

NO. 67763-2-I

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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GERALD B. ADAMS, ROGER H. AMUNDSON, KENNETH W. CROW, LARRY FARRAR, JERRY W. GERMEAU, JAMES R. "BOB" GILLESPIE, RON HAVILAND, WILLIAM E. HERBERT, DAVID F. HORTON, GENE C. HUNT, NORMAN D. JAMES, MARK E. KATZER, EMETT H. KELSIE, TOMMY B. KNIGHT, E.J. "NEIL" LOW, GARY J. McNULTY, LARRY NOLTING, DEAN QUAIL, DAVID C. RITTER, MICHAEL G. SEVERANCE, STEVEN R. SUNDSTROM, GORDON L. VANROOY, individuals, their spouses, and their marital communities, as applicable,

Appellants,

PHILIP R. FORSELL, STEPHEN M. MACOMBER, DALE A. MATSON, individuals, their spouses, and their marital communities, as applicable,

Plaintiffs,

v.

THE CITY OF SEATTLE,

Defendant, and

THE DEPARTMENT OF RETIREMENT SYSTEMS,

Respondent.

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COURT OF APPEALS DIV 1  
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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

The Appellants in this case are retired and active law enforcement officers of the City of Seattle. The officers claim that their monthly retirement allowance from the State (and, for active officers, the amount of their service credit toward their State retirement) should be larger to reflect the time they spent in non-commissioned jobs with the City, specifically as a police cadet, transit operator, or laborer. Contrary to the officers' claims, the State retirement plan properly credits only time spent as a commissioned law enforcement officer. This is supported by the plain language of the statutes, their purpose and history, and the consistent administration of the pension plan by the Department of Retirement Systems. The superior court correctly rejected the officers' claims, as should this Court.

## II. COUNTER-STATEMENT OF THE CASE

### A. Overview of Relevant Retirement Plans

Three retirement plans for public employees established over time by the Legislature are involved in this case. Pursuant to RCW 41.44, enacted in 1947,<sup>1</sup> the City of Seattle established a City Employees' Retirement System.<sup>2</sup> (For ease of reference, this brief will refer to this as

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<sup>1</sup> See Laws of 1947, ch. 71.

<sup>2</sup> Under RCW 41.44, first-class cities may establish their own city employees' retirement systems. See RCW 41.44.050.

the “city employees’ plan.”) The city employees’ plan expressly excludes employees employed as law enforcement officers, consistent with RCW 41.44.060 (“Police officers in first-class cities . . . shall be excluded from the provisions of this chapter . . .”). As required by RCW 41.20, enacted in 1909,<sup>3</sup> the City of Seattle also established the City Police Relief and Pension Fund for its law enforcement officers.<sup>4</sup> (For ease of reference, this brief will refer to this as the “city police plan.”)

Several decades later, in legislation enacted in 1969, the Legislature established a new state-wide retirement system for law enforcement officers and fire fighters, the Law Enforcement Officers’ and Fire Fighters’ Retirement System, commonly referred to as “LEOFF.” *See* Laws of 1969, 1st ex. sess., ch. 209, codified at RCW 41.26.<sup>5</sup> LEOFF became effective on March 1, 1970.

The LEOFF statutes transferred “all . . . law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis” from the city police plan in RCW 41.20 to LEOFF. The statutes further provided that law enforcement officers hired after

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<sup>3</sup> *See* Laws of 1909, ch. 39.

<sup>4</sup> Early statutes also provided for retirement systems for fire fighters. *See* RCW 41.16, RCW 41.18, and predecessor acts.

<sup>5</sup> LEOFF includes fire fighters, in addition to law enforcement officers. Since all Appellants here are law enforcement officers, this brief will omit references in the LEOFF statutes to fire fighters.

March 1, 1970, would be in LEOFF.<sup>6</sup> Laws of 1969, 1st ex. sess., ch. 209, § 4(1), (2); Laws of 1970, 1st ex. sess., ch. 6, § 2(1), (2), codified at RCW 41.26.040(1), (2).<sup>7</sup>

The LEOFF statutes defined “law enforcement officer” as:

Any person who is serving on a full time, fully compensated basis as a . . . city police officer . . . .  
PROVIDED, That the term “city police officer” shall only include such regular, full time personnel of a city police department as have been appointed to offices, positions or ranks in the department which have been specifically created or otherwise expressly provided for and designated by the city charter provision or by ordinance enacted by the legislative body of the city.

Laws of 1970, 1st ex. sess., ch. 6, § 1(3). *See* current RCW 41.26.030(18) (copy attached as appendix to this brief).

Since the law enforcement officers who were transferred into LEOFF in 1970 were already covered by other legislatively authorized pension systems, the Legislature included in the LEOFF statutes a provision that if the retirement benefits the officer would have received under the prior pension plan were better than under LEOFF, the city was to pay an additional amount to the retired officer representing the difference between the retirement allowance the officer would have

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<sup>6</sup> Later, the Legislature broke LEOFF into two plans. LEOFF Plan 1 covers employees hired before October 1, 1977, and LEOFF Plan 2 covers employees hired on or after October 1, 1977. *See* RCW 41.26.030(21), (22). Since all Appellants here are in LEOFF Plan 1, this brief will refer simply to LEOFF, meaning LEOFF Plan 1.

<sup>7</sup> Prior to March 1, 1970, the Legislature made several changes to the initial 1969 enactment. *See* Laws of 1970, 1st ex. sess., ch. 6.

received under the prior system (had the officers not been transferred out of that system into LEOFF) and what LEOFF pays. Specifically, RCW 41.26.040(2) provides, in part:

In addition [to the retired officer's LEOFF benefits], his benefits under the prior retirement act to which he was making contributions at the time of this transfer shall be computed *as if he had not transferred*. For purposes of such computations, the employee's creditability of service and eligibility for . . . benefits shall continue to be provided in such prior retirement act, *as if transfer of membership had not occurred*.

