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

Post LEOFF Employment
Preliminary Report

August 25, 2004

1. Issue

LEOFF Plan 2 members who continue in public employment following separation or retirement from LEOFF may be restricted from receiving their pension or establishing membership in a second public retirement system.

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3. Members Impacted

Post LEOFF employment could potentially be an issue for any of the 14,011 current active members and 244 current retirees.

4. Current Situation

The normal retirement age in LEOFF Plan 2 is 53. This means that many LEOFF Plan 2 members may retire or separate from LEOFF Plan 2 while still capable of productive employment. The current statutory framework for pensions creates barriers to post LEOFF public employment.

5. History

The primary statutes governing post LEOFF employment were enacted in 1976 and 1977. There have been a number of changes to post retirement statutes for PERS 2, TRS 2, and SERS 2.

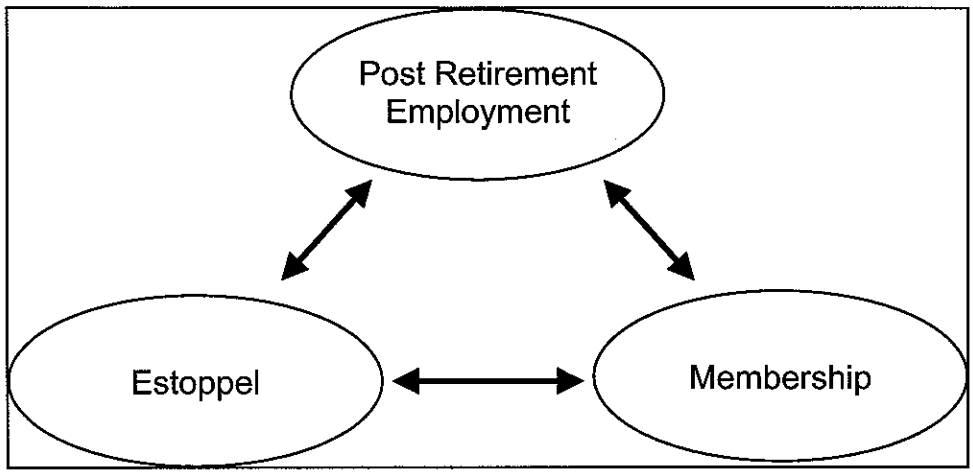
6. Example

A 50-year old LEOFF Plan 2 member with 20 years of service terminates employment and becomes employed in a PERS eligible position. The member can neither receive their LEOFF Plan 2 pension nor earn a new benefit in PERS.

7. Background Information and Policy Issues

I. Post LEOFF Employment

Post LEOFF employment is governed by a complex overlay of pension statutes including post retirement employment, estoppel[1], and membership. This statutory framework creates barriers to post LEOFF public employment.



The post retirement employment provisions govern impacts to a retiree's pension if the retiree returns to public employment. The estoppel provision affects the membership for persons who retire or are eligible to retire out of one retirement system and return to work in a position covered by a different retirement system. The membership provisions in each system provide additional specificity about who may or may not participate in each system.

As LEOFF Plan 2 matures, a greater number of members will retire or seek other lines of work. This means that provisions affecting post LEOFF employment will become increasingly important.

This report discusses each of these policy areas in more detail to show the complexity of the inter-related statutes and provide background allowing for comparison between LEOFF Plan 2 and other systems. This may be useful in determining future policy options.

II. Post Retirement Employment

A. LEOFF Plan 2 Post Retirement Employment

RCW 41.26.500 (Appendix A) governs the impacts to a LEOFF Plan 2 retiree's benefit if the retiree returns to employment. The LEOFF Plan 2 post retirement employment rules are not the same as the other Plan 2 systems.

[1] **Estoppel** is the doctrine that prevents a party from acting in a certain way because it is not equitable to do so.

