

Select Committee on Pension Policy

P.O. Box 40914
Olympia, WA 98504-0914
state.actuary@leg.wa.gov

Executive Committee Meeting

June 16, 2020

12:50 p.m. – 2:00 p.m.*

Virtual Remote Meeting

Click this link to join, or copy and paste into your web browser:

<https://zoom.us/j/91946515575?pwd=VDFDL0VOT0NDcEQxcFREblc4OUROdz09>

AGENDA

- 12:50 p.m. **A. Approval of November Minutes**
- 12:55 p.m. **B. AAG Update – Michael Nelson, Assistant
Attorney General, Office of the Attorney General**
- 1:05 p.m. **C. Committee Discussion**
- 1:25 p.m. **D. Constituent Correspondence – Aaron Gutierrez,
Senior Policy Analyst**
- 1:30 p.m. **E. Review Draft Interim Work Plan – Melinda
Aslakson, Policy Analyst**
- 1:40 p.m. **F. Adoption of July Agenda – Aaron Gutierrez**
- 1:50 p.m. **G. Other Business – Aaron Gutierrez**
- 2:00 p.m. **H. Adjourn**

**These times are estimates and are subject to change depending on the needs of the Committee.*

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Senator John Braun

John Boesenberg
PERS/Higher Ed Employers

Senator Steve Conway

Annette Creekpaum
PERS Employers

Randy Davis
TRS Actives

***Representative Joe
Fitzgibbon, Chair**

Beverly Freeman
PERS Employers

***Tracy Guerin, Director**
Department of Retirement Systems

***Bev Hermanson**
PERS Retirees

Senator Steve Hobbs

Leanne Kunze
PERS Actives

Anthony Murrietta
PERS Actives

***Byron Olson**
PERS Employers

Representative Timm Ormsby

Senator Mark Schoesler

David Schumacher, Director
Office of Financial Management

Mark Soper
WSPRS Retirees

**Representative Drew
Stokesbary**

***J. Pat Thompson**
PERS Actives

Representative Mike Volz

**Executive Committee*

(360) 786-6140
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TDD: 711
leg.wa.gov/SCPP.htm

A. Approval of November Minutes

Select Committee on Pension Policy

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REGULAR EXECUTIVE COMMITTEE MEETING

November 19, 2019

DRAFT MINUTES

The Select Committee on Pension Policy met in House Hearing Room A, Olympia, Washington, on November 19, 2019.

Committee Members Attending

Chair Fitzgibbon
Tracy Guerin
Bev Hermanson
Byron Olson
J. Pat Thompson

Other SCPP Members

Senator Conway
Randy Davis
Leanne Kunze
Anthony Murietta

Chair Fitzgibbon called the meeting to order at 1:03 p.m.

(A) APPROVAL OF OCTOBER MINUTES

It was moved, seconded, and carried to: Approve the Regular Executive Committee Meeting October 15, 2019, Draft Minutes.

(B) AAG UPDATE

Michael Nelson, Assistant Attorney General, provided an update on litigation and legal research.

(C) COMMITTEE DISCUSSION

No action taken.

(D) CONSTITUENT CORRESPONDENCE

Kaitlyn Donahoe, Associate Policy Analyst, reported on correspondence received since the October meeting.

(E) REVIEW DRAFT INTERIM WORK PLAN

The Committee discussed items to be added to the Draft Interim Work Plan.

***Vacant, Vice Chair**

John Boesenberg
PERS/Higher Ed Employers

Senator Steve Conway

Annette Creekpaum
PERS Employers

Randy Davis
TRS Actives

***Representative Joe Fitzgibbon, Chair**

Beverly Freeman
PERS Employers

***Tracy Guerin, Director**
Department of Retirement Systems

***Bev Hermanson**
PERS Retirees

Senator Steve Hobbs

Leanne Kunze
PERS Actives

Anthony Murietta
Actives

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(F) ADOPTION OF DECEMBER AGENDA

December Agenda

1. Approval of November Minutes
2. WSIB Update
3. Inactive Accounts
4. PERS and PSERS (Dual Membership)
5. Adjourn

It was moved, seconded, and carried to: Approve the December agenda as amended.

(G) OTHER BUSINESS

No action taken.

The meeting adjourned at 1:26 p.m.

Recorded audio of S CPP Full and Executive Committee meetings can be found on the [SCPP Meetings page](#), free of charge. The audio, and occasionally video, of Full Committee meetings can also be found at www.tvw.org.

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B. AAG Update

SCPP Litigation Update Report

June 2020

Case Summary	Status Summary:
<p>Fowler, et al v. Guerin (previously Frost) US Federal District Court/Thurston County Superior Court</p> <p>Issue: Same as Probst/Fowler state court case, but now in federal court and alleging a § 1983 challenge. The Fowlers claim that by not paying daily interest on TRS Plan 2 individual accounts, the Department effects an unconstitutional taking of their property.</p> <p>SGO: Peter Gonick AAGs: Nam Nguyen, Cam Comfort SAAGs: Mike Tardif and Jeff Freimund</p>	<p>The Department lost on summary judgment before the U.S. Court of Appeals for the Ninth Circuit. The Court ruled that plaintiffs had a constitutional right to daily interest. The Department Petitioned for a Writ of Certiorari to the U.S. Supreme court which was denied.</p> <p>The case has been remanded to the trial court to decide the issue of damages.</p>
<p>Appeal of Wilson Court of Appeals, Division I</p> <p>Issue: Whether Mr. Wilson separated from service in order to receive a LEOFF 2 retirement benefit.</p> <p>AAG: Nam Nguyen</p>	<p>The Department prevailed at the administrative level. Mr. Wilson filed an APA Petition for Judicial Review, and the superior court reversed the administrative decision and ordered the Department to pay \$12,000 in attorneys' fees. The Department has appealed the matter to Division II of the Court of Appeals. Parties are awaiting an oral argument date.</p>
<p>Appeal of Sloma Court of Appeals, Division II</p> <p>Issue: Mr. Sloma elected to participate in the PERS Plan 1 Post-30 Year Program and then retired from PERS Plan 1. Approximately 8 years later he returned to PERS employment, was enrolled in PERS Plan 1 for 3 years, and</p>	<p>The Department prevailed at the administrative level, petition level, and at the court of appeals. Mr. Sloma Petitioned the Supreme Court for review. The parties are awaiting the Supreme Court's decision on whether it will accept review.</p>