(Emphasis added.) (Complete text of statute attached as appendix to this brief.)

The Legislature included this provision in recognition of the long-established principle that, in general, the Legislature cannot change the retirement benefits that it has established for public employees to the detriment of the employees.<sup>8</sup>

To carry out this provision, when a law enforcement officer who has service in a prior system retires, the Department of Retirement Systems determines what the officer's monthly retirement allowance from LEOFF will be.<sup>9</sup> The Department notifies the retiring officer's employing

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<sup>8</sup> See *Bakerhus v. City of Seattle*, 48 Wn.2d 695, 296 P.2d 536 (1956) (establishing general principle); *Mulholland v. City of Tacoma*, 83 Wn.2d 782, 552 P.2d 1157 (1974) (recognizing application of general principle to LEOFF statutes); Op. Att'y Gen. 17 (1970) (same).

<sup>9</sup> The calculation of retirement allowance for service for LEOFF is in RCW 41.26.100.

city of this figure, and pursuant to RCW 41.26.040(2), the city calculates what the officer would have received under the prior retirement system, using the retirement benefits formula of that prior system. If the retiring employee would have received more under the prior system than under LEOFF, the city pays the difference, per RCW 41.26.040(2). The City of Seattle refers to this as the “excess benefit” payment. This comparison is done each year. CP 157; CP 428-430.<sup>10</sup>

The retirement benefits under LEOFF and the retirement benefits under the city police plan are determined under different formulas. For LEOFF, the benefit is based on a multiplier times months of service credit, and a retiring law enforcement officer can have all of his or her months of service (as a commissioned officer) considered for LEOFF, without any limitation. *See* RCW 41.26.100; CP 156. By contrast, the benefits in the city police plan are based primarily on the salary of the position from which the officer retired. However, the formula does provide for an increase in the monthly retirement allowance for years of service above 25 years of service “to a maximum of five additional years.” RCW 41.20.050. Under the formula for the city police plan, then, service

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<sup>10</sup> The Department of Retirement Systems does not know the amount of any excess payment by the City of Seattle, nor does the amount paid by the City have any bearing on the Department’s calculation of the retiree’s LEOFF benefits. CP 151.

credit over 30 years does not increase the officer's retirement allowance; rather, service credit is "capped" at 30 years under that plan. CP 428-430.

In 1973, the Legislature enacted a provision that permitted city employees who were members of the city employees' plan and who are now within the police department of the city to request to transfer their membership from the city employees' plan to the city police plan. Laws of 1973, ch. 143, § 2, amending RCW 41.20.170<sup>11</sup> (copy of session law attached as appendix to this brief). In practical terms, the effect of this provision was that police officers who had prior service in non-commissioned positions could have their service in such positions counted toward the service credit years used to determine their retirement allowance under the city police plan (up to the maximum of 30 years).

The crux of this case is whether the 1973 amendment allowing police officers to transfer their time in the city employees' plan, representing their service in non-commissioned positions, to the city police plan also allows them to have this time counted toward their retirement benefits under LEOFF (which has no limitation on the amount of service credits that may be counted). Contrary to the factual representations made by the police officers in their brief to this Court, the

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<sup>11</sup> Prior to the 1973 amendment, this statute provided only for employees of a former harbor department of a city to transfer their membership to the city police plan. See Laws of 1963, ch. 82; Laws of 1969, 1st ex. sess., ch. 209, § 27.

LEOFF statutes did not mandate transfer of credit under the city employees' plan when LEOFF was created. *See* Brief of Appellants at 4 (“With the adoption of LEOFF, all police officers were required to transfer their PRPF [city police plan] memberships—which included their transferred CERS [city employees' plan] contributions into LEOFF.”). In fact, employees could not transfer any city employees' plan credits to the city police plan until the 1973 amendment to RCW 41.20.170, two years after the effective date of LEOFF and the police officers' required transfer into LEOFF.

From time to time, law enforcement officers, including several of the Appellants and Plaintiffs in this case, have informally or formally requested that the Department of Retirement Systems include their time in non-commissioned positions, usually that of police cadet, for purposes of calculating their service credit or benefits under LEOFF.<sup>12</sup> The Department has consistently rejected these requests, taking the position that only service as a commissioned law enforcement officer counts toward retirement from LEOFF.<sup>13</sup> CP 157-158; CP 159-364.

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<sup>12</sup> *See* CP 159-352 (the Department's records relating to individual Appellants and Plaintiffs are in alphabetical order by member). As discussed below, not all of the original Plaintiffs joined in the appeal from the trial court decision.

<sup>13</sup> The Department has reached the same result with regard to fire fighters. *See* CP 365-373.

**B. Status of Appellants<sup>14</sup>**

This case was originally filed by 19 retired City of Seattle law enforcement officers and six active officers. Of these original plaintiffs, 22 have joined in this appeal, and three have not appealed.<sup>15</sup> CP 625-626 (notice of appeal). Of the 22 Appellants, 17 are retired and five are active employees.<sup>16</sup>

Each of the Appellants became a commissioned law enforcement officer in the 1960s or early 1970s. Each held a non-commissioned position with the City prior to becoming a commissioned police officer. Of the Appellants, one was previously a laborer,<sup>17</sup> two were previously transit operators,<sup>18</sup> and the remaining 19 were police cadets. CP 433-436. None of these prior positions, including that of police cadet, was a commissioned law enforcement officer position.<sup>19</sup>

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<sup>14</sup> The information in this section regarding the status of individual Appellants is based on the evidence in the record at the time the trial court ruled on the parties' cross-motions for summary judgment.

<sup>15</sup> The three original Plaintiffs who are not pursuing this appeal are Philip Forsell, Dale Matson, and Stephen Macomber.

