Court Commissioners

Issue

Court Commissioners (Commissioners), Judges, and Justices (Judges)[1] are members of the Public Empoyees' Retirement System (PERS) Plans 1, 2, and 3. In 2006, Judges were granted the option of paying higher contribution rates in exchange for an increased benefit multiplier.

Commissioners have asked for the ability to choose an increased multiplier option similar to the one provided to Judges in 2006.

[1] *Elected or appointed after 1988.*

Background

Judges in Washington can appoint Commissioners to assist the court in administering cases. Commissioners serve a similar role to that of a judge, with the power to hear cases, issue judgments, and administer oaths.

In the 2009 Legislative Session, Senate Bill 5523[2], a non-SCPP bill, was introduced to provide an enhanced benefit multiplier to Commissioners which is similar to the option provided to Judges. The enhanced benefit applies prospectively to all future service, but Commissioners can receive the increased multiplier for previous service credit by paying the full actuarial equivalent value for the higher benefit at any point prior to retirement. The bill passed out of Ways and Means, but did not pass the Senate.

Instead of the 2.0 percent multiplier for members of PERS Plans 1 and 2, and 1.0 percent for the defined benefit portion of PERS Plan 3, Commissioners who choose the increased multiplier will receive 3.5 percent and 1.6 percent, respectively. Enhanced benefits in Plans 1 and 2 are capped at 75.0 percent of salary average, and benefits in Plan 3 are capped at 37.5 percent. Member contribution rates will increase to pay for most of the increased cost.

[2] *A companion bill (HB 1742) was introduced, but did not receive a hearing.*

Policy Considerations

- While they serve in similar roles to Judges, Commissioners are not Judges and have never been provided the same benefits as Judges.
- Some of the pension policy and human resource policy reasons for providing higher benefits to Judges may apply to Commissioners.
- Groups other than Commissioners may want the ability to purchase customized benefits.

- Customized benefits increase member flexibility and may be an effective recruitment and retention tool. However, customization also increases system complexity and may encourage benefit envy among members.

What is the Next Step?

Options include:

- Do nothing at this time.
- Endorse SB 5523 or HB 1742.
- Sponsor this proposal as an SCPP bill.
  - Staff will provide an updated bill draft or amendments as requested.
- Consider other options.

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Court Commissioners

In Brief

Issue

Court commissioners have asked for the ability to purchase an enhanced benefit similar to the option offered to Judges in 2006.

Member Impact

The proposed legislation is targeted to court commissioners. Court commissioners are members of the Public Employees' Retirement System (PERS) and any changes could potentially affect all members of PERS. There are currently 117 court commissioners. Of these, 75 are eligible for benefits.

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Current Situation

Court Commissioners (Commissioners), Judges, and Justices (Judges) [1] are members of the Public Employees' Retirement System (PERS). In 2006, Judges were granted the option of paying higher contribution rates in exchange for an increased benefit multiplier.

Commissioners have asked for the ability to purchase an enhanced benefit similar to the option offered to Judges in 2006.

[1] *Elected or appointed after 1988.*

Background

Judges in each county and judicial district can appoint Commissioners to assist the court in administering cases.[2] Commissioners serve in similar capacity to that of a judge, with the power to hear cases, issue judgments, and administer oaths.[3] Commissioners can be limited in their appointment as to the type of actions they adjudicate, and generally preside over civil or uncontested matters, such as adoption and probate. However, in counties with a population over 400,000 Commissioners may also be appointed to adjudicate adult criminal cases.[4]

Commissioners are not required to have the same qualifications as a judge. Under Article IV, Section 17 of the State Constitution, admission to practice law in the State of Washington is a prerequisite to becoming a judge. In contrast, the State Constitution and RCW are silent on required qualifications for Commissioners.[5]

Prior to 1988, Judges had their own retirement systems which provided benefits that were different from those available to other public employees, including a higher multiplier.

Multipliers are used in the calculation of retirement benefits as follows:

Multiplier X Service Credit X Salary Average = Benefits

Beginning in 1988, newly elected or appointed Judges have been members of PERS. From 1988 to 2006, Judges in PERS received the same multiplier as other PERS members,[6] and state-employed Judges also had access to a special supplemental defined contribution account (the Judicial Retirement Account, or JRA) not available to other public employees. The JRA was funded equally by the Judges and the employer.

In 2006, the Legislature passed SHB 2691, which provided Judges in PERS the option of paying higher contribution rates in exchange for increased benefit multipliers of 3.5 percent, and 1.6 percent respectively.

Benefits for Judges in Plans 1 and 2 were capped at 75.0 percent of salary average, and benefits for Judges in Plan 3 were capped at 37.5 percent. Member contribution rates for Judges increased to pay for most of the cost.

[2] *Article IV, Section 23, and RCW 2.24.010 et seq.*

[3] *RCW 2.24.040.*

[4] *RCW 2.24.010(2).*

[5] *See also AGO 57-58 No. 50.*

[6] *Two percent for Plans 1 and 2, and 1 percent for Plan 3.*

Legislative History

Senate Bill 5523 was introduced in the 2009 legislative session.[7] The bill did not go through the SCPP. This bill would have provided an increased multiplier option for Commissioners that was identical to that for Judges: 3.5 percent for Plans 1 and 2, and 1.6 percent for the defined benefit portion of Plan 3. The bill was passed out of Senate Ways and Means.

Under the current wording of the bill, Commissioners wishing to receive the enhanced multiplier must make a one-time irrevocable election between September 1, 2009 and January 31, 2010. Commissioners appointed after September 1, 2009, would have 90 days from the date of hire to select this option.

