

Board Member Orientation Manual



City of Bellingham

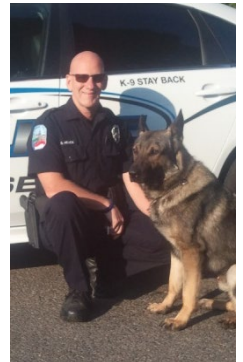


City of Spokane



City of Tacoma

City of Ellensburg



Snohomish County



City of Olympia



City of Centralia

*They keep
us safe, we
keep them
secure.*



City of Aberdeen

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Dear Board Member:

The Washington State Law Enforcement Officers' and Fire Fighters' (LEOFF) Plan 2 Retirement Board's mission is to responsibly govern the pension plan for the benefit of the members. In working to meet the needs of those we serve, the Board values:

- Respect, fairness, and honesty;
- Open and professional communication; and,
- Innovation, integrity, accountability, and excellence.

The Board's strategic plan includes four priority goals which form the foundation for its activities and accomplishments:

- Enhance member benefits;
- Provide the stakeholders with a voice in plan governance;
- Maintain the plan's financial integrity; and,
- Inform the stakeholders.

As a Board Member and Trustee for LEOFF Plan 2, you will be asked to make important long range decisions affecting the lives and financial well-being for members, retirees, and their families. You have the opportunity to acquire information about LEOFF Plan 2 and governmental pension plans, benefit policy, funding policy, and investment policy. We will help you take advantage of this opportunity.

The primary focus of the Orientation Manual is to help you get up to speed as quickly as possible. The secondary focus is to be an ongoing reference and resource. This manual is organized into three sections:

Responsibilities: Information about your key duties as a Board Member (what you have to do). This includes Fiduciary Duties, Statutory Duties (such as adopting contribution rates and plan assumptions and studying policy issues), and broader duties required by the State including Ethics, Public Records, and Open Public Meetings.

Plan Knowledge: Information to help you study issues and make decisions (what you should know). This includes key historical events leading to the creation of the LEOFF Plan 2 system, background on the creation of the Board and Plan Governance, key legal precedents, and a review of basic plan provisions.

Administrative Information: Information on conducting business as a state agency (what you should expect). This includes rules of conduct for meetings, details on Board and staff structure, stakeholders, Trustee education/conferences, making travel arrangements, and obtaining reimbursement for expenses.

We look forward to working with you!

Responsibilities



Responsibilities

Fiduciary Duties

LEOFF PLAN 2 Board Members Are Fiduciaries

The [LEOFF Plan 2 Board](#) statutes define LEOFF Plan 2 as a trust and assigns fiduciary duties to Board members. As a Board member, you must:

- “Exercise fiduciary responsibility in the oversight of the pension management function assigned to board;” [RCW 41.26.705\(3\)](#) and
- “Be the fiduciary of the plan and discharge the board’s duties solely in the interest of the members and beneficiaries of the plan;” [RCW 41.26.720\(1\)\(h\)\(i\)](#)

Your Fiduciary Duties

As a fiduciary you must act for the exclusive benefit of [LEOFF Plan 2](#) members and beneficiaries of the plan. This means managing and preserving the trust to ensure promised benefits are paid.

You cannot have dual loyalties, conflicts of interest, or even the appearance of a conflict. As a fiduciary of the LEOFF Plan 2 trust fund you owe “unwavering duty of loyalty to the trust beneficiaries”.¹ This includes not acting to benefit third parties even if there is no personal benefit to you.

Your duty to the trust fund requires “due care, skill, and prudence”. You are held to the standard of a prudent expert. You don’t have to be an expert, but you must consult with experts. Even with expert advice, you are the final decision maker. You fall short of your fiduciary duty if you simply “rubber stamp” expert advice.

Though not responsible for providing actuarial, investment, or administrative services for the LEOFF Plan 2 trust fund you must monitor the work being done by the [Office of the State Actuary \(OSA\)](#), the [State Investment Board \(SIB\)](#), and the [Department of Retirement Systems \(DRS\)](#) on behalf of LEOFF Plan 2 members.

Your duty as a LEOFF Plan 2 Board member is stricter than that required of Washington’s other state-wide pension systems. Washington’s Courts have ruled the [Public Employees’ Retirement System](#) and [Teachers’ Retirement System](#) are not trusts and DRS does not have a fiduciary duty to system members.² Your trusteeship and the fiduciary oversight that goes with it is a unique benefit to LEOFF Plan 2 members.

¹ *NLRB v. Amax Coal*, 453 U.S. 322 (1981)

² *RPEC v. Charles* 148 Wn.2d 602, 620-623, 62 P.3d 470 (2003)

Responsibilities

Board Duties

The statutes creating the LEOFF Plan 2 Retirement Board (Board) assigns specific statutory duties to you as a Board member. Those duties include: adopting long-term economic and demographic assumptions; setting contribution rates; adopting actuarial tables, schedules and factors; and, studying policy issues, which may include proposing legislation.

Adopt Long-Term Economic and Demographic Assumptions

The Board adopts long-term economic and demographic assumptions based on recommendations from [OSA](#). OSA bases its recommendations on actuarial analysis of past experience, current trends, and future predictions. OSA presents the results to the Board and recommends any changes needed to bring the assumptions more into line with the experience. After reviewing the results with an independent auditor the Board decides whether, or to what extent, to adopt the recommendations. Once adopted, the assumptions are used by OSA to calculate recommended contribution rates, actuarial tables, schedules, and factors.

Long-Term Economic Assumptions

Long-term economic assumptions are used to project the value of system assets and liabilities. You are responsible for adopting [long term economic assumptions](#) projecting average future:

- Growth in inflation;
- Investment rate of return;
- Growth in salaries; and,
- Growth in system membership

Every even-numbered year OSA compares the assumptions with actual experience to evaluate their accuracy. This is one of the most far-reaching decisions you make as a Board member as it is central to the long-term funding of the plan.

Demographic Assumptions

Demographic assumptions are used to predict when benefits start (assumed rates of retirement and disability) and when they stop (assumed mortality and employment termination). These assumptions are used to project the cost of future benefits.

As with long-term economic assumptions, OSA periodically compares demographic assumptions to actual experience. Instead of looking at the movement of established economic factors, the demographic review requires detailed analysis of the actual experience of plan members. OSA conducts this analysis, called an [Experience Study](#), every six years.

Contribution Rate Setting

OSA uses the assumptions adopted by the Board to develop [contribution rate recommendations](#). Your most important responsibility as a Board member is to set contribution rates using those recommendations.

History

During the 1980s and 90s, LEOFF Plan 2 contribution rates were adopted by a succession of different entities, most recently the [Pension Funding Council](#). One of the primary goals of [Initiative 790](#) was to place that responsibility with people whose lives are directly affected by those rates, which it did effective July 1, 2003.

Early on the Board adopted full funding and contribution rate stability as a primary strategic goal. In December 2004 it adopted a four-year plan of annual increases to raise rates back towards the historic average cost of the plan in order to fund current benefits. Next, the Board adopted policies to stabilize contribution rates: (1) a minimum contribution rate (floor); (2) a funding corridor to prevent the actuarial value of assets from diverging too much from the market value; and (3) temporarily replacing the Aggregate funding method with the Entry Age Normal funding method as the basis for OSA contribution rate recommendations through June 30, 2017.

Washington's plans use a "smoothing method," avoiding sharp spikes and drops in contribution rates by booking gains and losses over time. The Legislature [adopted a new smoothing method](#) in 2003 allowing gains and losses to be either booked immediately or smoothed over a period as long as 8 years, depending on the difference between actual and assumed rate of return.³ The greater the deviation is, the longer the smoothing period.

Process

Statutes governing the Board set out a process and timetable for adopting LEOFF Plan 2 contribution rates.