<sup>16</sup> The five active employees are Norman James (CP 285), Mark E. "Buzzy" Katzer (CP 291), Neil Low (CP 306), Gary McNulty (CP 319), and Michael Severance (CP 339). The remainder of the Appellants are retired officers.

<sup>17</sup> Emmett Kelsie. CP 433-436.

<sup>18</sup> Tommy Knight and Dean Quall. CP 433-436.

<sup>19</sup> In one passage of their brief, Appellants seem to suggest that police cadet time is equivalent to commissioned law enforcement officer time. Brief of Appellant at 8 ("The same principle of liberal construction should extend to law enforcement officers engaged in training academies as cadets.").

The Court should reject any attempt before this Court to characterize police cadet service as commissioned law enforcement officer service. At the trial court, Appellants conceded that time as a police cadet was not commissioned law enforcement

When LEOFF became effective on March 1, 1970, the City of Seattle reported to the State those members of its police department who were commissioned law enforcement officers, including those Appellants who were commissioned officers as of that date. CP 156, CP 159-352.<sup>20</sup> The remaining Appellants were enrolled into LEOFF at later dates between 1970 and 1973, as they became commissioned police officers.<sup>21</sup>

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time. See CP 45 (allegation in Plaintiffs' Amended Complaint that "unsworn time" was not being fully credited; CP 477 (Plaintiffs' Combined Response to Motions for Summary Judgment) ("At the time their work was initially performed *all* Plaintiffs were 'unsworn' members of the [city employees' plan] . . . ." (emphasis in original)). An appellant cannot argue on appeal a matter that was conceded in the trial court. *City of Oak Harbor v. St. Paul Mercury Ins.*, 139 Wn. App. 68, 72-73, 159 P.3d 422 (2007) (where party at trial court conceded damage was caused by negligence, cannot argue on appeal an issue of fact existed regarding cause of the damage). Moreover, an appellant generally cannot raise a new theory for the first time on appeal. RAP 2.5(a); see *Sourakli v. Kyriakos, Inc.*, 144 Wn. App. 501, 507-09, 182 P.3d 985 (2008), *review denied*, 165 Wn.2d 1017 (2009) (where party argued to trial court that duty arose from premises liability, party could not change theory on appeal and argue that duty arose from rescue doctrine or contractual obligations). The reason for this principle is to afford the trial court an opportunity to correct errors and avoid unnecessary appeals and to avoid injustice to the opposing party who is not on notice what evidence needs to be in the record on the issue. *Wilson & Son Ranch, LLC v. Hintz*, 162 Wn. App. 297, 303-05, 253 P.3d 470 (2011) (where party based its claim in trial court on prescriptive easement, could not argue on appeal that easement was express). In the present case, the police officers presented no evidence as to the duties of a police cadet in the 1960s-early 1970s; nor is there any evidence that such positions were commissioned law enforcement positions. Indeed, the only indication in the record, in an administrative appeal by one of the original Plaintiffs, is to the contrary. See CP 239 ("Police cadets . . . were hired to perform clerical duties in a variety of Seattle Police Department units. They did not receive actual law enforcement training or certification, and did not perform sworn law enforcement duties.").

<sup>20</sup> The following Appellants were transferred into LEOFF on March 1, 1970: Gerald Adams (CP 160), Kenneth Crow (CP 169), Larry Farrar (CP 173), Jerry Germeau (CP 249), James "Bob" Gillespie (CP 253), William Herbert (CP 262), David Hortin (CP 268), Gene Hunt (CP 276), Emmett Kelsie (CP 296), Tommy Knight (CP 300), Dean Quall (CP 332), David Ritter (CP 334), Michael Severance (CP 338), Steven Sundtrom (CP 342), and Gordon Van Rooy (CP 347).

<sup>21</sup> The following Appellants were enrolled in LEOFF on these dates: Roger Amundson—4/1/1971 (CP 165); Ron Haviland—3/1/1973 (CP 258); Norman James—3/1/1971 (CP 284); Mark E. "Buzzy" Katzer—3/1/1971 (CP 290); Neil Low—

When the officers were transferred into or enrolled in LEOFF, the City reported to the State the officers' employment history, distinguishing between time in non-commissioned positions and time as a commissioned police officer. CP 159-352. Following the 1973 amendment to RCW 41.20.170, each of the officers requested that their time in the city employees' plan be transferred to the city police plan.

The LEOFF monthly retirement allowances for those officers who have retired, and the statement of months of service credit for those officers who have not yet retired, do not include service credit for time worked in positions other than as a commissioned law enforcement officer.<sup>22</sup>

With regard to retirement benefits from the City of Seattle, each of the officers has at least 30 years' service credit under the city police plan (including time in non-commissioned positions), and thus their benefit from the City is capped at 60 percent of the current compensation for the retirement position. CP 430, CP 433-436 (chart). Ten of the retired

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7/1/1971 (CP 305); Gary McNulty—3/23/1973 (CP 318); Larry Nolting—3/23/1973 (CP 328).

<sup>22</sup> The one apparent exception is William Herbert, whose police cadet time appears to have been erroneously reported by the City to the State when Officer Herbert was transferred into LEOFF in 1970. To date, the Department of Retirement Systems has not made any adjustments to Officer Herbert's LEOFF retirement allowance or sought repayment of overpayments stemming from that oversight.

officers are receiving excess benefit payments from the City, based on the comparison under RCW 41.26.040. CP 431, CP 437-440 (chart).

**C. Procedural History**

The police officers filed suit in the King County Superior Court, alleging that, under the retirement statutes, they were entitled to additional retirement benefits (or for active employees, additional service credit toward retirement), representing the time they spent in non-commissioned positions of police cadet, transit operator, or laborer. CP 1-12 (original complaint), CP 39-50 (amended complaint). The officers contended that either the State or the City should pay the retired officers an additional retirement amount or give the active officers additional service credit. In deposition testimony, the officers' representative indicated he was not familiar with the details of the State and City retirement statutes and it was not important to the officers whether the additional money (or service credit) came from the State or the City. CP 126.

