check to employer to restore (buy back) some or all leave used.
3. Employer credits the employee's leave balance based on the amount of hours of leave the workers' compensation check will restore.
4. Employer uses the retirement transmittal to back out the restored leave previously reported to DRS in Step 1.
5. Employee applies directly to DRS to purchase service credit for each period of absence due to TDD status.
6. Employee will receive an Optional Bill for the member contributions from DRS.
7. Employers will receive an invoice for employer contributions only if and when the employee pays the optional bill amount. Payments are subject to interest (currently 7.8%) compounded monthly from the time of the disability.

APPENDIX A

Relevant statutes:

- PERS: **RCW 41.40.038**
- SERS: **RCW 41.35.070**
- PSERS: **RCW 41.37.060**
- TRS: **RCW 41.32.0641**
- LEOFF: **RCW 41.26.470 (3)**

Prior notices:

- **E07-020** (All Employers)
- **94-006** (PERS)
- **89-004** (LEOFF)
- **86-011** (PERS)

If you have any questions regarding this DRS Notice, please contact Employer Support Services at 360-664-7200, option 2, or 800-547-6657, option 6, option 2; or **email us**.

LEOFF

Plan 2 Retirement Board

Non-Duty Disability Leave

Comprehensive Report

December 13, 2023

Issue

- Concerns that DRS is not always treating temporary non-duty and temporary duty disability leave consistently for purposes of basic salary in situations where members utilized leave “buy-back”
- Research confirmed DRS is treating members’ basic salary the same in both situations. The service credit and basic salary for the leave that has been “bought back” is not reportable compensation in either situation
- Some CBAs and the requirements of Authorized Leave of Absence (ALOA) purchase service credit create a situation where members on temporary non-duty disability are unable to receive service credit in certain situations

Legislative History

- SB 5625 (2023) – DRS Ombuds Bill
- Initial Briefing in September
  - Board requested a comprehensive briefing

Basic Salary

- Paid Leave is basic salary
- Disability payments/Workers Compensation/Private insurance are not basic salary
- Some LEOFF employers **require** their employees to "buy back" the paid leave they have taken while out on temporary disability using their insurance payments
  - In Collective Bargaining Agreements
- Members may be able to purchase service credit for the time they bought back

Temporary Duty Disability Purchase Service Credit

- SB 5353 (1989) - Members of LEOFF 2 may purchase up to 6 consecutive months of service credit for periods of temporary duty disability (TDD)
- SHB 1271 (2017) - Members of LEOFF 2 (and other plans) may purchase up to 24 consecutive months of service credit for periods of TDD
- Employer Notice 17-007
  - Method 1 - Employer reports the regular compensation the employee would have earned if not on TDD
  - Method 2 – Employer reports the leave used, then makes adjustments to back-out and restore the member's leave allowing the member to contact DRS directly to purchase TDD service credit. After the member contacted DRS, DRS would create an invoice of contributions and interest for the employer, compounded monthly until the employee purchases their share of the service credit

Authorized Leave of Absence

- A break in service for a non-duty injury is not covered by the TDD Purchase Service Credit laws
- Instead, it would fall under the general Authorized Leave of Absence Purchase Service Credit Law
  - Up to 24 months of service credit
  - Only available to members who return to work after their leave of absences, not those who retire
  - Have to purchase before or at the time of retirement

Purchase Service Credit

- TDD
  - TDD Purchase Service Credit - 6 months no interest + 24 months with interest
  - Employer collects member contributions (employer pick-up)
  - Employer pays employer contributions
  - State pays state contributions
- Temporary Non-Duty Disability
  - Authorized Leave of Absence - 24 months
  - Member pays all contributions if within 5 years of returning to work
  - After 5 years member pays actuarial value of the service credit

Policy Options

1. Amend authorized leave of absence law to allow members retiring immediately after being out on temporary non-duty disability to be eligible to purchase service credit

Next Steps

1. Motion to consider the Comprehensive Report as the Final Proposal and endorse legislation on policy Option 1
    - Amend authorized leave of absence law to allow members retiring after being out on temporary non-duty disability to be eligible to purchase service credit
2. Motion to study further next interim
3. No action

LEOFF
Plan 2 Retirement Board

Thank You

Jacob White

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FINAL PROPOSAL

By Jacob White

Senior Research & Policy Manager

360-586-2327

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ISSUE STATEMENT

In the month a retiree or survivor passes away, the last month benefit payment is prorated based on the number of days the person was alive in the month. Frequently this results in an overpayment and an invoice being sent to the family or estate to collect any amount that should have been prorated.

OVERVIEW

This report provides background information on the month of death payment, including the current policy, legislative history, policy considerations, costs to the plan and data regarding who is impacted by the policy.

BACKGROUND AND POLICY ISSUES

Current Practice

Retirement benefits are paid on a monthly basis, but beneficiaries (retirees and survivors) only receive benefits up to their date of death. If DRS is not notified of the death before the cut-off time for processing the payment, the estate will receive a payment for the full month. In these cases, DRS sends an invoice to the estate for repayment of any benefits paid beyond the date of death. This practice also applies to the month of death payment of purchase service credit and purchase of additional annuity.

For example, if a retiree or survivor dies on day 10 of a 30-day month, they receive prorated benefits for only 1/3 of the month. If they have already received a check for the full month, DRS will seek repayment of the remaining 2/3.

This is a longstanding administrative practice. While statute does not expressly state when benefits should cease after death, DRS has general authority (see RCW 41.50.130) to bill retirees and survivors for overpayments of benefits.

There are multiples ways in which DRS may be notified of a member death through. For residents of Washington State who die, DRS receives a monthly data report from the Department of Health. For retirees or survivor beneficiaries who are not residents of Washington State it can be more difficult to quickly receive notification of a death. The Social Security Administration (SSA) has a Death Master File which contains SSA records of deceased persons possessing social security numbers and whose deaths were reported to the SSA. DRS is currently working with SSA to be able to utilize the Death Master File to identify member deaths. DRS also receives notification of member deaths from banks when an automatic deposit is denied due to the account owner's death.

Administrative Workload Data (all DRS administered plans)

Each month, on average, DRS retires 1,000 members and is notified of 500 retiree deaths. For 2018, there were 856 active invoices for month of death overpayments across, as of July 31. Approximately 90% of the overpayments DRS processes are connected to the month of death payment.