Base Contribution Rate

The Board must adopt rates by July 31 of even-numbered years based on OSA recommendations. The rates are effective at the beginning of the next biennium (July 1 of odd-numbered years). After passage, the Board reports the rates to the [Office of Financial Management \(OFM\)](#) and the DRS for implementation. Although the Board has the statutory authority to set rates, the Legislature can revise them.

Supplemental Rates

If the Legislature passes legislation affecting rates, the Board adopts supplemental rates to fund the change. OSA calculates a supplemental rate incorporating the costs or savings of the legislation and presents recommendations to the Board. The Board reviews the recommendations and adopts the supplemental rates necessary to fund the system. Supplemental rates are normally effective September 1, following the effective date of the legislation. After adopting a supplemental rate the Board reports the new rate to OFM and DRS for implementation.

³ [RCW 41.45.035](#)

Adopting Actuarial Tables, Schedules, and Factors

The Board also adopts administrative factors allowing members to select benefit payment options. For instance, if a member elects to extend the life of their benefit by naming a survivor beneficiary, DRS uses the factors to calculate an actuarial reduction so the total cost to the system is the same. Whenever the Board adopts assumption changes, the [administrative factors](#) need to be analyzed for possible updating.

The actuarial tables, schedules and factors can be broken down into four main categories:

1. **Early Retirement Factors (ERF)** - ERFs reduce a member's benefit to account for retirement prior to normal retirement age. Applies to non-duty death or disability benefits.
2. **Joint and Survivor Option Factors** - Joint and survivor factors reduce a member's monthly benefit to provide an ongoing benefit for their survivor. There are currently three options providing a full or reduced benefit to the survivor: joint and 100 percent, joint and 50 percent, or joint and 66 2/3 percent. The higher the percentage of the survivor benefit, the greater the reduction to the member benefit.
3. **Monthly Benefit per Dollar of Accumulation** - These annuity factors calculate an equivalency between a lifetime monthly benefit and a lump-sum. It is used to: 1) Calculate a lump sum payout if the member's monthly benefit is less than \$50; or 2) Calculate the lump sum necessary to purchase a future benefit stream ("air time").
4. **Service Credit Purchase Factors** - These factors determine the price of the increase in a member's benefit if they purchase service credit or reestablish service credit after the deadline for restoration of withdrawn contributions.

Studying Policy Issues

One of the Board's primary functions is to study policy issues. The staff provide briefings and reports as directed by the Board to assist with that process. The reports cover a wide variety of topics, including but not limited to benefit improvements, actuarial and funding policies, and health care. Some reports are considered educational in nature and serve strictly to inform members on a specific topic. Other reports may lead to proposing legislation, moving through three steps of increasing complexity and breadth. The Board decides whether an issue advances to the next step.

Educational Briefing

An educational briefing is typically requested by the Board to learn about a specific subject with no expectation of further action. This type of report and/or presentation may be made by staff or requested of an outside source.

Proposing Legislation

The Board may propose fiscally responsible legislation improving the plan for the benefit of members. Before proposing legislation the Board directs staff to research areas of interest and present their findings. The following three steps identify the process for proposing legislation:

1. **Initial Consideration** - Initial Consideration introduces the subject and provides basic facts about how it impacts the plan or members. The report and presentation serves to familiarize Board members with the subject matter. The Board may decide:
 - a. Not to pursue the matter (no action required); or,
 - b. Move it to the next step and direct staff to prepare a Comprehensive Report (requires a motion).
2. **Comprehensive Report** - The Comprehensive Report provides more detailed information to Board members and presents options to allow discussion of policy implications and consideration of further action. As a result of that discussion the Board may decide to:
 - a. Identify a need for more information and direct staff to prepare a "Follow-up Report" (requires a motion);
 - b. Decide to defer the subject until the next interim or drop the issue (no action required); or,
 - c. Decide it has sufficient information and wishes to pursue possible legislation, in which case the Board chooses an option and directs staff to prepare a Final Proposal (requires a motion).
3. **Final Proposal** - The Final Proposal adds a summary to the report explaining the impact(s) of the chosen option. A cost analysis of the impact of the potential legislation is provided as well as a bill draft. The Board will review the Final Proposal in a public meeting and hear public testimony before voting to move the proposal forward to the Legislature. The Board may decide to:
 - a. Submit the proposal to the Legislature (requires a motion);
 - b. Defer to the next interim (no action required); or,
 - c. Drop the issue (no action required).

A majority of Board members must agree to move the proposal forward to the Legislature.

Responsibilities

State Board Member Duties

In addition to your fiduciary obligations to LEOFF Plan 2 members, your status as a member of a State Board requires compliance with laws governing all state boards and agencies. These include the Ethics, Public Records, and the Open Public Meetings Acts.

Within one month of your initial appointment to the Board, you must take the Ethics, Public Records, and Open Public Meetings Act online training and report your completion to the Administrative Services Manager.

If you have any questions about your responsibilities under any of these laws, please contact staff.

Washington State Ethics – [RCW 42.52](#)

The state's ethics law forbids using a public position for personal gain or benefit. The [state's ethics law](#) codifies the requirement that State Officers not:

- Use their state positions to secure special privileges or exceptions for themselves or any other person;
- Receive compensation from a source other than the State for the performance of their official board duties;
- Receive a gift if it could be reasonably expected to influence or reward the performance of their official duties; or,
- Have financial or other interests, or engage in business or professional activities that conflict with the performance of their official duties.

*All who have the privilege of working for the people of Washington state can have but one aim: To give the highest public service to its citizens.
RCW 42.52.900*

When evaluating a potential conflict of interest ask yourself:

- Will your interests benefit as a result?
- Would a reasonable person conclude that a private or personal interest impairs your independent and impartial judgment in the exercise of your official duties?

Public Records Act – [RCW 42.56](#)

The Board must respond within five days to a public disclosure request by either providing the requested record or citing a disclosure exemption. If unable to provide the requested record within five days the Board must provide a written estimate of when it will produce the record. The Public Records Act does not require new records to be created.

“Public record” is broadly defined as any writing containing information relating to the conduct of government or the performance of any governmental function that was prepared, owned, used or retained by any agency regardless of physical form. The definition has been applied to each new medium as it emerges, and as long as that medium contains information related to government operations it will be considered a public record.

Public record requests must be coordinated through Board staff.

Open Public Meetings Act – [RCW 42.30](#)

The Open Public Meetings Act requires that all Board meetings be open and accessible to the public. A meeting generally includes any situation in which a quorum of the governing body meets and discusses the business of that body. For the LEOFF Plan 2 Board, a quorum is six Board members. Board resolutions and directives, including rate setting, are not valid unless adopted at a public meeting.

The Act contains specific provisions regarding:

- Regular and special meetings;
- Types of notice that must be given for meetings;
- Conduct of meetings; and,
- Penalties and remedies for violation of the Act.

Executive Sessions

An executive session is closed to the public to allow discussion of confidential matters. The Board may not vote on any issue while in executive session. The Open Public Meetings Act includes specific limitations on when an [executive session](#) is allowed and procedure for conducting them.

The Board may go into executive session to discuss some items privately before returning to a public meeting to take action on the item. For example, the Board has previously gone into executive session to discuss the following:

- Personnel evaluations and/or issues; and,
- Review of attorney client privileged communications.

Plan Knowledge



Plan Knowledge

LEOFF History

In meeting your fiduciary obligations to LEOFF Plan 2 members, it is useful to keep in mind the history of law enforcement officer and fire fighter pensions in Washington.