The officers also alleged that, in not paying them a greater retirement allowance (or recognizing more service credit), the State or the City had violated RCW 49.52, the "Wage Anti-Rebate Act," and RCW 49.46, the state minimum wage act, and sought attorneys' fees under those statutes. CP 45-47.

The Department of Retirement Systems and the City of Seattle moved for summary judgment, and the police officers cross-moved for summary judgment. CP 378-389 (City), CP 456-476 (State), CP 477-498 (Officers). The trial court granted summary judgment to the Department and to the City and denied summary judgment to the officers. CP 619-622.<sup>23</sup>

The police officers, with three exceptions, appealed the grant of summary judgment to the Department to this Court. CP 625-632. The notice of appeal expressly stated that the officers were not appealing the summary judgment granted to the City. CP 626 (appealing summary judgment order “solely as to Defendant Department of Retirement Systems”).

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<sup>23</sup> The summary judgment order covered all claims by the Appellants, including those under the minimum wage act and the wage anti-rebate act. In their opening brief on appeal, Appellants have not presented any argument or citations in support of those claims, and this Court may properly consider them abandoned. See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *WA Fed. Savings & Loan Ass'n v. Alsager*, 165 Wn. App. 10, 21, 266 P.3d 905 (2011), review denied, 173 Wn.2d 1025 (2012); *In re Guardianship of Atkins*, 57 Wn. App. 771, 775, 700 P.2d 210 (1990). Appellants may not present arguments in support of these claims for the first time in their reply brief. *Cowiche*, 118 Wn.2d at 809; *WA Fed. Savings & Loan*, 165 Wn. App. at 21-22.

In addition to the order granting summary judgment to both the State and City presented by the State (CP 619-622), the trial court entered a separate order granting summary judgment to the City, presented by the City. CP 617-618.

### III. ARGUMENT

#### A. **That the LEOFF Statutes Give Retirement Benefits Only for Time Served as a Commissioned Law Enforcement Officer Is Supported by the Express Language, Purpose, History, and Administrative Construction of the Statutes**

Appellants' effort to increase their monthly retirement allowances from the State (or, for active employees, their service credit toward retirement) should be rejected. That the LEOFF statutes give retirement benefits only for time served as a commissioned law enforcement officer is supported by the express language of the statutes, their purpose and history, and by the long-standing, consistent administrative construction given to the statutes by the Department of Retirement Systems.

##### 1. **By Their Plain Language, the LEOFF Statutes Give Credit Only for Service as a Commissioned Law Enforcement Officer**

From their inception, the LEOFF statutes have provided for credit toward retirement from the State only for service as a commissioned law enforcement officer (or fire fighter). The statutes provided that, to be in LEOFF, an individual had to be a "law enforcement officer," which can include a "city police officer." Laws of 1970, 1st ex. sess., ch. 6, § 1(3), codified at RCW 41.26.030(28)(a). Similarly, "service" in LEOFF was defined to mean "all periods of employment . . . as a law enforcement officer . . . ." Laws of 1970, 1st ex. sess., ch. 6, § 1(14), codified at

RCW 41.26.030(28)(a). Furthermore, the LEOFF statute provided that the system was created for law enforcement officers and that:

All . . . law enforcement officers employed *as such* on or after March 1, 1970, . . . shall be members of the retirement system established by this chapter with respect to all periods of service *as such* . . . .

Laws of 1970, 1st ex. sess., ch. 6, § 2(1) (underlining in original deleted, emphasis added), codified at RCW 41.26.040(1).

“Absent ambiguity, a statute’s meaning is derived from the language of the statute and we must give effect to that plain meaning as an expression of legislative intent.” *Bennett v. Seattle Mental Health*, 166 Wn. App. 477, 484, 269 P.3d 1079 (2012). From its creation to the present, LEOFF has always provided for coverage and benefits only for service as a commissioned law enforcement officer. “If the meaning of a statute is plain on its face, the inquiry ends.” *Id.*

The police officers here argue that “this remedial pension act [LEOFF] is liberally construed to protect the Officers’ retirement contributions.” Brief of Appellants at 7. However, LEOFF is a statutorily created retirement system, and members of the pension plan must meet the criteria in the statute regarding their eligibility for and amount of benefits. The principle of giving a liberal construction to pension statutes in favor of the plan members does not apply where, as here, the statute is

unambiguous. *Hahn v. Dep't of Ret. Sys.*, 137 Wn. App. 933, 943-44, 155 P.3d 177 (2007), *review denied*, 167 Wn.2d 1017 (2008); *Chancellor v. Dep't of Ret. Sys.*, 103 Wn. App. 336, 342, 12 P.3d 164 (2000).

This Court can, and should, resolve this case in favor of the State based on the plain language of the LEOFF statutes.

**2. Counting Service as a Police Cadet, Transit Operator, or Laborer Toward a Retirement Under LEOFF Is Contrary to the Legislature's Purpose in Establishing LEOFF to Protect Those Engaged in Hazardous Occupations**

“Statutes are to be interpreted to give effect to the Legislature’s intent.” *Grabicki v. Dep't of Ret. Sys.*, 81 Wn. App. 745, 750, 916 P.2d 452 (1996). If a statute is ambiguous, “[t]he interpretation adopted should always be that which best advances the legislative purpose.” *Id.* The officers argue that their reading of the statutes is consistent with the purpose underlying the LEOFF statutes. Brief of Appellants at 7-8. On the contrary, assuming there is any ambiguity in the statutes (which the State does not concede), interpreting the LEOFF statutes to include service as a police cadet, transit operator, or laborer would be contrary to the purposes of the Legislature in creating the plan.

