

Furloughs

(LEOFF 2 Proposal)

(Revised December 14, 2010 to change the description of the fiscal analysis. The results of the fiscal analysis are unchanged.)

Issue

The Law Enforcement Officers' and Fire Fighters' Plan 2 (LEOFF 2) Board has requested coordination in addressing the effects of budget-related salary reductions on pension benefits. Specifically, the Board wishes to address the effects on pension benefits for members of LEOFF resulting from general salary reductions, and any reduction or elimination of a previously negotiated salary increase. At issue for the SCPP is the decision whether or not to study expanding these effects in other retirement systems.

Procedural Standing

At their December 15 meeting, the Board will review a LEOFF 2 staff bill draft for possible recommendation to the Legislature. LEOFF 2 staff has provided a preliminary bill draft to the SCPP for review. This staff bill draft has not been reviewed or approved by the Board, and prior LEOFF 2 staff analysis has not addressed the bill draft directly.

An actuarial fiscal note is not available for the staff bill draft, but OSA will provide preliminary sensitivity analysis at the SCPP's December 14 meeting. Full fiscal analysis is contingent on obtaining data. OSA staff requested data from LEOFF 2, and received some preliminary data from the Washington State Association of Counties and the Association of Washington Cities.

Issue Development

In June 2010, the Board wrote to the SCPP requesting coordination between the two entities in preparing possible legislation for the 2011 Session. The Board advocated expanding pension protections enacted for PERS members in 2009 to members of other systems, including LEOFF Plan 2.

In September 2010, the SCPP held a work session to discuss the LEOFF 2 Board's request. After the meeting, no further action was taken.

In November 2010, the Board wrote to the SCPP to note that few LEOFF 2 members were subject to furloughs, but that salary reductions and foregone wage increases were common and had the same overall effect on the members as furloughs. As such, the Board advocated a modified proposal. The modified proposal would expand the definition of "furloughs" enacted in prior legislation to include salary reductions or foregone wage increases due to budget reductions.

At the November SCPP meeting, Board staff stated that draft language had been submitted to OSA staff in preparation for the Board's review and possible approval at its December meeting. The Executive Committee of the SCPP requested a work session on that draft.

Defining Furloughs

In the context of public employment, "furloughs" typically refers to unpaid leaves of absence or temporary layoffs. They can be voluntary or mandatory. In response to budgetary constraints, furloughs have been used by many public agencies to temporarily reduce staffing costs without laying off staff. Furlough plans commonly involve either shutting down the office for one or more days, or allowing individual employees to take unpaid leave.

While they may not be exempt from budget cuts, public safety personnel, including police, fire, and other emergency services, are typically exempt from furlough plans. There is no state wide furlough policy or exhaustive list of furlough plans, but staff has only confirmed one entity that has enacted mandatory furloughs on police or fire.¹

¹ *City of Bremerton.*

Furloughs Can Impact Pension Benefits

Furloughs reduce the amount of salary that is earned by employees. This, in turn, can impact a member's pension benefits by affecting salary average or service credit. Members may be able to minimize or avoid these impacts by working longer before retirement, or purchasing additional service credit at retirement.¹

Please see the September issue paper for more information on pension calculation and service credit rules: <http://www.leg.wa.gov/SCPP/Meetings/Pages/Sep10.aspx>.

Salary Average

Salary average varies by plan, but is generally based on the member's highest consecutive two or five years of employment. If an employee is furloughed during the two- or five-year span used to calculate salary average, that employee's pension benefits may be reduced.

For most employees, salary is highest near retirement. Employees who are furloughed five or more years before retirement are less likely to have their pension calculations affected by salary reductions.

Service Credit

Members are not likely to lose service credit due to furloughs. For example, a full-time employee subject to the ten shutdown days included in ESSB 6503 would not lose service credit. Partial service credit is also available and varies by plan.

Current Law

Two bills were passed in the last two years; one in each of the prior legislative sessions. The following is a brief description of the framework created by these bills. Please see the September issue paper for more details.

<http://www.leg.wa.gov/SCPP/Meetings/Pages/Sep10.aspx>

Under each of the prior bills, the plan administrator works with retirees and employers to determine whether furloughs will affect a retiree's salary average. Upon retirement, the Department of Retirement Systems (DRS) asks the retiree if he or she was affected by furloughs during the 2009-11 Biennium. If so, DRS will ask the employer to certify what the retiree would have earned had it not been for the reduction and that the reduction was an integral part of that employer's expenditure reduction efforts.

Based on that certification, DRS will adjust the retiree's salary average so that the member's pension benefits are calculated as though the member had not been furloughed. This is an after-the-fact adjustment based on what the employee would have earned, and the retiree does not directly receive compensation for time not worked.

Current law only includes salary reductions due to:

- ❖ Reduced work hours.
- ❖ Mandatory or voluntary leave without pay.
- ❖ Temporary layoffs.

Current law applies the salary average protection provision to the following retirement system members.

Salary Average Protection Provisions Created by SB 6157 (2009) and ESSB 6503 (2010)		
	Local	State
PERS	X	X
TRS		X
SERS		
PSERS		X
LEOFF		X
WSPRS		X

The salary average adjustment in current law creates a cost to the system because it removes a salary experience gain that would otherwise occur in absence of the adjustment. In other words, future plan liabilities and associated contribution rates would decrease without the adjustment. This cost must be absorbed by the affected retiree's retirement plan (i.e. passed to active members and employers).

For more information, please see the actuarial fiscal notes for the prior legislation.

SB 6157 (2009):

<https://fortress.wa.gov/ofm/fnspublic/legsearch.asp?BillNumber=6157&SessionNumber=61>

ESSB 6503 (2010):

<https://fortress.wa.gov/ofm/fnspublic/legsearch.asp?BillNumber=6503&SessionNumber=61>

LEOFF Proposal

Draft language provided by LEOFF 2 staff (attached) makes three changes to existing law for LEOFF members:

- ❖ Expanded coverage.
 - Current law applies the salary average adjustment to compensation foregone due to reduced work hours, mandatory or voluntary leave without pay and temporary layoffs. The staff bill draft would also apply the adjustment to all other salary reductions (such as percentage reductions across-the-board), and reductions or eliminations of previously contracted salary increases (such as salary freezes or foregone step increases). To be considered for the adjustment, a reduction must be certified by the employer as an integral part of the employer's expenditure reduction efforts.