Social Security

Social Security benefits are not prorated for the month of death. Instead, a member does not receive a benefit if they die at any point during the month because the benefit accrues at the end of the month. Furthermore, Social Security payments are delayed one month, meaning that the payment a member receives in September is actually their August payment. This gives Social Security Administration (SSA) additional time to receive notice that a member is deceased and stop payment of the benefit. If a benefit is paid for the month of death, then SSA collects that payment from the estate.[1]

Policy Considerations

The proration process can cause burdens for grieving families and for estates. Survivors are often in the position of getting a collection notice during a time of grief. Furthermore, proration can sometimes interfere with the deduction of insurance premiums and payment of insurance claims made during the retiree's month of death.

There is an administrative cost for prorating a benefit, which includes the collection of overpayments. According to DRS, enacting this proposal would likely not result in a savings, but instead would result in a redeployment of staff resources that are currently dedicated to pursuing these repayments.

2019 Legislative Session

During the 2019 legislative session the LEOFF 2 Board and Select Committee on Pension Policy (SCPP) endorsed HB 1414/SB 5335 – Month of Death Payment. This bill provided a retiree's beneficiary or estate a full month's benefit for the month a retiree or survivor passes away. Both bills did not make it out of the house of origin.

What is the cost of this proposal?

This proposal results in a cost to the LEOFF 2 Plan because members, or their survivors, will retain the full month's pension payment in the month of death, rather than having that month's benefit prorated. The Office of the State Actuary (OSA) has completed a Fiscal Note for HB 1414/SB 5355. The costs from this bill will be divided according to the standard funding method for LEOFF 2: 50 percent member, 30 percent employer, and 20 percent state.

The OSA fiscal note identified the contribution rate impact of this benefit improvement for LEOFF 2 is:

Contribution Rate Impact	
Employee	0.03%
Employer	0.02%
State	0.01%

[1] https://www.ssa.gov/pubs/EN-05-10077.pdf

OSA also identified that the budget impact is:

Budget Impact	
2019-2021	**Dollars in Millions**
State - General Fund	$0.4
Local Government	$0.8
2021-2023	**Dollars in Millions**
State - General Fund	$0.5
Local Government	$0.7
2019-2044	**Dollars in Millions**
State - General Fund	$5.4
Local Government	$8.4

To arrive at this cost, OSA assumed the distribution of deaths would be uniform throughout any given month. As a result, this proposal will provide on average an additional half-month pension payment to all annuitants.

If this proposal is enacted OSA also recommended administrative factors be recalculated. Administrative factors are used to determine optional payment forms, such as survivor benefit options, purchase service credit, and purchase of additional annuity. OSA calculates factors that are actuarially equivalent, and the current factors will need to be adjusted to reflect the additional benefit provided by this proposal.

Data from DRS

In 2018, 37 LEOFF 2 Members died. Of those 37 members, nine members had overpayments caused by DRS not receiving notification of death after the cut-off date for issuing a pension payment to the member. These nine overpayments were for an average of $4,583. Of those nine members, only one member received an overpayment that would have been completely eliminated by this proposed change. This overpayment was for $1,966.

Other Options

OSA previously presented an alternative option to the Select Committee on Pension Policy. This option shifts the cost from the pension system to the individual members wanting this benefit improvement by allowing members the option at retirement to either have their benefits prorated in the month of death (i.e. current law), or take a reduced monthly benefit to offset the expected cost of a full month of death benefit. OSA did not fully research this option, instead they offered it to the SCPP as something that could be further analyzed and developed if the SCPP was interested.

POLICY OPTIONS

Option 1: Pay full month of death payment
This option provides a retiree's beneficiary or estate a full month's benefit for the month a retiree or survivor passes away.

Option 2: No Action
Continue the current practice of prorating the final month benefit based on the number of days the retiree or survivor is alive in the month they die and collect an overpayment for any benefits paid beyond the date of death.

SUPPORTING INFORMATION

Appendix A: HB 1414/SB 5355 Fiscal Note

Appendix B: HCA Letter to SCPP 2018

Appendix C: Email from OSA regarding pricing request

Appendix D: DRS Bill Draft

APPENDIX A
Multiple Agency Fiscal Note Summary

Bill Number: 1414 HB	Title: Retirement benefits/death

Estimated Cash Receipts

NONE

Estimated Operating Expenditures

Agency Name	2019-21			2021-23			2023-25		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Department of Retirement Systems	.1	0	75,223	.0	0	0	.0	0	0
Actuarial Fiscal Note - State Actuary	.0	9,200,000	12,300,000	.0	10,000,000	13,300,000	.0	10,500,000	13,900,000
Total $	**0.1**	**9,200,000**	**12,375,223**	**0.0**	**10,000,000**	**13,300,000**	**0.0**	**10,500,000**	**13,900,000**

Estimated Capital Budget Expenditures

Agency Name	2019-21			2021-23			2023-25		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Retirement Systems	.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

NONE

Prepared by: Jane Sakson, OFM	Phone: 360-902-0549	Date Published: Final 1/25/2019

* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

FNPID: 53558

Individual State Agency Fiscal Note

Bill Number: 1414 HB	Title: Retirement benefits/death	Agency: 124-Department of Retirement Systems

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	0.3	0.0	0.1	0.0	0.0
Account					
Department of Retirement Systems Expense Account-State 600-1	75,223	0	75,223	0	0
Total $	75,223	0	75,223	0	0

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:	Phone:	Date: 01/22/2019
Agency Preparation: Mike Ricchio	Phone: 360-664-7227	Date: 01/23/2019
Agency Approval: Tracy Guerin	Phone: 360-664-7312	Date: 01/23/2019
OFM Review: Jane Sakson	Phone: 360-902-0549	Date: 01/23/2019

Part II: Narrative Explanation

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

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

This bill amends RCW 41.50 to require the Department of Retirement Systems (DRS) to continue paying benefits until the end of the month in which a retiree or beneficiary dies, instead of paying a pro-rated monthly amount as it does today. The change takes effect January 1, 2020.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

No Impact

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Administrative Assumptions

- This bill is prospective and will only apply to payments made on or after the effective date.

The assumption above was used in developing the following workload impacts and cost estimates.

Benefits/Customer Service

Retirement Specialists (RSs) will support the modifications to DRS' automated systems by participating in business requirement development and user acceptance testing activities. RSs will participate on the project team to implement these changes, and will assist in review of member communications and will make necessary updates to internal reference manuals, training materials, and member education.

Retirement Specialist 3 – 112 hours (salaries/benefits) = $4,453

Automated Systems

The agency's Benefit System will be modified to apply changes for paying benefits. Screen text changes will be made to web applications, and text changes will be made to mainframe and web-generated correspondence. Business requirements will be developed and user acceptance testing will be conducted.