The Legislature stated the purpose of LEOFF as follows:

The purpose of this . . . act is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers . . . and to

beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in the case of disability or death, and effecting a system of retirement from active duty.

Laws of 1969, 1st ex. sess., ch. 209, § 2. “The fundamental objective of LEOFF is to provide benefits to police officers and fire fighters upon their disability or retirement and to their dependents upon their disability or death.” *Hunter v. Dep’t of Labor & Indus.*, 19 Wn. App. 473, 475, 576 P.2d 69 (1978).

LEOFF has numerous sections dealing with disability benefits, indicating a recognition that employees covered by the plan are in particularly hazardous professions. As this Court has noted:

The LEOFF system was established to provide retirement and other benefits to those who engage in the inordinately hazardous occupations of law enforcement and fire fighting.

*Locke v. City of Seattle*, 133 Wn. App. 696, 712, 137 P.3d 52 (2006), *aff’d*, 162 Wn.2d 474, 172 P.3d 705 (2007).<sup>24</sup> LEOFF Plan 1, which covers these Appellants, has very generous benefits in recognition of the sacrifices that employees covered by the plan may be called upon to make.

*See City of Pasco v. Dep’t of Ret. Sys.*, 110 Wn. App. 582, 587 n.6, 42

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<sup>24</sup> In the *Locke* case, a fire fighter trainee was held to qualify as a “fire fighter” under LEOFF, based on evidence in the record regarding the status and duties of the fire fighter trainee. *See Locke*, 133 Wn. App. at 710-12. Appellants try to equate the fire fighter trainee position in *Locke* to the position of police cadet in this case. Brief of Appellants at 8. However, as discussed earlier in this brief, the record in this case contains no evidence that the position of police cadet, let alone those of transit operator or laborer, can be equated to that of fire fighter trainee in *Locke*. *See* fn. 19, *supra*.

P.3d 992 (2002) (recognizing that LEOFF Plan 1 has more generous benefits than LEOFF Plan 2).

The Legislature intended statutes such as LEOFF to provide benefits to those engaged in hazardous occupations in recognition of those individuals' service (and exposure) in those positions. *See Schrom v. Bd. for Volunteer Fire Fighters*, 153 Wn.2d 19, 29, 100 P.3d 814 (2004) (pension system for volunteer fire fighters "contemplate the recipients of these relief benefits possess duties and engage in activities that are prone to causing injury or death. . . . [S]ecretaries and/or clerical workers . . . simply do not confront similar perils" and are not covered by the pension system).

The Legislature's purpose in creating LEOFF does not bring service as a police cadet, transit operator, or laborer within the coverage of that retirement system. Restricting retirement benefits and service credit under LEOFF to time as commissioned law enforcement officer's best carries out the Legislature's intent.

### **3. Nothing in the Legislative History of the LEOFF Statutes or of the City Police Plan Supports the Appellants' Arguments**

If a statute is ambiguous, the Court may look to the legislative history of the statute. *Grabicki*, 81 Wn. App. at 750. Even assuming that the statutes here are ambiguous (which the State does not concede),

nothing in the legislative history of either the LEOFF statutes (RCW 41.26) or the city police plan statutes (RCW 41.20) provides support for the police officers' claim that their retirement allowance (or service credit toward it) under LEOFF should be based on time spent in any position other than as a commissioned law enforcement officer.

The officers place primary reliance on the 1973 amendment to the city police plan that allowed an employee of a city who was a member of the city employees' plan and who is "now employed within the police department of such city" to transfer, upon request, the employee's membership and service credit from the city employees' plan to the city police plan. Laws of 1973, ch. 143, § 2 (effective June 7, 1973), codified at RCW 41.20.170. See *Fann v. Smith*, 62 Wn. App. 239, 814 P.2d 214 (1991) (holding that 1973 act allowed officers to transfer prior service time as police cadets from the city employees' plan to the city police plan).<sup>25</sup>

The officers' contention here is that, since the 1973 amendment allowed them to transfer their time as a police cadet, transit operator, or laborer (which initially would have been in the city employees' plan) into

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<sup>25</sup> Some dicta in *Fann* may suggest that the police cadet time transferred from the city employees' plan should be credited not only in the city police plan but also in LEOFF. However, the court was clear that it was not making any ruling other than that police cadet time could be counted for the city police plan. *Fann*, 62 Wn. App. at 243-44. Moreover, the Department of Retirement Systems was not a party to the *Fann* case.

the city police plan, this time should be counted toward their retirement under LEOFF, just as their time in the city police plan as commissioned police officers is included under LEOFF.

As discussed above, the threshold problem with the officers' argument is that their reading of the 1973 amendment is contrary to the explicit language of the LEOFF statutes. The definition of "service" for LEOFF Plan 1 members is: "all periods of employment for an employer *as a . . . law enforcement officer.*" RCW 41.26.030(28)(a) (emphasis added). Service as a police cadet, let alone as a transit operator or laborer, is not service "as a law enforcement officer." Membership in LEOFF includes "law enforcement officers *employed as such* on or after March 1, 1970." RCW 41.26.040(1) (emphasis added).

RCW 41.26.030(28)(a)(i)(B) provides that for LEOFF members retiring after May 21, 1971, who were employed under the coverage of a prior pension act before March 1, 1970 (the effective date of LEOFF), service includes "such other periods of service as were *then* creditable to a particular member under the provisions of RCW 41.18.165, 41.40.160, or 41.20.170." (Emphasis added.) Contrary to the police officers' argument, Brief of Appellants at 11-13, the "then" in this statute refers to March 1, 1970, the date the LEOFF act became effective, not to the date of

retirement of a member. This is evident from the language of the 1971 amendment adding this definition of service credit:

For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were *then* creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160, or 41.20.170.