The enhanced benefit applies prospectively to all future earnings. However, Commissioners can receive the increased modifier for previous service by paying the full actuarial equivalent value at any point prior to retirement.

Under the current wording of the bill, member contribution rates for Commissioners would increase to pay for most of the cost.

Member contribution rates for Commissioners would increase as noted in the attached fiscal note, and updated pricing will be available at the November Select Committee hearing. In brief, increased member contributions will pay for most of the increased cost.

[7] *A companion bill (HB 1742) was introduced, but did not receive a hearing.*

Other states

Of Washington's peer states, California has Commissioners substantially similar to Washington. In California, Commissioners receive the same benefits as other California Public Employees'

Retirement System employees, and do not receive the special benefits provided to Judges.

Policy Analysis

There are three questions the Committee may wish to consider:

- Do the reasons why Judges were given a higher multiplier also apply to Commissioners?
- Are Commissioners similar enough to Judges to warrant similar benefits?
- Should different benefits be given to individual groups within a system?

Do the reasons why Judges were given a higher multiplier also apply to Commissioners?

There are three reasons Judges were given a higher multiplier:

- Historical precedent.
- Shorter careers.
- Recruitment.

The following sections will examine each of these reasons and how they may apply to Commissioners in greater detail.

There is no historical precedent for giving Commissioners unique benefits

Judges have historically received unique benefits not available to other public employees, while Commissioners have received the same level of benefits as other PERS members.

Judges have historically received unique benefits not available to other public employees. As mentioned above, Judges had two retirement systems of their own prior to 1988. Even when Judges became members of PERS and received the same multiplier as other members of PERS, they still had access to a special defined contribution account (the JRA).

In contrast, Commissioners have historically received the same benefits as other PERS members. The Legislature has not chosen to provide Commissioners with the same benefits as Judges at any of the times benefits for Judges were created or modified.

Commissioners Typically Have Shorter Careers

Like Judges, Commissioners typically begin in mid or late career, and may not have time to accrue substantial benefits.

Judges typically begin in mid or late career, and compared to the average PERS member may have less time before retirement to accrue benefits. This is because Judges must be qualified to practice law, and must have extensive education and legal experience prior to running for the position.

Like Judges, Commissioners typically begin in mid or late career, and may not have time before retirement to accrue substantial benefits. While not required under the Constitution or state statute, Commissioners may also have extensive education and legal experience prior to being appointed.

Recruitment

Increased benefits can assist with recruitment of candidates.

Increased benefits, such as a higher multiplier, can assist in recruitment of qualified candidates in a profession where salaries can be high. Commissioners may be recruited from the same pool as Judges, and a higher multiplier may also assist in recruiting candidates for Commissioner.

Are Commissioners similar enough to Judges to warrant similar benefits?

Commissioners are not Judges, but they serve in similar roles.

Some policy makers may feel that employees who work side by side in similar roles should have similar benefits. Commissioners are not Judges, but they share similar roles and demographics such as background, qualifications, and accrued service credit. For example, Commissioners and Judges may work side by side, and in some cases a single individual may serve as both Commissioner and judge at the same time. Commissioners and Judges both typically receive salaries that are higher than the average PERS member.

However, Judges are elected, where Commissioners are appointed. Judges are required under the State Constitution to be qualified to practice law, while Commissioners are not.

Given these differences, policy makers may wish to consider whether Commissioners are similar enough to Judges to warrant similar benefits.

Should Different Benefits Be Given To Individual Groups Within A System?

Most members of PERS do not receive customized benefits. The groups that do receive customized benefits have a history of receiving benefits not available to other public employees.

Groups within PERS do not generally receive customized benefits. Typically, if a member group is to be granted customized benefits, the members will be removed from PERS and given their own system. For example, SERS and PSERS were both created with former members of PERS.

Judges and other elected officials are the only groups still within PERS that receive customized benefits. Both of these groups have a history of receiving unique benefits not available to other public employees.

If increased benefits are extended to Commissioners, it would represent the first time a member group without a historical

precedent for special benefits stayed in PERS while receiving customized benefits.

If one group of PERS members without a history of unique benefits is allowed to pay more in exchange for increased or customized benefits, it may set precedent for other groups to request identical benefits or greater customization. For example, other public employees may also begin their career in Washington State at mid or late career, and want to pay for a higher multiplier. Still other public employees may wish to pay more for a lower retirement age.

Customized benefits provide flexibility and may be an effective recruitment tool. However, customization can also create complexity within a system and encourage benefit envy.

Some policy makers may view this issue as one of providing member flexibility at member cost. While customized benefits increase member flexibility and may be an effective recruitment and retention tool, greater customization of benefits also increases system complexity, and may encourage benefit envy between members.

Conclusion

Judges have historically received unique benefits not available to other public employees, while Commissioners have received the same level of benefits as other PERS members.

Commissioners are not Judges, but they serve in similar roles, and are demographically similar to Judges in many respects. Like Judges, Commissioners typically begin in mid or late career, and may not have time accrue substantial benefits.

Few groups within PERS receive customized benefits, and those that do have a historical precedent for receiving special benefits. Customizing benefits for groups that do not share such a history may be an effective recruiting tool, but can create complexity and envy within a system.

Next Steps

- Do nothing at this time.
- Endorse SB 5523 or HB 1742.
- Sponsor this proposal as an SCPP bill.
  - Staff will provide an updated bill draft or amendments as requested.
- Consider other options.

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