- ❖ Application to local government employees.
 - Current law applies to state LEOFF employees and does not cover local government LEOFF employees. The staff bill draft would apply both the current provisions and new provisions to all members of LEOFF, including both state and local. As of the June 30, 2009, Actuarial Valuation, only 114 of the 16,951 active members are state employees.
- ❖ Modified timeframe.
 - Current law applies to reductions experienced during the 2009-11 Biennium. The staff bill draft would alter this in three ways:
 - Current provisions for state LEOFF employees would be extended to the 2011-13 Biennium.
 - Current provisions would apply retroactively for local government LEOFF employees and would apply for both the 2009-11 and 2011-13 Biennia.
 - New provisions would apply retroactively and would apply for both the 2009-11 and 2011-13 Biennia.

The full text of the draft provided by LEOFF 2 staff is attached. However, the crux of the proposal is contained in the following changes to RCW 41.26.030(15)(c):

- ❖ In calculating final average salary under (a) or (b) of this subsection, the department of retirement systems shall include any compensation forgone by a member ~~((employed by a state agency or institution))~~ during the 2009-2011 fiscal biennium or the 2011-2013 Fiscal Biennium as a result of salary reductions, reduction or elimination of previously contracted salary increases, reduced work hours, mandatory or voluntary leave without pay, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

Administration

Based on the bill draft provided by LEOFF 2 staff, DRS would administer the proposal in the same way as the prior furlough bills: In addition to asking a retiree if he or she was affected by furloughs, DRS will inquire whether the retiree was affected by other salary reductions (e.g. across-the-board salary reductions) or a reduction or elimination of a previously contracted salary increase (e.g. salary freeze or foregone step increase).

If the retiree answers in the affirmative, DRS will ask the employer to certify what the retiree would have earned had it not been for the reduction, and adjust the retiree's salary average accordingly.

As currently drafted, the LEOFF 2 staff bill draft would apply only to those who have not yet retired. In other words, DRS will not adjust benefits for retirees who have retired prior to the effective date of the proposal. To illustrate, here is one possible scenario:

A LEOFF member who worked for a local government was furloughed during the 2009-11 Biennium. That member retired, and did not receive a salary average adjustment since LEOFF local government employees are not covered under current law. Sometime after the member has retired, the LEOFF 2 bill passes (as currently drafted), and LEOFF local government members are now covered back to the beginning of the 2009-11 Biennium. DRS would not adjust that retiree's benefits to account for the furloughs.

Cost

The cost of the Board staff draft is indeterminate at this time. Preliminary sensitivity analysis will be presented at the December SCPP meeting, but a complete analysis will be contingent on obtaining additional information regarding the extent of salary reductions for each of the affected members and how the language of the staff bill draft is interpreted.

In general, the extent of salary reductions is not yet known because employers report what an employee earned, and not what the employee might have earned. Employers do not report furloughs to DRS, and data is obtained only after the retiree requests an adjustment. Similarly, employers do not report reductions in salary or foregone increases. As noted above, staff is working to obtain data on budget cuts and salary reductions.

We also do not yet know how the LEOFF 2 staff bill draft will be interpreted. This issue is discussed in greater detail below.

Any cost for salary average adjustments for retirees affected by salary reductions in the staff bill draft would be absorbed by the retirement system (i.e. passed to all members and employers). This is because the salary adjustment eliminates a salary experience gain that would occur without the adjustment. In other words, the plan's liabilities and associated contribution rates would decrease without the adjustment. The cost is the elimination of that salary experience gain. This structure is consistent with current law for salary average adjustments for retirees impacted by furloughs.

If the proposal is limited to LEOFF 2 members only, then any of the 16,951 active members (as of the 2009 actuarial valuation) could be affected, and the plan would absorb the cost. If expanded to other systems, then potentially any of the 301,838 active members could be affected, though the most likely to be affected are those who are currently eligible for retirement, or are within seven years of retirement

(measured from the beginning of the 2009-11 biennium). For those who are affected, the cost would be absorbed by the appropriate plans. Contribution rates will likely increase to cover the increased cost.

Should The Proposal Be Applied To Other Systems?

The LEOFF 2 staff bill draft applies only to members of LEOFF, and may not be directly portable to other systems. However, the SCPP may wish to study whether the approach should be applied to other systems. In other words, should employees in other state retirement systems receive a salary average adjustment in response to expenditure reduction efforts other than furloughs?

Furlough plans are typically just one part of a broader expenditure reduction plan, and many public entities are experiencing compensation reductions that may not fit the current furloughs provisions. If the SCPP chooses to study broader application of the proposal, there are several subsidiary issues the committee may wish to address.

Who Should It Apply To?

Policy makers may wish to decide whether to study the application of this proposal to all other public employees, or to those whose duties or job classifications make them similarly situated to members of LEOFF. Many public entities in various job classes and retirement systems have experienced budget reductions to some extent, and many of these reductions have taken the form of salary reductions or foregone increases.

Previous legislation addressed the pension impact of reduced work hours and temporary layoffs. The Board has stated that public safety and emergency personnel, due to the nature of their duties, are not able to use reduced work hours or temporary layoffs as a means of reducing expenditures. However, those entities may still be experiencing other forms of salary reduction, resulting in a lower salary average when calculating pension benefits.

Public safety and emergency personnel serve in other systems in addition to LEOFF, and these employees may be having a similar experience to the members in LEOFF. This may include, for example, state troopers in WSPRS, prison guards in PSERS, or state hospital employees in PERS.

How Long Should Salary Average Adjustment Provisions Be In Effect?

The salary average adjustment provisions enacted in the last two sessions were temporary measures covering reductions in the 2009-11 Biennium. The current staff bill draft expands this for another biennium.

The SCPP may wish to ask if the proposal will be a one-time extension, or if it will be necessary to continue extending the provision for additional biennia. The SCPP may also wish to study whether a temporary measure, if consistently extended, could acquire permanent status. For example, the SCPP may wish to study whether applying the salary average adjustment in current law over multiple biennia could permanently redefine the calculation of salary average.

Are There Plan Qualification Issues?

If a retirement plan does not adhere to certain criteria, it may lose preferential tax status. The SCPP may wish to study any potential tax implications from this proposal, or solicit advice from tax counsel.

Some initial questions for consideration may include whether there are limits to the amount of benefits that can be provided for compensation that has not been earned, and whether benefits are definitely determinable if they involve speculation about what an employee might have earned.

Uncertainty Over Interpretation of Bill Language

There are many ways to interpret the language of the attached LEOFF 2 staff bill draft, and those interpretations may have unintended consequences. This uncertainty is reflected in the preliminary fiscal analysis above. If the Board approves the staff bill draft, or a similar draft at the Board's December meeting, the SCPP may wish to study its implications for the retirement systems.