Laws of 1971, 1st ex. sess., ch. 257, § 6(14), codified at RCW 41.26.030(28)(a)(i) (copy of session law attached as appendix to this brief). As with the military service in subsection (A) of this section, the other "then creditable" periods of service in subsection (B) refers to service creditable under the prior pension acts as of March 1, 1970. The transfer to the city police plan of police cadet or other non-commissioned service was not authorized until the 1973 amendment and therefore does not add any service credit in LEOFF because that time was not "then creditable," i.e., creditable as of March 1, 1970, in the city police plan.

Neither in the 1973 amendment to RCW 41.20.170 nor in any other enactment has the Legislature expanded the definition of "service" for LEOFF to include service other than as a commissioned law enforcement officer, with one exception. In a section of the original 1969 law establishing LEOFF, the Legislature allowed employees of the police

department of a city, who had been employed in the harbor department of the city that had abolished the harbor department and transferred its functions to the city police department, to request to transfer their service in the city employees' plan to the city police plan. Laws of 1969, 1st ex. sess., ch. 209, § 27. Any such transfers had to be requested by December 31, 1969. *Id.* Thus, for this limited group of police officers—those who had been employed in the harbor department—this service would have been transferred to their city police plan prior to the effective date of their transfer into LEOFF (March 1, 1970), and would have counted toward their LEOFF service. None of the Appellants in this case falls within this exception.

The provision for city police officers who had formerly been employed in the city harbor department shows that the Legislature knew how to provide for inclusion of non-commissioned service in LEOFF when it chose to do so. That the Legislature did so expressly with only one group (former harbor department employees) indicates it did not intend inclusion of service in other non-commissioned positions, such as police cadet, transit operator, or laborer. *See Grabicki*, 81 Wn. App. at 754-55 (express statutory inclusion of longevity pay as part of “basic salary” for police officer indicates that other payments not so included, such as education pay, are not part of “basic salary”).

In sum, neither the 1973 amendment to RCW 41.20.170 nor anything else in the history of either LEOFF or the city police plan supports inclusion of time as a police cadet, transit operator, or laborer for purposes of the officers' retirement allowance from or service credit in LEOFF.

**4. Limiting Service Credit in LEOFF to Commissioned Law Enforcement Positions Is Supported by the Consistent Construction Given to the Statutes by the Department of Retirement Systems**

To the extent that the LEOFF statutes may be ambiguous (which the State does not concede), the Court may look to the administrative construction given to the statutes by the agency charged with administering them, here, the Department of Retirement Systems. *Grabicki*, 81 Wn. App. at 752-53; *City of Pasco*, 110 Wn. App. at 588. While an agency's interpretation is not binding on the courts, "[c]ourts give substantial weight to an agency's interpretation of the law it administers." *City of Pasco*, 110 Wn. App. at 587-88.

The Department of Retirement Systems has consistently interpreted the statutes as meaning that only service as a commissioned law enforcement officer qualifies for credit under LEOFF, and that service as a police cadet or in other non-commissioned positions does not. CP 157-158 (declaration of former LEOFF Plan Administrator);

CP 159-364 (letters and administrative decisions involving individual LEOFF members). The Department's rulings include letters or administrative decisions involving five of the original Plaintiffs or Appellants in this case.<sup>26</sup> The Department has interpreted the fire fighter prong of LEOFF in the same manner. CP 365-373. In the course of making these determinations, the Department has considered, and rejected, all the arguments Appellants here have made in support of their claims. *See, e.g.*, CP 365-373 (11-page final order following a hearing under the Administrative Procedure Act, ch. 34.05 RCW). Where, as here, the agency's interpretation of the statutes it is charged with administering has been consistent, the Court should defer to that interpretation. *See Grabicki*, 81 Wn. App. at 756 (noting that Department of Retirement Systems' interpretation of relevant statutes had been consistent).

Thus, taking into account the plain language of the LEOFF statutes, the Legislature's purpose in establishing LEOFF, the history of the statutes, and the consistent interpretation given to them by the agency charged with their administration, the Court should conclude that the

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<sup>26</sup> One of the Department's decisions was a final administrative order in the matter of Philip Forsell, one of the original Plaintiffs in this case. CP 238-248. At the trial court, the Department argued that the court should grant summary judgment to it against Mr. Forsell on the ground, *inter alia*, that the adverse administrative ruling against him acted as a bar under the doctrine of collateral estoppel. CP 471-472. Mr. Forsell did not join in this appeal. Therefore, that issue is now moot.

officers' prior service as a police cadet, transit operator, or laborer does not count for purposes of their retirement allowance under LEOFF.

**B. The Officers Cannot Combine the Favorable Features of the City Police Plan and LEOFF to Create a Hybrid Pension Plan That the Legislature Has Not Established**

The police officers here are, in effect, trying to combine features of the city police plan that they like with features of LEOFF that they like in order to create a hybrid pension plan. However, the courts have clearly ruled that public employees cannot combine elements of different pension plans to establish for themselves a plan that the Legislature has never authorized.

With respect to the city police plan, the officers like the feature that allowed them to transfer their service in non-commissioned positions under the city employees' plan into the city police plan, but they do not like the provision in the city police plan capping their service credit at 30 years (whether commissioned or non-commissioned time). With respect to LEOFF, the officers like that LEOFF has no cap on the amount of service credit that can be counted but do not like its being limited to service as a commissioned officer. The officers want to combine the most favorable features of the two retirement plans.

But the Legislature has not provided for *combining* the features of LEOFF and the city police plan. Rather, the Legislature has provided for

*coordinating* the retirement allowances that a police officer would receive under the respective plans. As discussed earlier, because of constitutional strictures, when it created LEOFF, the Legislature provided that those who were in the city police plan when LEOFF was created should not suffer by receiving less than they would have had they retired from the city police plan. See *Mulholland v. City of Tacoma*, 83 Wn.2d 782, 522 P.2d 1157 (1974). As noted in *Mulholland*, a retiree can receive benefits from both the city police plan in RCW 41.20 and from LEOFF in RCW 41.26. *Mulholland*, 83 Wn.2d at 785-86. But, as the *Mulholland* court noted, LEOFF “by its very terms coordinates the benefits of both acts.”

