

Select Committee on Pension Policy

P.O. Box 40914
Olympia, WA 98504-0914
state.actuary@leg.wa.gov

Executive Committee Meeting

July 21, 2020

12:10 p.m. – 1:20 p.m.*

Virtual Remote Meeting

Click this link to join, or copy and paste into your web browser:

<https://zoom.us/j/91946515575?pwd=VDFDL0VOT0NDcEQxcFREblc4OUROdz09>

AGENDA

- 12:10 p.m. **A. Approval of June Minutes**
- 12:15 p.m. **B. AAG Update – Michael Nelson, Assistant
Attorney General, Office of the Attorney General**
- 12:35 p.m. **C. Committee Discussion**
- 12:40 p.m. **D. Constituent Correspondence – Aaron Gutierrez,
Senior Policy Analyst**
- 12:50 p.m. **E. Review Draft Interim Work Plan – Melinda
Aslakson, Policy Analyst**
- 1:00 p.m. **F. Adoption of September Agenda – Melinda
Aslakson**
- 1:10 p.m. **G. Other Business – Aaron Gutierrez**
- 1:20 p.m. **H. Adjourn**

**These times are estimates and are subject to change depending on the needs of the Committee.*

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John Boesenberg
PERS/Higher Ed Employers

Senator John Braun

Senator Steve Conway

Annette Creekpaum
PERS Employers

Randy Davis
TRS Actives

***Representative Joe
Fitzgibbon, Vice Chair**

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**Executive Committee*

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Fax: (360) 586-8135
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A. Approval of June Minutes

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REGULAR EXECUTIVE COMMITTEE MEETING JUNE 16, 2020 DRAFT MINUTES

The Select Committee on Pension Policy met remotely, on June 16, 2020.

Committee Members Attending

Chair Schoesler
Vice Chair Fitzgibbon
Tracy Guerin
Beverly Hermanson
Byron Olson
J. Pat Thompson

Other SCPP Members

Senator Conway
Annette Creekpaum
Randy Davis
Beverly Freeman
Anthony Murrietta

Chair Schoesler called the meeting to order at 12:56 p.m.

(A) APPROVAL OF NOVEMBER MINUTES

It was moved, seconded, and carried to: Approve the Regular Executive Committee Meeting November 19, 2019, Draft Minutes.

(B) AAG UPDATE

Michael Nelson, Assistant Attorney General, Attorney General's Office, provided an update on litigation.

(C) COMMITTEE DISCUSSION

No action taken.

(D) CONSTITUENT CORRESPONDENCE

Aaron Gutierrez, Senior Policy Analyst, reported on correspondence received since the November meeting.

(E) REVIEW DRAFT INTERIM WORK PLAN

The Committee discussed items to be added to the Draft Interim Work Plan.

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(F) ADOPTION OF JULY AGENDA

July Agenda

1. Approval of June Minutes
2. Rate Recommendation to PFC
3. 2020 Legislative Session Highlights
4. Study of Administrative Practices Under Chapter 41.54 RCW
5. Interruptive Military Service Credit Study
6. Public Comment
7. Adjourn

No action taken.

(G) OTHER BUSINESS

No action taken.

The following non-members addressed the Committee:

Fred Yancey, Washington State School Retirees' Association, Washington Association of School Administrators.

The meeting adjourned at 1:44 p.m.

Recorded audio of SCPP Full and Executive Committee meetings can be found on the [SCPP Meetings page](#), free of charge. The audio, and occasionally video, of Full Committee meetings can also be found at www.tvw.org.