A LEOFF Plan 2 retiree's pension will be suspended[2] if employed:

- as a full-time and fully compensated law enforcement officer or firefighter, or
- in an eligible position in the Public Employees' Retirement System (PERS), the Teachers' Retirement System (TRS), or the School Employees' Retirement System (SERS).

A LEOFF Plan 2 retiree's pension will continue if employed:

- in an ineligible LEOFF, PERS, TRS, or SERS position,
- by a private employer, or
- by a public employer that is not covered by any of the Washington State retirement systems.

B. Other Plan 2 Systems Post Retirement Employment

i. PERS, SERS, and TRS Plan 2

A retiree from PERS, SERS, and TRS must wait 30 calendar days before returning to eligible employment in any other system. If the retiree returns to eligible employment before 30 calendar days, the retiree's benefit is reduced 5.5% for every eight hours worked in PERS or SERS and 5.5% for every seven hours in TRS. The benefit reduction is applied up to a maximum of 160 hours in PERS or SERS and up to a maximum of 140 hours in TRS each month until the retiree satisfies the required 30 calendar day break in service.

After a retiree has been separated for 30 calendar days, the retiree may work in eligible employment up to 867 hours during a calendar year in LEOFF, PERS, SERS, or TRS eligible position without suspension of benefits. If a retiree exceeds 867 hours, the retiree's benefit is suspended. The retiree's benefits are reinstated when the retiree terminates the employment that caused the benefits to be suspended. At the beginning of a new calendar year, the retiree may again work 867 hours while receiving their pension.

ii. WSPRS Plan 2

WSPRS Plan 2 does not contain specific statutory language for suspension of benefits upon reemployment as the other systems do. A WSPRS retiree who returns to work as a commissioned officer of the Washington State Patrol is required to return to WSPRS membership beginning on the first day of employment. The retiree's pension stops when membership begins. A WSPRS retiree may go to work under any other retirement system without interruption of benefit.

[2] The retiree's benefits are reinstated and actuarially recalculated when they terminate the employment that causes the benefits to be suspended.

III. Estoppel

A. Operation of Estoppel

Enacted on March 19, 1976, RCW 41.04.270 (Appendix B), referred to as the "estoppel rule", provides a general rule regarding membership for persons who retire out of one retirement system and return to work in a position covered by a different retirement system.

The provisions of RCW 41.04.270 prohibit certain individuals from establishing any rights in a public retirement system listed in RCW 41.50.030 (DRS administered plans) or First Class City systems if:

- the person is retired or eligible to retire[3] from a public retirement system; or
- the person receives a disability allowance from a public retirement system.

The law also provides that persons receiving a benefit or who were eligible to receive a benefit are not subject to the provisions of the statute if the person accumulated less than 15 years of service.

In 1987, the law was amended to provide that it does not apply to a dual member who is eligible to receive a benefit from a system.

B. Application of Estoppel to LEOFF Plan 2

LEOFF Plan 2 retirees and members eligible to retire are prohibited from becoming members of a second public retirement system if the retiree/member has accumulated more than 15 years of service credit.

LEOFF Plan 2 retirees and members eligible to retire that have accumulated less than 15 years of service credit may be eligible for membership in another public retirement system. Depending on the membership rules of the specific system, the retiree may be excluded from membership, may be mandated into membership, or may optionally join membership.

Example 1: A 53 year old LEOFF Plan 2 retiree who retired with more than 15 years of service becomes employed in an eligible PERS position. Because the person is retired from LEOFF Plan 2 and has more than 15 years of service, the retiree is estopped from membership in PERS and would not accrue a benefit in PERS. Even though the retiree is estopped from membership in PERS, the retiree is employed in an eligible PERS position and the retiree's LEOFF benefit would be suspended under current LEOFF post employment rule (RCW 41.26.500).

[3] "Retired and eligible to retire" includes those persons who qualify under any "normal retirement", "early retirement", or "alternate early retirement" criteria.