SCPP Litigation Update Report
June 2020

Case Summary	Status Summary:
<p>retired a second time. Is Mr. Sloma entitled to have his retirement allowance recalculated with the higher AFC from his most recent employment?</p> <p>AAG: Nam Nguyen</p>	
<p>Hester et al. v. DRS and WSP Court of Appeals, Division I</p> <p>ISSUE: Whether the Legislature’s 2001 repeal of the inclusion of overtime into troopers’ benefit calculation was legal.</p> <p>AAGs: Nam Nguyen, Kathryn Wyatt assisted by Eric Mentzer of AGO Complex Lit</p>	<p>The Superior Court issued preliminary ruling that adopted a three-year statute of limitations which accrues at retirement and held that ESB 5143 is “reasonable and necessary to meet a legitimate public purpose.” The court also held that there are material fact for trial on whether ESB 5143 provided comparable advantages. Plaintiff’s moved for interlocutory review of the case, which was granted by the Court of Appeals. Appellants recently filed a motion to transfer the case to the Supreme Court, which is now pending.</p>
<p>Appeal of Jennifer Quesnell Administrative Appeal</p> <p>The issue is whether a TRS member is entitled to service credit for part-time teaching over a two year period in the early 1990s.</p> <p>AAG: Kathryn Wyatt, Debra Lefing</p>	<p>Case has been briefed and argued at the administrative level and the parties are awaiting a decision and final order from the presiding officer.</p>
<p>Appeal of Douglas Merino Administrative Appeal</p> <p>The issue in this matter is whether appellant’s wife is eligible for WSPRS survivorship</p>	<p>The Department prevailed at the administrative level. Mr. Merino has filed a petition for judicial review to Superior Court. An oral argument is currently set for July 10.</p>

SCPP Litigation Update Report

June 2020

Case Summary	Status Summary:
<p>benefits despite the appellant withdrawing membership contributions.</p> <p>AAG: Kathryn Wyatt</p>	
<p>In re Audit of King Co. Fire Dist. No. 2 Administrative Appeal</p> <p>The issue is whether audit correctly characterized type of retirement accounts Fire District established for members and whether such accounts resulted in overpayments</p> <p>AAGs: Kathryn Wyatt, Debra Lefing</p>	<p>Awaiting decision on motion for summary judgment at the administrative level. The Presiding Officer requested an extension to issue a final order.</p>
<p>In re Valley View Sewer District Administrative Appeal</p> <p>The issue is whether the District is responsible for an overpayment of benefits made to their employee, for not reporting the retiree.</p> <p>AAGs: Troy Klika, David Moon</p>	<p>Motions for summary judgment have been filed at the administrative level, but a decision has been stayed pending settlement discussions.</p>
<p>Appeal of Moore-Duncan Administrative Appeal</p> <p>The issue is whether the appellant, who worked an overnight shift that continued into the morning hours of the first day of her first month</p>	<p>Matter argued on cross summary judgment motions at the administrative level; awaiting decision of the presiding officer.</p>

SCPP Litigation Update Report
June 2020

Case Summary	Status Summary:
<p>of retirement, is responsible for overpayment of benefits in her first month of retirement.</p> <p>AAG: David Moon</p>	
<p>Appeal of Cheryl Turner Administrative Appeal</p> <p>The issue is whether the appellant is eligible for a PERS 2 disability retirement benefit under RCW 41.40.670.</p> <p>AAGs: David Moon, Kathryn Wyatt</p>	<p>New administrative level case, the prehearing conference has not yet been scheduled.</p>

C. Committee Discussion

- ❖ Interim Kick-Off
- ❖ Agency Updates and COVID-19 Impacts
- ❖ Preliminary AVR Results and Demographic Experience Study Audit
- ❖ Interim Planning

D. Constituent Correspondence

Halverson, Beth

From: Ernest Mikami <emikami@yahoo.com>
Sent: Wednesday, November 20, 2019 8:25 PM
To: Office State Actuary, WA
Subject: Roth Option

I watched the Select Committee on Pension Policy public meeting on 11/19 on TVW.org. The only mention of Roth option for the DCP was that DRS will do the work and that there are other pressing needs. This is the same excuse we have heard for the last 8 years. The other disappointment is the lack of any discussion because nobody spent the time to review the points I made earlier. Only after understanding the magnitude of the problem could there be an informed choice as to where in the priority this task should be put.

It is not just a matter of expectation of tax bracket as those brackets can easily be distorted by effects of health cost costs varying based on income level on both Obamacare and Medicare. The other distortion is the tax on Social Security Income. In the case of tax on Social Security, it is actually impacting the lower end of the income range. For Obamacare premiums, it impacts the lower and the middle income range which are common for early retiree. The potential of more easily moving money to a Roth IRA after separation allowing to side step age 70 1/2 required minimum distribution is another benefit of having a Roth option. The impact of deferring causing a larger account that has a larger tax burden down the line which in turn can raise the tax bracket especially for those with pension and social security income is another factor to consider. Losing a spouse can cause tax to climb unexpectedly. Many people have ties outside the state and even outside the country as such not having a Roth option can negatively impact those individuals. State and foreign income tax skew the decision in favor of the Roth. Worst part is that those would be saving for retirement might decide in their situation, it isn't worth doing that with the DCP in place right now because of the lack of Roth option and some of those people actually might have the larger contributions which help lower the cost for everyone else.