This uncertainty in interpretation could also lead to perceived abuse.

How Will The Bill Language Be Interpreted?

The bill draft provided by LEOFF 2 staff applies the salary average adjustment to "salary reductions, [and] reduction or elimination of a previously contracted salary increase" that are certified by the employer as integral to the employer's expenditure reduction efforts.

Determining which reductions fit under the LEOFF 2 staff bill language will depend on:

- ❖ How much foregone salary can be included?
- ❖ What are "salary reductions"?
- ❖ What is "integral"?
- ❖ What does "previously contracted" mean?
- ❖ What are the contract terms?
- ❖ Will there be an incentive to shift economic impact from employees to the pension system?

How Much Foregone Salary Can Be Included?

There are no limits under either current law or the LEOFF 2 staff bill draft. Under current law there is no limit to the amount of furlough days that can be included for the adjustment. Under the staff bill draft, there is also no percentage or dollar value limit on the amount of foregone salary that can be included.

What Are "Salary Reductions"?

The term "salary reductions" as applied to LEOFF members likely means reductions in "basic salary" which is a defined term in the LEOFF statutes. This term is defined differently for Plan 1 and Plan 2.² For example, if "salary reductions" means "basic salary", LEOFF Plan 2 members will receive pension credit for foregone overtime, while Plan 1 members would not.

The term "salary reductions" could also refer to any mechanism that directly reduces actual salary, as opposed to other types of compensation, such as subsidized health benefits or vehicle allowances. However, since the term is not defined it could be subject to different interpretations, and some employers may interpret this as including those other types of compensation.

Lacking a concrete definition, this may result in little or no uniformity between public entities, or even between employees within a single department. In other words, two retirees who experience identical salary reductions could receive different salary average adjustments depending on how the employer characterizes the reductions and interprets the provision.

² See RCW 41.26.030(4).

What Is "Integral"?

Theoretically, any action which reduces expenditures could be considered integral to the employer's expenditure reduction efforts. What constitutes an "integral" reduction may be both a matter of opinion, and an ethical decision for the employer.

One example may be an employer and employee creating a special deal for an individual employee, such as a phased retirement. In other words, an employee may voluntarily reduce his or her hours, perhaps down to working only half time. If certified as integral by the employer, that employee's pension benefits would be calculated as though he or she worked full time.

What Does "Previously Contracted" Mean?

It is not clear whether the term "previously contracted" would be interpreted as meaning previous to the passage of a bill, or previous to the reduction in salary. If it were interpreted as meaning previous to the passage of a bill, then this provision is likely limited to the terms of employment contracts currently in existence.

However, if it were to be interpreted as previous to the reduction in salary, it could affect future contracting. For example, employers and employees could agree to insert language into future contracts stating the employees would have received much higher salaries if not for the current budget. This could also be done in exchange for retaining other compensation, as noted below.

What Are The Contract Terms?

Not all employees are under the same employment contract, and not all employees have a written contract. For employees represented by collective bargaining, there is likely a single document, or set of documents containing all the terms for that bargaining unit. Many public employees are represented by collective bargaining, including most LEOFF employees, and the contract terms will vary with every contract. If the current staff bill draft were to be applied to employees who are not represented by collective bargaining, it may be necessary to determine what constitutes the terms of the employment contract for those employees.

Will There Be An Incentive To Shift Economic Impact From Employer Budgets To The Pension System?

Employers and employees may have an incentive to find ways to shift costs to the pension system. To illustrate, if an employer is planning to cut back on other types of compensation, the parties may trade that other compensation for an equivalent cut in direct salary, since the foregone salary will still be counted at retirement. This may

be most desirable for employees near retirement, who may be better able to handle reduced pay for a short time in exchange for a larger pension.

Will The Certification Requirement Prevent Perceived Abuse?

As a general rule, uncertainties in interpreting, quantifying, and verifying can each increase the potential for inconsistent application. Inconsistent application can result from reasonable, but differing interpretations, or from genuine abuse.

Abuse may include activity that is not actually illegal, but is designed to maximize the employees' benefit at the expense of the system, as these actions may run counter to the intent of the underlying proposal. However, there are no rules or guidelines in current law or in the LEOFF 2 staff bill draft to determine what constitutes abuse, and no penalties for violation.

A provision of current law (retained in the staff bill draft) was intended to prevent abuse. Under current law, the retiree will not receive the salary average adjustment unless the employer certifies the furlough was an integral part of the employer's compensation reduction efforts. DRS will rely on this certification to administer the provisions of this bill draft as well.

The certification provision is still relatively new, and it is not yet known whether or not it will be effective in deterring abuse. The effectiveness of the certification provision could affect both current law and the approach used in the staff bill draft.

The certification provision could also raise other plan administration questions. For example, what level of review or audit is expected or required of the plan administrator?

Conclusion

The bill draft provided by LEOFF 2 staff expands the provisions of the prior furloughs legislation to additional types of compensation reductions, and applies those provisions to additional employees. Further, LEOFF 2 staff bill draft extends both new and old provisions for an additional biennium.

Expanding the salary average adjustments as described in the proposal will increase costs in affected plans because the adjustments remove a salary experience gain (a decrease in future plan contribution rates) that would otherwise occur without the adjustments.

Policy makers may wish to study whether this, or a similar proposal should be applied to all public employees, or public safety and emergency employees in other systems. The SCPP may also wish to study any aspects of any bill draft approved by the Board.

Special Session

During the second special session, the Legislature passed HB 3225. As of this writing, it has not been signed into law. OSA is currently studying the potential pension impacts of HB 3225, and those impacts are not yet known.

The bill affects the salary average adjustment provisions by inserting the following (or substantially similar) language into statutes for PERS, TRS, LEOFF, PSERS, and WSPRS:

In calculating earnable compensation under (a) or (b) of this subsection, the department of retirement systems shall include any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to the effective date of this section, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

Next Steps

- ❖ Nothing more at this time. For example:
 - Not move on the issue generally.
 - Wait for the LEOFF 2 Board to recommend a bill draft.
- ❖ Request information from LEOFF 2 regarding some of the issues raised.
- ❖ Study applying the proposal to other retirement systems next interim.
 - All public employees.
 - Public safety and emergency personnel only.
 - Request input from tax counsel.
 - Request input from potential stakeholders.
- ❖ Study the potential pension impacts of the bill passed during special session (HB 3225).