Example 2: A 53 year old LEOFF Plan 2 member with 16 years of service terminates employment and becomes employed in an eligible PERS position. Because the member is eligible to retire from LEOFF Plan 2 and has more than 15 years of service, the member is estopped from membership in PERS. While the individual can be employed by the PERS employer, the individual can not establish membership in PERS and can not accrue a retirement benefit for that service.

Example 3: A 53 year old LEOFF Plan 2 member with 14 years of service terminates employment and becomes employed in an eligible PERS position. This member would be mandated into PERS membership and would accrue a benefit in PERS.

Example 4: A 53 year old LEOFF Plan 2 retiree who retired with 14 years of service becomes employed in an eligible PERS position. The retiree would not be estopped from membership in PERS and the retiree would be mandated into membership and would accrue a benefit in PERS. However, because the retiree is employed in an eligible PERS position, the retiree's LEOFF benefit would be suspended under current LEOFF post employment rule (RCW 41.26.500).

C. Exceptions to Estoppel Rule

While the estoppel rule prohibits certain individuals from establishing membership in another retirement system, there are some exceptions to the rule including optional membership and previous membership in a system.

RCW 41.04.270 (1) begins with a proviso that states "Notwithstanding any provision of chapter 2.10, 2.12, 41.26, 41.28, 41.32, 41.35, 41.40, or 43.43 RCW to the contrary". This language has been applied as meaning "unless there is a specific provision in a system's rules allowing otherwise, the estoppel rule applies". Therefore, exceptions can be created in each system through specific statutory provisions affecting the membership of retirees.

i. Previous Membership

The estoppel law prevents a person from establishing membership in another system, not from continuing membership in another system. RCW 41.04.270 was enacted on March 19, 1976. A person who has retired or is eligible to retire from a Washington State retirement system cannot participate in another system unless the person established membership in the other system prior to March 19, 1976.

A LEOFF Plan 2 member or retiree who established membership in another system prior to March 19, 1976 will be provided an opportunity to continue membership in that prior system, even if they are retired or eligible to retire in LEOFF and have more than 15 years of service.

Example 5: A person establishes membership in PERS Plan 1 on February 1, 1976 and works for two years. The person then establishes membership in LEOFF Plan 2 on February 1, 1978. The member retires from LEOFF Plan 2 in 2004 at age 53. The person then becomes employed in a PERS eligible position. Because the person established membership in PERS Plan 1 prior to March 19, 1976, they can choose to continue membership in PERS Plan 1 and accrue a PERS benefit. However, the person's LEOFF benefit will be suspended until they terminate the PERS eligible position.

Additionally, a LEOFF Plan 2 member who separates from LEOFF Plan 2 before becoming eligible for retirement, and enters PERS membership is not estopped from continuing membership in PERS when they become eligible to retire from LEOFF Plan 2.

ii Dual Membership

Dual membership was created in 1987 to allow for some sharing of Final Average Salary (FAS) and service credit when a person has membership in more than one public retirement system. At the same time RCW 41.04.270 was amended so that the estoppel rule would not apply to a dual member. A person, who has established membership before retirement in either system, may retire from one system and continue membership in the other system regardless of if the person had more than 15 years of service in the first system. Estoppel would not apply.

IV. Membership

A. Membership Eligibility

All pension rights begin when a person establishes membership in a particular retirement system. Membership eligibility is the threshold determination - the point from which every other right or benefit flows. In most cases, determining someone's eligibility is straightforward. If a person is working in a position that is retirement-eligible, the person establishes membership and is reported by their employer to the Department of Retirement Systems. Unfortunately, in some cases, it is not always that simple. Retirement law has many "gray areas" which make it difficult to determine a member's or retiree's rights.

Membership is generally mandatory for employees in eligible positions in each of the state's retirement systems. RCW 41.26.040 provides that membership in LEOFF is mandatory for all full-time, fully commissioned law enforcement officers and fire fighters. This means that if a LEOFF retiree returns to an eligible LEOFF position, the retiree is required back into membership. Consequently, the retiree's LEOFF pension is suspended under RCW 41.26.500.