The plan was to vote on whether to vote on whether to put any resource for it, place the item into higher priority, or to create a bill to legislatively mandate it was it not? How do you vote when you aren't spending the time to have any discussion in the committee?

I was contacted by Seth Miller and in his own comment mentioned that DRS will not put the item into high priority without a legislative action. As such I demand a legislative mandate with a specific delivery date since we already know anything less will never ever get the work done.

Thank you,

Ernest

Russell, Lindsey

From: Russ Skolrood <RSkolrood@hoquiam.net>
Sent: Tuesday, December 10, 2019 12:57 PM
To: Office State Actuary, WA
Subject: TRS plan 2 legislation
Attachments: Dear Pension Policy Committee Member.docx

Please forward the attached letter to all members of the pension policy committee for their consideration. Thank you, R. Skolrood

Dear Pension Policy Committee Member,

I am writing this letter to try to influence you to look into an early out pension option for TRS2 and TRS3 Pension members. As you are well aware the negotiations that took place after the Legislatures latest attempt to meet the Supreme Courts' McCleary requirements saw many educators across the State gain large wage increases. This is the opportune time for the DRS to look at doing a one-time option of letting Plan 2/3 educators retire without penalty before the age of 62.

Giving educators that have 30+ years of teaching the option of retiring early without penalty would have a number of benefits for DRS and for the State. As you know TRS 2 members retirement is based on their 5 highest years of pay. In my case if I continue to work three more years at my elevated wage my benefit for retirement would cost DRS over \$300,000 more for an average 20 year retirement than if I were allowed to retire this year without penalty for getting out before 62. I am currently at the top of the scale and am going to be 59 at the end of the school year. Below are my calculations on the savings DRS would achieve by allowing me to retire early.

Base Salary for 5 years 2016-20 Average	\$76,640
33 Years Service	<u>X.66</u>
	\$50,580 No Reduction
20 Years receiving benefits	\$1,011,600 Total

Base Salary for 5 years 2018-22 Average	\$94,400
36 Years Service	<u>X.72</u>
	\$67,968 No Reduction
20 years receiving benefits	\$1,359,360

- Early out option	<u>-\$1,011,600</u>
- <u>Total DRS Savings</u>	<u>\$ 347,760</u>

The second benefit to allowing teachers to retire without penalty would be the relief that local school districts would gain by having teachers at the top of the scale retire and allowing them to hire new teachers at the bottom of the scale. With the new allocation model that the State uses to reimburse Districts for each FTE it makes teachers at the top of the scale a liability to the Districts budget. The State now pays Districts \$68,000 per FTE. Most pay scales top out at close to \$90,000 that makes any teacher that is at the top of the scale a \$22,000 liability to the Districts' bottom line. If you allow those teachers the option of retiring the District could then hire a new teacher at around \$50,000 which would benefit their budget by around \$18,000 per FTE. The current allocation actually has age discrimination built in that I am sure will have to be addressed anyway by the Legislature.

In closing, I am not sure how many teachers would be able to retire early due to the issue with retiree medical costs but if you can get some of them to pull the plug you could definitely save money for DRS and for many school districts that are currently struggling with their budgets. If you have any questions or concerns please contact me at anytime.

Sincerely,

Russ Skolrood
russkolrood@comcast.net
360-581-4084

Halverson, Beth

From: Gutierrez, Aaron
Sent: Friday, December 13, 2019 3:12 PM
To: @SCPP Members
Cc: @SCPP Assistants
Subject: SCPP: Policy Analysis of WSIB Proposal
Attachments: Gutierrez-WSIB.Bill.Draft.Invest.Opt.TDF-With.Bill.Draft.Attached.pdf

Members of the Select Committee on Pension Policy,

At the November SCPP meeting, staff was asked to analyze WSIB's proposal, and submit that analysis via email when ready. The policy analysis is attached. The actuarial analysis is still in process. We will forward the actuarial analysis to you as soon as it is complete.

Please contact me if you have any questions.

Thank you,

Aaron Gutierrez, MPA, JD
Senior Policy Analyst
Office of the State Actuary
P.O. Box 40914
Olympia, Washington 98504-0914
<http://osa.leg.wa.gov/>
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"Supporting financial security for generations."

This e-mail, related attachments, and any response may be subject to public disclosure under state law (Chapter 42.56 RCW).

WSIB Bill Draft: Investment Options for Target Date Funds (Plans 3 and DCP)

Issue Summary

At the November Select Committee on Pension Policy (SCPP) meeting, staff was instructed to analyze the final proposal prepared by the Washington State Investment Board (WSIB), and report back via email. This report contains that analysis.

The proposal, as shown in the attached bill draft, would allow the asset mix of Target Date Funds (TDFs) to include investment in the Total Allocation Portfolio (TAP) in both the Plans 3, and the Deferred Compensation Program (DCP).

Background

Current Situation

The following terms are difficult to define without reference to other key terms. Thus, it may help to read this section as a whole.

Statute provides WSIB with general authority to develop investment options for participants.¹

The Public Employees' Retirement System (PERS) Plan 3, the School Employees' Retirement System (SERS) Plan 3, and the Teachers' Retirement System (TRS) Plan 3 (collectively referred to as the Plans 3) have both a Defined Benefit (DB) and Defined Contribution (DC) component. The DC component is at issue here, as members can choose to self-direct their investments (which includes TDFs as an option) or have their money invested by WSIB (via the TAP).²

The DCP is an optional plan that state employees, and many local government employees can participate in. It is functionally similar to the DC portion of the Plans 3 but lacks one of the investment options (DCP members cannot invest in the TAP).