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B. AAG Update

SCPP Litigation Update Report
July 2020

Case Summary	Status Summary:
<p>Fowler, et al v. Guerin (previously Frost) US Federal District Court/Thurston County Superior Court</p> <p>Issue: Same as Probst/Fowler state court case, but now in federal court and alleging a § 1983 challenge. The Fowlers claim that by not paying daily interest on TRS Plan 2 individual accounts, the Department effects an unconstitutional taking of their property.</p> <p>SGO: Peter Gonick AAGs: Nam Nguyen, Cam Comfort SAAGs: Mike Tardif and Jeff Freimund</p>	<p>The Department lost on summary judgment before the U.S. Court of Appeals for the Ninth Circuit. The Court ruled that plaintiffs had a constitutional right to daily interest. The Department Petitioned for a Writ of Certiorari to the U.S. Supreme court which was denied.</p> <p>The case has been remanded to the trial court to decide the issue of damages.</p>
<p>Appeal of Wilson Court of Appeals, Division I</p> <p>Issue: Whether Mr. Wilson separated from service in order to receive a LEOFF 2 retirement benefit.</p> <p>AAG: Nam Nguyen</p>	<p>The Department prevailed at the administrative level. Mr. Wilson filed an APA Petition for Judicial Review, and the superior court reversed the administrative decision and ordered the Department to pay \$12,000 in attorneys’ fees. The Department has appealed the matter to Division II of the Court of Appeals. Oral argument is being rescheduled from July 10th.</p>
<p>Appeal of Sloma Court of Appeals, Division II</p> <p>Issue: Mr. Sloma elected to participate in the PERS Plan 1 Post-30 Year Program and then retired from PERS Plan 1. Approximately 8 years later he returned to PERS employment, was enrolled in PERS Plan 1 for 3 years, and</p>	<p>The Department prevailed at the administrative level, petition level, and at the court of appeals. Mr. Sloma Petitioned the Supreme Court for review. On July 8, the Supreme Court denied Mr. Sloma’s petition for review.</p>

SCPP Litigation Update Report
July 2020

Case Summary	Status Summary:
<p>retired a second time. Is Mr. Sloma entitled to have his retirement allowance recalculated with the higher AFC from his most recent employment?</p> <p>AAG: Nam Nguyen</p>	
<p>Hester et al. v. DRS and WSP Court of Appeals, Division I</p> <p>ISSUE: Whether the Legislature’s 2001 repeal of the inclusion of overtime into troopers’ benefit calculation was legal.</p> <p>AAGs: Nam Nguyen, Kathryn Wyatt assisted by Eric Mentzer of AGO Complex Lit</p>	<p>The Superior Court issued preliminary ruling that adopted a three-year statute of limitations which accrues at retirement and held that ESB 5143 is “reasonable and necessary to meet a legitimate public purpose.” The court also held that there are material fact for trial on whether ESB 5143 provided comparable advantages. Plaintiff’s moved for interlocutory review of the case, which was granted by the Court of Appeals. Appellants recently filed a motion to transfer the case to the Supreme Court, which is now pending.</p>
<p>Appeal of Jennifer Quesnell Administrative Appeal</p> <p>The issue is whether a TRS member is entitled to service credit for part-time teaching over a two year period in the early 1990s.</p> <p>AAG: Kathryn Wyatt, Debra Lefing</p>	<p>Case has been briefed and argued at the administrative level and the parties are awaiting a decision and final order from the presiding officer.</p>
<p>Appeal of Douglas Merino Administrative Appeal</p> <p>The issue in this matter is whether appellant’s wife is eligible for WSPRS survivorship</p>	<p>The Department prevailed at the administrative level. Mr. Merino has filed a petition for judicial review to Superior Court. The oral argument has been moved to July 24, 2020.</p>

SCPP Litigation Update Report
July 2020

Case Summary	Status Summary:
<p>benefits despite the appellant withdrawing membership contributions.</p> <p>AAG: Kathryn Wyatt</p>	
<p>In re Audit of King Co. Fire Dist. No. 2 Administrative Appeal</p> <p>The issue is whether audit correctly characterized type of retirement accounts Fire District established for members and whether such accounts resulted in overpayments</p> <p>AAGs: Kathryn Wyatt, Debra Lefing</p>	<p>Awaiting decision on motion for summary judgment at the administrative level. The Presiding Officer requested an extension to issue a final order.</p>
<p>In re Valley View Sewer District Administrative Appeal</p> <p>The issue is whether the District is responsible for an overpayment of benefits made to their employee, for not reporting the retiree.</p> <p>AAGs: David Moon</p>	<p>Motions for summary judgment have been filed at the administrative level; the parties have agreed to a settlement.</p>
<p>Appeal of Moore-Duncan Administrative Appeal</p> <p>The issue is whether the appellant, who worked an overnight shift that continued into the morning hours of the first day of her first month</p>	<p>Matter argued on cross summary judgment motions at the administrative level; awaiting decision of the presiding officer.</p>

SCPP Litigation Update Report
July 2020

Case Summary	Status Summary:
<p>of retirement, is responsible for overpayment of benefits in her first month of retirement.</p> <p>AAG: David Moon</p>	
<p>Appeal of Cheryl Turner Administrative Appeal</p> <p>The issue is whether the appellant is eligible for a PERS 2 disability retirement benefit under RCW 41.40.670.</p> <p>AAGs: David Moon, Kathryn Wyatt</p>	<p>Appellant may be voluntarily dismissing the appeal.</p>

C. Committee Discussion

- ❖ Rate Recommendation to the PFC
- ❖ 2020 Legislative Session Highlights
- ❖ Study of Administrative Practices Under Chapter 41.54 RCW
- ❖ Interruptive Military Service Credit Study

D. Constituent Correspondence

From: [MAUREEN WARBRUCK](#)
To: [Schoesler, Sen. Mark](#); [Office State Actuary, WA](#)
Subject: RE: RCW 41.26.150 (1)
Date: Monday, July 13, 2020 11:33:40 AM
Attachments: [Mark Schoesler Chair SCPP.docx](#)

July 13, 2020

The Honorable Mark Schoesler, Chair Select Committee on Pension Policy
Mr. Matt Smith, State Actuary, Office of the State Actuary
Members of the Select Committee on Pension Policy

Dear Senator Schoesler, Mr. Matt Smith and Committee Members,

Last year in regards to the governance of the LEOFF 1 Retirement System, we contacted the Select Committee in an attempt to resolve a problem some members are having with the payment of medical expenses under RCW 41.26.150 (1) Sickness or Disability Benefits-Medical Services. Some LEOFF I Disability Boards are requiring the member or the family to pay the medical bills and then request a reimbursement from the employer. The reimbursement can take one or more months depending when the board meets and the policy of the employer in making the reimbursement payments. Quite often the member will receive a second bill before receiving the reimbursement for the first bill. This creates a real hardship on the member or family, particularly if the member is incapacitated. As you are aware medical bills can be in the thousands of dollars, much more than most families have in their checking accounts. An additional problem is that many of the LEOFF I members are in their mid-eighties and ninety plus years of age making this reimbursement policy an unnecessary problem for them.

Having been involved in 1970 when the LEOFF I Retirement System was established I can honestly state that this reimbursement policy was not the intent of the Legislature. As stipulated in RCW 41.26.150 (1): *“Whenever any active member, or any member hereafter retired, on account of service, sickness or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be the judge, is confined in any hospital or in home, and whether or not confined, requires medical services, the employer shall pay for the active or retired member the necessary medical services not payable from some other source as provided for in subsection (2) of this section.”*

The Committee previously requested and received an Attorney General Opinion advising that it was not in the scope or authority of the Committee to instruct the disability boards how to administer the duties and responsibilities of the board.

I met with the Director of the Department Systems to ask if she would issue a WAC Rule under RCW 41.26.115 to clarify how the medical payments should be made. RCW 41.26.115 states: *“Director of retirement systems to adopt rules governing disability boards – Remand of orders not in accordance with rules.”* As of this date I am not aware of a WAC Rule being published.

On behalf of the 6,900 LEOFF I members, we request this issue be put on the Committee meeting agenda for consideration of a bill to amend RCW 41.26.150 to clarify and direct how the medical payment shall be made.

Thank you for your consideration of this very important issue. If necessary I can address this issue on a virtual committee meeting or at a public hearing.

Respectfully,

Richard C. Warbrouck
President Retired Firefighters of Washington

E. Review Draft Interim Work Plan

2020 Draft Interim Work Plan

This document is prepared by staff to assist in planning for the interim, and subject to change at least monthly. Committee agendas are adopted by the Executive Committee in open meetings. The Committee typically does not meet in August or during the Legislative Session. Please see the [SCPP website](#) for adopted agendas.

June		
Subject	Briefing Type	Action Item?
Interim Kick-Off	Procedural	
Agency Updates and COVID-19 Impacts <ul style="list-style-type: none"> ❖ Washington State Investment Board ❖ Department of Retirement Systems ❖ Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board ❖ Office of the State Actuary 	Informational	
Preliminary AVR Results and Demographic Experience Study Audit	Informational	
Interim Planning	Informational	
Election of Officers	Procedural	Y
July		
Subject	Briefing Type	Action Item?
Rate Recommendation to PFC	Procedural	Y
2020 Legislative Session Highlights	Informational	
Study of Administrative Practices Under Chapter 41.54 RCW	Initial Briefing	
Interruptive Military Service Credit Study	Initial Briefing	
September		
Subject	Briefing Type	Action Item?
CEM Benchmarking	Annual Update	
Update on PFC Rate Adoption	Informational	
Study of Administrative Practices Under Chapter 41.54 RCW	Policy Analysis	
Interruptive Military Service Credit Study	Policy Analysis	
Inactive Accounts	Informational	

October		
Subject	Briefing Type	Action Item?
DRS Update	Annual Update	
OSA Budget	Informational	
Interruptive Military Service Credit Study: Preliminary Recommendations	Public Hearing/Action Item	Y
Preliminary 2021 Meeting Dates	Procedural	
PSERS and LEOFF 2 Disability Benefits	Informational	
Early Retirement Options	Informational	
November		
Subject	Briefing Type	Action Item?
WSIB Update	Annual Update	
Study of Administrative Practices Under Chapter 41.54 RCW	Public Hearing/Action Item	Y
Interruptive Military Service Credit Study: LEOFF 2 Board Recommendations	Informational	
Adoption of 2021 Meeting Dates	Procedural	Y
December		
Subject	Briefing Type	Action Item?
Interruptive Military Service Credit Study: Final Recommendations	Public Hearing/Action Item	Y

Key

Procedural: Refers to Committee processes. Action may or may not be required.
Informational: Provides the Committee with information. Action is not required.
Annual Update: Regular updates from entities involved in pensions, such as the Department of Retirement Systems and Washington State Investment Board.

While not expressly required, many **policy-related** agenda items follow a three-step process:

1. **Initial Briefing** (background and scoping).
2. **Policy Analysis** (develop options; potential pricing).
3. **Public Hearing/Action Item.**

Please note that each step can sometimes take more than one meeting.

F. Adoption of September Agenda

Select Committee on Pension Policy

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Regular Committee Meeting

September 15, 2020
10:00 a.m. – 12:00 p.m.*
House Hearing Room A
Olympia

DRAFT AGENDA

- 10:00 a.m.
1. Approval of July Minutes
 2. CEM Benchmarking
 3. Update on PFC Rate Adoption
 4. Study of Administrative Practices Under Chapter 41.54 RCW
 5. Interruptive Military Service Credit Study
 6. Inactive Accounts
 7. Public Comment
- 12:00 p.m.
8. Adjourn

**These times are estimates and are subject to change depending on the needs of the Committee.*

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G. Other Business

No written materials have been included for this agenda item.

- ❖ Update: LEOFF 2 Board Coordination