This coordination of benefits is done through an annual comparison of the officer’s retirement allowance under LEOFF and what the officer would have received under the city police plan. If the officer would have received more under the city police plan, the city provides an “excess benefit” payment to the officer over and above what LEOFF provides. This comparison with reference to the provisions of each plan separately, not by combining provisions of the two plans.<sup>27</sup>

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<sup>27</sup> In their brief to this Court, the officers contend: “The Department cannot simply point at the City.” Brief of Appellants at 13. But the Department has never pointed at the City, “simply” or otherwise. Rather, it was the officers who filed their lawsuit below against both the City and the State, not caring from which entity they received additional retirement benefits. On appeal, the officers have dropped their claims against the City, presumably recognizing that the 30-year cap in the city police plan is clear and unassailable. Regrettably, the officers continue to fail to recognize the same as to the limitation in LEOFF to service as a commissioned officer.

Our Supreme Court has made it clear that a retiree cannot combine the features of two public retirement plans that benefit the retiree and create a hybrid plan that the Legislature never contemplated or authorized. In *Vallet v. City of Seattle*, 77 Wn.2d 12, 459 P.2d 407 (1969), the court rejected an attempt by a retiree to take advantage of provisions in a 1915 pension law that the retiree liked along with provisions of a successor 1961 pension law that the retiree also liked. The court stated:

The language of our past decisions does not contemplate a situation whereby a pensioner is entitled to select the best parts of several pension acts relating to him. To hold otherwise would have a serious effect on the everyday administration of pension plans in this state . . . .

*Vallet*, 77 Wn.2d at 21-22.

The Supreme Court reaffirmed its holding in *Vallet* in the case of *McAllister v. City of Bellevue Firemen's Pension Bd.*, 166 Wn.2d 623, 210 P.3d 1002 (2009). In the *McAllister* case, the court rejected a retiree's attempt, in the court's words, to "'cherry pick' the best of LEOFF and [a prior pension act]." *Id.* at 632. As the court noted:

To read the LEOFF statutes to allow the McAllisters to "blend" the best of two different pension plans would run counter to our holding in *Vallet* and introduce instability into the administration of the plans.

*Id.*

As with the retirees in *Vallet* and *McAllister*, the police officers in this case are trying to combine features of the city police plan and of

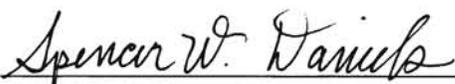
LEOFF into a pension plan that is different from any plan the Legislature has enacted. The Court should not grant the officers retirement benefits beyond those the Legislature has provided. *See Grabicki*, 81 Wn. App. at 755 (“these are determinations for the Legislature to make in structuring the publicly-funded retirement system for law enforcement officers”).

#### IV. CONCLUSION

The trial court correctly granted summary judgment to the Department of Retirement Systems, dismissing all claims against the Department. The Department respectfully requests that this Court affirm the trial court.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of May, 2012.

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**CERTIFICATE OF SERVICE**

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

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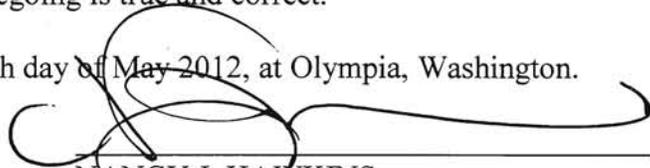
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 18th day of May 2012, at Olympia, Washington.



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NANCY J. HAWKINS  
Legal Assistant

provisions of this subsection (16)(d) shall not apply to plan 2 members;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The fees of the following:

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

RCW 41.26.040  
System created — Membership — Funds.

**\*\*\* CHANGE IN 2012 \*\*\* (SEE 6095.SL) \*\*\***

The Washington law enforcement officers' and firefighters' retirement system is hereby created for firefighters and law enforcement officers.

(1) Notwithstanding \*RCW 41.26.030(8), all firefighters and law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter with respect to all periods of service as such, to the exclusion of any pension system existing under any prior act.

(2) Any employee serving as a law enforcement officer or firefighter on March 1, 1970, who is then making retirement contributions under any prior act shall have his membership transferred to the system established by this chapter as of such date. Upon retirement for service or for disability, or death, of any such employee, his retirement benefits earned under this chapter shall be computed and paid. In addition, his benefits under the prior retirement act to which he was making contributions at the time of this transfer shall be computed as if he had not transferred. For the purpose of such computations, the employee's creditability of service and eligibility for service or disability retirement and survivor and all other benefits shall continue to be as provided in such prior retirement act, as if transfer of membership had not occurred. The excess, if any, of the benefits so computed, giving full value to survivor benefits, over the benefits payable under this chapter shall be paid whether or not the employee has made application under the prior act. If the employee's prior retirement system was the Washington public employees' retirement system, payment of such excess shall be made by that system; if the employee's prior retirement system was the statewide city employees' retirement system, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred: PROVIDED, That any death in line of duty lump sum benefit payment shall continue to be the obligation of that system as provided in RCW 41.44.210; in the case of all other prior retirement systems, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred.

(3) All funds held by any \*\*firemen's or policemen's relief and pension fund shall remain in that fund for the purpose of paying the obligations of the fund. The municipality shall continue to levy the dollar rate as provided in RCW 41.16.060, and this dollar rate shall be used for the purpose of paying the benefits provided in chapters 41.16 and 41.18 RCW. The obligations of chapter 41.20 RCW shall continue to be paid from whatever financial sources the city has been using for this purpose.