TDFs (also called Retirement Strategy Funds) are some of the investment options available for members of the Plans 3 and the DCP. Participants can pick a retirement date, and the asset mix of the fund will transition over time from more aggressive (but generally riskier) investments in the early years, to less aggressive (and generally safer) investments as the

¹See e.g., RCW [43.33A.135](#) and [43.33A.190](#).

²See the [DRS Website](#) for more information.

member gets closer to retirement. Members who do not select an option are defaulted into a TDF aligned with their expected retirement date.

The Commingled Trust Fund (CTF) holds all the assets of the Plans 1 and 2, as well as the DB portions of the Plans 3. It also holds any DC funds that Plans 3 members have chosen to invest in the TAP. Statute allows WSIB to mix these assets together for investment purposes.³

The TAP is nearly synonymous with the CTF. Essentially, it is an administrative mechanism created to allow Plans 3 members to invest in the CTF. Please note that DCP participants cannot invest in the TAP/CTF.

The CTF, and by extension the TAP, is invested in a variety of assets, including:

- ❖ Public markets.
 - ◇ Public equity.
 - ◇ Fixed income.
- ❖ Private markets.
 - ◇ Private equity.
 - ◇ Real estate.
 - ◇ Tangible assets.

As of June 30, 2019, the proportion of TAP/CTF assets invested in private markets was approximately 35 percent.⁴

Analysis of private markets, and the investment of public funds in private markets, is largely beyond the scope of this paper. We can, however, note three things that may be helpful:

- ❖ Private markets generally provide the opportunity for higher returns at greater risk.
- ❖ WSIB is a leader in utilizing private markets for the investment of pension funds.
- ❖ Private equity, and the investment of public funds in private equity, are the subject of some controversy.⁵

³[RCW 43.33A.170](#).

⁴See the [WSIB website](#) for more details.

⁵See, for example, some recent articles:

- [4 Key Takeaways From Congress' Private Equity Hearing](#).
- [Higher Risk, Higher Returns? New CalPERS Strategy Would Use Non-Public Employees](#).
- [They're The Biggest Investors In Private Equity. Now They're Asking The SEC To Step In](#).

WSIB Proposal

The attached bill draft does three main things:

- ❖ Allows the asset mix of the TDFs offered by WSIB for both Plans 3 and DCP to include the TAP.
- ❖ Changes the required frequency of portfolio valuations from monthly, to not less than monthly.
- ❖ Expands the limitation of liability for state actors related to the investment portion of the DCP (see below for more information on liability limitations).

Sectional

Section 1: Finding/Intent (New)

- ❖ States that the Legislature:
 - ◇ Finds that including the CTF in the asset mix would provide members broader investment exposure.
 - ◇ Intends to confirm participant access to a broader scope of assets.

Section 2: Modifies Plans 3 Statute (41.34.060)

- ❖ Allows the asset mix of the TDFs offered by WSIB to include the commingled funds authorized under law.
- ❖ Changes the required frequency of valuations of the portfolios mentioned above from "monthly" to "not less frequently than monthly".

Section 3: Modifies Plans 3 Statute (41.34.140)

- ❖ This appears to be a housekeeping change. Removes the word "monthly" in two references to the portfolio valuations mentioned above.
 - ◇ For reference, this section of statute limits the liability of certain employees when crediting rates based on the monthly valuations in Section 2 of the bill. Section 2 changes the valuation frequency, and this subsection strikes the word "monthly" in two places to bring it in line.

Section 4: Modifies DCP Statute (41.50.770)

- ❖ Allows the asset mix of the TDFs offered by WSIB to include the commingled funds authorized under law.
- ❖ Changes required frequency of valuations of any funds or portions requiring valuation to "no less than monthly".
- ❖ Allows WSIB to delegate powers and duties in this subsection to a third party.

- ❖ States that any declared unit values, frequency of valuations, and internal procedures shall be the sole discretion of the WSIB.

Section 5: Modifies DCP Statute (41.50.780)

- ❖ Adds a reference to 43.33A.170 (the statute that allows commingling of funds for investment purposes).
 - ◇ For reference, this subsection allows WSIB to invest the DCP principal account in accordance with certain statutes, and this adds the CTF statute to the list.
- ❖ Creates additional limitation of liability for state actors in relation to the DCP, with respect to unit valuations, rates of return, and any other action.

Limitations of Liability

In general, the bill draft expands the limitations of liability for state actors as it relates to the DCP by copying the limitation of liability in the Plans 3 chapter.

Given the interweaving of various provisions, it may be beneficial to break them down separately in the following table. Note the similarities between rows 7 to 8, and 11 to 12.