Pre-LEOFF

A statewide system covering both police and fire is a comparatively recent development. Prior to enrollment of the first LEOFF member on March 1, 1970:

- State law required pension coverage for fire fighters, with each covered municipality administering, and more importantly, funding its own system under chapters 41.16 RCW and 41.18 RCW. By 1962 Washington had 37 separate municipal fire fighter pension systems.
- Law enforcement officers employed by first class cities (Seattle, Tacoma, and Spokane) belonged to a system operated by each city under chapter 41.20 RCW. Law enforcement officers in other cities were covered by the Statewide Cities Retirement System (SCRS), chapter 41.44 RCW. County Sheriffs were covered under the Public Employees' Retirement System (PERS).⁴

The pre-LEOFF systems suffered from a recurrent problem: failure to put away enough money today to pay for benefits promised for tomorrow. A 1962 report on the results of a research study of public employee retirement systems in the state documented a combined \$105 million under-funding for Washington's law enforcement officer and fire fighter pension systems, resulting in a combined funded status of 15%.⁵

LEOFF Plan 1

The legislature enacted [LEOFF](#) (Plan 1) in 1969, for the first time creating a statewide system providing consistent pension and disability benefits for Washington's full-time fire fighters and law enforcement officers. Equally important, the State adopted a funding system to ensure the money would be there to pay the promised benefits:

In many ways, the real deal being negotiated was for the state to step in and assume the financial liabilities of numerous and varied municipal pension plans. Most cities just didn't have the money to cover the wave of fire fighters that had been hired after World War II, and who were fast approaching retirement. As Howard Vietzke described, "With LEOFF, cities got off the hook. Before that, if fifty firefighters retired, fifty guys who had

⁴ PERS and SCRS participation was optional for cities and counties. If a county sheriff of a city police officer worked for an employer who had not opted for coverage, they would not have been in one of the state pension systems.

⁵ *The Public Employee Pension Problem in the State of Washington*; report from consulting actuary A.A. Weinberg to the Legislative Council (1962), pgs. 14, 117, 119.

been paying into their pension, the city would have to start paying. And the cities didn't have the money."⁶

Instead of relying on the funding policies of each municipality, the State assumed both the assets and liabilities of the municipal systems, agreeing to fund any deficit for past service as well as pay any costs of the new LEOFF system that exceeded 12% of salary (6% flat member contribution rate plus 6% flat employer contribution rate).

While opinions varied widely about LEOFF Plan 1, all can agree it provided good pension and disability benefits and was expensive. A number of anecdotes catalogued perceived abuses, usually focused on who got in and who got out on a disability. These anecdotes generated a parade of bills to reduce or restrict benefits. Whether the cost was inherent in the system, the result of perceived abuses, or a combination of the two, it was clear the State was not adequately funding law enforcement officer and fire fighter pensions. In 1975 the LEOFF Plan 1 funding ratio was 12%.

By the mid-1970s, All Washington's systems at this time, including PERS and the Teachers' Retirement System (TRS) suffered from underfunding. Thomas Bleakney, actuary for the funds, described the dynamic:

You've got this long gap between the time benefits are being earned and the time they're being paid out. The threat is not so much insolvency, but the danger that the legislature will realize too late the costs it has. In the state of Washington, there's no question that the No. 1 problem is the funding of the systems.⁷

At this time all three systems were controlled by Boards administering the systems and managing investments. Responsibility for administering all of the State's pension systems, including LEOFF Plan 1, was transferred to DRS in 1976.⁸

LEOFF Plan 2

In 1977 the Legislature reduced pension benefits by creating the plans 2, including [LEOFF Plan 2](#). The LEOFF retirement age increased from age 50 to 58. LEOFF disability benefits were essentially eliminated in Plan 2.⁹

The theme of LEOFF's story from 1977 forward is finding a middle ground between LEOFF Plan 1 and the original provisions of LEOFF Plan 2. The funding mechanism for LEOFF Plan 2 helps make this possible. Instead of employees and employers paying a flat rate with the State picking up the remainder as in LEOFF Plan 1, LEOFF Plan 2's variable contribution rate requires members to pay 50% of the system costs. The remaining 50% is split between employer (30%) and the State (20%).

⁶ *Fully Involved: A history of the Washington State Council of Firefighters*, copyright 2004 Ellie Belew, p. 141, 142.

⁷ *Id.* At 145.

⁸ The retirement system boards were fully eliminated in 1981 when the newly formed State Investment Board took over management of investments.

⁹ When LEOFF Plan 2 was created the disability benefit provided was simply either a refund of accumulated contributions or a monthly pension actuarially reduced from age 58. Members were also provided with duty disability coverage from workers compensation.

Ensuring employee responsibility for half of system costs enhanced the equity argument for benefit improvement proposals.

Retirement Age

The original LEOFF Plan 2 retirement age of 58 has been lowered in recognition of the physical demands of the job, especially in light of the greatly reduced LEOFF Plan 2 disability benefit. The Legislature reduced the retirement age to 55 in 1993 and lowered it again to 53 in 2000.

Initiative 790 – Creation of the LEOFF Plan 2 Board

Voters created the LEOFF Plan 2 Retirement Board (Board) by passing [Initiative 790](#) in 2002. I-790 assigned the LEOFF Plan 2 Board of Trustees a fiduciary duty to manage the plan responsibly in:

- Adopting actuarial standards for LEOFF Plan 2;
- Providing improved benefits for LEOFF Plan 2 members;
- Providing annual plan reports to the governor and legislature; and
- Adopting LEOFF Plan 2 contribution rates.

LEOFF Plan 2 benefit improvements spearheaded by the Board include:

Disability Coverage

The Board actively pursued the original legislative policy of LEOFF to provide benefits “enabling such employees to provide for themselves and their dependents in case of disability or death.” RCW [41.26.020](#).

The Board sponsored, and worked for the passage of, the following [disability benefit](#) improvements:

- Providing a minimum duty related disability pension equivalent to ten percent of a member’s final average salary which is not actuarially reduced based on the member’s age and would be nontaxable (2004);
- Allowing the withdrawal of 150 percent of accumulated member contributions for duty related disability in lieu of a disability pension (2004);
- Eliminating the “early retirement” actuarial reduction for duty related disability retirements (2005);
- Providing [catastrophic disability](#) coverage for members whose disability left them unable to engage in substantial gainful employment. This benefit provides for 70% of salary, with offsets for workers’ compensation and social security disability benefits to ensure that total benefits did not exceed 100% of salary (2006);
- Increasing the amount of LEOFF Plan 2 service credit available for periods of temporary duty related disability from 6 months to 2 years (2007);
- Reclassifying eligible Service and Disability retirements to “Occupational” duty related disability retirements for the purpose of allowing affected retirees to take advantage of favorable tax treatment on the first 10% of the member’s salary (2009); and,
- Reimbursing catastrophically disabled members’ health insurance premiums for the member, spouse, and dependent children (2010).

Survivor Benefits

Recognizing the member's sacrifice and lack of benefits, the Board prioritized these benefits in their first strategic plan and worked to significantly improve LEOFF Plan 2 survivor benefits. Survivor benefit improvements for members killed in the line of duty include:

- Elimination of the “early retirement” actuarial reduction from the survivor benefit paid from a LEOFF Plan 2 member's earned retirement benefit if the member is killed in the course of employment (2004);
- Providing reimbursement to survivors of LEOFF Plan 2 members killed in the course of employment for the cost of participating in a PEBB health insurance plan (2006);
- Extending coverage for the \$150,000 death benefit to members who die from a duty-related illness such as an infectious disease or cancer which results from a job-related exposure (2006);
- Elimination of actuarial reduction on survivor benefit for members killed while on leave to serve in the national guard in a time of war (2009);
- Providing survivors of duty-related deaths in LEOFF Plan 2 and WSPRS Plan 2 with the choice of an ongoing pension or 150% withdrawal of accumulated contributions (2010);
- Elimination of actuarial reduction for the joint and 100% survivor benefit for duty-related deaths in LEOFF Plan 2 and WSPRS 2 (2010);
- Providing a 10% minimum pension benefit for duty-related deaths (2010);
- Increasing the \$150,000 lump-sum duty-related death benefit to \$214,000 reflect inflation since 1996 and adding an inflationary adjustment for the future (2010);
- Requiring state universities and community colleges to waive all tuition fees and services and activities fees for children and surviving spouses of any law enforcement officer or firefighter who is killed or totally disabled in the line of duty (2010); and,
- Eliminating the “remarriage penalty” by providing LEOFF Plan 2 will pay the L&I survivor benefit if the surviving spouse of a LEOFF Plan 2 member killed in the course of employment remarries. LEOFF Plan 2 will also pay a benefit to surviving spouses whose benefits were previously suspended due to remarriage (2015).