Furloughs

(LEOFF 2 Proposal)

Issue

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Procedural Standing

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In November 2010, the Board wrote to the SCPP to note that few LEOFF 2 members were subject to furloughs, but that salary reductions and foregone wage increases were common and had the same overall effect on the members as furloughs. As such, the Board advocated a modified proposal. The modified proposal would expand the definition of "furloughs" enacted in prior legislation to include salary reductions or foregone wage increases due to budget reductions.

At the November SCPP meeting, Board staff stated that draft language had been submitted to OSA staff in preparation for the Board's review and possible approval at its December meeting. The Executive Committee of the SCPP requested a work session on that draft.

A full briefing paper with analysis of the LEOFF 2 proposal and LEOFF 2 staff bill draft will be distributed at the December meeting.

Materials

- ❖ Executive Summary.
- ❖ Briefing Paper on LEOFF 2 staff bill draft (distributed at the meeting).
- ❖ Issue Paper on Furloughs (September 21, 2010) - provided for background on topic.
- ❖ Stakeholder Correspondence from Kelly Fox, Chair, LEOFF 2 Board, received on the following dates:
 - June 17, 2010.
 - November 8, 2010.
- ❖ LEOFF 2 staff bill draft.

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Furloughs

Current Situation

In Brief

Current Situation

Furloughs can affect how pensions are calculated. Current law mitigates the pension impact of furloughs on some employees. The LEOFF 2 Board asked the SCPP to study the issue and consider extending the mitigation provisions to other members and systems.

Member Impact

All members of state-administered retirement systems could potentially be affected.

State and local government employees are being furloughed in response to budget pressures. Furloughs can affect how employee pensions are calculated. Current law mitigates the pension impact of furloughs on some employees. It adjusts a retiring employee's benefit calculation to account for compensation the employee would have earned had it not been for the furlough.

In June 2010, the Law Enforcement Officers' and Fire Fighters' Plan 2 (LEOFF 2) Board wrote to the SCPP and requested the SCPP study furloughs, and consider extending the mitigation provisions to other members not currently covered.

Legislative History

In the 2009 Legislative Session, a non-SCPP bill (SB 6157) was enacted to mitigate the effect of furloughs on pensions for some members of the retirement systems during the 2009-11 Biennium. The SCPP was briefed on that bill at the September 2009 hearing.

In the 2010 Legislative Session, another non-SCPP bill (ESSB 6503) was passed. This bill mandated cost-reductions within state agencies, including salary reductions and/or furloughs. Included in that bill were provisions to mitigate the impact of furloughs for some members of systems that weren't covered in the 2009 bill.

Not all public employees were covered under the combined effect of these bills. The mitigation provisions only addressed the impact of furloughs on a retiring employee's salary average.

Background

What Are Furloughs?

Furloughs are authorized unpaid leaves of absence, often synonymous with the terms "temporary layoffs" or "unpaid vacation."

It is important to distinguish between voluntary furloughs, furloughs that are mandated at the agency or local government level, and furloughs that are mandated by the state. As discussed below, the mitigation provisions and exemptions will not always apply evenly.

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How Furloughs Can Impact Pension Benefits

Pension benefits are calculated as:

(Percentage multiplier) X (years of service) X (average salary)

Furloughs can impact a member's pension benefits by affecting salary average or service credit. Members may be able to minimize or avoid these impacts by working longer before retirement, or purchasing additional service credit at retirement.

Furloughs can impact pensions by affecting salary average or service credit.

Employees within a few years from retirement are more likely to see their salary average affected.

Full time employees are not likely to see their service credit affected.

Salary Average

Salary average varies by plan, but is generally based on the member's highest consecutive two or five years of employment. If an employee is furloughed during the two or five year span used to calculate salary average, that employee's pension benefits may be reduced.

For most employees, salary is highest near retirement. Employees who are furloughed five or more years before retirement are less likely to have their pensions reduced.

Service Credit

Members are not likely to lose service credit due to furloughs. For example, a full-time employee subject to the ten shutdown days included in ESSB 6503 would not lose service credit.

Service credit is based on hours worked, and varies by plan. For example, to earn one year of service credit:

- ❖ A member of the Public Employees' Retirement System (PERS) 2/3 must work at least 90 hours per month, for twelve months.
- ❖ A member of Teachers' Retirement System (TRS) 2/3 must begin working in September, work at least 810 hours, and must work at least nine months of the school year.

Partial service credit is available, and varies by plan. Generally, if a plan member has worked at least one hour in a month, that member will receive partial service credit for that month. Depending on the length of time an employee is furloughed, it is possible that an employee could receive reduced service credit.

Employers may be able to minimize or avoid lost service credit through careful scheduling.

Current Law

If upon retirement it is determined that a furlough will affect a covered member's average salary, then the Department of Retirement Systems (DRS) will adjust the calculation to include any compensation the member would have earned if the member had not been subject to furlough.

If a retiring employee's salary average is affected by furloughs, DRS will adjust the salary average to include compensation the member would have earned if not for the furlough.

The member does not actually receive compensation for the time off, and the employer only reports the actual hours earned by the member. No employer or employee contributions are collected for the furloughed time. Please see Appendix B for more information on how recent legislation combined to create current law.

How can this impact the system?

Adjusted benefits are calculated in part based on salary that was not earned and time that was not worked. The adjustment is made after-the-fact, and since no contributions are made to the system for that time, the result is a cost that must be absorbed by the system.

The cost to the system will develop over time, as members retire. Overall, the total cost will depend on how many people utilize the salary average adjustment, how many furlough hours affect their salary average, and whether those furloughs are covered by the adjustment provisions. In 2009, OSA prepared a fiscal note for the first of the two recent furloughs bills (SB 6157, 2009 c 430). The estimated 25 year costs for the salary average adjustment could range as follows:

No contributions are made for the furloughed time. Resulting costs must be absorbed by the system.

- ❖ Total employer low estimate: \$47 million (rounded to nearest million)
- ❖ Total employer high estimate: \$185 million
- ❖ Total employee low estimate: \$18 million
- ❖ Total employee high estimate \$72 million

The fiscal note for the second of the furloughs bills (ESSB 6503, 2010 c 32) states that expanding the salary average adjustment to the other systems named in the bill will not add to the costs already anticipated under SB 6157.

To view these fiscal notes, please visit OFM's website:

<https://fortress.wa.gov/ofm/fnspublic/>

For more information on recent legislation, please see Appendix B.

The salary average adjustment covers all members of PERS, as well as state employees of TRS, PSERS, LEOFF, and WSPRS.

Who does this apply to?

The salary average adjustment covers all members of PERS, as well as state employees of TRS, Public Safety Employees' Retirement System (PSERS), LEOFF, and Washington State Patrol Retirement System (WSPRS).