While PERS, TRS, and SERS have membership eligibility provisions similar to this LEOFF provision, the PERS, TRS, and SERS post retirement rules provide a retiree

the option to join membership and terminate benefits or choose to return to work for a limited period of employment while continuing to receive pension benefits.

B. Personal Exemption

The LEOFF and TRS systems have very specific and inclusive definitions of membership eligibility. Both the PERS and SERS systems are different in that they define membership eligibility by specifying individual circumstances not included in membership by way of exemption from the system. This is sometimes referred to as "personal eligibility" as opposed to "position eligibility". The discussion of personal eligibility relies mainly upon the statutory provisions setting out the exemptions to membership.

Currently there are 20 PERS exemptions provided under RCW 41.40.023 (Appendix C); there are nine SERS exemptions under RCW 41.35.030. In a few cases, the personal exemption has a proviso stating that the individual has the option to waive the exemption and join membership. One such exemption that can affect a LEOFF retiree is the elected official exemption. While elected official positions generally are considered eligible positions, the official employed in the eligible position is personally exempted from participation in the retirement system unless they opt to join. For a LEOFF Plan 2 retiree this may become problematic.

A LEOFF Plan 2 retiree who becomes an elected official can choose to join PERS membership[4] and accrue a PERS benefit. If the official chooses to join PERS membership, their LEOFF pension will be suspended under RCW 41.26.500. However, if the official does not join PERS membership, their LEOFF Plan 2 benefit may still be suspended. Even though personally exempted from membership, the official is still "employed in an eligible position" and may not be allowed to receive their LEOFF pension under RCW 41.26.500. Although this is just one example, the same consequences could befall a LEOFF Plan 2 member or retiree that fits one of the other exemptions.

C. Dual Membership

Dual members can qualify for retirement with a multiple system benefit by combining service credit earned in the multiple systems. A dual member may also substitute base salary between systems for the purpose of calculating his or her retirement allowance. The portability laws are contained in RCW 41.54 and WAC 415-113.

Determining whether a dual member is eligible for a multiple system benefit requires combining service credit and evaluating eligibility under the laws of each system. A person who is eligible for a benefit may, in some cases, choose to defer the benefit, waive the benefit, or receive the benefit in a lump sum.

[4] If the retiree had 15 or more years of service they would be estopped and would not have the option to join.

A dual member may elect to retire from a system or systems without the benefits or restrictions of the portability law. A dual member must retire from all dual member systems he or she participates in. If a dual member's combined service and age qualify him or her to retire from one system but not from a second, the dual member must either:

- begin drawing an actuarially reduced retirement allowance from the second system (and have the benefit reduced from the earliest age at which the person's combined service would allow retirement from the second system); or
- defer receipt of the benefit from the second system.

If the dual member chooses to begin receiving a retirement allowance from a system before being fully eligible, the benefit is actuarially reduced. The benefit is reduced from the earliest age at which the person's combined service would allow retirement from the second system.

Under some circumstances, a dual member may be eligible for a retroactive retirement allowance at the time he or she elects to retire with a multiple system benefit. If a dual member retires from all dual member systems, his or her retirement allowance from a prior system will be retroactive back to the accrual date under the prior system.

RCW 41.54.020(1) requires that, in some cases, if membership in a subsequent system would have been prohibited under RCW 41.04.270, except for a person's status as a dual member, and the person attempts to retire retroactively from a prior system while continuing in the second system, the person's membership will be canceled and contributions in the subsequent system will be refunded.

Example 6: An inactive member in LEOFF Plan 2 with 16 years of LEOFF service becomes a member of PERS Plan 2 at age 51. Because the member has become a member participant of PERS Plan 2 prior to attaining retirement eligibility under LEOFF Plan 2 (i.e., age 53), the member may later retire retroactively from LEOFF Plan 2, subject to LEOFF Plan 2 criteria, while continuing membership in PERS Plan 2. However, while the member can retire retroactively from LEOFF Plan 2, the member would not be eligible to receive a benefit while employed in a PERS eligible position. (See RCW 41.26.500.)