Contracted Programmer time of 360 hours @ 105 per hour = $37,800
Information Technology Specialist 4 – 220 hours (salaries/benefits) = $11,617
WaTech* cost of $500 per week for 15 weeks = $7,500

Total Estimated Automated Systems Costs = $56,917

*cost for mainframe computer processing time and resources at WaTech

Project Management

The agency's Project Management Office (PMO) will lead the team that implements this change. PMO will assign a dedicated project manager to provide project oversight and leadership throughout the initiation, planning, execution, implementation, closeout, and measure-value phases of the project.

Project Manager – 220 hours (salaries/benefits) = $13,853

ESTIMATED TOTAL COST TO IMPLEMENT THIS BILL: $75,223

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2020	FY 2021	2019-21	2021-23	2023-25
600-1	Department of Retirement Systems Expense Account	State	75,223	0	75,223	0	0
		Total $	75,223	0	75,223	0	0

III. B - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	0.3		0.1		
A-Salaries and Wages	22,301		22,301		
B-Employee Benefits	7,622		7,622		
C-Professional Service Contracts	37,800		37,800		
E-Goods and Other Services	7,500		7,500		
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	75,223	0	75,223	0	0

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 2020	FY 2021	2019-21	2021-23	2023-25
Information Technology Specialist 4	81,934	0.1		0.1		
Project Manager	99,461	0.1		0.1		
Retirement Specialist 3	59,439	0.1		0.0		
Total FTEs		0.3		0.2		0.0

Part IV: Capital Budget Impact

No Impact

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

No Impact

Individual State Agency Fiscal Note

Bill Number: 1414 HB	Title: Retirement benefits/death	Agency: AFN-Actuarial Fiscal Note - State Actuary

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

		FY 2020	FY 2021	2019-21	2021-23	2023-25
Account						
All Other Funds-State	000-1	1,400,000	1,700,000	3,100,000	3,300,000	3,400,000
General Fund-State	001-1	4,400,000	4,800,000	9,200,000	10,000,000	10,500,000
	Total $	5,800,000	6,500,000	12,300,000	13,300,000	13,900,000

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:		Phone:	Date: 01/22/2019
Agency Preparation:	Aaron Gutierrez	Phone: 360-786-6152	Date: 01/24/2019
Agency Approval:	Lisa Won	Phone: 360-786-6150	Date: 01/24/2019
OFM Review:	Jane Sakson	Phone: 360-902-0549	Date: 01/25/2019

Part II: Narrative Explanation

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

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

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2020	FY 2021	2019-21	2021-23	2023-25
000-1	All Other Funds	State	1,400,000	1,700,000	3,100,000	3,300,000	3,400,000
001-1	General Fund	State	4,400,000	4,800,000	9,200,000	10,000,000	10,500,000
		Total $	5,800,000	6,500,000	12,300,000	13,300,000	13,900,000

III. B - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits	5,800,000	6,500,000	12,300,000	13,300,000	13,900,000
C-Professional Service Contracts					
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	5,800,000	6,500,000	12,300,000	13,300,000	13,900,000

Part IV: Capital Budget Impact

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

SUMMARY OF RESULTS

BRIEF SUMMARY OF BILL: Requires DRS to pay a full month of benefits for the month in which an annuitant dies.

COST SUMMARY

During FY 2020, the supplemental rates displayed below would be collected for the cost of the benefit improvement under this bill. This benefit improvement would also result in an increase to the TRS Plan 2 and WSPRS member maximum contribution rates.

Impact on Contribution Rates (Effective 09/01/2019)						
FY 2019-2021 State Budget	PERS	TRS	SERS	PSERS	LEOFF	WSPRS
Employee (Plan 2)	0.03%	0.02%	0.03%	0.01%	0.03%	0.07%
Employer						
Current Annual Cost	0.03%	0.02%	0.03%	0.01%	0.02%	0.07%
Plan 1 Past Cost	0.02%	0.03%	0.02%	0.02%	0.00%	0.00%
Total Employer	0.05%	0.05%	0.05%	0.03%	0.02%	0.07%
Total State					0.01%	

Budget Impacts			
(Dollars in Millions)	2019-2021	2021-2023	25-Year
General Fund-State	$9.2	$10.0	$82.5
Local Government	$8.4	$9.0	$74.4
Total Employer	$20.7	$22.4	$183.7

HIGHLIGHTS OF ACTUARIAL ANALYSIS

- This bill results in a cost to the retirement systems because members and their survivors will retain the full month's pension payment in the month of death, rather than having that month's benefit prorated.
- We assumed the distribution of deaths would be uniform throughout any given month. As a result, this bill will provide on average an additional half-month pension payment to all current and future annuitants.
- We valued the cost of an additional half-month annuity benefit paid at the death of the member only. We examined the impacts of J&S options and found they did not affect the supplemental rates outlined above.
- This fiscal note excludes the impacts of this bill on Plan 3 TAP annuities, the Judicial Retirement System (99 retirees and beneficiaries), and the Judges' Retirement Fund (11 retirees and beneficiaries).
- We assume DRS and the LEOFF 2 Board will adopt new administrative factors that include the provisions of this bill for future retirees who purchase optional annuities.
- The best estimate results can vary under a different set of assumptions. If we assumed all members died on the last day of the month, this bill would have no cost. In contrast, if we assumed all members died on the first day of the month, the cost of this bill would double.

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

WHAT IS THE PROPOSED CHANGE?

Summary Of Benefit Improvement

This bill impacts the following systems:

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

This bill requires the Department of Retirement Systems (DRS) to pay a full month of benefits for the month in which an annuitant dies.

Effective Date: January 1, 2020.

What Is The Current Situation?

Retirement benefits are paid on a monthly basis at the end of the month, but annuitants (retirees and survivors) only receive benefits up to their date of death. If DRS is not notified of the death before the cut-off time for processing the payment, the estate will receive a payment for the full month. In these cases, DRS sends an invoice to the estate for repayment of any benefits paid beyond the date of death.

For example, if an annuitant dies on day 25 of a 30-day month, they receive pro-rated benefits for only those 25 days. If they have already received a check for the full month, DRS will seek repayment of the remaining five days.

This is a longstanding administrative practice. While statute does not expressly state when benefits should cease after death, DRS has general authority (see e.g., RCW 41.50.130) to bill retirees and survivors for overpayments of benefits.

At retirement, members of the Plans 3 can purchase an annuity from the Total Allocation Portfolio (TAP). The same proration of benefits in the month of death applies to members who purchase a TAP annuity.

Who Is Impacted And How?

This bill will improve benefits for all members and survivors who receive an annuity, with the exception of those who die on the last day of the month. Because of this, we estimate this bill could affect 556,881 members of the impacted systems. These members include active, retired, disabled, and vested terminated members, as well as all joint-life survivors.

