

SENATE BILL REPORT

SB 5916

As Reported by Senate Committee On:
Ways & Means, April 23, 2013

Title: An act relating to administration of public retirement plans.

Brief Description: Addressing the administration of public retirement plans.

Sponsors: Senators Bailey, Baumgartner, Hill, Holmquist Newbry, Ericksen, Schoesler, Hewitt and Mullet.

Brief History:

Committee Activity: Ways & Means: 4/18/13, 4/23/13 [DPS, DNP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5916 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Bailey, Becker, Braun, Dammeier, Hewitt, Padden, Parlette, Rivers, Schoesler and Tom.

Minority Report: Do not pass.

Signed by Senators Nelson, Assistant Ranking Member; Conway, Fraser, Hasegawa, Hatfield, Keiser and Kohl-Welles.

Staff: Pete Cutler (786-7474)

Background: LEOFF Plan 1. Former employers of persons who retire in Plan 1 of the Law Enforcement Officers and Fire Fighters Retirement System (LEOFF) are responsible for paying necessary medical services not paid from some other source. The medical services are not paid from the LEOFF Plan 1 retirement fund. The medical services that employers must pay for LEOFF Plan 1 retirees include expenses for nursing home confinement or a hospital extended-care facility.

LEOFF Plan 1 city and county disability boards review and approve applications for disability retirement and also designate the medical services available to retired members. Each board uses its own discretion regarding which medical services are paid by their LEOFF Plan 1 employer. Disability board decisions denying or canceling a disability

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

retirement can be appealed to the director of the Department of Retirement Systems (DRS); decisions regarding medical services are not subject to appeal to DRS.

An actuarial valuation done by the Office of the State Actuary in 2011 estimated the total employer actuarial accrued liability for LEOFF Plan 1 medical benefits to be approximately \$1.9 billion. Individual employer expenses can fluctuate widely from year to year depending especially on retirees' need for nursing home confinement.

Excess Compensation. The monthly defined benefit retirement allowances in state retirement plans are most commonly calculated by multiplying the retiree's number of years of service by a percentage multiplier of 1 or 2 percent, and by the retiree's average pension-eligible compensation. In Plan 1 of the Public Employees' Retirement System Plan (PERS) and the Teachers' Retirement System (TRS), the allowance is based on the retiree's average pension-eligible compensation over a two-year period; in Plans 2 of PERS, TRS, and LEOFF, the allowance is based on a five-year average.

Since 1984, excess compensation has been defined in the pension statutes as consisting of specific types of payments when those payments increase the member's retirement allowance. If excess compensation is included in the reportable compensation used to calculate a retirement allowance, then the applicable employer is responsible for the resulting liability to the pension fund. Without such an employer payment, the cost to the pension fund caused by the excess compensation would be paid by all employers through the contribution rate structure for the plan. In the case of the Plan 2 systems, the cost would be spread among all members as well as all employers.

Under current retirement statutes, employers that make payments to employees which qualify as excess compensation are liable to the pension fund for the total estimated cost of all present and future retirement benefits attributable to the excess compensation. The labeling of a form of compensation as excess compensation does not affect the calculation of a retiree's pension benefits.

Excess compensation includes the following payments, when used in the calculation of the retirement allowance:

- a cashout of more than 240 hours of annual leave;
- a cashout of any other form of leave;
- a cashout in lieu of the accrual of annual leave;
- any payment added to salary or wages, concurrent with a reduction of annual leave;
- any payment that exceeds twice the regular daily or hourly rate of pay;
- a payment for, or in lieu of, any personal expenses or transportation allowance, to the extent that the payment qualifies as reportable compensation in the member's retirement system; or
- any termination or severance payment.

The excess compensation statutes apply to all of the retirement systems administered by DRS except the Judicial Retirement System and LEOFF Plan 1; including PERS, TRS, the School Employees' Retirement System, the Public Safety Employees Retirement System, LEOFF Plan 2, and the Washington State Patrol Retirement System.

Summary of Bill (Recommended Substitute): The local government self-insurance program of the Department of Enterprise Services must provide assistance to a workgroup composed of city, county, and fire district representatives to develop a voluntary local government risk pool for LEOFF Plan 1 retiree medical services. Employer premiums must be the sole source of funding for the risk pool claims and administrative expenses. Upon request, the Office of the State Actuary may provide actuarial support to the workgroup. If statutory changes are needed, the local government self-insurance program must submit a report and proposed legislation to the fiscal committees of the Legislature no later than December 1, 2013.

LEOFF Plan 1 members and employers may appeal to the the director of DRS any disability board decision to grant or deny coverage for a requested medical service. The director must review the appeals using standards recommended by the Health Care Authority medical director.

An additional category of excess compensation is created to include any increases in the compensation used to calculate a retirement allowance that exceeds 125 percent of the person's reportable compensation from the prior salary averaging period, where the increase is the result of payments for overtime, bonuses, cashouts of any form of leave, or lump-sum payments.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute): The addition of another category of excess compensation is made effective for all retirements occurring after June 30, 2011. No collective bargaining agreement entered into after the effective date of the bill under chapters 41.56 RCW, 41.59 RCW, or 41.80 RCW that covers state, higher education, local government, or education employees may include a provision that bases employee eligibility for voluntary overtime on seniority or eligibility for retirement. DRS must conduct an onsite audit of employer compensation records in all cases where the base salary reported for a LEOFF Plan 1 member increased by more than 10 percent in the final two years prior to retirement. The section establishing the DRS review of appeals for local disability board decisions is made effective March 1, 2014.

Appropriation: None.

Fiscal Note: Requested on April 17, 2013.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The bill addresses issues local government has been struggling with for some time. We support exploring creating a risk pool for the LEOFF Plan 1 medical expenses – employers cannot purchase long-term care insurance for the LEOFF Plan 1 retirees. An appeal process for local disability board decisions would be appropriate. The excess compensation provision may need more work.

CON: We agree pension spiking and ballooning is bad; it undermines the stability of the retirement systems and certainly undermines public trust in the benefits. DRS should review

alleged abuses. The problem is mostly with people who cheat the system; this bill goes too far because it would impact legitimate overtime for persons working in public safety, public utility district linemen, etc. They do not determine when they work overtime. The bill might cause employers to cut off overtime in emergency situations due to fears regarding excess compensation billings. The bill raises new issues and should be sent to the Select Committee on Pension Policy or LEOFF Plan 2 Board for further study. We support the creation of a risk pool. Regional fire authorities should be included in the workgroup that looks at creating a risk pool. The section providing for DRS review of local disability board decisions might be unconstitutional. In 2005 the courts held in a case involving Snohomish County that the local boards decide what medical services are provided to LEOFF Plan 1 retirees, and what medical necessity standard applies. It is not clear whether the DRS director would be qualified to make such decisions. The law and local boards worked for more than 30 years without problem; the system is not broke, do not fix it.

OTHER: DRS does not have experience with medical services appeals; it might make sense to give the appeal review role to a different agency that does medical reviews as part of its programs. If DRS is going to be given the role it will need more time to set up an effective process and standards.

Persons Testifying: PRO: Candice Bock, Assn. of WA Cities.

CON: Matt Zuvich, WA Federation of State Employees; Ken Crowder, WA State Retired Police Officers Assn.; Dick Warbrouck, Retired Firefighters of WA; Geoff Simpson, WA State Council of Fire Fighters; Jamie Daniels, WA Council of Police and Sheriffs.

OTHER: Dave Nelsen, DRS.