Select Committee on Pension Policy

Bill Draft	Current Law	Statute	Chapter	Entity	Not Liable For
1	X	43.33A.070	WSIB	Members of State Investment Board	Negligence, default, or failure of any other person or member of the board to perform the duties of the member's office
2	X	43.33A.070	WSIB	Members of State Investment Board	Cannot be considered an insurer of the funds or assets of any trust
3	X	43.33A.070	WSIB	Nonvoting members	Actions performed with the exercise of reasonable diligence within the scope of the member's authorized duties
4	X	41.50.145	DRS/DCP	Department of Retirement Systems	Employer error resulting in loss of investment return. Note: States that DRS is liable for departmental error resulting in loss of investment return
5	X	41.34.140	Plans 3	State Board or commission, agency, or any officer, employee or member thereof	Loss or deficiency resulting from participant investment of Plans 3 funds
6	X	41.34.140	Plans 3	Department, director, employee, State Investment Board, nor any officer, employee, or member thereof	Loss or deficiency resulting from the default investment option, or reasonable efforts to implement investment directions
7	X	41.34.140	Plans 3	State Investment Board, or any officer, employee, or member thereof	Declared monthly unit values or crediting rates of return, or any other exercise of powers, duties, or discretion
8	X	41.34.140	Plans 3	Department, officer or employee thereof	Crediting rates of return consistent with WSIB's declaration of monthly unit values
9	X	41.50.780	DRS/DCP	State board, commission, agency, or any officer, employee, or member thereof	Loss or deficiency resulting from participant investment of DCP funds
10	X	41.50.780	DRS/DCP	Department, director, or any employee, or the State Investment Board, nor any officer, employee, or member thereof	Loss or deficiency resulting from reasonable efforts to implement investment directions
11	X	41.50.780	DRS/DCP	State Investment Board, or any officer, employee, or member thereof	Declared monthly unit values or crediting rates of return, or any other exercise of powers, duties, or discretion
12	X	41.50.780	DRS/DCP	Department, or any officer or employee thereof	Crediting rates of return consistent with WSIB's declaration of monthly unit values

Policy Analysis

Caveat

The proposal and bill draft are all about investment policy. Investment policy is not something typically addressed by the SCPP and is outside SCPP staff's expertise. As a result, staff is relying on WSIB as the investor of funds and the Department of Retirement Systems (DRS) as the administrator of the plans for interpretation of the bill and some of the analysis.

For example, statute provides WSIB with broad authority in multiple areas related to the investment of retirement funds. Comparatively little is set in statute; the CTF is not defined in statute; nor is the TAP. Instead, statute grants WSIB broad authority to commingle funds for investment purposes,⁶ and explicitly allows members to have their Plans 3 funds invested by WSIB.⁷ Thus, interpretation of the bill draft language requires the reader to make some inferences, or rely on WSIB's stated intent and interpretation that the bill would allow the TDFs to include some investment in the TAP.⁸

Similarly, it is unclear whether or not a statutory change is required before WSIB can enact the underlying proposal since WSIB has broad authority to develop participant investment options⁹ in consultation with DRS.¹⁰ Ultimately, WSIB has said that yes, this proposal does require a statutory change.¹¹

Legal Analysis

With any issue before the committee, SCPP staff considers whether or not the issue or proposal will have any state or federal legal implications. If so, staff may comment on it, or follow up with experts as needed. In this case, SCPP staff is relying on statements from WSIB that this bill draft has been sufficiently analyzed by their legal staff.

Policy Considerations

The Revised Code of Washington ([RCW 43.34.010](#)) states that the purpose of the defined contribution portion of the Plans 3 is to increase portability (i.e., transition into other public or private employment) and increase employee options for addressing their retirement needs. While the purpose behind the DCP was not codified, the enacting legislation contained a similar statement.¹²

⁶[RCW 43.33A.170](#).

⁷[RCW 41.34.060](#).

⁸For example, [RCW 41.34.060](#) creates three separate Plan 3 portfolios; one each for PERS, SERS, and TRS, and says that when the members elect to have WSIB invest their funds PERS funds must be invested in the PERS portfolio, and so forth. Thus, so long as those three portfolios are invested the same fund (i.e., in the CTF), the TDFs can include investment in the CTF.

⁹[RCW 43.33A.010](#), [41.34.130](#), [43.33A.190](#). See also [RCW 43.33A.135](#) which applies to the Guaranteed Education Tuition Program.

¹⁰[RCW 41.34.130\(1\)](#).

¹¹See the [WSIB presentation](#) at the November SCPP meeting.

¹²Please note that [Chapter 239, Laws of 1995](#) created both TRS 3, and the DCP. The intent section seems to have applied to both.

Depending on your perspective and view of private equity, policy makers could see the bill draft as expanding options, modifying current options, or limiting options.

- ❖ Members of the Plans 3 can currently only take advantage of private markets if they participate in the TAP, so allowing the TDFs to have access to private markets could be viewed by policy makers as expanding options.
- ❖ Members of the DCP cannot take any advantage of private markets, so allowing this access through the TDFs could be viewed as expanding options.
- ❖ Increased exposure to private markets could impact the rate of return on member funds in either a positive or negative way depending on market performance. Thus, increasing the exposure could be viewed by policy makers as a welcome opportunity, an unnecessary risk, or somewhere in between.
- ❖ As noted above, private equity is the subject of some controversy, and some participants may have ideological objections to investing in it. Right now, only one of the investment options available to members includes investments in private equity. Under the proposal, many (or most, depending on how WSIB structures it) of the investment options will have exposure to private equity. Thus, this could be viewed by policy makers as limiting options.

Under current law, WSIB must establish investment policies aimed at maximizing returns at a prudent level of risk.¹³ According to WSIB, this proposal is expected to benefit members by providing higher risk-adjusted returns in the long run, which is consistent with that mandate.¹⁴

Actuarial Analysis

The Office of the State Actuary is currently performing actuarial analysis on the bill draft, and staff will update the SCPP when the analysis is complete.

Conclusion

Investment policy is largely outside of SCPP staff's expertise, so staff is relying on WSIB as the investor of funds and DRS as the administrator of the plans for interpretation of the bill and some of the analysis.

The bill draft provides Plans 3 and DCP members with additional ways to invest in private markets. According to WSIB, this is expected to benefit participants by providing higher risk-adjusted returns in the long run. However, the investment of retirement funds in private markets and private equity can be controversial, and some participants or policy makers may object to the expansion of private market investing through the TDFs.