This bill will increase the benefits for a typical member by providing the annuitant with a full month's annuity benefit in the month of death. Continuing with the prior example, assume that a given retiree receives a monthly pension benefit of $1,500 and dies on the 25th day of June. Under current law, DRS would prorate this member's benefit in the month of June. If DRS had already processed the payment, the member's estate would need to reimburse DRS for the five days of June that the member was not alive. Therefore, this member's benefit in the month of death would be:

$$(25 / 30) * \$1,500 = \$1,250$$

and DRS would request reimbursement of $250. Under this bill, DRS would not prorate the member's benefit in the month of death and the full $1,500 benefit would be paid for the month of June.

This bill impacts all active members of PERS, TRS, SERS, PSERS, LEOFF, and WSPRS through increased contribution rates. With the exception of WSPRS members, this bill will not affect member contribution rates in Plan 1 since they are fixed in statute. Additionally, this bill will not affect member contribution rates in Plan 3 since Plan 3 members do not contribute to their employer-provided defined benefit.

This bill impacts all employers of members in these systems through increased normal cost contribution rates. Additionally, the Unfunded Actuarial Accrued Liability (UAAL) contribution rates for PERS, TRS, SERS, and PSERS employers will increase.

WHY THIS BILL HAS A COST AND WHO PAYS FOR IT

Why This Bill Has A Cost

This bill has a cost because any member or survivor who receives an annuity would be able to retain their full benefit amount in the month of death, rather than only a prorated portion.

Who Will Pay For These Costs?

For PERS, TRS, SERS, and PSERS, the costs that result from this bill will be divided between members and employers according to standard funding methods that vary by plan:

- Plan 1: 100 percent employer.
- Plan 2: 50 percent member and 50 percent employer.
- Plan 3: 100 percent employer.

PERS, SERS, and PSERS employers will realize the impacts from the PERS 1 UAAL payments, whereas TRS employers will realize the impacts from the TRS 1 UAAL payments. Since this bill constitutes a benefit improvement, the TRS 2 statutory maximum member contribution rate will increase.

For LEOFF 2, the costs that arise from this bill will be divided according to the standard funding method for LEOFF 2: 50 percent member, 30 percent employer, and 20 percent state.

For WSPRS, this bill constitutes a benefit improvement. As a result, any costs that arise from this bill will be divided according to the standard funding method of 50 percent member and 50 percent employer. The WSPRS statutory maximum member contribution rate will correspondingly increase as well.

HOW WE VALUED THESE COSTS

Assumptions We Made

Under this bill, we assumed that members who receive an annuity would be provided with an additional half-month annuity payment upon death. While some members will die earlier in the month and other members will die later in the month, we assumed the distribution of deaths would be uniform throughout a month and will average out to an additional half-month pension payment.

Otherwise, we developed these costs using the same assumptions as disclosed in the *June 30, 2017, Actuarial Valuation Report* (AVR), Projections Disclosures, and *Risk Assessment* analysis available on our website.

How We Applied These Assumptions

In our valuation software, we modeled an additional half-month annuity payment by providing members, upon death, with a one-time benefit payment in the amount of $1/24^{th}$ of the member's annual pension payment (or projected annual benefit for current active members), grown with appropriate cost-of-living adjustments.

Our pricing approach provides an additional half-month pension payment upon the death of the member only. We analyzed the impact of a member electing a Joint-and-Survivor (J&S) option but found that this option did not affect the supplemental rates outlined on page 1 of this fiscal note.

The fiscal impact of this bill represents the change in projected contributions. To estimate the fiscal impact of this bill, we compared projected pension contributions under current law to the projected contributions we expect under this bill. To determine the projected contributions under current law, or the "base", we relied on the AVR. The base projected pension contributions reflect contributions from the covered group as well as future new entrants. For the covered group, or "current active members", contribution rates from the AVR are multiplied by future payroll. For the future new entrants, contribution rates under the Entry Age Normal Cost method are multiplied by future new entrant payroll.

To determine the projected costs under this bill, we modified the base described above to reflect the provisions of the bill and the assumptions noted above.

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

For more detail, please see the **Appendix**.

ACTUARIAL RESULTS

How The Liabilities Changed

This bill will impact the actuarial funding of the PERS, TRS, SERS, PSERS, LEOFF, and WSPRS systems by increasing the present value of future benefits payable to the members. The impact of the increasing present value of future benefits payable for current members is shown below.

Impact on Pension Liability			
(Dollars in Millions)	**Current**	**Increase**	**Total**
Actuarial Present Value of Projected Benefits			
(The Value of the Total Commitment to All Current Members)			
PERS 1	$12,412	$23.2	$12,435
PERS 2/3	45,048	53.2	45,101
PERS Total	$57,459	$76.4	$57,536
TRS 1	$8,938	$15.5	$8,954
TRS 2/3	17,514	17.2	17,531
TRS Total	$26,452	$32.7	$26,485
SERS 2/3	$6,486	$7.8	$6,494
PSERS 2	$1,213	$0.8	$1,214
LEOFF 1	$4,124	$8.6	$4,132
LEOFF 2	13,689	11.7	13,701
LEOFF Total	$17,813	$20.3	$17,833
WSPRS 1/2	$1,448	$1.5	$1,450
Unfunded Actuarial Accrued Liability			
*(The Portion of the Plan 1 Liability that is Amortized According to Funding Policy)**			
PERS 1	$5,099	$23.0	$5,122
TRS 1	$3,407	$15.4	$3,423
LEOFF 1	($1,280)	$8.6	($1,271)
Unfunded Entry Age Accrued Liability			
(The Value of the Total Commitment to All Current Members Attributable to Past Service that is Not Covered by Current Assets)			
PERS 1	$5,299	$23.1	$5,322
PERS 2/3	$3,975	46.6	4,021
PERS Total	$9,273	$69.7	$9,343
TRS 1	$3,547	$15.5	$3,563
TRS 2/3	1,210	13.8	1,224
TRS Total	$4,757	$29.3	$4,786
SERS 2/3	$629	$6.7	$635
PSERS 2	$25	$0.4	$26
LEOFF 1	($1,282)	$8.6	($1,274)
LEOFF 2	(878)	9.3	(869)
LEOFF Total	($2,160)	$17.9	($2,142)
WSPRS 1/2	$90	$1.3	$91

Note: Totals may not agree due to rounding.
**PERS 1 and TRS 1 are amortized over a ten-year period. LEOFF 1 must be amortized by June 30, 2024.*

How The Assets Changed

This bill does not change asset values, so there is no impact on the actuarial funding of the affected plans due to asset changes.

How The Present Value Of Future Salaries (PVFS) Changed

This bill does not change the PVFS, so there is no impact on the actuarial funding of the affected plans due to PVFS changes.