As noted above, even though all employees in the named categories are covered, the only employees who will actually utilize the adjustment are those who are furloughed within the salary average period used for calculating their benefits.

What types of reductions are covered?

The salary average provision applies to compensation foregone as a result of reduced work hours, mandatory and voluntary leave without pay, and temporary layoffs that the employer certifies are an integral part of that employer's cost reduction efforts.

Only compensation reductions that are accompanied by reduced work hours (e.g. across-the-board cuts) are included. Other cost-reduction efforts, such as compensation lost due to cancellation of a cost-of-living increase, are not included.

To be included, furloughs must be compensation reductions accompanied by reduced work hours that the employer certifies as an integral part of cost reduction efforts.

Furthermore, DRS will not compensate for furloughs that are not certified as an integral part of an employer's expenditure reduction efforts. In other words, if an employee were to take reduced work hours as part of a voluntary phased retirement, the lost compensation would not be included. Current law does not address service credit lost due to furloughs.

When does this apply?

The salary average adjustment only applies to furloughs taken during the 2009-11 Biennium. It does not cover furloughs taken prior to that window, or any that may be taken after it.

Who is being furloughed?

Furlough policies in Washington continue to develop. Additional data will be available later this year. However, complete data on voluntary furloughs is difficult to obtain without polling each city, county, and district individually. Please see Appendix A for more information.

Furlough policies typically exempt public health, safety, and regulatory personnel. However, this is not always the case.

Who is exempt from furloughs?

Few are categorically exempt from voluntary furloughs, or furloughs mandated at the agency and local government level. In practice these

furlough policies typically exempt public health, safety, and regulatory enforcement personnel.¹

For state-mandated furloughs under ESSB 6503, the bill contains a list of exemptions from the cost-reduction efforts in the bill, for example, including personnel in public safety, health, and revenue generating fields. Please refer to the bill for the full list.

The cost-reduction efforts named in ESSB 6503 are directed at state agencies. Though local government employees may be indirectly impacted, they are exempt from state-mandated furloughs in the bill.

¹ While typical, this is not always the case. For example, commissioned officers of the Washington State Patrol are exempt from state-mandated furloughs. However, the chief and some commissioned officers in the executive staff took voluntary furlough time.

Legal action

Lawsuits and grievances have been filed to stop the furloughing of employees covered by collective bargaining, at both the state and local government levels. The outcomes of these suits may affect both the total amount of employees furloughed and the categories of personnel subject to furlough. Please see Appendix C for more information on these cases.

Policy Questions

As a threshold question, policy makers may wish to ask whether employee pension benefits should be shielded from reductions due to short-term cost-reduction efforts. If so, policymakers may wish to ask several additional questions:

- ❖ Which employees should be covered?
- ❖ Which impacts should employee benefits be shielded from?
- ❖ How long should mitigation provisions be in effect?
- ❖ Who should pay for the cost of the salary adjustment provisions?

The salary average adjustment does not apply to all members of all systems. However, not all members and systems are experiencing furloughs.

Which employees should be covered?

The salary average adjustment does not apply to the following members and systems:

- ❖ Local government employees of TRS, PSERS, and LEOFF.
- ❖ Employees in SERS, VFFRO, and the two closed judicial plans.

Thus far, staff has found very few of these members experiencing furloughs. Of those few, none are state-mandated. For more information on who is being furloughed, please see Appendix A.

Which impacts should employee benefits be shielded from?

The salary average adjustment does not apply to all impacts of cost-reduction efforts on pensions.

The salary average adjustment does not take into account potential lost service credit due to furloughs. Also, furloughs are not the only cost reduction effort that could affect employee benefits. Others, such as across-the-board cuts, can affect employee benefits, but are not considered for the salary average adjustment.

How long should mitigation provisions be in effect?

The salary average adjustment is limited to furloughs taken in the 2009-11 Biennium. Adjustments will not be applied for furloughs taken before or after that window.

Some local governments budget on a calendar year, rather than a fiscal year, and some of these local governments began taking furloughs prior to the beginning of the 2009 fiscal year -- the effective date of the mitigation provisions. As such, employees furloughed between January 1, and June 30, 2009 may see a reduction in pension benefits due to those furloughs.

By all predictions, the budget will not improve significantly for several more years. It is likely that furloughs, and other cost-reduction efforts, will continue or be renewed for at least the next biennium. If furloughs are utilized beyond the 2009-11 Biennium, then anyone furloughed within two to five years of retirement could see a reduction in benefits.²

² See "Salary Average," above.

Who pays for the cost of the provisions?

Salary average adjustments are not directly paid for by the members receiving the benefits. That cost is passed to all members and employees.

Furloughs are enacted as a short-term cost-saving measure. However, salary average adjustments result in a long-term cost to the retirement system.

That cost is not directly paid by the members receiving the benefits. Since no contributions are collected for time the employee was furloughed, the cost of salary average adjustments is absorbed by the system. Once absorbed, the cost is rolled into future contribution rates. The end result being that much of the cost of the adjustments is paid for by all members and employers.

Other States

As of this writing, the situation is still unfolding in many states. For example, governors and agency heads in many states have proposed furlough plans that have not yet been enacted or finalized.

Of Washington's peer states:

- ❖ Two states (IA, OH) allow furloughed members to buy back lost time.
- ❖ Another state (CO) has a buy back provision in law, but it only applies to furloughs taken from July 1, 2002 to June 30, 2004.
- ❖ One state (CA) will not allow furloughs to impact salary average, service credit, or other benefits.³

³ This is based on the CalPERS website, which states: "At this time, it is our understanding that the State furloughs and pay reduction will not impact the amount used to calculate your retirement, your service credit towards retirement, or your health or dental benefits."

<http://www.calpers.ca.gov/index.jsp?bc=/about/press/news/furlough/faq-retirement-health-benefits.xml>

Legal Action in Other States

Lawsuits have been filed in several states, to stop or modify enacted furlough plans. Some have been decided, and many are still pending. Please see Appendix C for more information.

Conclusion

Furloughs may impact pensions by affecting salary average and service credit. The full extent of impacts from furloughs cannot be determined at this time. The impact will depend on:

- ❖ The number of employees furloughed.
- ❖ The amount and timing of reduced hours for each employee.
- ❖ When those employees retire.

Lawsuits and grievances have been filed to stop the furloughing of employees subject to collective bargaining, both in Washington and in other states. The decisions in these cases have been mixed, and some are still pending.

Policy makers may wish to determine whether employee pension benefits should be shielded from reductions due to short-term cost-reduction efforts such as furloughs.

If so, policy makers may wish to consider:

- ❖ Which employees should be covered.
- ❖ Which impacts employee benefits should be shielded from.
- ❖ How long any mitigation provisions should be in effect.
- ❖ Who should pay for the cost of any mitigation provisions.

Next Steps

- ❖ Nothing at this time. This option may be appropriate if policy makers feel:
 - ◇ The issue has already been addressed by the Legislature, and the salary adjustment provision should be allowed to expire.
 - ◇ Additional time would allow the situation to develop more fully.
- ❖ Direct staff to prepare options. This option may be appropriate if members feel the protections are not adequate or not applied consistently. Sample options include:
 - ◇ Extending the salary adjustment provision beyond the current biennium.
 - ◇ Expanding the salary adjustment provision to members and systems not currently covered.
 - ◇ Addressing other impacts from cost-reduction efforts.

Appendix A

Who is being furloughed?

Appendix B

Recent furlough legislation from the 2009 and 2010 sessions.

Appendix C

Legal actions in Washington and other states.

Correspondence

- ❖ Representative Seaquist, received September 14, 2010.
- ❖ Kelly Fox, Chair, LEOFF 2 Board, received June 17, 2010.

- ❖ Senator Pridemore, received September 11, 2009.
- ❖ Carol Conley, Human Resources Manager, City of Bremerton, received July 22, 2009.

Additional Information

The Office of Financial Management maintains a furloughs web page, which contains information about ESSB 6503, closure dates, and tables listing which agencies are utilizing alternative plans:

<http://www.ofm.wa.gov/layoff/default.asp>

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Appendix A

Who Is Being Furloughed?

Furlough policies in Washington continue to develop. With the passage of ESSB 6503, state agencies must reduce employee compensation as detailed in the omnibus appropriations act. To meet those reductions, agencies can choose between a salary reduction plan (with approval from Office of Financial Management (OFM), and may include furloughs) or full agency closures on specific dates listed in statute.

As of this writing, OFM reports¹ that:

- ❖ Fifty-two state agencies have chosen to utilize the specific closure dates mentioned in the bill.
- ❖ Thirty-nine state agencies have submitted an alternate plan with OFM.
- ❖ Five state agencies are wholly exempt from the bill.²

For agencies without an alternate plan, the first three furlough days have already taken place on July 12, August 6, and September 7, 2010.

ESSB 6503 does not require furloughs for local government entities. However, some state agencies and local governments began furloughing employees at least as far back as January of 2009.

Data on local government furloughs is difficult to obtain without polling each city, county, and district individually. The Association of Washington Cities is preparing data on city government furloughs, but it will not be available until October. Some information can be obtained from news articles, but the reader should be cautioned that the articles may not always reflect final action. For example, as noted below, some agencies have enacted furloughs, only to have those furloughs repealed through legal action.

The following information shows the limited information staff was able to obtain regarding furloughs of local government employees.

¹ For more information see "Additional Information" above.

² This does not include individual job classifications that may be exempt regardless of agency.

PERS

Precise numbers are not yet available, however news articles and constituent correspondence (attached) indicate that at least some PERS employees in cities and counties are experiencing furloughs.

TRS

The Office of the Superintendent of Public Instruction is not tracking furloughs for teachers. However, staff contacted four school districts (Seattle, Tacoma, Spokane, and North Thurston), and each stated that its employees were not subject to furloughs. These districts did note they are experiencing other cost-reduction efforts, such as losing in-service or Learning Improvement Days, and freezing step increases.

SERS

The four school districts noted above stated that classified staff were not subject to furloughs.

At least one school district has furloughed its classified staff for 20 days. However, the union representing the classified staff filed a grievance against the school district. As a result, the district was ordered to restore the 20 days and provide back pay and benefits. Please see Appendix C for more information.

PSERS

The state Department of Corrections is not aware of any PSERS members subject to voluntary furloughs at the local government level. However, to confirm the impact on local government members of PSERS would require contacting each county and city (other than Seattle and Tacoma).

LEOFF

The LEOFF 2 Board has not been able to provide data regarding the furloughing of LEOFF members. Police and fire are typically exempt from furloughs, and staff is not aware of furloughs encompassing police or fire.³

³ For clarification, in a recent PERC case, the petitioner asserted that the imposition of a county furlough program on fire fighters was a violation of employee rights. However, to date, no police or fire fighters in that county have been furloughed. Please see Appendix C for more information.

Volunteer Fire Fighters and Reserve Officers (VFFRO)

Volunteer firefighters typically do not collect a salary, and, as such, have no salary to be reduced via furloughs. In addition, Fire fighters are exempt from state-mandated cost reductions under EESB 6503 (see "Statewide Cost Reduction," above).

Judicial Plans

Judges are exempt from state-mandated furloughs under Article XXVIII of the State Constitution. Under Article XXVIII, salaries for elected officials, including judges, are set by an independent commission, and cannot be reduced.

Appendix B

Recent Legislation

In the 2009 and 2010 Sessions, the Legislature considered three non-SCPP bills. Each bill contained a provision to mitigate the impact of furloughs on employee pension benefits, but each bill would apply that same provision in different ways. Two of the three bills passed and are now current law.

Salary average adjustment

All three bills contained a provision affecting salary average for purposes of calculating pension benefits. This provision worked as detailed in the main body of the paper: If upon retirement it is determined that a furlough will affect a member's average salary, then DRS will adjust the calculation to include any compensation the member would have earned if the member had not been subject to furlough. The member does not actually receive compensation for the time off, and the employer only reports the actual hours earned by the member.

Salary average adjustment provision applied differently

All three bills differed in terms of:

- ❖ Which plans were covered.
- ❖ Which employees (state and/or local) within those plans were covered.
- ❖ What timeframe was covered.

The three bills shared many similarities in subject and title, making it difficult to distinguish them. The bill titles in quotes are nicknames created for this paper, and are intended only to assist in comparison. Please refer to the bill number for the official full and short titles.

"PERS Only"

Senate Bill 6157 passed in 2009 (2009 c 430), and applied the salary average adjustment provision to PERS state and local employees. This bill covered furloughs taken during the 2009-11 Biennium only.

"Statewide Cost Reduction"

Engrossed Substitute Senate Bill 6503 passed in 2010 (2010 c 32), and applied the salary average adjustment provision to state employees in TRS, PSERS, LEOFF, and WSPRS.¹ Local government employees in those systems were not included.

ESSB 6503 applied the salary average adjustment provision to furloughs taken during the 2009-11 Biennium only.

¹ This bill contained many provisions. Only the furlough mitigation provisions are addressed here.

"PERS Calendar Year"

Senate Bill 6742 was considered in the 2010 Session, but did not pass. For PERS state and local employees, this bill would have expanded the timeframe the salary average adjustment provision was in effect: In addition to furloughs taken during the 2009-11 Biennium, SB 6742 would have also covered furloughs taken between December 31, 2008, and the start of the fiscal year.

Which Plans?		
	PERS	LEOFF, TRS, PSERS, WSPRS
"PERS Only"	X	
"Statewide Cost Reduction"		X
"PERS Calendar Year"	X	

State or Local?		
	State	Local
"PERS Only"	X	X
"Statewide Cost Reduction"	X	
"PERS Calendar Year"	X	X

What Timeframe is Covered?		
	Fiscal Biennium 09-11	12/31/2008 - 6/30/2009
"PERS Only"	X	
"Statewide Cost Reduction"	X	
"PERS Calendar Year"	X	X

Which Bills Passed?		
	Passed	Did Not Pass
"PERS Only"	X	
"Statewide Cost Reduction"	X	
"PERS Calendar Year"		X

Appendix C

Legal Actions

Washington State Government

The Washington Federation of State Employees (Federation) filed for a preliminary injunction on June 25 of this year.¹ The requested injunction would have stopped the state-mandated (under ESSB 6503) furloughing of employees represented by the Federation until the Federation's grievance and unfair labor practice complaint could be resolved.²

Among other things, the Federation's complaint alleged:

- ❖ Not allowing the Federation to bargain over the impact of furloughs was a violation of the collective bargaining agreement.
- ❖ A unilateral decision to furlough workers must be justified by the budgetary shortfall, but the current furlough plan will save substantially more than is required to meet that shortfall.
- ❖ The list of exemptions in ESSB 6503, and the ability of agencies to use alternative cost reduction options resulted in insufficient notice of which workers would be furloughed.

On July 2, the court denied the Federation's motion for a preliminary injunction, and agencies began taking furloughs as scheduled.

¹ *Washington Federation of State Employees v. State of Washington (10-2-01395-1)*.

² *For clarification, ESSB 6503 contains a section (Section 4) on collective bargaining. However, this section only determines the parties involved in negotiating the impact of furlough days or alternative cost-reduction plans.*

Washington Local Government

Two employee unions filed grievances against King County in response to furloughs. Both cases,³ were decided in favor of the union, nullifying any remaining furloughs and requiring the county to reimburse those employees for any furloughs taken.

A third case was filed on behalf of classified staff at a school district. The district was ordered to restore the 20 furlough days and pay back pay and benefits.⁴

A fourth case was filed on behalf of fire fighters. However, participation in the furlough program is voluntary, and according to the City of Vancouver, no police or fire fighters have been furloughed to date. Final action on this case is still pending.⁵

³ *Amalgamated Transit Union, Local 587 v. King County (22254-U-09-5679) and Technical Employees Association v. King County (22175-U-09-5658).*

⁴ *Teamsters Local Union 252 v. Griffin School District (22170-U-08-5653).*

⁵ *International Association of Fire Fighters, Local 452 v. City of Vancouver (22845-U-09-5831).*

Other States

Lawsuits have been filed in several states to stop or modify enacted furlough plans.

Tracking these lawsuits is difficult for three reasons. First, the timeline of events is complex and continually unfolding. Second, most lawsuits are near the beginning of the legal process, and have yet to be resolved by the court.

Finally, multiple lawsuits can be filed against the same statute or executive order. Similar suits can be filed by different entities (e.g. different employee groups can file suit separately), or on behalf of different employees (e.g. those who are and are not represented by a union.) The court may eventually join these suits, but at filing there can be more than one suit alleging the same thing.

Due to this complexity, only three lawsuits (one per state) are discussed here:

- ❖ Kentucky, because it is very similar to the lawsuit against Washington State detailed above.
- ❖ Maryland, because it is a federal case that has been resolved, pending further appeal.
- ❖ California, because it illustrates the complexity involved.

Kentucky

An employee union filed for a temporary injunction to stop the mandatory furloughs, pending the resolution of the case. The court denied the motion, and furloughs have begun as scheduled. The overall case regarding the validity of the furlough program is still pending.

Maryland

In the original case, the trial court held that furloughing employees was a violation of a collective bargaining agreement (CBA), and

constituted an unlawful impairment of contracts under Article I, Section 10 of the US Constitution. On June 23, a federal Court of Appeals overturned the trial court, and ruled in favor of the county.⁶

The trial court focused on many things, including allegations that the county had made conflicting statements. However, the crux of the appeal was the three-part test of whether a law violates the contracts clause. Courts inquire:

- ❖ Was there an impairment of a contract?
- ❖ Was the impairment substantial?
- ❖ If so, was the impairment reasonable and necessary (i.e. justified under police powers)?

If the answer to all three is yes, then there is a violation of the contracts clause.

On appeal, the Court of Appeals stated that furloughs were not an impairment of the CBA, and therefore not a violation of the contracts clause. The case turned on two county ordinances that apply to all employees whose contracts are collectively bargained.

The first ordinance states that county employees may be furloughed. The second states that the relevant county laws apply unless the CBA specifically says otherwise. The CBA contained no exemption from furloughs. In fact, the court noted that CBAs in previous years included exemption from furloughs, but that provision had been dropped in the mid-1990s.

Therefore, the court ruled that no impairment had taken place, and therefore was not a violation of the contracts clause.

⁶ *Fraternal Order of Police v. Prince George's County, Maryland* (608 F.3d 183).

California

Many lawsuits have been filed in California. The following timeline illustrates the impact of just one of those suits, filed on behalf of the State Compensation Insurance Fund (SCIF):

- ❖ December 19, 2008.
 - ◇ Executive Order S-16-08, requires two furlough days per month, from January 1, 2009, to June 30, 2010, regardless of funding source.
- ❖ July 1, 2009.
 - ◇ Executive Order S-13-09, amends the furlough plan to three days per month.
- ❖ August 31, 2009.

- ◇ State Superior Court judge rules that under section 11873 of the state insurance code the SCIF is not subject to other state laws of general applicability. Thus, employees of the SCIF are exempt from furloughs, and those employees must be given back pay, plus interest.
- ❖ June 30, 2010.
 - ◇ Amended furlough plan ends.
- ❖ July 28, 2010.
 - ◇ Executive Order S-12-10, requires three furlough days per month, until the 2010-11 Fiscal Year budget is in place and there is enough cash in place for the state to meet certain obligations.
 - ◇ In addition to exemptions for public health and safety, employees of the State Compensation Insurance Fund are exempt.