Funding

Washington's public pension systems historically suffered from chronic underfunding prior to the funding legislation of 1989. The Board ended that practice in LEOFF Plan 2, adopting full funding and stable contribution rates as specific strategic goals. After setting responsible rates, the Board works with the Legislature to preserve them.

The Board also convinced the Legislature to adopt an [alternate revenue bill](#) creating a new funding source for future benefit improvements. Under this law, if state revenues increase by 5% or more from one year to the next, a specified amount is set aside in a benefit improvement account to fund future LEOFF Plan 2 benefit increases. In 2019, the Legislature repealed the alternate revenue provision from law in exchange for a one-time transfer of \$300 million from the LEOFF Plan 2 retirement fund to the LEOFF Plan 2 Benefit Improvement Account.

Other Changes

- Terminated members with at least 20 years have 3% annual index of final average salary until time of retirement (1993);
- Retirees who become employed in eligible non-LEOFF positions provided with a choice to either receive their LEOFF pension or enter into membership in another plan and suspend receipt of their LEOFF pension until their employment in the other system ends (2005);
- Ability to purchase up to five years of additional service credit at the time of retirement (2005);
- Expansion of Emergency Medical Technicians eligibility to participate in LEOFF Plan 2 (2005);
- Members killed or disabled during interruptive military service provided option to purchase service credit (2005);
- Emergency Medical Technicians who become members of LEOFF Plan 2 due to previous legislation provided with the option to transfer their past PERS service credit to LEOFF Plan 2 (2007);
- Improvements to [Dual Membership](#) by clarifying “base pay” inclusions, removal of the maximum benefit rule, and inclusion of LEOFF Plan 2 among those plans whose members can combine service credit for improved benefits tied to length of service (2007);
- Fish & Wildlife Enforcement Officers who become members of LEOFF Plan 2 due to previous legislation provided with the option to transfer their past PERS service credit to LEOFF Plan 2 (2009);
- Service credit for interruptive military service during time of war with no member contribution (2009);
- Domestic partners accorded same status as surviving spouses (2009);
- Shared leave treated as reportable compensation to DRS with contributions withheld (2010);
- Compensation lost due to furlough is included in the pension calculation (2011);
- Creation of the LEOFF Plan 2 Ombudsman Service Program (2013);
- Creation of an optional life annuity benefit allowing LEOFF Plan 2 members to roll over funds from certain tax-qualified plans to purchase a life annuity from the LEOFF Plan 2 trust fund at the time of retirement (2014);
- Elimination of the Remarriage Prohibition for Survivors allowing the surviving spouse of a LEOFF Plan 2 member killed in the course of employment to remarry and continue receiving workers’ compensation survivor benefits (2015);
- Elimination of the Remarriage Prohibition for Survivors allows the surviving spouse of a LEOFF Plan 2 member killed in the course of employment to remarry and continue receiving workers’ compensation survivor benefits (2015);
- LEOFF 2 members who are called to respond to natural disasters are granted the same benefits as those who are called into military service during a time of war (2016);
- LEOFF 2 members called to respond to natural disasters are granted the same benefits as those who are called into military service during a time of war (2016);
- Granting the Board the authority to set the salary of the Executive Director of the Board (2018);

- Updating the definition of veteran, as it relates to determining eligibility for no-cost interruptive military service credit for LEOFF Plan 2 members, to include recent military conflicts and other administrative updates (2018);
- Granting the Board the authority to set the salary of the Executive Director of the Board (2018);
- Updating the definition of veteran, as it relates to determining eligibility for no-cost interruptive military service credit for LEOFF Plan 2 members, to include recent military conflicts and other administrative updates (2018);
- Requiring written consent from a member's spouse only where a member selects a survivor benefit of less than the 50 percent option or names someone other than their spouse as their beneficiary (2019);
- Allowing law enforcement officers and firefighters meeting certain specified criteria the option to recover service credit from PERS and transfer that service credit into LEOFF Plan 2 (2019);
- Allowing LEOFF 2 retirees a 90-day window after the receipt of their first retirement payment to change their survivor election (2020); and,
- Amending the definition of "veteran" so that all armed conflicts where Campaign Badges are awarded qualify for no-cost interruptive military service credit (2020).

Plan Knowledge

Constitutional Protections

Sooner or later as a Board member you will hear the word “*Bakenhus*”. *Bakenhus v. Seattle*¹⁰ (1956), was the first in a line of pension cases decided under the “Contract Clause” of the State and Federal Constitutions. It is important you have an understanding of the *Bakenhus* decision, how it has affected the development of the LEOFF system, and how it impacts your decisions on the Board.

Bakenhus Introduces the Concept of Vested Pension Rights

Bakenhus held that when an employee enters employment, the pension provisions in statute provide a portion of their compensation and are therefore contractual in nature. Although the receipt of this compensation is deferred, an employee’s right to receive the compensation at retirement begins to vest from the first day of service. Except in narrowly defined circumstances, a change in statute or administrative interpretation reducing benefits violates the contract clause.

The protection of pension benefits provided by *Bakenhus* is strong precisely because it is grounded in the state constitution. In general, the Legislature has “plenary power” to take any action not prohibited by the state or federal constitutions. Under *Bakenhus*, the state constitution prohibits the legislative impairment of pension benefits unless necessary to protect the integrity and flexibility of the plan.

Pension Benefits, Once Enacted, May Not Be Reduced

The Legislature has long recognized *Bakenhus*’s limitations on its authority to change pension benefits. When creating the statewide LEOFF system in 1969, the Legislature included provisions preserving the pension rights of members of the prior plans, requiring the local government employers to pay the difference, if any, between retiree benefits under the old plan and the benefits provided by LEOFF.¹¹ Another example is the existence of LEOFF Plan 2 itself. Even if politically feasible to reduce the pension benefits of already employed law enforcement officers and fire fighters, the *Bakenhus* doctrine prohibits it.

This is not to say no changes can be made. The Legislature passes pension bills every year without violating *Bakenhus*. The Supreme Court laid out the analytical framework governing the Legislature’s authority to change pension benefits in *Dailey v. Seattle*.¹²

¹⁰ *Bakenhus v. City of Seattle*, 48 Wash.2d 695, 698, 296 P.2d 536 (1956).

¹¹ RCW 41.26.040(2), *Mulholland v. City of Tacoma*, 83 Wash.2d 782, 522 P.2d 1157 (1974).

¹² *Dailey v. Seattle*, 54 Wn.2d 733, 344 P.2d 718 (1959). See also *McAllister v. City of Bellevue Firemen's Pension Bd.*, 142 Wn. App. 250, 255, 180 P.3d 786 (2007).