How Contribution Rates Changed

The rounded increase in the required actuarial contribution rate results in the supplemental contribution rate shown on page one that applies in the 2019-21 Biennium. However, we will use the un-rounded rate increases shown below to measure the budget changes in future biennia. LEOFF Plan 1 is currently in a surplus funded position and no contributions are required either under current law or under this bill.

Impact on Contribution Rates (Effective 09/01/2019)						
System/Plan	**PERS**	**TRS**	**SERS**	**PSERS**	**LEOFF**	**WSPRS**
Current Members						
Employee (Plan 2)	0.035%	0.024%	0.034%	0.011%	0.028%	0.072%
Employer						
Normal Cost	0.035%	0.024%	0.034%	0.011%	0.017%	0.072%
Plan 1 UAAL	0.020%	0.031%	0.020%	0.020%	0.000%	0.000%
Total	0.055%	0.055%	0.055%	0.031%	0.017%	0.072%
State						
Current Annual Cost					0.011%	
Plan 1 Past Cost					0.000%	
Total					0.011%	
New Entrants*						
Employee (Plan 2)	0.005%	0.005%	0.005%	0.005%	0.006%	0.005%
Employer						
Normal Cost	0.005%	0.005%	0.005%	0.005%	0.004%	0.005%
Plan 1 UAAL	0.020%	0.031%	0.020%	0.020%	0.000%	0.000%
Total	0.025%	0.036%	0.025%	0.026%	0.004%	0.005%
State						
Current Annual Cost					0.002%	
Plan 1 Past Cost					0.000%	
Total					0.002%	

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

How This Impacts Budgets And Employees

Budget Impacts							
(Dollars in Millions)	PERS	TRS	SERS	PSERS	LEOFF	WSPRS	Total
2019-2021							
General Fund	$1.9	$5.4	$1.3	$0.1	$0.4	$0.0	$9.2
Non-General Fund	2.9	0.0	0.0	0.0	0.0	0.1	3.1
Total State	$4.9	$5.4	$1.3	$0.1	$0.4	$0.1	$12.2
Local Government	5.5	1.1	0.9	0.2	0.8	0.0	8.4
Total Employer	$10.4	$6.4	$2.2	$0.3	$1.2	$0.1	$20.7
Total Employee	$4.8	$0.7	$0.6	$0.1	$1.2	$0.1	$7.5
2021-2023							
General Fund	$2.1	$5.9	$1.4	$0.1	$0.5	$0.0	$10.0
Non-General Fund	3.2	0.0	0.0	0.0	0.0	0.1	3.3
Total State	$5.3	$5.9	$1.4	$0.2	$0.5	$0.2	$13.4
Local Government	6.0	1.2	0.9	0.2	0.7	0.0	9.0
Total Employer	$11.3	$7.2	$2.2	$0.3	$1.2	$0.2	$22.4
Total Employee	$5.0	$0.7	$0.5	$0.1	$1.2	$0.2	$7.7
2019-2044							
General Fund	$16.8	$48.4	$10.3	$1.4	$5.4	$0.1	$82.5
Non-General Fund	25.3	0.0	0.0	0.2	0.0	1.3	26.8
Total State	$42.1	$48.4	$10.3	$1.5	$5.4	$1.4	$109.3
Local Government	47.8	9.9	6.6	1.7	8.4	0.0	74.4
Total Employer	$89.9	$58.4	$17.0	$3.2	$13.8	$1.4	$183.7
Total Employee	$47.5	$11.8	$5.4	$1.8	$13.8	$1.4	$81.8

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

If this bill passes, we would recommend new Administrative Factors be used for optional payment forms in order to maintain actuarial equivalent purchases for current active members. The above impacts assume that DRS and the LEOFF 2 Board would adopt such factors. If they do not adopt new factors, we expect the costs for this bill to be higher than shown in this fiscal note.

The analysis of this bill does not consider any other proposed changes to the systems. The combined effect of several changes to the systems could exceed the sum of each proposed change considered individually.

Comments On Risk

Our office performs annual risk assessments to help us demonstrate and assess the effect of unexpected experience on pension plans. The risk assessment allows us to measure how affordability and funded status can change if investment experience, expected state revenue growth, and inflation do not match our long-term assumptions. Our annual risk assessment also considers past practices, for funding and benefit enhancements, and their impact on pension plan risk if those practices continue.

The table below displays our latest risk measurements as of June 30, 2017. For more information, please see our Risk Assessment webpage and the **Glossary**.

Select Measures of Pension Risk as of June 30, 2017[1]		
	FY 2018-37	FY 2038-67
Affordability Measures		
Chance of Pensions Double their Current Share of GF-S[2]	1%	3%
Chance of Pensions Half their Current Share of GF-S[2]	47%	46%
Solvency Measures		
Chance of PERS 1 or TRS 1 in Pay-Go[3]	15%	18%
Chance of Any Open Plan in Pay-Go[3]	1%	8%
Chance of PERS 1, TRS 1 Total Funded Status Below 60%	29%	27%
Chance of Open Plans Total Funded Status Below 60%	24%	36%

[1]FY 2018 returns used for purposes of this analysis are 10.04%. Due to a restatement in October 2018, this differs from the 10.20% reported by the Washington State Investment Board. We expect this difference to have limited impacts to the risk measures.
[2]Pensions approximately 5.5% of current General Fund-State (GF-S) budget; does not include higher education.
[3]When today's value of annual pay-go cost exceeds $50 million.

In terms of risk, we expect a bill that provides benefit improvements will worsen the above affordability and solvency risk measures because benefit improvements will: (1) increase contribution rates, which requires additional contributions; (2) temporarily increase unfunded liabilities, which increases the chance of pay-go in the short term; and (3) increase future benefits paid from the plan, which increases the amount of pay-go if it occurs in the future. For this bill, we expect any changes to the risk metrics will be small.

HOW THE RESULTS CHANGE WHEN THE ASSUMPTIONS CHANGE

The best estimate results can vary under a different set of assumptions. To determine the sensitivity of the actuarial results to the best estimate assumptions selected for this pricing we varied the following assumptions:

- ❖ We considered the impact of varying our assumption of a uniform distribution of deaths throughout a month.
  - ◊ If deaths occur later in each month on average, then the cost of this bill will be less than our best estimate. For instance, if we assume that all deaths occur on the last day of the month, then this bill will have no cost because there would be no prorating reduction under current law.
  - ◊ On the other hand, if deaths occur earlier in the month on average, then the costs will be greater. For example, if we assume that all deaths occur on the first day of the month, then the cost of this bill will double because the member would retain a full month's benefit rather than our assumption of a half month's benefit.