[1991 c 35 § 15; 1989 c 273 § 11; 1979 ex.s. c 45 § 1; 1974 ex.s. c 120 § 7; 1973 1st ex.s. c 195 § 44; 1970 ex.s. c 6 § 2; 1969 ex.s. c 209 § 4.]

Notes:

**Reviser's note:** \*(1) RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (8) to subsection (20).

\*\* (2) The "firemen's relief and pension fund" was changed to the "firefighters' relief and pension fund" by 2007 c 218 § 37.

**Intent -- 1991 c 35:** See note following RCW 41.26.005.

**Severability -- 1989 c 273:** See RCW 41.45.900.

**Effective date -- 1979 ex.s. c 45:** "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 45 § 8.]

**Severability -- 1974 ex.s. c 120:** See note following RCW 41.26.030.

**Severability -- Effective dates and termination dates -- Construction -- 1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

section 11, chapter 39, Laws of 1909 as amended by section 5, chapter 18, Laws of 1911 and RCW 41.20.030; and amending section 1, chapter 82, Laws of 1963 as amended by section 27, chapter 209, Laws of 1969 ex.sess. and RCW 41.20.170.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 11, chapter 39, Laws of 1909 as amended by section 5, chapter 18, Laws of 1911 and RCW 41.20.030 are each amended to read as follows:

The board herein provided for shall hold monthly meetings on the first Mondays of each month and upon the call of its president. It shall issue warrants, signed by its president and secretary, to the persons entitled thereto under provisions of this chapter other than RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 for the amounts of money ordered paid to such persons from such fund by said board, which warrants shall state for what purpose such payments are made; it shall keep a record of its proceedings, which record shall be a public record; it shall, at each monthly meeting, send to the treasurer of such city a written or printed list of all persons entitled to payment under provisions of this chapter other than RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The treasurer of such city shall thereupon enter a copy of said list upon a book to be kept for that purpose and which shall be known as "the police relief and pension fund book", and the said board shall direct payment of the amounts named therein to the persons entitled thereto, out of such fund. The treasurer shall prepare and enter into such book an additional list showing those persons entitled to payment under RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 and shall on the last day of each month issue warrants in the appropriate amounts to such persons. A majority of all the members of said board herein provided for shall constitute a quorum, and have power to transact business.

Sec. 2. Section 1, chapter 82, Laws of 1963 as amended by section 27, chapter 209, Laws of 1969 ex. sess. and RCW 41.20.170 are each amended to read as follows:

Any former employee of a ((harbor)) department of a city of the first class ((that has been abolished and has had its functions included within the police department of such city)) who (1) ((is)) was a member of the employees' retirement system of such city, and (2) is now employed within the police department of such city, may transfer his membership from the city employees' retirement system to the city's police relief and pension fund system by filing a written request with the board of administration and the board of trustees, respectively, of the two systems.

Upon the receipt of such request, the transfer of membership to the city's police relief and pension fund system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration of the city's employees' retirement system shall transmit to the board of trustees of the city's police relief and pension fund system a record of service credited to such member which shall be computed and credited to such member as a part of his period of employment in the city's police relief and pension fund system. For the purpose of the transfer contemplated by this section, the affected individuals shall be allowed to restore withdrawn contributions to the city employees' retirement system and reinstate their membership service records.

Any employee so transferring shall have all the rights, benefits and privileges that he would have been entitled to had he been a member of the city's police relief and pension fund system from the beginning of his employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon service with the city.

The right of any employee to file a written request for transfer of membership as set forth herein shall expire December 31, ((1969)) 1973.

Passed the Senate February 6, 1973.

Passed the House March 1, 1973.

Approved by the Governor March 20, 1973.

Filed in Office of Secretary of State March 20, 1973.

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CHAPTER 144

[Engrossed Senate Bill No. 2093]

STATE FUNDS--UNANTICIPATED INCOME--  
EXPENDITURE PROCEDURES

AN ACT Relating to state funds; amending section 43.79.260, chapter 8, Laws of 1965 and RCW 43.79.260; amending section 43.79.270, chapter 8, Laws of 1965 and RCW 43.79.270; amending section 43.79.280, chapter 8, Laws of 1965 and RCW 43.79.280; and repealing section 43.79.250, chapter 8, Laws of 1965 and RCW 43.79.250.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 43.79.260, chapter 8, Laws of 1965 and RCW

selected twenty-four month period by twenty-four; (c) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement.

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

(14) "Service" means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all months of service rendered by a member from and after his initial commencement of employment as a fire fighter or law enforcement officer, during which he worked for ten days or more, or the equivalent thereof, or was on disability leave or disability retirement. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. In addition to the foregoing, for members retiring after the effective date of this 1971 amendatory act who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall include (a) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under his particular prior pension act, and (b) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. ((No credit shall)) However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act: PROVIDED, That if such member's prior service is not creditable due to the withdrawal of his contributions plus accrued interest thereon from a prior pension system, such member shall be credited with such prior service, as a law enforcement officer or fire fighter, by paying to the Washington law enforcement officers' and fire fighters' retirement system, on or before March 1, 1975, an amount which is equal to that which was withdrawn from the prior system by such member, as a law enforcement officer or fire fighter; PROVIDED FURTHER, That if such member's prior service is not creditable because, although employed in a position covered by a prior pension act, such member had not yet become a member of the pension system governed by such act, such member shall be credited with such prior service as a law enforcement

officer or fire fighter, by paying to the Washington law enforcement officers' and fire fighters' retirement system, on or before March 1, 1975, an amount which is equal to the employer's contributions which would have been required under the prior act when such service was rendered if the member had been a member of such system during such period.

(15) "Accumulated contributions" means the employee's contributions made by a member plus accrued interest credited thereon.

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

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

(18) "Disability board" means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to his full salary prior to the commencement of disability retirement.

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

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

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

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

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

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

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