Actuarial Analysis is pending, and staff will update the Committee when it is available.

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¹³RCW [43.33A.110](#).

¹⁴See WSIB's presentation to the SCPP in November 2019, available [here](#).

Attachment

WSIB Bill Draft

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: P/KB-2/19

ATTY/TYPIST: KB:eab

BRIEF DESCRIPTION: This will be assigned by the CRO

[Phil's Drafting notes:

- New language
- ((deletions))

]

AN ACT Relating to the retirement strategy funds in the plan 3 and the deferred compensation programs.

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

NEW SECTION **Sec. 1.** The legislature finds that participants in the retirement strategy funds of the deferred compensation and plan 3 defined contribution plans would gain broader investment exposure to a diversified asset mix by including the state investment board's commingled pension fund in the asset mix. It is the intent of the legislature to confirm participant access to a broader scope of assets.

Sec. 2. RCW 41.34.060 and 2011 c 80 s 2 are each amended to read as follows:

RCW Caption: Members' accounts—Investment—Election.

(1) Members may select investments as provided in subsections (2) and (4) of this section. If a member of the public employees' retirement system entering plan 3 under RCW 41.40.785, a member of the teachers' retirement system entering plan 3 under RCW 41.32.835, or a member of the school employees' retirement system entering plan 3 under RCW 41.35.610 does not select investments, the member's account shall be invested in the default investment option of the retirement strategy fund that is closest to the retirement target date of the member. Retirement strategy fund means one of several diversified asset allocation portfolios managed by investment advisors under contract to the state investment board. The asset mix of the portfolios adjusts over time depending on a target retirement date. The retirement strategy fund asset mix may include investment in state investment board commingled funds as authorized in RCW 43.33A.170.

(2) Members may elect to have their account invested by the state investment board. In order to reduce transaction costs and

address liquidity issues, based upon recommendations of the state investment board, the department may require members to provide up to ninety days' notice prior to moving funds from the state investment board portfolio to self-directed investment options provided under subsection (4) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan 3, investment shall be in the same portfolio as that of the teachers' retirement system combined plan 2 and 3 fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.35 RCW of plan 3, investment shall be in the same portfolio as that of the school employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(4).

(c) For members of the retirement system as provided for in chapter 41.40 RCW of plan 3, investment shall be in the same portfolio as that of the public employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(3).

(3) The state investment board shall declare ~~monthly~~ unit values not less frequently than monthly for the portfolios or funds, or portions thereof, utilized under subsection(2)(a), (b), and (c) of this section. The declared values shall be an approximation of portfolio or fund values, based on internal procedures of the state investment board. Such declared unit values and internal procedures shall be in the sole discretion of the state investment board. The state investment board may delegate any of the powers and duties under this subsection, including discretion, pursuant to RCW 43.33A.030. Member accounts shall be credited by the department with a rate of return based on changes to such unit values.

(4) Members may elect to self-direct their investments as set forth in RCW 41.34.130 and 43.33A.190.

[2011 c 80 § 2; 2001 c 180 § 2; 2000 c 247 § 404; 1999 c 265 § 1; 1998 c 341 § 303; 1996 c 39 § 15; 1995 c 239 § 206.]

Sec. 3. RCW 41.34.140 and 2011 c 80 s 3 are each amended to read as follows:

RCW Caption: Liability for loss or deficiencies—Limitations.

(1) A state board or commission, agency, or any officer, employee, or member thereof is not liable for any loss or deficiency resulting from member defined contribution investments selected, made, or required pursuant to RCW 41.34.060 (1), (2), or (4).

(2) Neither the department, nor director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from a member investment in the default option pursuant to RCW 41.34.060(1) or reasonable efforts to implement investment directions pursuant to RCW 41.34.060 (1), (2), or (4).

(3) The state investment board, or any officer, employee, or member thereof is not liable with respect to any declared ~~monthly~~ unit valuations or crediting of rates of return, or any other exercise of powers or duties, including discretion, under RCW 41.34.060(3).

(4) The department, or any officer or employee thereof, is not liable for crediting rates of return which are consistent with the state investment board's declaration of ~~monthly~~ unit valuations pursuant to RCW 41.34.060(3).

[2011 c 80 § 3; 2010 1st sp.s. c 7 § 35; 1999 c 265 § 2; 1998 c 341 § 308.]

Sec. 4. RCW 41.50.770 and 2016 c 112 s 1 are each amended to read as follows:

RCW Caption: Deferred compensation plans.

(1) "Employee" as used in this section and RCW 41.50.780 includes all full-time, part-time, and career seasonal employees of the state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of the government, including full-time members of boards, commissions, or committees;

justices of the supreme court and judges of the court of appeals and of the superior and district courts; and members of the state legislature or of the legislative authority of any county, city, or town.

(2) The state, through the department, and any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body is authorized to contract with an employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the amount allowable under 26 U.S.C. Sec. 401(a) or 457, and deposit or invest such deferred portion in a credit union, savings and loan association, bank, or mutual savings bank or purchase life insurance, shares of an investment company, individual securities, or fixed and/or variable annuity contracts from any insurance company or any investment company licensed to contract business in this state.

(3) Beginning no later than January 1, 2017, all persons newly employed by the state on a full-time basis who are eligible to participate in a deferred compensation plan under 26 U.S.C. Sec. 457 shall be enrolled in the state deferred compensation plan unless the employee affirmatively elects to waive participation in the plan. Persons who participate in the plan without having selected a deferral amount or investment option shall contribute three percent of taxable compensation to their plan account which shall be invested in a default option selected by the state investment board in consultation with the director. This subsection does not apply to higher education undergraduate and graduate student employees and shall be administered consistent with the requirements of the federal internal revenue code.

