

HOUSE BILL REPORT

SHB 2202

As Passed Legislature

Title: An act relating to the eligibility of emergency medical technicians for membership in the law enforcement officers' and firefighters' retirement system plan 2.

Brief Description: Addressing the eligibility of emergency medical technicians for membership in the law enforcement officers' and firefighters' retirement system plan 2.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Manweller and Ormsby).

Brief History:

Committee Activity:

Appropriations: 4/14/17 [DPS].

Floor Activity:

Passed House: 4/18/17, 96-0.

Passed Senate: 4/20/17, 47-1.

Passed Legislature.

Brief Summary of Substitute Bill

- Narrows the definition of new employees eligible for the Law Enforcement Officers' and Fire Fighters' Retirement System Plan 2 (LEOFF Plan 2) membership after the effective date of the act to Emergency Medical Services providers, who are Physician's Trained Advanced Emergency Medical Technician and Paramedics and Emergency Medical Technicians (EMTs) that provide medical treatment at the scene of a medical emergency, or while transporting a patient to a medical facility.
- Broadens the definition of "employer" for members of the LEOFF Plan 2 to include public corporations created by a city, town, or county.
- Requires that, upon receipt of a request from an EMT firefighter, the Department of Retirement Systems (DRS) provide the EMT with the cost of establishing service credit for LEOFF Plan 2 service earned after July 24, 2005.
- Permits the EMT to purchase that service before July 1, 2018, and provides five years to make the required contributions.

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.

- Requires the DRS to bill the employer for employer contributions upon completion of member payments, reduced by contributions made to a retirement account for that employee up to 3 percent of pay.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Cody, Condotta, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Taylor, Tharinger, Vick, Volz and Wilcox.

Staff: David Pringle (786-7310).

Background:

Emergency Medical Technicians (EMTs) are licensed by the Department of Health upon completion of approved training and association with an Emergency Medical Services (EMS) agency, a law enforcement agency, a business with an organized safety team, or as instructors or coordinators with approved EMS training programs. There are several types of licensed EMTs, for example the "Physician's Trained Advanced Emergency Medical Technician and Paramedic" regulated in Chapter 18.71 RCW, and the broader category of "Emergency Medical Technician" regulated in Chapter 18.73 RCW. Emergency Medical Technicians are defined as providing "Emergency Medical Service" if they render care at the scene of a medical emergency, or while transporting a patient to a medical facility.

In 2005 the Legislature added EMTs employed on a full-time, fully compensated basis by a city, town, county, or district to the definition of "Firefighter" in the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF). In some instances, employers and employees were not aware that these employees had become newly eligible for LEOFF membership.

Cities, towns, and counties are authorized by state law to create public corporations in order to improve the administration of authorized federal grants or programs, to improve governmental efficiency and services, or to improve the general living conditions in the urban areas of the state, or any city, town, or county.

The LEOFF provides retirement and disability benefits to full-time, fully compensated general authority law enforcement officers and firefighters. Members of the plan first becoming eligible for LEOFF on or after October 1, 1977, are members of the LEOFF Plan 2. The LEOFF Plan 2 provides for retirement benefits based on 2 percent of a member's average final salary per year of service credit, and a normal retirement age of 53. Enhanced early retirement benefits are available to members with 20 or more years of service, and disability benefits are provided for members disabled, or catastrophically disabled, in the line of duty. Contributions are paid into the LEOFF Plan 2 by employees (50 percent of the total

rate), employers (30 percent), and the state (20 percent). Currently the total contribution rate for the LEOFF Plan 2 is 17.5 percent of pay.

In 2008 the Department of Retirement Systems (DRS) began the adoption of administrative rules to define EMT for purposes of the LEOFF Plan 2. The rules were finalized in 2009 and established that LEOFF EMTs must be certified by the DOH as EMTs and complete the requirements of their employer to perform the duties of an EMT.

In 2010 the DRS identified that there could be significant numbers of EMTs who are employed by Public Hospital Districts (PHDs) and who became eligible for the LEOFF Plan 2 in 2005, but had not been enrolled. In 2011 the DRS determined that Public Hospital District (PHD) EMTs meeting the employee definition would be enrolled in the LEOFF. This determination was administratively appealed by the PHDs, and in 2016 the DRS' final determination was appealed to Chelan County Superior Court.

A member of the LEOFF Plan 2 may establish service credit in the plan if not previously credited according to law. The Director of the DRS may bill an employer for employer and employee contributions and interest, and following the employer notifying the DRS that the employee has reimbursed the employer for the employee contributions, credit the service to the employee's account. Failure by the employee to pay the employer does not reduce the employer's obligation to the retirement plan.

In the 1956 *Bakenhus v. City of Seattle* case, the state Supreme Court held that members of the state's retirement systems have a constitutionally protected contractual right to a secure retirement benefit. Subsequent decisions found that the contract-like pension benefit vests on the first day of employment covered by the pension plan, though a member may not earn enough service to be entitled to a specific benefit until years later.

Summary of Substitute Bill:

The definition of new employees eligible for LEOFF Plan 2 membership prospectively is narrowed from all eligible EMTs employed by LEOFF Plan 2 employers to EMS providers. Emergency Medical Service providers are Physician's Trained Advanced Emergency Medical Technicians and Paramedics and Emergency Medical Technicians that provide medical treatment at the scene of a medical emergency, or while transporting a patient to a medical facility.

The definition of "employer" for members of the LEOFF Plan 2 is broadened to include public corporations created by a city, town, or county.

The DRS is required to notify persons eligible to establish LEOFF Plan 2 service credit earned as EMTs on or after July 24, 2005, of the requirement that the person elect to purchase that service before July 1, 2018.

For members that provided EMT service in the LEOFF Plan 2, the DRS will provide, upon receipt of a written request from the EMT, the cost of establishing service credit for LEOFF Plan 2 service earned after July 24, 2005. The EMT may elect to purchase that service before July 1, 2018, and has five years to make the required contributions. Upon completion of

payments, the DRS will bill the employer for the contributions, reduced by any contributions made to a retirement account for that employee for the same period, up to 3 percent of pay.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Legislature commonly adopts rules that change the retirement plans, but sometimes the meaning of bills can change over time. This bill is a bit like the circumstances in *Dolan v. King County*. This bill tries to address the costs, and fix the law going forward so there is agreement about the meaning of the law in the future. The bill has been worked on by all parties. The Public Hospital Districts (PHDs) need to find a way to deal with the retroactive portion of these costs. The credit for past contributions and the considerable length of time given to make the contributions will help. As a result of a 2005 bill that did not contemplate all the persons that might be covered by the membership change, this bill is needed. The 2005 bill didn't change the employers covered by the LEOFF Plan 2, only the employees, by adding full-time, fully-compensated EMTs. Years later, the Department of Retirement Systems (DRS) realized that PHDs were the local EMT employers. When the DRS said the PHDs needed to begin including these EMTs in the LEOFF Plan 2, the need for this bill became apparent. The pension rights of these EMTs are protected by *Bakenhus*, and they cannot be taken away retroactively. But for the future, these definitions can be corrected. There are EMTs providing Emergency Medical Services, emergency responders that should be covered just like the other members of the LEOFF Plan 2. The State Council of Fire Fighters doesn't think there are many other groups out there that are impacted by this change, certainly not the 1,500 suggested as the high range in the fiscal note.

(Opposed) None.

Persons Testifying: Representative Manweller, prime sponsor; Geoff Simpson, Washington State Council of Fire Fighters; and Lisa Thatcher, Association of Public Hospital Districts.

Persons Signed In To Testify But Not Testifying: None.