- We also considered the impact of varying our mortality assumptions.
  - ◊ If members live longer than expected, the cost of this bill will be less than our best estimate. This is because the additional half-month benefit would be paid later than assumed, and the present value of this benefit amount would be more heavily discounted by interest.
  - ◊ On the other hand, if members do not live as long as expected, the cost of this bill will be greater since the additional half-month benefit would be paid earlier than assumed.

The actual cost of this bill may vary from our best estimate and may fall outside the range of cost identified in this section.

WHAT THE READER SHOULD KNOW

The Office of the State Actuary ("we") prepared this fiscal note based on our understanding of the bill as of the date shown in the footer. We intend this fiscal note to be used by the Legislature during the 2019 Legislative Session only.

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

ACTUARY'S CERTIFICATION

The undersigned hereby certifies that:

1. The actuarial cost methods are appropriate for the purposes of this pricing exercise.
2. The actuarial assumptions used are appropriate for the purposes of this pricing exercise.
3. The data on which this fiscal note is based are sufficient and reliable for the purposes of this pricing exercise.
4. Use of another set of methods and assumptions may also be reasonable and might produce different results.
5. The risk analysis summarized in this fiscal note involves the interpretation of many factors and the application of professional judgment. We believe that the data, assumptions, and methods used in our risk assessment model are reasonable and appropriate for the purposes of this pricing exercise. The use of another set of data, assumptions, and methods, however, could also be reasonable and could produce different results.
6. We prepared this fiscal note for the Legislature during the 2019 Legislative Session.
7. We prepared this fiscal note 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 fiscal note.

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

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

Lisa Won, ASA, FCA, MAAA
Deputy State Actuary

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APPENDIX

This bill provides a non-standard payment form, which our valuation software is unable to model. That is, our software does not have the capability to model an end-of-month annuity where a payment is also made in the month of death. We therefore estimated the cost of this bill through the use of a life insurance payment with a lump-sum payout equal to a half-month of the annuity amount the member was receiving upon death.

This insurance payment would apply to several types of benefits a member could receive in each system. However, since retirement benefits account for over 90 percent of the total active and total inactive liabilities across all systems, we modeled these insurance payments for retirement-based annuity benefits only.

The life insurance payments that we modeled can only be applied to a single life, or rather the primary member. In other words, we could not model a payment to the last survivor, i.e., the person who does not die first, for any J&S annuities. As a result, we priced an additional half-month pension payment upon the death of the member only.

However, we did analyze the impact of a member electing a J&S option.

1. If a member chooses a J&S option and pre-deceases his or her beneficiary, the additional half-month benefit (on average) would be paid at the time of the beneficiary's death and may be a smaller amount if the option selected is less than a J&S 100 percent.
2. Likewise, if a member chooses a J&S option and the member's beneficiary pre-deceases him or her, the additional half-month benefit would be paid at the time of the member's death and may be larger since DRS unwinds the optional reduction factor (the pension amount pops up to the original life only amount).

Neither of these components had a material impact on contribution rates in any system.

Many of the plans also have a provision whereby if a retired member dies before the total pension payments received exceeds the value of the accumulated contributions, then the difference is paid to the member's beneficiary or estate. Our pricing approach continues to provide an additional half-month annuity benefit if the member dies inside this timeframe. We analyzed the impact of accounting for this and found the resulting reduction in cost to be immaterial.

GLOSSARY OF ACTUARIAL TERMS

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

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

Aggregate Funding Method: The Aggregate Funding Method is a standard actuarial funding method. The annual cost of benefits under the Aggregate Method is equal to the normal cost. Under this method, all plan costs (for past and future service credit) are included under the normal cost. Therefore, the method does not produce an unfunded actuarial accrued liability outside the normal cost. It's most common for the normal cost to be determined for the entire group rather than on an individual basis for this method.

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

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

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

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

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

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

Unfunded EAN Liability: The excess, if any, of the present value of benefits calculated under the EAN cost method over the valuation assets. This is the portion of all benefits earned to date that are not covered by plan assets.

GLOSSARY OF RISK TERMS

Affordability Risk: Measures the affordability of the pension systems. Affordability risk measures the chance that pension contributions will cross certain thresholds with regards to the General Fund and contribution rates.

"Current Law": Scenarios in which assumptions about legislative behavior are excluded. These scenarios show projections regarding the current state of Washington statutes.

Funded Status: The ratio of a plan's current assets to the present value of earned pensions. There are several acceptable methods of measuring a plan's assets and liabilities. In financial reporting of public pension plans, funded status is reported using consistent measures by all governmental entities. According to the Government Accounting Standards Board (GASB), the funded ratio equals the actuarial value of assets divided by the actuarial accrued liability calculated under the allowable actuarial methods.

Optimistic: A measurement of the pension system under favorable conditions (above expected investment returns, for example). Optimistic refers to the 75^{th} percentile, where there is a 25 percent chance of the measurement being better and 75 percent chance of the measurement being worse. Very optimistic refers to the 95^{th} percentile.

"Past Practices": Scenarios in which assumptions regarding legislative behavior are introduced. These assumptions include actual contributions below what are actuarially required and improving benefits over time. These scenarios are meant to project past behavior into the future.

Pay-Go: The trust fund runs out of assets, and payments from the General Fund must be made to meet contractual obligations.

Pessimistic: A measurement of the pension system under unfavorable conditions (below expected investment returns, for example). Pessimistic refers to the 25^{th} percentile, where there is a 75 percent chance of the measurement being better and 25 percent chance of the measurement being worse. Very pessimistic refers to the 5^{th} percentile.

Premature Pay-Go: Pay-go payments, measured in today's value, which might be considered "significant" in terms of the potential impact on the General Fund.

Risk Tolerance: The amount of risk an individual or group is willing to accept with regards to the likelihood and severity of unfavorable outcomes.

Solvency Risk: Measures the risk metrics of the pension systems, including the chance that the pension systems will prematurely run out of assets, the amount of potential pay-go contributions, and the chance that the funded status will cross a certain threshold.

Washington State Health Care Authority

Month of Death Pension Deduction for PEBB Program Benefits

Employees and Retirees Benefits Division

Background

The Employees and Retirees Benefits Division within the Health Care Authority (HCA) is responsible for administration of the Public Employees Benefits Board (PEBB) Program which provides insurance benefits to state employees and both state and school retirees. There are almost 72,500 retirees enrolled in PEBB Program retiree insurance coverage and approximately 67 percent of those (~49,000 accounts) retirees have their insurance premium deducted from their pension benefit each month. Retirees like the method and it works well except during the month of death. On average 146 retirees who use this payment method die each month.

Observations during the Month of Death

The current practice of prorating the pension payment for the month of death is challenging in the following ways:

- The HCA must seek to collect the PEBB Program insurance premium for the month of death. The invoices sent to collect the premium are often ignored by the deceased member's family because they believe the insurance premium was already paid with money from pension.
- The PEBB Program insurance coverage for a surviving spouse who is enrolled is affected when the insurance premium payment is taken back in order to prorate the month of death pension payment.

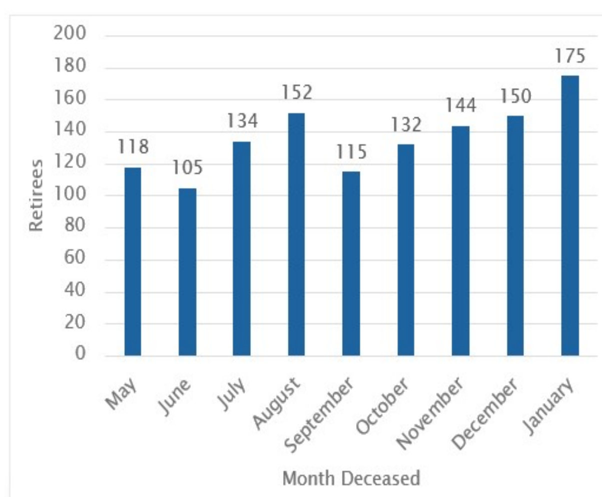
The proposed policy change (to pay a full month benefit for the month in which the member dies) would be beneficial to the HCA and PEBB Program members in the following ways:

- The surviving spouse's PEBB Program insurance coverage would not be affected for the month of death.
- Confusion for family members would be reduced because the insurance premium for the month of death would not have to be recovered by DRS.
- HCA would not have to attempt to collect from the member's estate.

Retirees Enrolled in PEBB Program Insurance Coverage

	May 2018 Enrollment	Percentage
Premiums paid through Pension Deduction	48,820	67.40%
Premiums paid direct to HCA	23,624	34.60%
Total	72,444	100%

2017 PEBB Program Retirees Deceased by Month



Month of Death Briefing Paper for Select Committee on Pension

APPENDIX C

From: Bennington, Katie on behalf of Won, Lisa
To: White, Jacob (LEOFF)
Cc: Nelsen, Steve (LEOFF); DeCamp, Mitch
Subject: LEOFF 2 Pricing Request - Month of Death
Date: Monday, November 20, 2023 3:30:37 PM

External Email

Jacob,

As requested, we reviewed the impact on LEOFF 2 of providing a full month of retirement benefits in the month of death. This would replace the current administrative practice of prorating the final annuity payment to the exact day of the month in which the annuitant dies.

We previously priced this proposal during the 2019 Legislative Session for HB 1414. We believe the contribution rate impacts identified at that time (see table below) are still reasonable for LEOFF 2 Board decision-making purposes. We've provided the un-rounded rates below so the Board understands how close the rates are to rounding up or down, which provides context given we haven't updated the analysis for the most recent actuarial valuation.

Impact on Contribution Rates *(Effective 09/01/2019)*	
Employee (Plan 2)	0.028%
Employer	0.017%
State	0.011%

Below is a summary of some key takeaways from our analysis for HB 1414. For more information regarding the data, methods, and assumptions used to conduct this analysis, please see the Actuarial Fiscal Note.

- This proposal results in a cost to the LEOFF 2 retirement system because members and their survivors will retain the full month's pension payment in the month of death, rather than having that month's benefit prorated to the date of death.
- We assumed the distribution of deaths would be uniform throughout any given month. As a result, this proposal will provide, on average, an additional half-month pension payment to all current and future annuitants. Note that some members may receive up to 30 days of additional benefits (those who die on the first day of the month), while others may receive no additional benefits from this proposal (those who die on the last day of the month).
  - For context, as of the 2022 Actuarial Valuation Report, LEOFF 2 has approximately 28,700 actives, terminated vested members, and annuitants (including service retirees, disability retirees, and survivors). Note that any members who do not earn a vested pension or who elect a refund of contributions will not benefit from this proposal.
- We valued the cost of an additional half-month annuity benefit paid at the death of the primary annuitant only. We examined the impacts of J&S options for the contingent

annuitant and found they did not affect the rounded contribution rates.

If this proposal were to become a bill dropped during the 2024 Session, we would re-price it using our latest actuarial valuation. The impacts of that pricing may vary from those stated above for reasons such as changes in member demographics, underlying actuarial assumptions, and plan provisions. However, we expect the general magnitude of the contribution rate impact would be similar.

Please let us know if you have questions regarding this analysis.

Lisa Won, ASA, FCA, MAAA
Deputy State Actuary
Office of the State Actuary
P.O. Box 40914
Olympia, Washington 98504-0914
http://osa.leg.wa.gov/
Phone 360.786.6150
Fax 360.586.8135
"Supporting financial security for generations."

APENDIX D

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #:	Z-0386.1/23
ATTY/TYPIST:	MFW:eab
BRIEF DESCRIPTION:	Concerning paying state retirement benefits until the end of the month in which the retiree or beneficiary dies.

AN ACT Relating to paying state retirement benefits until the end of the month in which the retiree or beneficiary dies; adding a new section to chapter 41.50 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec. 1.** The legislature finds that when a retiree or beneficiary of state retirement benefits dies, the department of retirement systems only pays benefits up to the precise date of that individual's death. If the retiree or beneficiary has already received payment for that month by the time the death occurs, the department of retirement systems requires repayment of any benefits received after the death. For example, if death occurs on the 25th day of a 30-day month, the beneficiary's estate may be required to refund five days' worth of benefits.

The legislature intends to change that practice by paying benefits until the end of the month in which the death occurs.

NEW SECTION. **Sec. 2.** A new section is added to chapter 41.50 RCW to read as follows:

(1) When a retiree or beneficiary under chapter 2.10, 2.12, 41.26, 41.32, 41.35, 41.37, 41.40, or 43.43 RCW dies, the department

must continue paying benefits until the end of the month in which death occurred. Survivor benefits, when applicable, will begin on the first day of the following month.

(2) This section applies to any and all benefit payments issued by the department including optional annuities.

(3) The department must continue to require the beneficiary, survivor, or estate of the deceased to refund any benefit payments made following the month of death.

(4) This section applies prospectively only and not retroactively. No beneficiary, survivor, or estate that has been subject to repayment of benefits before January 1, 2025, has a right to receive a refund of those repayments.

NEW SECTION. **Sec. 3.** This act takes effect January 1, 2025.

--- END ---

LEOFF
Plan 2 Retirement Board

Month of Death Payment

Final Proposal
December 13, 2023

Issue

- In the month a retiree or survivor passes away, the last month benefit payment is prorated based on the number of days the person was alive in the month. Frequently this results in an overpayment and an invoice being sent to the family or estate to collect any amount that should have been prorated

Issue History

- In 2018 DRS requested the Board and SCPP endorse legislation to pay the full month of death payment
  - The Board and SCPP endorsed that legislation, but it failed to pass
- In 2019 the Board received a follow up briefing on the issue but did not pursue legislation
- This year DRS requested the Board, SCPP, and Governor's Office endorse legislation
  - The SCPP endorsed the legislation
  - DRS is waiting on decision from Governor's Office

Policy Considerations

- Burden for grieving families
  - Does not eliminate all overpayments caused by month of death issue
- Administrative costs
  - Nominal savings for DRS in previous Fiscal Note, no FTE saving
- Causes issues with insurance premiums

DRS Data - 2018

- 37 LEOFF 2 Members died
- 9 members had overpayments caused by month of death
- 1 member had an overpayment that would have been eliminated by this proposal

LEOFF 2 Budget Impact from 2019

Budget Impact	
2019-2021	**Dollars in Millions**
State - General Fund	$0.4
Local Government	$0.8
2021-2023	**Dollars in Millions**
State - General Fund	$0.5
Local Government	$0.7
2019-2044	**Dollars in Millions**
State - General Fund	$5.4
Local Government	$8.4

Contribution Rate Impact	
Employee	0.03%
Employer	0.02%
State	0.01%

PEBB Impacts

- HCA testified in support of this policy proposal at the SCPP, provided documentation to the Board in 2019 (in Board materials)
- Under current law
  - HCA must collect the PEBB Program insurance premium for the month of death
  - The PEBB Program insurance coverage for a surviving spouse who is enrolled is affected when the insurance premium payment is taken back to prorate the month of death pension payment
- If this bill is passed
  - Surviving spouse's PEBB program insurance coverage would not be affected for the month of death
  - HCA would not have to attempt to collect from the member's estate

Next Steps

- **Option 1:** Endorse legislation
  - This option provides a retiree's beneficiary or estate a full month's benefit for the month a retiree or survivor passes away
- **Option 2:** Direct LEOFF 2 Board staff to sign-in/testify in support of the legislation at legislative committee hearings
- **Option 3**: No action

Plan 2 Retirement Board

Thank You

Jacob White

Senior Research & Policy Manager

(360) 586-2327

jacob.white@leoff.wa.gov

LEOFF Plan 2 Retirement Board

December 13, 2023

DRS Appeal Deadlines

FINAL PROPOSAL

By Jacob White
Senior Research & Policy Manager
360-586-2327
jacob.white@leoff.wa.gov

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 errored 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.

During the November Board meeting, the Bord requested a final briefing on the policy option to require DRS to toll the time to file an appeal when DRS requests the member provide additional information and to 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).

Normally, the Board would request an actuarial analysis from the Office of the State Actuary before a final presentation. However, due to the large number of policy briefings the Board will be receiving in December, Board staff worked with OSA to prioritize the proposals to have OSA provide analysis on.

If the Board does choose to endorse legislation regarding this policy proposal OSA will complete an actuarial fiscal note during the legislative session if the bill receives a hearing in a legislative fiscal committee.

However, OSA did complete a Fiscal Note for SB 5625 (see appendix A) and stated: “We expect this change to result in an indeterminate cost to the retirement system, as refiled claims have the potential to result in pension benefit increases.”

POLICY OPTIONS

Option 1: Require tolling and extend timeframe
LEOFF 2 members have 120 days to appeal administrative decisions from DRS. DRS must provide written notice of the right to appeal and the deadline for filing the appeal. If DRS requests additional records from the member they must toll the deadline for filing an appeal and provide in writing the updated deadline for filing the appeal.

Option 2: No action

SUPPORTING INFORMATION

Appendix A: Fiscal Note for SB 5625 (2023)

Appendix B: Bill Draft

Multiple Agency Fiscal Note Summary

Bill Number: 5625 SB	**Title:** Public employee retirees

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

Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 035-Office of the State Actuary

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

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

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

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

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.

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.

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 OOBR'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

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: 5625 SB	Title: Public employee retirees	Agency: 107-Washington State Health Care Authority

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

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

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.

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

<u>Public Employees Benefits Board (PEBB) and School Employees Benefits Board (SEBB) Program Impacts</u>

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 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.

<u>Medicaid</u>

No impacts to Medicaid lines of business.

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.

Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 124-Department of Retiremen Systems

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

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:

- [X] 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.
- [X] 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

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.

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.

- 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.

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.

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

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

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

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: AFN-Actuarial Fiscal Note - State Actuary

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.

X 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

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: 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 LEOFF[1] 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.

[1]*The 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.*

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 Harbour

Michael T. Harbour, ASA, MAAA
Actuary

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APPENDIX B

An act related to the department for retirement systems appeals process; adding a new section to chapter 41.50 RCW.

Sec. 1 Intent: It is intent of the legislature that this legislation be liberally construed most strongly in favor of the beneficiaries consistent with established case law (see *Hanson v. Seattle*, 80 Wn. 2d 242, 80 Wash. 2d 242, 493 P.2d 775 (Wash. 1972)).

Sec 2. New Section. Appeals of Department Administrative Decisions by LEOFF 2 Members

(1) LEOFF 2 members have 120 days to appeal administrative decisions from the department. The department must provide written notice of the right to appeal and the deadline for filing the appeal. If the department requests additional records from the member, the department must toll the deadline for filing an appeal and provide in writing the updated deadline for filing the appeal.

LEOFF
Plan 2 Retirement Board

DRS Appeal Deadlines

Final Proposal
December 13, 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

Policy Topic History

- Issue was part of DRS Ombuds Bill (SB 5625)
- Board received Initial Briefing in July
- Comprehensive Briefing in November, Board requested final briefing on:
  1. Require tolling
  2. Extend time to file an appeal to 120 days

Administrative Procedures Act

- Minimum of 20 days to file an appeal
  - No tolling required
  - No petitions process required

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)

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

OSA Analysis

- Did not request a pricing from OSA for Final Proposal
- However, OSA did complete a Fiscal Note for similar section of SB 5625 (see appendix A)
- “We expect this change to result in an indeterminate cost to the retirement system, as refiled claims have the potential to result in pension benefit increases”

Next Steps

1. Motion to endorse legislation
   - LEOFF 2 members have 120 days to appeal administrative decisions from DRS
   - DRS must provide written notice of the right to appeal and the deadline for filing the appeal
   - If DRS requests additional records from the member they must toll the deadline for filing an appeal and provide in writing the updated deadline for filing the appeal
2. No action

Thank You

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