(4) Beginning no later than January 1, 2017, any county, municipality, or other political subdivision offering the state deferred compensation plan authorized under this section, may choose to administer the plan with an opt-out feature for new employees as described in subsection (3) of this section.

(5) Employees participating in the state deferred compensation plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a) administered by the department shall self-direct the investment of the deferred portion of their income through the selection of investment options as set forth in subsection (6) of this section.

(6) The department can provide such plans as it deems are in the interests of state employees. In addition to the types of investments described in this section, the state investment board, with respect to the state deferred compensation plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a), shall invest the deferred portion of an employee's income, without limitation as to amount, in accordance with RCW 43.84.150, 43.33A.140, and 41.50.780, and pursuant to investment policy established by the state investment board for the state deferred compensation plan under 26 U.S.C. Sec. 457 or money-purchase retirement savings plan under 26 U.S.C. Sec. 401(a). The state investment board, after consultation with the director regarding any recommendations made pursuant to RCW 41.50.088(2), shall provide a set of options for participants to choose from for investment of the deferred portion of their income. Any income deferred under these plans shall continue to be included as regular compensation, for the purpose of computing the state or local retirement and pension benefits earned by any employee.

(7) Any retirement strategy fund asset mix may include investment in a state investment board commingled fund. Retirement strategy fund means one of several diversified asset allocation portfolios managed by investment advisors under contract to the state investment board. The state investment board shall declare unit values for its commingled funds no less than monthly for the funds or portions thereof requiring valuation. The declared values shall be an approximation of portfolio or fund values, and both the values and the frequency of the valuation shall be based on internal procedures of the state investment board. Such declared unit values,

the frequency of their valuation, and internal procedures shall be in the sole discretion of the state investment board. The state investment board may delegate any of the powers and duties under this subsection, including discretion, pursuant to RCW 43.33A.030.

~~((7))~~ (8) Coverage of an employee under optional salary deferral programs under this section shall not render such employee ineligible for simultaneous membership and participation in any pension system for public employees.

[2016 c 112 § 1; 2014 c 172 § 1; 2010 1st sp.s. c 7 § 29; 1998 c 116 § 11; 1995 c 239 § 314.]

Sec. 5. RCW 41.50.780 and 2016 c 112 s 2 are each amended to read as follows:

RCW Caption: Deferred compensation principal and administrative accounts created—Participation in deferred compensation plans—Department's duties.

(1) The deferred compensation principal account is hereby created in the state treasury.

(2) The amount of compensation deferred under 26 U.S.C. Sec. 457 by employees under agreements entered into under the authority contained in RCW 41.50.770 shall be paid into the deferred compensation principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by the department. The deferred compensation principal account shall be used to carry out the purposes of RCW 41.50.770. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department under RCW 41.50.770. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under RCW 41.50.770, including the making of payments therefrom to the employees participating in a deferred compensation

plan upon their separation from state or other qualifying service. Accordingly, the deferred compensation principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein.

(4) All moneys in the state deferred compensation principal account and the state deferred compensation administrative account, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the state deferred compensation plan's participants and their beneficiaries. Neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, has any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments under the plan. These payments and right thereto are nonassignable and nontransferable. Unpaid accumulated deferrals are not subject to attachment, garnishment, or execution and are not transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law.

(5) The state investment board has the full power to invest moneys in the state deferred compensation principal account and the state deferred compensation administrative account in accordance with RCW 43.84.150, 43.33A.140, 43.33A.170, and 41.50.770, and cumulative investment directions received pursuant to RCW 41.50.770. All investment and operating costs of the state investment board associated with the investment of the deferred compensation plan assets shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation principal account.

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency

resulting from participant investments selected pursuant to RCW 41.50.770(5).

(b) Neither the department, nor the director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.50.770(5).

(c) The state investment board, or any officer, employee, or member thereof is not liable with respect to any declared unit valuations or crediting of rates of return, or any other exercise of powers or duties.

(d) The department, or any officer or employee thereof, is not liable for crediting rates of return which are consistent with the state investment board's declaration of unit valuations.

(7) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the department pertaining to the deferred compensation plan including staffing and administrative expenses shall be paid out of the deferred compensation administrative account. Any excess balances credited to this account over administrative expenses disbursed from this account shall be transferred to the deferred compensation principal account at such time and in such amounts as may be determined by the department with the approval of the office of financial management. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from this account shall be transferred to this account from the deferred compensation principal account.

(8)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant, obligations, transactions, and affairs of any deferred compensation plans created under RCW 41.50.770 and this section. The department shall account for and report on the investment of state deferred compensation plan assets or may enter into an agreement with the state investment board for such accounting and reporting.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks.

(9) The department may adopt rules necessary to carry out its responsibilities under RCW 41.50.770 and this section.

[2016 c 112 § 2; 2010 1st sp.s. c 7 § 30; 2008 c 229 § 12; 2001 c 181 § 2. Prior: 1998 c 245 § 42; 1998 c 116 § 12; 1995 c 239 § 315.]

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From: [MAUREEN WAR BROUCK](#)
To: [Office State Actuary, WA](#)
Subject: Retired Firefighters of Washington constituent letter to be listed for the record at the SCPP 6-16-2020 Executive Committee Meeting
Date: Monday, June 8, 2020 2:54:57 PM
Attachments: [June 8 Rep. Fitzgibbon & Mr. Smith.docx](#)

June 8, 2020

Representative Joe Fitzgibbon
Chair, Select Committee on Pension Policy
Olympia, WA

Mr. Matt Smith, State Actuary
Office of the State Actuary
Olympia, WA

Dear Representative Fitzgibbon and Mr. Smith,

We respectfully request you to put an item on the 2020 Interim Select Committee on Pension Policy agenda. The issue is in regard to RCW 41.26.150 medical services and the payment of medical expenses for LEOFF I members that have been approved for payment by a LEOFF I disability board. The statute was discussed during the 2019 interim by the Committee and is still a major concern.