Example 7: A person who is 53 years old is an active member in PERS Plan 2 and an inactive member in LEOFF Plan 2. If the person decides not to retire from LEOFF Plan 2 until eligible to retire with full benefits from PERS Plan 2 at age 65. Upon retirement, the person will be entitled to a LEOFF Plan 2 retirement allowance effective on his accrual date under LEOFF Plan 2 (i.e., age 53).

If a dual member retires with a multiple system benefit that includes a retroactive LEOFF Plan 2 retirement allowance, DRS will compute the LEOFF Plan 2 allowance based upon the greater of the following:

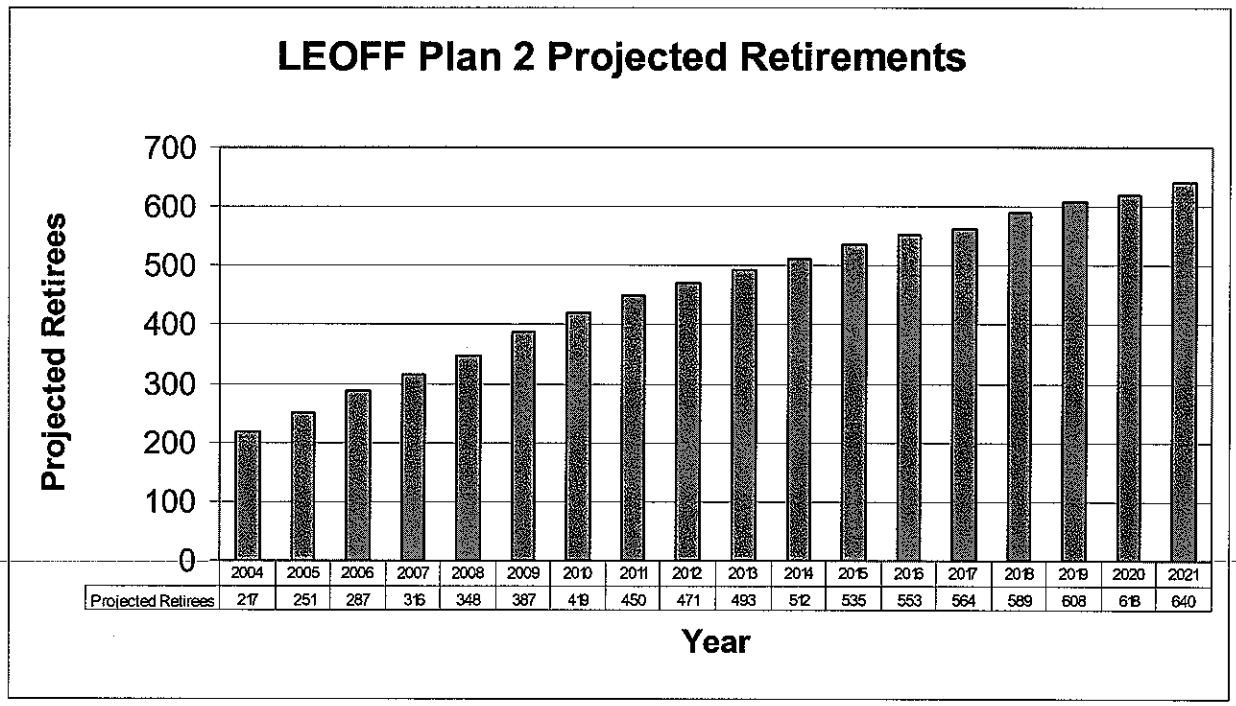
- The LEOFF Plan 2 FAS, substituting some or all of the dual member's base salary under the second system earned prior to the LEOFF Plan 2 accrual date (i.e., age 53); or
- An indexed retirement allowance under RCW 41.26.530(2) using the dual member's LEOFF Plan 2 FAS.