STATE OF WASHINGTON

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS'
PLAN 2 RETIREMENT BOARD

P.O. Box 40918 • Olympia, Washington 98504-0918 • (360) 586-2320 • FAX (360) 586-2329

June 14, 2010

RECEIVED

JUN 17 2010

Office of
The State Actuary

Select Committee on Pension Policy
C/O The Office of the State Actuary
Post Office Box 40914
Olympia, Washington 98504-0914

Dear Honorable Members of the Select Committee on Pension Policy:

On behalf of the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board (LEOFF 2 Board), I would like to thank you for the cooperative working relationship we have shared during the past 7 years and look forward to a similar partnership in the upcoming year.

I would like to bring two topics to your attention as you begin preparation for the 2010 interim. It is our hope that the Select Committee on Pension Policy (SCPP) and the LEOFF 2 Board can work cooperatively on these issues. I have provided a brief summary of each topic for your reference:

Purchase of Annuity

Under current law, Plan 3 members (TRS, PERS & SERS) can purchase an annuity out of the comingled trust fund. Plan 2 and Plan 3 members may purchase additional service credit at the time of normal retirement by paying the actuarial cost of the additional service, but they are limited to five years. Members who have assets in excess of the purchase cost for the maximum five years could benefit from another avenue to invest those assets.

Furloughs

The Legislature passed a bill in the 2009 session that provided retirement protections for state and local government PERS employees who take unpaid leave of absences as a means of addressing budget challenges. Public employees who are members of other retirement systems could also benefit from similar protection.

A member who either voluntarily or involuntarily takes unpaid leave as a result of the current economic conditions may have their retirement benefit adversely affected if it occurs during their final average salary period.



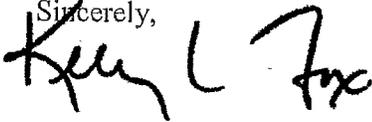
Select Committee on Pension Policy
June 14, 2010
Page 2

The LEOFF 2 Board also would like to respectfully request that the legislative sponsorship of any bills that are jointly recommended by the Board and the SCPP to the Legislature for the 2011 legislative session be coordinated between the Chair of the LEOFF 2 Board and the Chair of the SCPP.

Please feel free to contact me or Steve Nelsen, LEOFF 2 Board Executive Director, should you have any questions or would like additional information. Steve can be reached at (360) 586-2320 or steve.nelsen@leoff.wa.gov, and I can be contacted at (360) 943-3030 or pres@wscff.org.

We would be happy to meet with you to discuss these topics at an upcoming SCPP or LEOFF Plan 2 Retirement Board meeting. Thank you for your consideration and we look forward to working with you.

Sincerely,

A handwritten signature in black ink that reads "Kelly L. Fox". The signature is written in a cursive, slightly slanted style.

Kelly Fox, Chair

cc: Matt Smith, State Actuary



RECEIVED

NOV 8 - 2010

Office of
The State Actuary

STATE OF WASHINGTON

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS'
PLAN 2 RETIREMENT BOARD

P.O. Box 40918 • Olympia, Washington 98504-0918 • (360) 586-2320 • FAX (360) 586-2329

November 2, 2010

Select Committee on Pension Policy
C/O The Office of the State Actuary
Post Office Box 40914
Olympia, Washington 98504-0914

Dear Honorable Members of the Select Committee on Pension Policy:

On behalf of the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board (LEOFF 2 Board), I would like to request joint coordination with the Select Committee on Pension Policy (SCPP) on legislation for the issue of Furloughs during the 2011 legislative session.

Furloughs

LEOFF Plan 2 members, as well as other retirement plans (PERS, TRS, SERS, PSERS, and WSPRS) may have their retirement benefit adversely affected because of salary reductions as a result of the current economic condition if it occurs during their final average salary (FAS) period.

Furloughs are one short-term option for solving budget shortfalls. For LEOFF employers furloughs may not be a viable option since police and fire stations cannot be shut down for a day. For these employees, budget shortfalls may be met through salary reductions such as across the board salary reductions or forgoing cost of living adjustments or pay increases previously negotiated. However, the impact to the member's retirement benefit is no different than a furlough. Therefore, any legislation should include these types of salary reductions as well.

Please feel free to contact me or Steve Nelsen, LEOFF Plan 2 Board Executive Director, should you have any questions or would like additional information. Steve can be reached at (360) 586-2323 or steve.nelsen@leoff.wa.gov, and I can be contacted at (360) 943-3030 or pres@wscff.org.

Thank you for your consideration. We look forward to working with you.

Sincerely,


Kelly Fox, Chair

cc: Matt Smith, State Actuary

LEOFF 2 Staff Bill Draft on Furloughs

Sec. 1. RCW 41.26.030 is amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(2) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(3) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(4)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by

another person.

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(7) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(8) "Director" means the director of the department.

(9) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(10) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(11) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(12) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.020.

(13) "Employee" means any law enforcement officer or firefighter as defined in subsections (16) and (18) of this section.

(14)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or firefighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the firefighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or firefighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or firefighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(15)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(c) In calculating final average salary under (a) or (b) of this subsection, the department of retirement systems shall include any compensation forgone by a member (~~employed by a state agency or institution~~) during the 2009-2011 fiscal biennium or the 2011-2013 fiscal biennium as a result of salary reductions, reduction or elimination of previously contracted salary increases, reduced work hours, mandatory or voluntary leave without pay, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

(16) "Firefighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination;

(c) Supervisory firefighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (16)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (16)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for firefighter;

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

(17) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

(18) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (18)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(19) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57

RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic X-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(20) "Member" means any firefighter, law enforcement officer, or other person as would apply under subsections (16) or (18) of this section whose membership is transferred to the Washington law enforcement officers' and firefighters' retirement system on or after March 1, 1970, and every law enforcement officer and firefighter who is employed in that capacity on or after such date.

(21) "Plan 1" means the law enforcement officers' and firefighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(22) "Plan 2" means the law enforcement officers' and firefighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(23) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(24) "Regular interest" means such rate as the director may determine.

(25) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(26) "Retirement fund" means the "Washington law enforcement officers' and firefighters' retirement system fund" as provided for herein.

(27) "Retirement system" means the "Washington law enforcement officers' and firefighters' retirement system" provided herein.

(28)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a firefighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or

more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(29) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(32) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(33) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.