Under *Dailey*, any change in pension rights is weighed against pre-existing rights in each individual case to determine whether impairment exists. Pension benefits may be altered to maintain the integrity of the system, but they must be accompanied by some corresponding benefit. In *McAllister*, the court explained that “[w]ithout comparable new advantages attendant to a disadvantageous change to a pension system, the modification is void and unconstitutional”.¹³

Pension Provisions Arising Outside the Pension Statutes May Also Enjoy *Bakenhus* Protection

Over the intervening 55 years, the courts construing *Bakenhus*, have found certain pension provisions arising outside the pension statutes to be constitutionally protected. For example:

- A statutory interpretation by the Department of Retirement Systems (DRS) may be constitutionally protected if consistently followed over time;¹⁴
- The principle of systematic funding is “one of the vested contractual pension rights flowing to members of the system”;¹⁵ and,
- Changes in other statutes or contracts that affect retirement rights have been rejected, such as:
 - Amendments to non-pension statutes that impair pension rights;¹⁶
 - Impairment of contracts for post-retirement health care;¹⁷ and,
 - Impairment of private pension contracts.¹⁸

Limitations on *Bakenhus*

Although the holding in *Bakenhus* is far-reaching, the Court has imposed some limitations. *Bakenhus* does not provide a benefit to a person who does not meet the clear requirements of the pension statutes.¹⁹ Further, *Bakenhus* does not allow employees to cherry-pick the best provisions from different acts. Each time the pension statutes are amended, the courts define the amendment as a different “act”. If some changes are beneficial and some are detrimental, the court will determine the most recent act that can be constitutionally applied to the member. But members may not combine the best provisions of different acts to create a “super” benefit.²⁰

The Legislature can reduce or repeal a pension benefit if it reserved the right to do so in the original bill creating the benefit. In a pair of recent Supreme Court cases the Legislature repealed pension benefits that, when enacted, included a provision reserving the right to

¹³ *McAllister v. City of Bellevue Firemen's Pension Bd.*, 166 Wn.2d 623, 628, 210 P.3d 1002 (2009).

¹⁴ *Bowles v. Washington Dept. of Retirement Systems*, 121 Wn.2d 52, 66, 847 P.2d 440 (1993).

¹⁵ *Weaver v. Evans*, 80 Wn.2d 461, 478, 495 P.2d 639 (1972).

¹⁶ *State Employees*, *supra*.

¹⁷ *Navlet v. Port of Seattle*, 164 Wn.2d 818, 194 P.3d 221 (2008).

¹⁸ *Jacoby v. Grays Harbor Chair & Mfg. Co.*, 77 Wash.2d 911, 915, 468 P.2d 666 (1970).

¹⁹ *Wong v. Boeing*, 26 Wn.App. 557, 561, 613 P.2d 788 (1980).

²⁰ *Adams v. City of Seattle*, 67763-2-I (2013).

amend or repeal the benefit.²¹ Employee groups sued, claiming the repeal violated *Bakenhus*. The Supreme Court ruled the reservation of rights clause was enforceable and upheld the repeal of the benefits. There are three LEOFF Plan 2 benefits that include a reservation of rights clause:

- Health insurance premium reimbursement for catastrophically disabled members - RCW 4126.470(10)(a);
- 6 month temporary duty disability service credit - RCW 4126.470(3)(h); and,
- 24 month temporary duty disability service credit - RCW 4126.473(9)

Finally, *Bakenhus* and its progeny have always reserved to the Legislature the ability to impair pension rights if necessary to maintain flexibility and preserve the integrity of the plan.²² Washington's Courts have yet to authorize impairment under this standard but this question is facing a number of courts in other states at the time of this writing.²³

Plan Knowledge

Plan Provisions

The following brief overview of LEOFF Plan 2 pension statutes is a starting point. It is not a comprehensive explanation of the entire plan.

Membership

All [full-time, fully compensated](#) law enforcement officers and fire fighters hired by a LEOFF employer on or after October 1, 1977, are mandated into LEOFF Plan 2.

Plan Funding

The [cost of the plan is shared](#) by employers (30%), the State (20%) and active members (50%). Contributions plus investment earnings fund LEOFF Plan 2 benefits. The LEOFF Plan 2 Board sets contribution rates calculated as a percentage of pay. Contributions to the plan are held in trust and invested by the SIB.

Benefit Formula

“Fire fighter” also includes supervisory fire fighter personnel; and emergency medical technicians.

“Law Enforcement Officer” also includes public safety officers and public safety directors.

²¹ WEA v DRS, 181 Wn.2d 233, 332 P.3d 439 (2014) (WEA I); WEA v. DRS, 181 Wn.2d 212, 332 P.3d 428 (2014) (WEA II).

²² *Weaver*, at 478.

²³ Cf. *City of San Jose v. San Jose Police Officers' Association* | No. 12-cv-02904 U. S. District Court for the Northern District of California; *Justus v. Colorado*, Court of Appeals of Colorado, Fourth Division, No. 11CA1507.

Members who reach retirement age qualify for a benefit calculated as follows: **2% x Years of Service x Final Average Salary.**

Final average salary (FAS) is the average of compensation earned over the highest consecutive sixty-service credit months (five years). The formula produces the “standard allowance.” A member may select an actuarially reduced benefit to provide a continuing survivor benefit.

Service Retirement

Members qualify for an unreduced retirement benefit at age 53 with at least five years of service (vested). Members with at least 20 years of service may retire at age 50 with reduced benefits.

Disability

Members who become totally incapacitated for continued employment by an employer may be eligible for a [disability retirement benefit](#).

- Non-duty disability beneficiaries qualify for:
 - A retirement allowance of 2% x years of service x FAS actuarially reduced from age 53.
- If the member’s disability is incurred in the line of duty he or she may qualify for:
 - **Temporary disability benefit** - The member is eligible for LEOFF Plan 2 service credit during the temporary disability period.
 - **Permanent disability benefit** - The member qualifies for an unreduced retirement allowance of 2% x years of service x FAS:
 - The minimum benefit payable is 10% of FAS; or
 - The member may elect to receive a refund of 150% of his or her accumulated contributions.
 - **Catastrophic disability benefit** - For those unable to perform any substantial gainful activity the member receives 70% of FAS. This benefit is offset by social security disability or workers’ compensation benefits received by the member to ensure he or she does not receive more than 100% of salary; totally disabled members also qualify for reimbursement of post-retirement medical premiums paid through the employer or to Medicare, and waiver of in-state tuition for the member and his or her family.

Survivor Benefits

If the member dies prior to retirement and was not killed in the course of employment:

- With less than 10 years of service credit not eligible for retirement, a refund of accumulated contributions plus interest will be paid to the member’s beneficiary.
- With 10 or more years of service credit or eligible to retire, the spouse can choose to receive either:
 - A lump sum payment of 150% of the member’s accumulated contributions plus interest; or,
 - A monthly retirement allowance calculated as a 100% survivor benefit.

If the member was killed in the course of employment, the member’s survivor(s) qualify for:

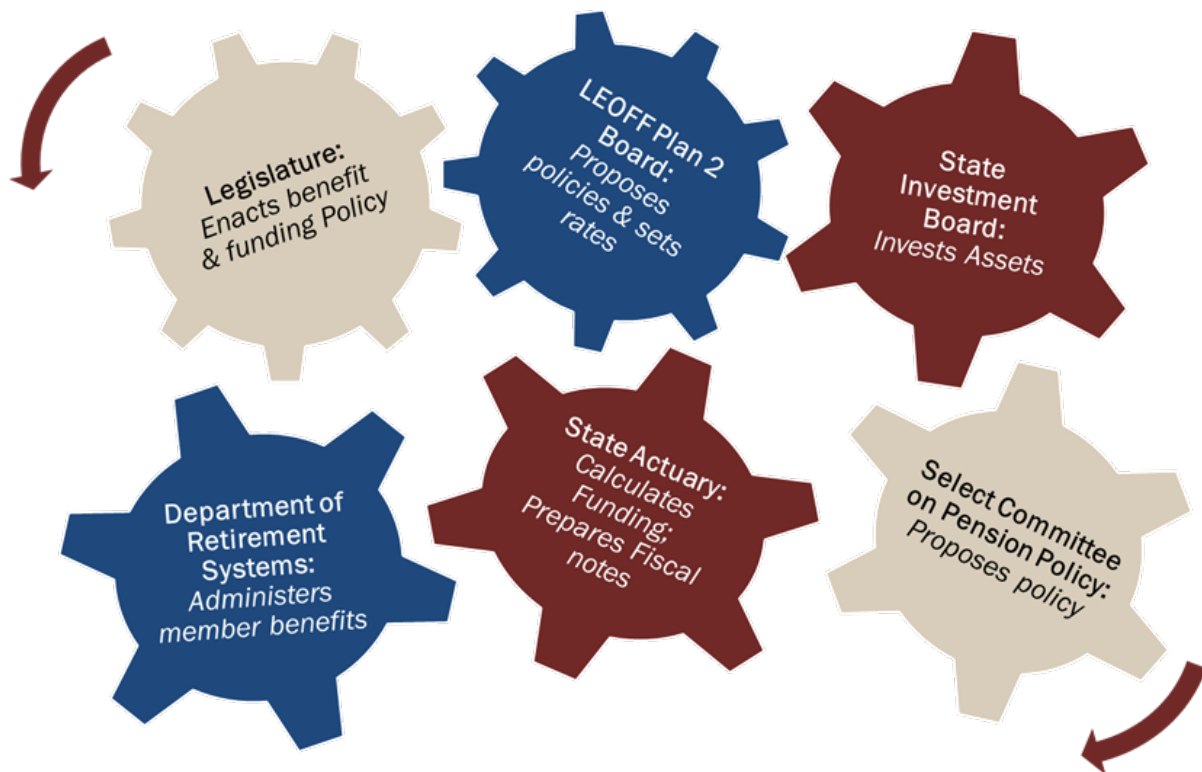
- A tax-free lump-sum death benefit indexed for inflation;
- Either:
 - An unreduced retirement allowance with a minimum of 10% of FAS; or,

- 150% of the member's accumulated contributions.
- Reimbursement of health care premiums; and,
- Waiver of tuition at the State's higher education institutions.

Plan Knowledge

Plan Governance

As a Board member you will work with other agencies who also participate or assist in LEOFF Plan 2 governance:



State Legislature

The [Legislature](#) enacts the statutes governing the LEOFF Plan 2 system and the agencies responsible for different aspects of LEOFF Plan 2 governance.

LEOFF Plan 2 Retirement Board

An 11 member [board](#) including representatives of both law enforcement and firefighter employees, LEOFF Plan 2 employers, and the Legislature. The Board assists DRS in administering the system, makes policy recommendations to the Legislature, and sets the actuarial assumptions and rates for LEOFF Plan 2.

Washington State Investment Board (WSIB)

A 15 member board including retirement system members, the State Treasurer, 2 Legislators, the Directors of DRS and L&I, and five nonvoting members appointed by the Board. [WSIB](#) is responsible for investing public trust funds, including the assets of the LEOFF Plan 2 trust fund.

Department of Retirement Systems (DRS)

[DRS](#) collects contributions and pays benefits for LEOFF Plan 2. DRS also administers Washington's other public pension systems.

Office of the State Actuary (OSA)

A Legislative agency responsible for providing actuarial services to DRS, the LEOFF Plan 2 Retirement Board, and the Legislature. These duties include producing actuarial fiscal notes estimating the cost to fund bills proposing changes to pension benefits. [OSA](#) staffs the Select Committee on Pension Policy.

Select Committee on Pension Policy (SCPP)

A 20-member committee including representatives of employees, retirees, employers, Legislators, and the directors of DRS and the Office of Financial Management. The [SCPP](#) makes pension policy and contribution rate recommendations for Washington public plans other than LEOFF Plan 2. The SCPP and the LEOFF Plan 2 Board work to coordinate policies to maintain consistency between systems. SCPP is staffed by OSA.

Office of the Attorney General (AG)

The [AG](#) represents the Board in all legal and quasi-legal matters, including litigation, RCW 43.10.040. An Assistant AG attends all public Board meetings to advise on legal issues, especially to ensure compliance with the open public meetings act.

Administrative Information



Administrative Information

Board Meetings

One of your primary activities as a Board member is attending Board meetings. The following discussion outlines the scheduling and conduct of Board meetings.

Meeting Schedule

Board meetings are held monthly in the same building as the Board office. The annual meeting schedule is proposed each November and voted on each December for the following year. Board members receive hard copy schedules and are sent invitations via email.

Typically, meetings are scheduled for the 4th Wednesday of each month from 9:30am to 3:00pm, though the Board does not usually conduct full meetings while the Legislature is in session, informational meetings via video conference take place. The Board provides members with coffee, refreshments, and lunch. The chairman will break when appropriate for meals and other needs.

If a meeting is canceled, notices are distributed to Trustees, the [Code Reviser's Office](#), stakeholders, media, and interested parties no later than one week prior to the meeting date.

What to Expect

The Board operates public meetings in a paperless environment. Trustees are assigned iPads to access online materials, or they may use their own device(s). Online access to materials is made possible through a hidden webpage for Trustees. A login or password aren't required. The webpage can only be accessed by using the following link: <https://leoff.wa.gov/l2btrustees>

One week prior to Board meetings, Trustees will receive an email stating that materials are ready for their review. Other information or instructions pertaining to the meeting will also be included with the notification. Trustees are expected to review the materials to prepare for meeting discussion and actions. Should materials arrive after the original posting, they will be added to the online agenda and Trustees will be notified of their availability again via email.

The Administrative Committee, made up of the Chair, Vice Chair, and one employer representative meet with the Executive Director the same days as Board meetings at 8:30am in our small conference room. They review staff activities, discuss future agenda items, and provide direction as needed. Any Board member is welcome to attend.

Trustees should bring their iPads (or their own device), as well as completed travel forms to Board meetings. Board meetings are open to the public and audio recorded. Professional dress is requested, business casual at a minimum.

Please arrive at least 15 minutes prior to the meeting in case there are last minute materials or information. Breaks, as well as before and after meetings, are good times for Trustees to get to know

each other and discuss work, family, and other activities. **Remember: No Board issues should be discussed privately due to the Open Public Meetings Act.**

Teleconferencing

You may attend a Board meeting via teleconferencing if you cannot be there in person. Staff will inquire prior to the meeting whether any Board members intend to teleconference. To request this service, simply reply back to the email or call the office. Staff will send instructions and all Board materials can be accessed online at <https://leoff.wa.gov/l2btrustees>.

Please note: Due to privacy issues associated with teleconferencing and video conferencing, virtual attendees are not allowed to attend executive sessions, should one be called during a Board meeting.

Video Conferencing

When the Legislature is in session (typically January through March or April), the Board may meet virtually to get Legislative and Administrative updates from the Executive Director.

The Board uses an online video conferencing service called WebEx. Just as for teleconferencing, staff will send instructions and all Board materials can be accessed at the following link: <https://leoff.wa.gov/l2btrustees>.

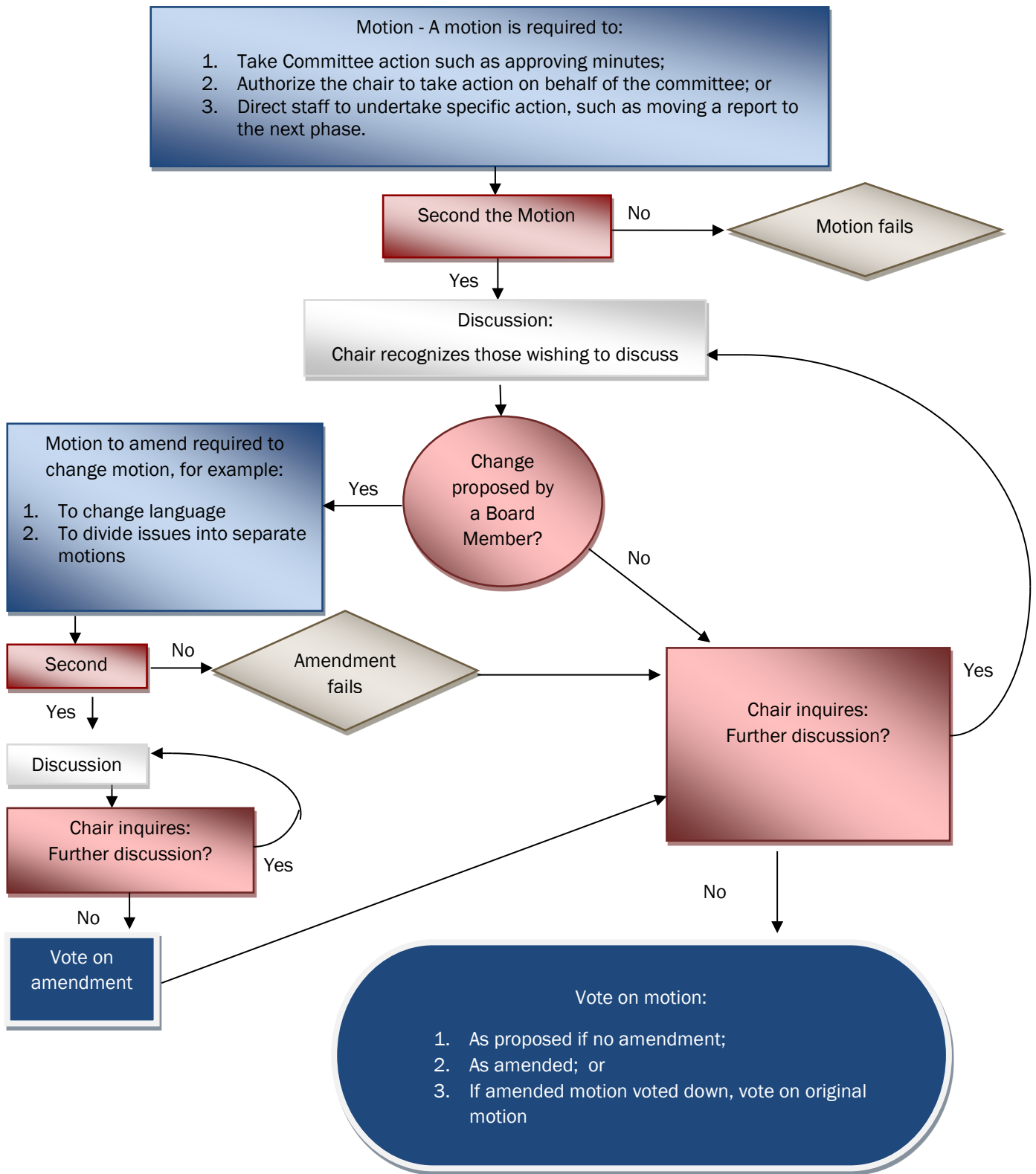
Parliamentary Procedures

Board meetings are conducted using [Robert's Rules of Order](#). Parliamentary procedure under these rules requires a Board member to be acknowledged by the Chair prior to speaking. This helps to maintain an orderly meeting.

When addressed, please remember to speak clearly and directly into the microphone from a distance of four to six inches. This improves the recording and assists anyone who may be teleconferencing.

The chart on the next page explains the procedure for making and voting on a motion.

Parliamentary Procedure



Administrative Information

Stakeholders

LEOFF Plan 2 members and employers have formed stakeholder groups who regularly testify before the Board and contact Board members to discuss issues. Those groups include, but are not limited to:

Employee Groups:

Washington State Council of Firefighters (WSCFF)

WSCFF was founded on September 1, 1939, and represents 130 affiliated local fire fighter unions and more than 6900 affiliated members of the International Association of Fire Fighters (IAFF) within the state.

www.wscff.org

Council of Metropolitan Police and Sheriffs (COMPAS)

COMPAS represents King County Sheriffs, the Seattle Police Management Association, King County Sheriffs Management, and the Seattle Police Officers at the state level. COMPAS is a non-partisan advocacy organization representing currently-commissioned law enforcement officers of member organizations.

www.compas-wa.org

Washington State Fraternal Order of Police (FOP)

The Washington FOP is the state level group of the national organization. Any fully commissioned officer, active or retired, is eligible for membership in the FOP. There are currently 22 FOP lodges organized in Washington.

www.wafop.com

Washington Council of Police and Sheriffs (WACOPS)

WACOPS originally represented police officers in the 10 first class cities who provided pensions under Chapter 41.20 RCW. Today WACOPS has more than 100 member organizations. WACOPS membership includes both active and retired law enforcement officers.

www.wacops.org

Employer and Management Groups:

Association of Washington Cities (AWC)

AWC is a private, non-profit, non-partisan corporation that represents Washington's cities and towns before the state legislature, the state executive branch, and with regulatory agencies.

www.awcnet.org

Washington State Association of Counties (WSAC)

WSAC is a voluntary, non-profit association serving all of Washington's 39 counties. WSAC members include elected county commissioners, council members and executives from all of Washington's 39 counties.

www.wsac.org

Washington State Association of Fire Chiefs

The Washington State Association of Fire Chiefs was established on August 1, 1932 as an incorporated nonprofit association. Its mission is to be a source of information and education to its members and to take a lead role in influencing issues affecting the fire service.

www.washingtonfirechiefs.com

Washington Association of Sheriffs and Police Chiefs (WASPC)

A voluntary association of Sheriffs and Police Chiefs.

www.waspc.org

Washington State Sheriffs Association

The Sheriffs Association includes all 39 elected sheriffs in Washington.

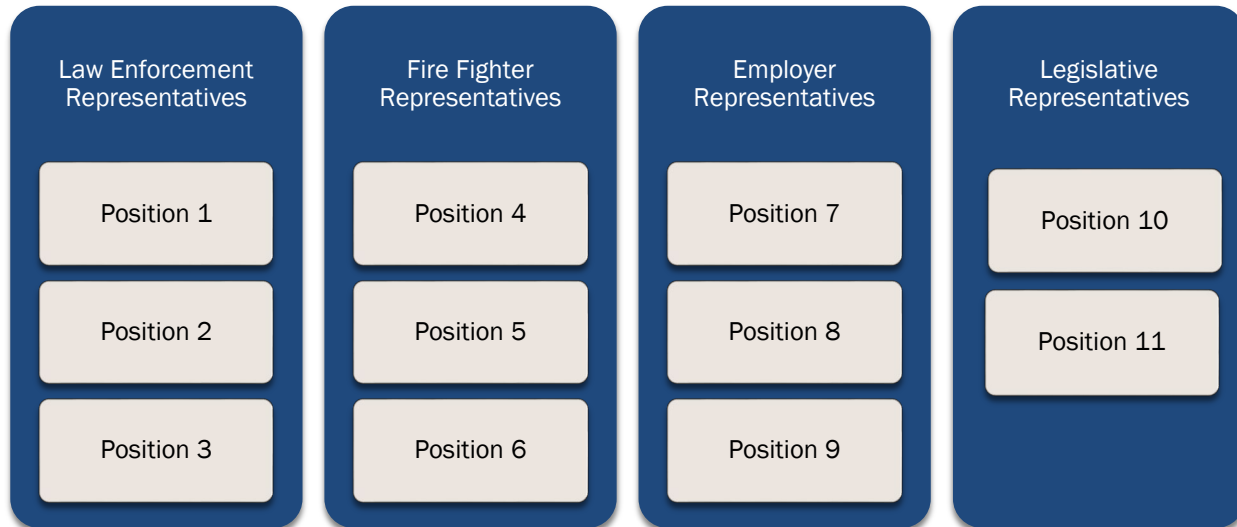
www.washeriffs.org

Administrative History

Board Structure and Staff

Board

The composition of the Board and the [terms of Board members](#) are set in statute.



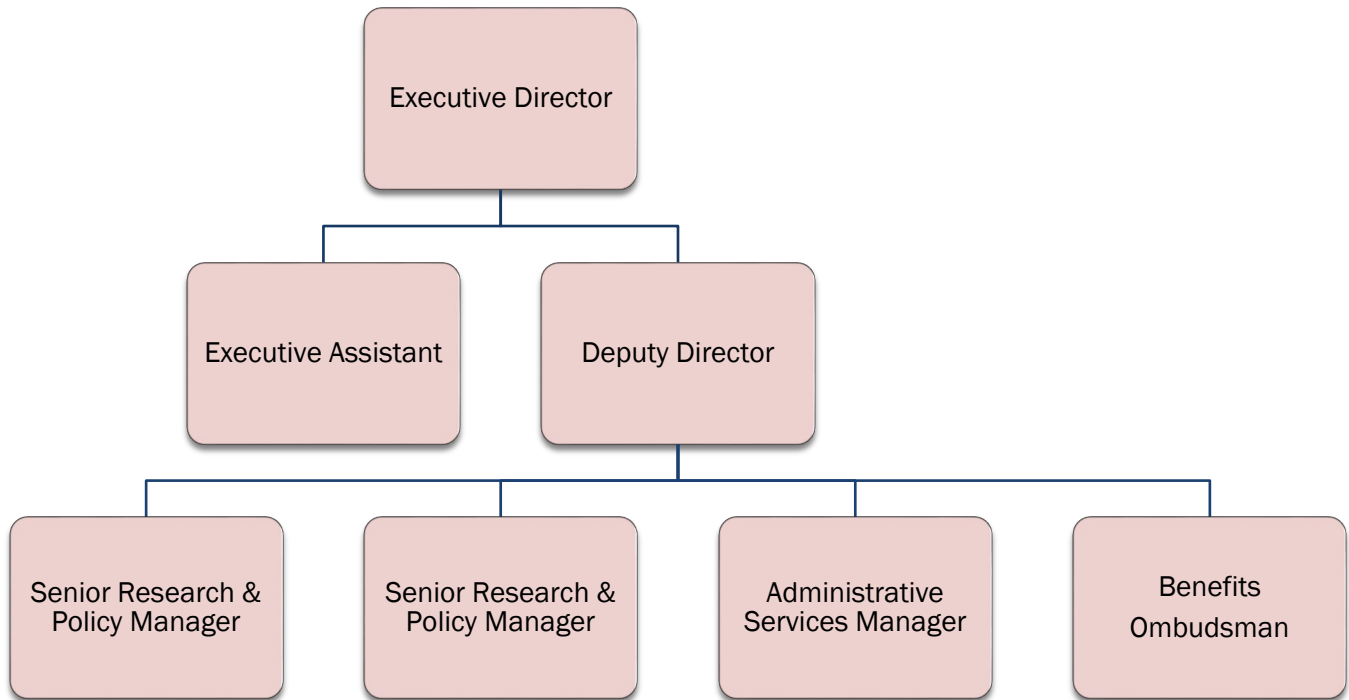
- Board members representing law enforcement officers and fire fighters serve six-year terms ending June 30.
- Board members representing employers serve four-year terms ending June 30.
- Legislative Board members serve two-year terms ending December 31.

Terms are staggered so no more than three Trustee positions are up for appointment in any given year. Trustees may be reappointed to succeeding terms without limitation and serve until their successors are appointed and seated.

Trustees nearing the end of their term should discuss re-appointment with their respective represented organization and the Governor's Office.

The Administrative Services Manager can assist you in answering any questions about terms.

Staff



Executive Director

The Executive Director supports the Board in developing policy recommendations to the Legislature; adopting appropriate contribution rates; monitoring the administration and investments of LEOFF Plan 2 benefits; fulfilling the statutory duties of the Board; and complying with all state laws, regulations and policies related to the operation of state agencies. The Executive Director serves as the spokesperson for the Board and ensures appropriate financial and internal controls are in place to protect the assets of the Board.

Deputy Director

The Deputy Director is a member of the executive team and functions as the Executive Director in his/her absence. This position directly supervises the research team, the Benefits Ombudsman, and the Administrative Services Manager. The Deputy Director provides operational management of the agency and assists the Executive Director with organizational and strategic planning in addition to coordinating Board activities. Reports to the Executive Director.

Executive Assistant

Provides administrative support services for the Executive Director and staff. Board meeting coordinator, scheduling, accounts payables, staff travel arrangements and reimbursements, and supply orders. Reports to the Executive Director.

Administrative Services Manager

Responsible for developing, recommending, and executing operational and human resource policies and procedures to the executive team. Functions as the agency's public records officer, human resources manager, Governor's Office liaison, staff and fiduciary education program manager, reports manager, facilities and inventory manager, and coordinates Trustee travel arrangements and reimbursements. Reports to the Executive Director and Deputy Director.

Senior Research & Policy Managers

Serves as lead analyst in conducting policy research on pension related issues for the agency's executive team and Board of Trustees. Analyzes proposed and existing pension policy to ensure agency and statewide legal standards are met. Analyzes, develops, and drafts policy recommendations and options impacting LEOFF Plan 2 pension system members, employers, the state, and stakeholders. Performs legal research, analysis, and assists in drafting legislation as required. Reports to the Deputy Director.

Benefits Ombudsman

Responsible for assisting members and their beneficiaries in identifying and evaluating resources and benefit options in the event of death or disability. Functions and operates as the agency's death and disability liaison for members, their beneficiaries, employers, employer groups, state and federal partners and other stakeholders. The team member currently in this position also manages communications and technology for the agency. Reports to the Executive Director and Deputy Director.

Administrative Information

Travel

You may incur reimbursable Board-related travel expenses when you attend Board meetings and approved conferences. Staff is familiar with the [State's requirements](#) for arranging travel and reimbursing expenses and will assist you in making travel arrangements and completing the forms necessary to authorize reimbursement.

Out-of-state travel requires pre-approval for reimbursement. Staff must make your travel arrangements and will provide a final itinerary and supporting documents.

You may combine business and personal travel as long as it does not result in additional costs to the Board. If you are traveling with a guest, coordination can be provided. Guests must cover their own expenses (air, baggage, shuttles, meals, etc.).

You will be reimbursed for use of your personal automobile for Board travel as long as you keep mileage records. You may be eligible for meal reimbursements depending on the time you leave for and return from your trip. Staff will provide you with the forms necessary to ensure you are reimbursed correctly.

A "Travel Do's and Don'ts" is available in the GoodReader application on your iPad if you would like additional information regarding specific travel rules.

Administrative Information

Board Education

It is important for you to be knowledgeable and up to date on pension issues in order to fulfill your statutory and fiduciary responsibilities. Therefore, attending education conferences is encouraged.

Educational Conferences

Conferences are evaluated for content and attendance requirements to ensure Trustees get a quality experience. A pre-approved list is updated and distributed electronically throughout the year to keep Trustees informed of upcoming events.

The Administrative Services Manager researches educational opportunities, maintains the pre-approved list and tracks completed training for Trustees, including education credits earned.

To request training, please contact the Administrative Services Manager for approval, registration, reservations and other travel arrangements on your behalf. See the travel section under this tab for more information.

International Foundation of Employee Benefit Plans (IFEBP)

All Trustees are registered for membership with [IFEBP](#). They are a leader in providing education and research within the pension industry. Membership includes access to information on Trustee education, current employee benefit issues, research, and additional training, including certifications. It is a valuable resource for information.

Continuing Education Credits

Many of the educational conferences on the pre-approved list offer continuing education credits which can be applied to your professional development track.



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