V. Projected Retirements

The current membership of LEOFF Plan 2 is 14,011, as stated in the most recent Actuarial Valuation Report[5] from the Office of the State Actuary. The number of LEOFF Plan 2 retirees stated in that report is 244.

The Office of the State Actuary has projected that the number of LEOFF Plan 2 members who will retire each year will increase every year from 2004 to 2021. During this period it is projected that 8,258 members will retire from LEOFF Plan 2.

The following chart shows the increase in retirements from year to year. This is a reflection of the aging baby boomer population coupled with LEOFF Plan 2 beginning to reach maturity.



	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Projected Retirees	217	251	287	316	348	387	419	450	471	493	512	535	553	564	589	608	618	640

[5] 2002 Actuarial Valuation Report prepared in October 2003.

8. Key Issues & Policy Options

I. Key Issues

The normal retirement age for LEOFF Plan 2 (53) is an age at which a person is generally considered to still be in the prime of their productive employment period although they may no longer be capable of performing the duties of a law enforcement officer or firefighter. A LEOFF Plan 2 member who separates from LEOFF employment at age 53 may be expected to seek continued full-time employment in a non-LEOFF capacity for a number of reasons including income, access to health care coverage and the ability to qualify for social security or earn additional pension benefits to supplement those provided by LEOFF Plan 2.

Public employment offers a number of potential second careers to LEOFF 2 members where the skills developed in their LEOFF positions can be utilized. However, LEOFF Plan 2 members who seek to continue in public employment following separation or retirement from LEOFF may be restricted from establishing membership in a second public retirement system or receiving their LEOFF pension. Thus, there are barriers to transitioning to public employment after completing a career in LEOFF.

When a LEOFF Plan 2 retiree becomes employed in an eligible position covered by another state pension system the retiree will have their LEOFF pension suspended. Additionally, the retiree would normally be prohibited from participating as a member in the other state pension system and accruing a second pension. These pension provisions may make continued public employment an unviable option for LEOFF Plan 2 retirees.

II. Policy Options

A. Policy Option 1

The first policy option is to provide LEOFF Plan 2 retirees who become employed in an eligible Public Employees' Retirement Systems (PERS), Teachers' Retirement System (TRS), School Employees' Retirement System (SERS), or Public Safety Employees Retirement System (PSERS) position with a choice to opt out of membership in the new system and receive their LEOFF Plan 2 pension, or opt into membership in the new system and have their LEOFF Plan 2 pension suspended.

Providing members with a choice regarding membership allows each member to make the decision of what is more important to them with respect to their pension. Members who leave LEOFF with 20 years of service or less might value the opportunity to earn a second pension and increase their eventual post-retirement income. However, other members may only be interested in working for a short period of time and have no interest in earning an additional pension. Providing members with a choice would require employers to administer the choice when hiring a LEOFF 2 retiree.

Example: A LEOFF Plan 2 member retires at age 53 with 18 years of service. The retiree is elected into the State Legislature which is a PERS-eligible position. The retiree chooses to receive their LEOFF Plan 2 pension. The retiree will not be a member of PERS nor accrue any PERS pension benefits.

Example: A LEOFF Plan 2 member retires at age 53 with 18 years of service. The retiree becomes employed as an investigator with the Attorney General's Office. The retiree chooses to become a member in PERS Plan 2. The retiree's LEOFF Plan 2 pension is suspended. The member works for an additional 12 years until age 65 and then retires from PERS Plan 2. The person's LEOFF Plan 2 pension would be restarted when they separate from employment.

B. Policy Option 2

The second policy option is to remove the restriction on receiving their pension when a LEOFF Plan 2 retiree becomes employed in an eligible position in PERS, TRS, SERS or PSERS. The person would also be allowed to participate as a member in the other state pension system and accrue an additional pension.