An Attorney General Opinion was requested and received by the SPP in 2019. The opinion outlined the Committee's duties, responsibilities and authority and advised that the Committee had no authority to instruct or mandate how a LEOFF I disability board must administer the board's responsibilities under the statute. Currently several LEOFF I disability boards are requiring the LEOFF I member or family to pay out of pocket for medical expenses regardless of the amount and then apply for reimbursement from the employer.

This policy places a real hardship on the member who may be in a hospital or nursing home or on a spouse who may not be well themselves and at an older age, often in their seventies, eighties and some in their nineties. We don't think the pre-payment requirement meets the scope of the statute or the legislative intent. We also feel that RCW 41.26.150 should be administered in the same manner throughout the state like any other statute. We don't know of any other medical insurance provider including PEB that provides the medical insurance for state employees that require a prepayment. Keep in mind that some of these expenses can be in the tens of thousands of dollars.

We further request the Select Committee on Pension Policy to submit a bill in the 2021 session to correct and clarify this inequity that creates such a hardship on so many members and their families.

Thank you for your consideration of this request.

Respectfully,

Richard C. Warbrouck
President Retired Firefighters of Washington (RFFOW)
206-406-9823

E. Review Draft Interim Work Plan

2020 Draft Interim Work Plan

This document is prepared by staff to assist in planning for the interim, and subject to change at least monthly. Committee agendas are adopted by the Executive Committee in open meetings. The Committee typically does not meet in August or during the Legislative Session. Please see the [SCPP website](#) for adopted agendas.

June		
Subject	Briefing Type	Action Item?
Interim Kick-Off	Procedural	
Agency Updates and COVID-19 Impacts <ul style="list-style-type: none"> ❖ Washington State Investment Board ❖ Department of Retirement Systems ❖ Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board ❖ Office of the State Actuary 	Informational	
Preliminary AVR Results and Demographic Experience Study Audit	Informational	
Interim Planning	Informational	
Election of Officers	Procedural	Y
July		
Subject	Briefing Type	Action Item?
Rate Recommendation to PFC	Procedural	Y
2020 Legislative Session Highlights	Informational	
Study of Administrative Practices Under Chapter 41.54 RCW	Initial Briefing	
Interruptive Military Service Credit Study	Initial Briefing	
September		
Subject	Briefing Type	Action Item?
CEM Benchmarking	Annual Update	
Update on PFC Rate Adoption	Informational	
Study of Administrative Practices Under Chapter 41.54 RCW	Policy Analysis	
Interruptive Military Service Credit Study	Policy Analysis	

October		
Subject	Briefing Type	Action Item?
DRS Update	Annual Update	
OSA Budget	Informational	
Interruptive Military Service Credit Study: Preliminary Recommendations	Public Hearing/Action Item	Y
Preliminary 2020 Meeting Dates	Procedural	
November		
Subject	Briefing Type	Action Item?
WSIB Update	Annual Update	
Study of Administrative Practices Under Chapter 41.54 RCW	Public Hearing/Action Item	Y
Interruptive Military Service Credit Study: LEOFF 2 Board Recommendations	Informational	
Adoption of 2020 Meeting Dates	Procedural	Y
December		
Subject	Briefing Type	Action Item?
Interruptive Military Service Credit Study: Final Recommendations	Public Hearing/Action Item	Y

Key

Procedural: Refers to Committee processes. Action may or may not be required.
Informational: Provides the Committee with information. Action is not required.
Annual Update: Regular updates from entities involved in pensions, such as the Department of Retirement Systems and Washington State Investment Board.

While not expressly required, many **policy-related** agenda items follow a three-step process:

1. **Initial Briefing** (background and scoping).
2. **Policy Analysis** (develop options; potential pricing).
3. **Public Hearing/Action Item.**

Please note that each step can sometimes take more than one meeting.

F. Adoption of July Agenda

Select Committee on Pension Policy

P.O. Box 40914
Olympia, WA 98504-0914
state.actuary@leg.wa.gov

Regular Committee Meeting

July 21, 2020
10:00 a.m. – 12:00 p.m.*
Virtual Remote Meeting
Olympia

DRAFT AGENDA

- 10:00 a.m.
1. **Approval of June Minutes**
 2. **Rate Recommendation to PFC**
 3. **2020 Legislative Session Highlights**
 4. **Study of Administrative Practices Under Chapter 41.54 RCW**
 5. **Interruptive Military Service Credit Study**
 6. **Public Comment**
- 12:00 p.m.
7. **Adjourn**

**These times are estimates and are subject to change depending on the needs of the Committee.*

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***Vacant, Vice Chair**

John Boesenberg
PERS/Higher Ed Employers

Senator Steve Conway

Annette Creekaum
PERS Employers

Randy Davis
TRS Actives

***Representative Joe Fitzgibbon, Chair**

Beverly Freeman
PERS Employers

***Tracy Guerin, Director**
Department of Retirement Systems

***Bev Hermanson**
PERS Retirees

Senator Steve Hobbs

Leanne Kunze
PERS Actives

Anthony Murrietta
PERS Actives

***Byron Olson**
PERS Employers

Representative Timm Ormsby

Senator Mark Schoesler

David Schumacher, Director
Office of Financial Management

Mark Soper
WSPRS Retirees

Representative Drew Stokesbary

***J. Pat Thompson**
PERS Actives

Representative Mike Volz

**Executive Committee*

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G. Other Business

No written materials have been included for this agenda item.