

BOARD MEETING AGENDA

JUNE 17, 2024 • 9:30AM



LOCATION - Hybrid Meeting

In-Person:
Washington State Investment Board
2100 Evergreen Park Drive SW, Suite 100
Olympia, WA 98502

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

TRUSTEES

DENNIS LAWSON, CHAIR
Central Pierce Fire and Rescue

JASON GRANNEMAN, VICE CHAIR
Clark County Sheriff's Office

MARK JOHNSTON
Vancouver Fire Department

AJ JOHNSON
Snohomish County Fire

SENATOR JEFF HOLY
WA State Senator

TARINA ROSE-WATSON
Spokane Int'l Airport Police Dept

PAT MCELLIGOTT
East Pierce County Fire and Rescue

JAY BURNEY
City of Olympia

WOLF OPITZ
Pierce County

REPRESENTATIVE STEVE BERGQUIST
WA State Representative

DARELL STIDHAM
Spokane County Sheriff's Office (Retired)

STAFF

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

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

- | | |
|---|-----------------|
| 1. Approval of Minutes | 9:30 AM |
| <ul style="list-style-type: none">• May 29, 2024 | |
| 2. LAVR/Contribution Rate Presentation | 9:35 AM |
| Mitch DeCamp, Senior Actuarial Analyst, OSA
Sarah Baker, Senior Actuarial Analyst, OSA | |
| 3. Salary Setting Responsibility | 10:35 AM |
| Karen Durant, Sr Research and Policy Manager | |
| 4. Standby Pay- Initial Consideration | 11:05 AM |
| Jacob White, Sr Research and Policy Manager | |
| 5. Fiduciary Training: Open Public Meetings Act | 11:35 AM |
| Morgan Damerow, Open Government Ombuds, AGO | |
| 6. Administrative Update | 12:20 PM |
| Steve Nelsen, Executive Director | |
| 7. Public Comment | 12:30 PM |

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

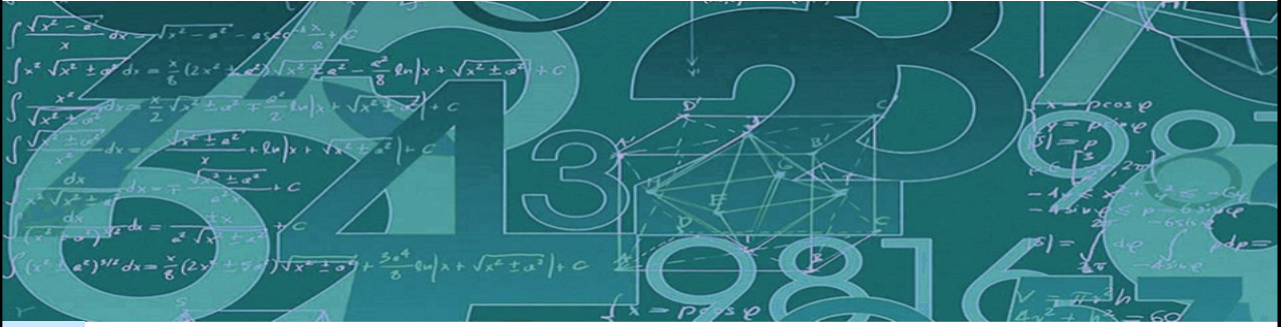
**Lunch is served as an integral part of the meeting.*

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

2023 Preliminary LEOFF 2 Actuarial Valuation Results

Presentation to: LEOFF Plan 2 Retirement Board

Mitch DeCamp, ASA, MAAA, Senior Actuarial Analyst
Sarah Baker, ASA, MAAA, Senior Actuarial Analyst



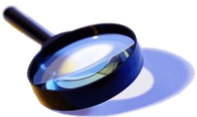
Office of the State Actuary
"Supporting financial security for generations."

June 17, 2024

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Today's Presentation

- Background on the actuarial valuation cycle
- 2023 Preliminary Actuarial Valuation Report results
 - Data, Assets, Asset Smoothing, Funded Status, Contribution Rates
- Informational – No Board action needed today



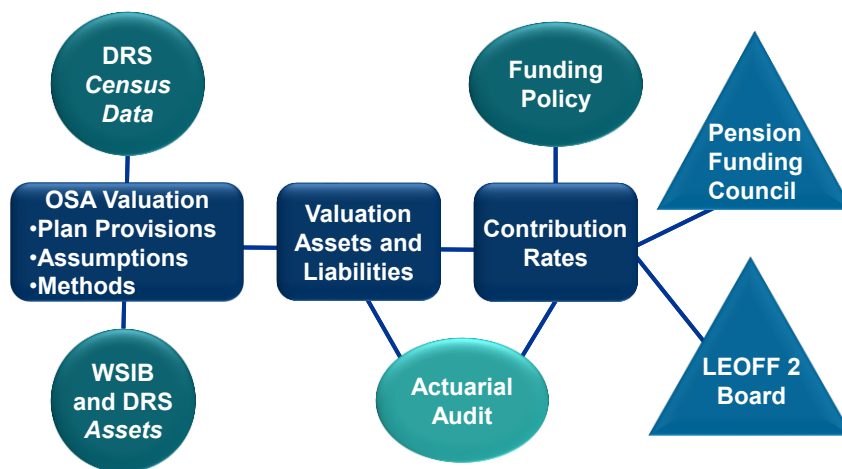
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Purpose of 2023 Valuation

- Estimate future benefits to be paid from the plan
- Calculate contribution rates that fund expected future benefits
 - Rate-setting valuation
- Check funding progress
- Certify the underlying data, assumptions, and methods are reasonable and conform with current actuarial standards of practice

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The Actuarial Valuation Process: How We Get from Participant Data to Contribution Rates



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Valuation Results – Changes in Assets

LEOFF 2	
<i>(Dollars in Millions)</i>	
2021 Market Value*	\$19,187
Contributions	415
Disbursements	(499)
Investment Earnings	37
Other Revenue	22
2022 Market Value*	\$19,162
Contributions	452
Disbursements	(818)
Investment Earnings	1,327
BIA Transfer	476
Other Revenue	18
2023 Market Value	\$20,617

*Market values do not include adjustments for the anticipated future transfer of the BIA.

■ Investment Returns

- FY 2022 investment return of 0.21%
- FY 2023 investment return of 6.90%
- Expected return was 7.00%

■ BIA Transfer was performed in two steps

- \$927 million transfer from L2 trust to BIA
- \$1.403 billion transfer from BIA to L2 trust

■ FY 2023 disbursements include roughly \$215 million for additional lump sum payments to retirees under SHB 1701

Calculating 2023 AVA

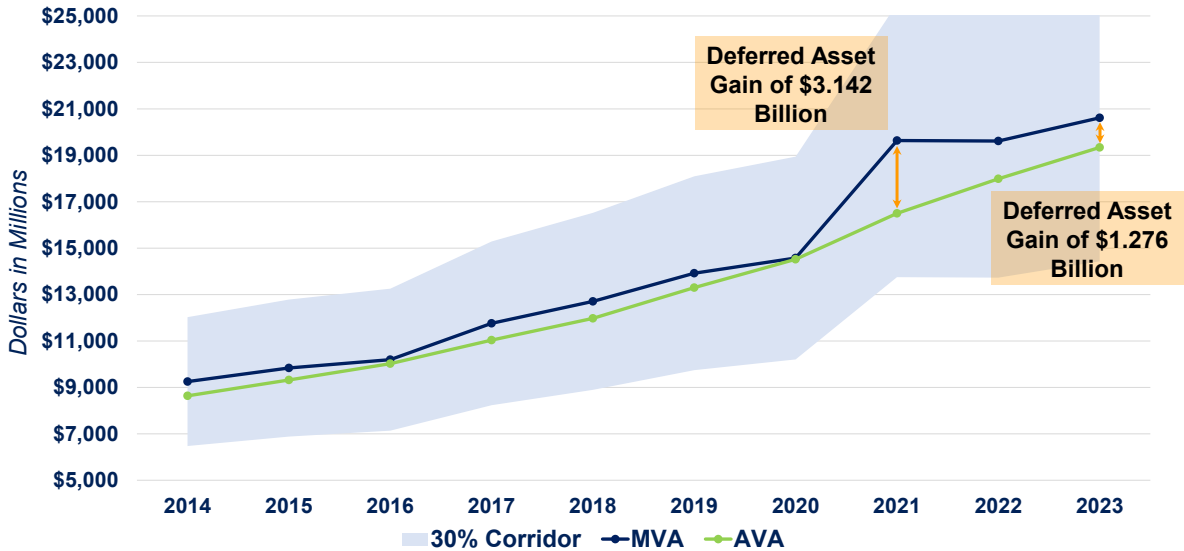
Calculation of Actuarial Value of Assets				
LEOFF 2				
<i>(Dollars in Millions)</i>				2023
Market Value of Assets (MVA)				\$20,617
Plan Year Ending	Return on Assets	Years Deferred	Years Remaining	Amount Deferred*
6/30/2023	6.90%	0	0	0
6/30/2022	0.21%	7	5	(927)
6/30/2021	31.65%	8	5	2,202
Total Deferral				1,276
Actuarial Value of Assets (AVA)**				\$19,342

Note: Totals may not agree due to rounding.

*Amount of asset gains and (losses) left to recognize, or apply, in future valuations. All asset gains/losses prior to 6/30/2021 have been fully recognized.

**AVA can never be less than 70% (\$14,432) or greater than 130% (\$26,802) of the MVA.

Actuarial Value of Assets Less Volatile than Market Value



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Valuation Results – Participant Data

LEOFF 2			
	2021	2022	2023
Actives			
Headcount	18,683	18,625	19,311
Average Annual Salary	\$122,500	\$129,100	\$136,600
Average Age	42.3	41.7	41.1
Average Service	13.1	12.4	11.8
Annuitants			
Headcount	7,574	8,597	9,460
Average Annual Benefit	\$56,200	\$58,900	\$61,600
Actives to Annuitants	2.5	2.2	2.0

- Salary Increases were higher than expected in FY 2022 and 2023
 - Total average salary increased by approximately 6% annually
 - Members continuing active service experienced average salary increases of approximately 10% annually
- New retirements were higher than expected
 - The number of annuitants increased by 14% in FY 2022 and 10% in FY 2023

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OSA Methodology Change on Future COLAs

- LEOFF Plan 2 COLAs are based on inflation but capped at 3% with “banking” of any excess
- The currently adopted assumption for inflation is 2.75%
- To reflect large amounts of banking, we assume all annuitants, as of the June 30, 2023, measurement date, will receive 3% COLAs in the future
 - Future new annuitants are still expected to receive 2.75% COLAs given “banking” has not occurred

Recent Inflation Experience			
Calendar Year	Applicable CPI Change	COLA Received*	Approximate COLA Bank
2021	4.8%	3.0%	1.8%
2022	8.8%	3.0%	5.8%
2023	5.5%	3.0%	2.5%
Total			10.1%

*COLAs are applied July 1 and based on the prior calendar year CPI. For example, the CPI change in Calendar Year 2021 was used to inform COLAs applied on July 1, 2022.

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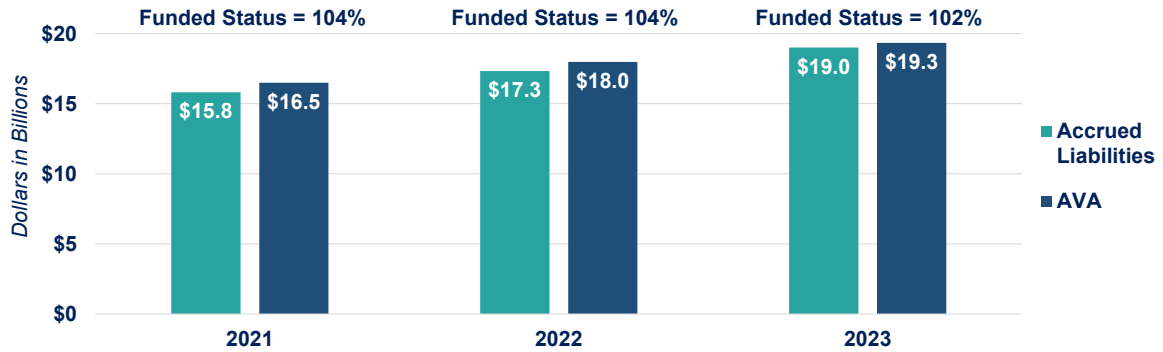
Valuation Results – Change in Liabilities

LEOFF 2			
(Dollars in Millions)	2021	2022	2023
Present Value of Future Benefits	\$21,075	\$23,018	\$25,412
Accrued Liability	\$15,819	\$17,336	\$19,011

- Present Value of Future Benefits
 - Today’s value of all future expected benefits for current members
- Accrued Liability
 - Today’s value of all future plan benefits that have been accrued or “earned” as of the valuation date by current plan members under the EAN cost method

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Funded Status Change from Last Rate-Setting Valuation



■ Funded Ratio =
$$\frac{\$ \text{ Actuarial Value of Assets}}{\$ \text{ Accrued Liabilities}}$$

- If the funded ratio exceeds 100%, the plan has more than \$1 of assets for every \$1 of accrued benefits

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Gain/Loss Analysis – Funded Status

Changes to LEOFF 2 Funded Status	
Funded Status — 2021 Valuation	104.3%
Investment Returns/Recognizing Past Deferred Gains	↑ 2.4%
Plan Experience	↓ (2.9%)
Funded Status — 2022 Valuation	103.7%
Investment Returns/Recognizing Past Deferred Gains	↑ 2.5%
Plan Experience	↓ (3.0%)
COLA Banking Modeling Change	↓ (1.5%)
Funded Status — 2023 Valuation	101.7%

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Currently Adopted Contribution Rates

LEOFF 2 Contribution Rates	
	Adopted
Member	8.53%
Employer	5.12%
State	3.41%

- The Board adopted the current contribution rates for the 2023-25 and 2025-27 Biennia under the 4-Year Rate Adoption policy

- Rates match the contribution rate cap under SHB 1701

“Adopt the current contribution rate for the 2023-25 and 2025-27 biennia. Reassess the 2025-27 biennium contribution rates based on the 2023 Actuarial Valuation Report consistent with funding policy set in SHB 1701.” –July 2022 Rate Adoption Motion

- Possible contribution rate adoption part of the Board’s July meeting agenda

Two Sets of Contribution Rates

- Under plan funding policy, the final contribution rate is the greater of two sets of rates

Aggregate Rates

- Full actuarial cost method for the plan set in statute
- Fully funds plan obligations over working careers of current members
- Rate fluctuates with plan experience and changes in assets

Minimum Rates

- Calculated from Normal Cost of Entry Age Normal Cost Method (EANC)
- Different “tiers” of rates based on funded status
- Rates can experience sharp changes when moving between tiers
- New Offset Rate first applied in 2023 Valuation based on requirements of [SHB 1701](#) (2021 Legislative Session)

Gain/Loss Analysis – Aggregate Rates

Changes to LEOFF 2 Member Aggregate Rates	
2021 Valuation	8.65%
(A) 2022/2023 Investment Returns/Past Deferred Gains	↓ (1.59%)
(B) 2022/2023 Plan Experience	↑ 1.90%
(C) COLA Banking Modeling Change	↑ 0.43%
2023 Valuation	9.39%

Note: This table contains the member contribution rate only. Employers and the state contribute 60% and 40% of the member rate, respectively.

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Minimum Rate Funding Policy

Minimum Rate Tiers	
Funded Status (FS)	Minimum Rate*
1. FS less than 105%	100% EANC - 100% Offset Rate
2. FS at least 105% but less than 110%	90% EANC - 90% Offset Rate
3. FS at least 110%	80% EANC

*EANC is the Normal Cost under the Entry Age Normal cost method.

EANC

- Generally stable rate between valuations that doesn't change with level of plan assets

Offset Rate

- Intended to reduce Minimum Rates so costs do not increase for current members due to SHB 1701 under the minimum rate policy
- Applies for 15 years, which is the expected working lifetime of current members
- OSA calculated the rate as 0.75% reduction

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Minimum Rate Calculation

Member Minimum Rate		
	2021	2023
	Valuation	Valuation
Funded Status	104%	102%
(A) 100% EANC	9.94%	9.97%
(B) 100% Offset Rate*	N/A	0.75%
Minimum Rate (A) - (B)	9.94%	9.22%

Note: Calculation shown for member contribution rate only. Employers and the state contribute 60% and 40% of the member rate, respectively.

*Minimum Rate calculated for the 2021 valuation did not include the Offset Rate.

Final Rate Calculation

Member Contribution Rate		
	2021	2023
	Valuation	Valuation
(A) Aggregate Rate	8.65%	9.39%
(B) Minimum Rate	9.94%	9.22%
Calculated Rate [Larger of (A) or (B)]	9.94%	9.39%
(C) Rate for Recent Legislation	0.00%	0.04%
Final Rate [Calculated Rate + (C)]	9.94%	9.43%

Note: Calculation shown for member contribution rate only. Employers and the state contribute 60% and 40% of this rate, respectively.

*Minimum Rate calculated for the 2021 valuation did not include the Offset Rate.

- The final valuation rate is the larger of the Aggregate and Minimum Rate plus an additional rate for recent legislation not yet included in our valuation software

Final Contribution Rates

Contribution Rate Summary			
	Member	Employer	State
Current Adopted Rates*	8.53%	5.12%	3.41%
2023 Valuation			
Funded Status = 102%			
Contribution Rate = Aggregate	9.43%	5.66%	3.77%

*Currently adopted rates for the 2025-27 Biennium.

- Recap of primary elements impacting contribution rates
 - Higher than expected salary growth for active members ↑
 - Increase in expected COLAs for current annuitants from recent high inflation growing COLA “bank” ↑
 - Recognition of deferred investment performance that exceeded assumed return ↓

Summary

- The plan is considered healthy
 - Funded status decreased but still exceeds 100%
 - AVA is deferring over \$1.27 billion
 - Expect funded status improvement as deferred assets are recognized if assumptions are realized
- Contribution rates are expected to decrease over the next few biennia as funded status rises
- OSA is available to consult or answer questions on contribution rate adoption at the July meeting

Questions? Please Contact: The Office of the State Actuary
leg.wa.gov/OSA; state.actuary@leg.wa.gov

360-786-6140, PO Box 40914, Olympia, WA 98504

Mitch DeCamp

Sarah Baker

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Thank You



Office of the State Actuary
"Supporting financial security for generations."

June 17, 2024

Disclosure

- This presentation is based on the Preliminary 2023 AVR. Please see [our website](#) at the end of June for the preliminary report containing assumptions, methods, and data used to produce the results in this presentation.
- All results are preliminary and currently under audit.
- Kyle Stineman, ASA, MAAA served as the reviewing and certifying actuary for the 2023 valuation report and meets the qualification standards of the American Academy of Actuaries to render the actuarial opinions provided.



Salary Setting Responsibility

June 17, 2024

Issue

- **The LEOFF Board expressed interest in being able to set staff salaries in support of their fiduciary responsibilities.**

Background

- **Board requested legislation to exempt staff from civil service, allowing the board authority to set salaries (HB 2337/SB 6198)**
- **During session, the salary setting bill was amended and merged into the broad LEOFF 2 bill (SSB 6197). The provisions of the bill became effective June 6, 2024.**

Amendment Details

- Amendment exempted some agency positions from civil service
 - Deputy Director (1)
 - Research and Policy Positions (2)
- Amendment specified that
 - Board will have authority to establish and fix salaries for these positions *in consultation* with the director of the Office of Financial Management
 - Board must consider comparable public sector positions using *market-driven data* when setting salaries
 - Notice of *proposed* changes to compensation levels shall be provided to the chairs of the fiscal committees of the house and senate

Consultation

- The board shall establish and fix salaries in *consultation* with the director of the Office of Financial Management
- Initial contact was made with OFM
- Discussion of consultation

Market-Driven Data

- The board must consider comparable public sector positions using *market-driven data*
- A market analysis/salary survey will need to be completed
- Third-party vendor

Next Steps

- **Consultation parameters identified**
- **Motion for contract for a third-party vendor**



Thank You

Karen Durant

Senior Research and Policy Manager

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June 17, 2024
Standby Pay

INITIAL CONSIDERATION

By Jacob White

Senior Research & Policy Manager

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ISSUE STATEMENT

“Standby pay” is not considered basic salary for LEOFF 2 members, while it is for PERS and PSERS members.

OVERVIEW

“Standby pay” is not considered basic salary in LEOFF 2 because it is not specifically identified as earnable compensation in law and because the Department of Retirement Systems (DRS) has determined that it does not fall under the general definition of “compensation for services rendered”.

BACKGROUND AND POLICY ISSUES

Some LEOFF Plan 2 members receive standby pay while off-duty in exchange for being prepared to report to work on short notice. This payment is not considered compensation for services rendered and is not reportable compensation for LEOFF Plan 2.

The Board considered this issue during the 2016 and 2018 interims. The Board did not endorse legislation in either of those years.

Standby pay is reportable compensation for pension purposes in two state retirement systems: the Public Employees Retirement System (PERS) and the Public Safety Employees Retirement system (PSERS). It is considered reportable compensation because the legislature has specifically identified it as being so for those systems.

In 1994, legislation was enacted¹ that allowed the inclusion of standby pay in compensation earnable for the Public Employees’ Retirement System (PERS) when: (1) the member is required to be present at, or in the immediate vicinity of, a specified location; and (2) the employer requires the member to be prepared to report immediately for work if the need arises. In 1995, the requirement that the member must be present at or in the immediate vicinity of a specified location was removed.² Standby pay was

¹ C 177 L94 (ESHB 2644)

² C 244 L 95 (SSB 5118)

included as compensation earnable for the Public Safety Employees Retirement System when it was created in 2003³.

Reportable Compensation/Basic Salary

"Reportable compensation" is used in determining a state retirement system member's pension. It is generally defined as salaries and wages payable for services rendered to the employer. DRS determines reportable compensation based upon the nature of the payment made to an employee, not the name given to it. A LEOFF member's salary or wages must meet the definition of "basic salary" in LEOFF retirement law⁴ to be subject to retirement system contributions and included in the calculation of his or her retirement benefit.

In LEOFF Plan 2 "reportable compensation" is termed "basic salary". In order for compensation to be reportable to DRS for LEOFF, it must be basic salary. Basic salary for LEOFF Plan 2 is a payment that is a salary or wage earned during a calendar month for personal services rendered by a member to an employer.

Certain payments that are not for personal services rendered by a member also qualify if there are specific provisions in the laws identifying them as basic salary. Payments not specifically identified in the rules qualify as basic salary only if the payments are for services rendered.⁵

Standby pay is one such payment that does not qualify as basic salary for LEOFF as it is not considered pay for services rendered and is not included by law as basic salary.

Standby Pay is Not Basic Salary in LEOFF

Standby pay is a nominal rate of pay provided in exchange for the employee being available to come to work quickly if called, though he or she might not be called. While on standby an employee is usually confined to a specified geographic area and prohibited from consuming alcohol or other intoxicants. If the employee is called in, they usually earn overtime for periods actually worked.

DRS excludes standby pay from LEOFF basic salary. DRS does not consider standby pay compensation for services rendered⁶. While ready to work if called, an employee on standby is engaged in personal activities, not performing work for their employer.

DRS has identified what is and is not considered Basic Salary with the following chart in WAC 415-104-299:

Type of Payment	LEOFF 2 Basic Salary?
Additional Duty Pay	Yes - WAC 415-104-360
Allowances (i.e. uniform)	No - WAC 415-104-390
Basic Monthly Rate	Yes - WAC 415-104-360
Cafeteria Plans	Yes - WAC 415-104-367

³ PSERS was removed as a membership subset from PERS in 2003 when it was created.

⁴ see RCW 41.26.030 and WAC 415-104-298

⁵ WAC 415-104-299 Basic Salary Table

⁶ see RCW 41.26.030(4)(b) and WAC 415-104-393

Deferred Wages Attached to Position	Yes - WAC 415-104-363(1)
Deferred Wages not attached to a Position	No - WAC 415-104-363(2)
Disability Payments	No - WAC 415-104-380
Education Attainment Pay	Yes - WAC 415-104-375
Employer taxes/contributions	No - WAC 415-104-383
Fringe Benefits, including insurance	No - WAC 415-104-385
Illegal Payments	No - WAC 415-104-387
Leave Cash Outs/Severance	No - WAC 415-104-401
Longevity	Yes - WAC 415-104-375
Overtime	Yes - WAC 415-104-370
Paid Leave	Yes - WAC 415-104-373
Payments in Lieu of Excluded Items	No - WAC 415-104-405
Performance Bonuses	Yes - WAC 415-104-377
Retroactive Salary Increase	Yes - WAC 415-104-365
Reimbursements	No - WAC 415-104-390
Retirement or Termination Bonuses	No - WAC 415-104-395
Shift Differential	Yes - WAC 415-104-379
Special Salary or Wages	Yes - WAC 415-104-375
Standby Pay	No - WAC 415-104-393
Tuition/Fee Reimbursement	No - WAC 415-104-390
Workers' Compensation	No - WAC 415-104-380

Compensation for Standby Pay

The rate of standby pay varies. Below are some examples:

- Fire fighter examples:
 - Reduced rate of pay – some jurisdictions pay an hourly standby wage at a reduced rate of pay such as 10% of regular pay.
 - Reduced hours – some jurisdictions pay a full overtime wage for a reduced number of hours. For instance, one employer pays one hour of overtime for a 12 hour standby shift.
- Law enforcement examples:
 - 4 hours pay for being on standby, additional pay if called in for more than 4 hours.
 - No standby pay but guaranteed 4 hour pay minimum if called in.



Standby Pay

Initial Consideration
June 17, 2024

Issue

- “Standby pay” is not considered basic salary for LEOFF 2 members, while it is for PERS and PSERS members.

Legislative History

- **1994 – Standby pay included for PERS**
 - Vicinity requirement
 - Prepared to report if needed
- **1995 – Vicinity requirement dropped**
- **2003 – Standby pay included for PSERS (created in 2003)**
- **2016 – LEOFF 2 Board studied, no action**
- **2018 – LEOFF 2 Board studied, no action**

Who Earns Standby Pay?

- **Fire Fighters:**
 - Employees working 8-hour shifts required to muster for fire events
 - Fire fighters called in to supervise volunteers
 - Lieutenant backfilling for absent chief
 - Employees mobilized for fire camps
- **Law Enforcement Officers:**
 - Special squad members, such as detectives

“Basic Salary” – Reportable Compensation

- Used in determining a state retirement system member’s pension
 - Final Average Salary (FAS)
- Generally defined as salaries and wages payable for services rendered
- Certain payments not for personal services rendered may qualify if specifically identified in law

Standby Pay Conditions

- **Typical Standby Pay Conditions**
 - Present at a specified location/timeframe or is immediately available to be contacted
 - Prepared to report immediately for work if the need arises
 - Must not be impaired
 - Less than full pay

How is Standby Pay Paid?

- Depends on the employer, typically negotiated under CBA
- Reduced rate of pay
 - Example: 10% of regular pay
- Full overtime rate for reduced number of hours
 - Example: 1 hour overtime pay for 12 hours of standby
- Regular rate for reduced number of hours
 - Example: 4 hours regular pay for 16 hours standby

Next Steps

1. No further action
2. Motion for a Comprehensive Briefing



Thank You

Jacob White

Senior Research and Policy Manager

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OPEN GOVERNMENT TRAINING



OPEN PUBLIC MEETINGS ACT CHAPTER 42.30 RCW

Prepared by the Washington State Attorney General's Office
June 17, 2024



OUTLINE

Significance of Open Government & Transparency
The Open Public Meetings Act

DISCLAIMER

This presentation is educational only and is not legal advice or a legal opinion. The OPMA changes over time. Later court decisions, or changes in statutes, can impact the law, an agency's obligations and the expectations on individuals.

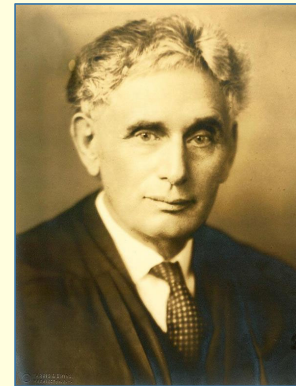
THE OPMA IS ONE OF WASHINGTON'S “TRANSPARENCY LAWS” OR “SUNSHINE LAWS”

Washington's Open Public Meetings Act

Passed in 1971.

Requires meetings to be open
to the public, gavel to gavel.

"Sunlight is the best disinfectant."



U.S. Supreme Court Justice
Louis Brandeis

Transparency builds public confidence in government.

THE OPMA – STARTING POINT

“The people do not yield their sovereignty to the agencies which serve them.”

“The people, in delegating authority, do not give public servants the right to decide what is good for the people to know and what is not good for them to know.”

OPMA POLICY

It is the intent of this chapter that the actions of a governing body be taken openly and that their deliberations be conducted openly.

The people insist on remaining informed and informing the people's public servants of their views so that they may retain control over the instruments they have created.

The OPMA, ch. 42.30 RCW, is our comprehensive transparency statute. The act seeks “to ensure public bodies make decisions openly.”

OPMA POLICY

The OPMA is to be liberally construed to effectuate its purpose, exceptions are narrowly confined. It's intended to guarantee public access to and participation in the activities of their representative agencies.

OPMA APPLIES TO:

Multi-member public state and local agencies, such as boards and commissions:

- Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature.
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of Washington.
- Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.
- Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

“Public Agencies” subject to the OPMA.

THE OPMA DOES NOT APPLY TO:

These entities:

- Courts
- Legislature
- Agencies not defined as “public agency” in OPMA, such as agencies governed by a single individual.
- Private organizations, i.e., HOA’s, Youth Sports Clubs.

These activities:

- Licensing/permitting for businesses, occupations or professions or their disciplinary proceedings (or proceedings to receive a license for a sports activity, or to operate a mechanical device or motor vehicle).
- Quasi-judicial matters.
- Matters governed by the Washington Administrative Procedure Act, RCW 34.05.
- Collective bargaining.

BASIC REQUIREMENTS

All meetings of the **GOVERNING BODY** of a **PUBLIC AGENCY** shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in RCW 42.30.

Public agencies are *encouraged* to provide for the increased ability of the public to observe and participate in the meetings of governing bodies through real-time telephonic, electronic, internet, or other readily available means of remote access that do not require an additional cost to access the meeting.

WHAT IS A GOVERNING BODY?

Multimember boards, commissions, councils, or other policy or rule-making bodies of a public agency.

INCLUDES

– Committees and Subcommittees –
Acting on behalf of governing body, taking testimony or public comment, or conducting hearings.

– Advisory Bodies –
If the body's advice is necessary for the governing body to act, and the body was created by the legislative body.

MEETING



- Meeting means meetings at which the public agency takes “action.”
- Requires a majority of its members (quorum). No meeting if less than a quorum.
- Physical presence not required – an exchange of e-mail could constitute a meeting.
- Does not need to be titled “meeting” – may be a “retreat,” “workshop,” “study session,” etc.
- Simply receiving information without comment is not a meeting.



MEETING REQUIRES A COLLECTIVE INTENT TO MEET

Citizens Alliance v. San Juan County,
184 Wn.2d 428, 359 P.3d 753 (2015).

No OPMA violation because the commissioners were not aware that the communications included a majority, and passive receipt of information is not “action” under the OPMA.

Egan v. City of Seattle,
14 Wn. App.2d 594, 471 P.3d 899 (2020).

OPMA violation found. Over two dozen communications occurred between individual councilmembers, as well as city staff, during a three-day period. Communications included in-person meetings, emails, phone calls, text messages, and distribution of hard copies of a draft press release.

ACTION

The transaction of the official business of the public agency
and includes but is not limited to:

Public Testimony
Considerations

All Deliberations
Reviews
Final Action

Discussions
Evaluations

See upcoming slide on Final Action.

The requirements of the OPMA are triggered
whether or not “final” action is taken.



FINAL ACTION

- “**Final action**” is a collective positive or negative decision, or an actual vote, by a majority of the governing body, or by the “committee thereof.”
- Must be taken in public, even if deliberations were in executive session.
- Secret ballots are not allowed.

VOTE



PUBLIC ATTENDANCE

- A public agency can't place conditions on public to **attend** meetings subject to OPMA.
- Reasonable rules of conduct can be set.
- Governing body may adopt generally applicable conditions determined to be reasonably necessary to protect public health or safety, or to protect against interruptions.
- Agencies encouraged to provide remote access.
- Cameras and tape recorders are permitted unless disruptive.

REMOTE OBSERVATION AND PARTICIPATION

Agencies are encouraged to:

- Provide remote access that does not require an additional cost to access the meeting.
- Provide an online streaming option for all regular meetings.
- Make audio or video recordings and make recordings available online for a minimum of six months. (This does not alter recordkeeping requirements under chapter 42.56 RCW. Additional requirements for School Boards.)

PUBLIC COMMENT

Oral or written public comment required at or before every regular meeting at which final action is taken.

Oral Comment

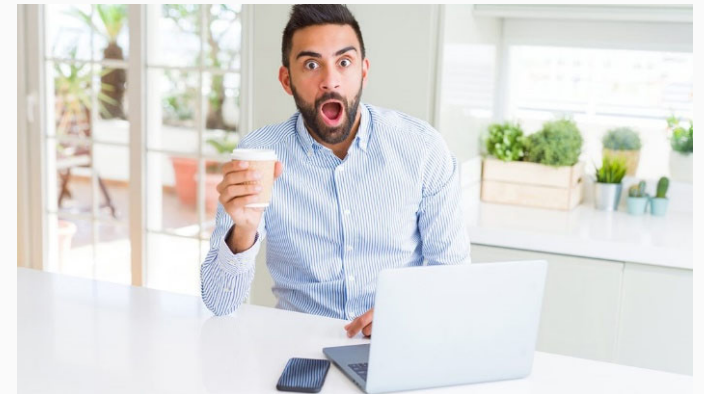
- The governing body shall, when reasonable, provide people with a disability, limited mobility or any other reason that makes physical attendance difficult, the opportunity to make oral comment.
- May put guidelines in place for public comment i.e., time limits.

Written Comment

- Written testimony must be distributed to the governing body.
- May have reasonable deadlines for submission of written testimony.

INTERRUPTIONS AND DISRUPTIONS

- May stop individuals from speaking when not recognized to speak.
- The OPMA provides a procedure for dealing with situations where a meeting is being interrupted, the orderly conduct of the meeting is unfeasible, and order cannot be restored by removal of the disruptive persons.
- OPMA provides hierarchy for restoration of an orderly meeting, through removal of individuals who are interrupting the meeting, clearing the meeting room, or moving the meeting to another location. Final disposition can occur only on matters appearing on the agenda. More details set out in the OPMA.



REGULAR MEETINGS



- Recurring meetings held in accordance with a periodic schedule by ordinance, resolution, bylaws or other rule.
- Must have an agenda available online at least 24 hours in advance of the published start time of the meeting. Agency may share or have website hosted by another public agency.
- Agenda may be modified.
- Any otherwise legal action taken at a regular meeting, where agenda was not posted 24 hours in advance, is not invalidated. Failure to post agenda is not the basis for attorney fees, mandamus or injunction.



REGULAR MEETINGS – SMALL AGENCY AGENDA EXEMPTION

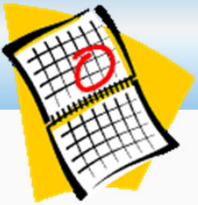


A special purpose district, city, or town is not required to post an agenda online if the district, city, or town:

- (a) Has an aggregate valuation of the property subject to taxation by the district, city, or town of less than \$400,000,000, as placed on the last completed and balanced tax rolls of the county preceding the date of the most recent tax levy;
- (b) Has a population within its jurisdiction of under 3,000 persons; and
- (c) Provides confirmation to the state auditor at the time it files its annual reports under RCW 43.09.230 that the cost of posting notices on a website of its own, a shared website, or on the website of the county in which the largest portion of the district's, city's, or town's population resides, would exceed one-tenth of one percent of the district's, city's, or town's budget.



SPECIAL MEETINGS



A “**special meeting**” is a meeting that is not a regular meeting. Can be called by presiding officer OR majority of the members.

Notice of Meeting

Written notice, 24 hours before the meeting of the **Time, Place** and **Business to be Transacted.**

Exception: not required when the notice cannot be posted with reasonable safety.

How Notice is Provided

- To each member of the governing body (unless waived).
- To each local newspaper of general circulation, radio, and TV station which has a notice request on file.
- Posted on the agency’s website [with certain exceptions in RCW 42.30.080(2)(b)].
- Prominently displayed at the main entrance of the agency’s principal location and the meeting site (if not at the same location, or not remote).

EMERGENCY SPECIAL MEETINGS

Notice is not required for a special meeting called to deal with an emergency* when:

Time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

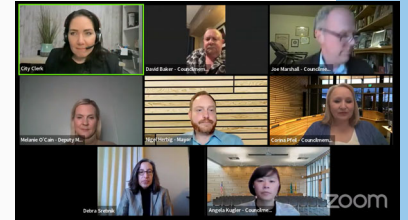
OR

The required notice cannot be posted or displayed with reasonable safety, including but not limited to declared emergencies in which travel to physically post notice is barred or advised against.



* Emergency means circumstances involving injury or damage to persons or property or the likelihood of such injury or damage.

REMOTE EMERGENCY MEETINGS



Requirements for a remote meeting:

- Declared emergency at the local, state or federal level AND the agency determines it cannot hold a meeting in person with reasonable safety where members or public are in attendance.
- Public must be able to listen, if not, meeting prohibited - except executive session.
- Notice of meeting must include remote participation instructions and otherwise comply with the OPMA notice requirements.

Structure for an emergency remote meeting:

- *Option 1: Hold an all remote meeting without a physical location.*
- *Option 2: Hold a meeting with governing body present but some or all of the public excluded.*

Members of a governing body may participate in a meeting remotely, with no declared emergency, if otherwise permitted by agency policy or practice.

EXECUTIVE SESSION

**MEETING
IN PROGRESS**

- Part of a regular or special meeting that is closed to the public.
- Limited to specific purposes set out in the OPMA, RCW 42.30.110.
- Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins.
- Time may be extended. Must be announced by presiding officer.
- Purpose of executive session must be entered into the minutes.

EXECUTIVE SESSION

Sample of allowed purposes for an Executive Session.

- To evaluate qualifications of applicant for public employment.
- Consideration of the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. Final action selling or leasing public property must be taken at open meeting.
- Review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs.
- Meet with legal counsel regarding enforcement actions, litigation or potential litigation.
- National Security.

Examples above may be summaries. Please review the statute's actual provisions.

Other purposes are identified in RCW 42.30.110(1).

TRAVEL AND GATHERING

- A majority of the members of a governing body may travel together or gather for purposes other than a regular meeting or a special meeting, so long as no action is taken.
- Discussion or consideration of official business would be action; action triggers the OPMA's requirements.

RCW 42.30.070



MINUTES

- Minutes of public meetings must be promptly recorded and open to public inspection.
- Minutes of an executive session are not required.
- No format specified in law.
- Executive session's purpose must be recorded in the minutes.
- If meeting provides remote option, add relevant information to the minutes like links & phone numbers.



OPMA PENALTIES

- Penalty may be imposed against individual members of the governing body for knowing violations by the courts.
 - **\$500** fine for the first violation.
 - **\$1,000** for subsequent violation.
 - **Costs and attorney fees.**
- Final action at illegal meetings may be declared void.
- Mandamus or injunctive action to stop violations.



OPMA TRAINING

- The “Open Government Trainings Act” requires OPMA training for every member of a governing body within 90 days of taking their oath or assuming their duties. RCW 42.30.205.
- Refresher training occurs no later than every four years.
- Training can be taken online, in person, or by other means.



- Training resources, videos, and more information about the Act are available on the Attorney General’s Office Open Government Training Web Page:
<http://www.atg.wa.gov/OpenGovernmentTraining.aspx>

Open Government Training



OPMA Training