This option eliminates the key barriers to LEOFF Plan 2 retirees seeking non-LEOFF public employment, is the easiest for employers to administer and provides the most benefits to the member. However, this approach might create an incentive for members to leave a LEOFF Plan 2 position as soon as they reach normal retirement age which could generate an actuarial cost to the LEOFF plan.

Example: A LEOFF Plan 2 member retires at age 53 and begins receiving their pension. The retiree becomes employed in a PERS eligible position. The member is enrolled in PERS and begins accruing a benefit in PERS while continuing to receive their LEOFF pension. The member earns 12 years of service credit in PERS and retires with a second benefit from PERS at age 65.

C. Policy Option 3

The third policy option is to create retire/rehire rules for LEOFF Plan 2 similar to those in the other Plan 2 systems such as a thirty day waiting period before a retiree could return to covered employment in any system and a limit on the number of hours a retiree could work each calendar year without loss of pension.

The 867-hour limit currently used for the PERS, TRS and SERS Plan 2 systems was developed for members retiring at age 65 who are generally interested only in returning to part-time employment as a means of supplementing their retirement income. A LEOFF Plan 2 member who retires at age 53 would be much more likely to seek full-time employment. Thus, the 867 hour limit may not be an appropriate standard to apply to LEOFF Plan 2 retirees returning to public employment.

This option creates uniformity with the other Plan 2 systems and does provide an opportunity for LEOFF Plan 2 retirees to continue receiving their pension while being employed in the public sector. However, this approach does not provide LEOFF 2 retirees with the opportunity to accrue a second pension.

Example: A LEOFF Plan 2 member retires on June 1 and begins receiving their pension. The member returns to full-time employment in an eligible PERS position on July 1 and continues to receive their pension. On December 1 the retiree exceeds the 867 hours for the year. The retiree's pension would be stopped at that time. In January, the retiree's benefit would be restarted and the retiree could again work 867 hours (approximately 5 full-time months) while receiving their pension.

9. Supporting Information

Appendix A – RCW 41.26.500

RCW 41.26.500 Suspension of retirement allowance upon reemployment -- Reinstatement.

(1) No retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, or 41.35.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030. If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

Appendix B – RCW 41.04.270

RCW 41.04.270 Public retirement systems -- Members or beneficiaries estopped from becoming a member or accruing rights in any other public retirement system.

(1) Notwithstanding any provision of chapter 2.10, 2.12, 41.26, 41.28, 41.32, 41.35, 41.40, or 43.43 RCW to the contrary, on and after March 19, 1976, any member or former member who (a) receives a retirement allowance earned by said former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (c) is the beneficiary of a disability allowance from any public retirement system listed in RCW 41.50.030 shall be estopped from

becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030: PROVIDED, That (a) and (b) of this subsection shall not apply to persons who have accumulated less than fifteen years service credit in any such system.

(2) Nothing in this section is intended to apply to any retirement system except those listed in RCW 41.50.030 and the city employee retirement systems for Seattle, Tacoma, and Spokane. Subsection (1)(b) of this section does not apply to a dual member as defined in RCW 41.54.010.

Appendix C – RCW 41.40.023

RCW 41.40.023 - Membership.
Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;

(3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim

for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan except as follows:

(a) In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

(d) Except as provided in RCW 41.40.109, on or after July 25, 1999, an employee shall not be excluded from membership or denied service credit pursuant to this subsection solely on account of participation in a defined contribution pension plan qualified under section 401 of the internal revenue code;

(e) Employees who have been reported in the retirement system prior to July 25, 1999, and who participated during the same period of time in a defined contribution pension plan qualified under section 401 of the internal revenue code and operated wholly or in part by the employer, shall not be excluded from previous retirement system membership and service credit on account of such participation;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income

received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as agency vendors;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(4) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1999, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(19) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(20) Beginning on July 22, 2001, persons employed exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under

chapter 35.82 RCW, (a) if the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan.