

NOTES FROM MEETING
WITH THE WSCFR ON
FRIDAY APRIL 15, 2011

RAID ON LEOFF 1

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Seattle, April 16, 2011

Last week we were comfortable that we could skate through this legislative session without an attack on LEOFF 1. WE WERE WRONG! The attack surfaced on Thursday, April 14th when House Bill 2097 was dropped.

Here is the bill digest as posted on the Legislature's web site.

"Merges plans 1 and 2 of the law enforcement officers' and firefighters' retirement system."

What the bill does.

- It sets the contribution rates for LEOFF 2 for the period of July 1, 2011 to June 30, 2013.
- It combines the current LEOFF 1 and LEOFF 2 pension trust funds.
- It renames the plans to the Law Enforcement and Fire Fighters Retirement System.
- It places LEOFF 1 under the governance of the LEOFF 2 Retirement Board.
- It empowers the Retirement Board to set rates and adjust benefits.
- It gives all of LEOFF 1 funds and control over to LEOFF 2

This bill was planned, conceived, written and proposed without any notice to any LEOFF 1 organization. In fact, even the Association of Washington Cities was unaware of this legislation until yesterday. All of the stakeholders except LEOFF 2 were left out of the process. The result is a bad bill for everyone.

I will review each of these areas in depth in this article but it suffices to say that this is a bad deal for LEOFF 1. It is a bad deal for the cities, it is a bad deal for the counties, it is a bad deal for the fire districts and it is even a bad deal for LEOFF 2 although they don't yet realize it.

WE MUST ACT QUICKLY TO STOP THIS BILL IN ITS TRACKS.

See **"WHAT YOU CAN DO"** for information about things you can do to help this effort.

In this article we will review how this came about, why it is a bad bill and what we need to do to stop it. Please be sure to read it through and PLEASE act quickly.

You may see some LEOFF 1 organization jumping on this to raise money. The argument will be that we are being raided and need to build a war chest to stop it. That time may come but not yet. When and if it does come, only give money to an organization that will provide you with a financial accounting of their spending and with officers and board members you can elect.

WHY WAS HR 2097 PROPOSED?

As we all know, the state has a serious budget crisis. The legislators are looking under every rock trying to find cuts. Actually the Governor had provided an effective budget proposal but both Democrats and Republicans have been trying to find what they think is a better way.

So, in the process someone gets the idea that that if you lower the contribution rates for the LEOFF 2 pension the state will not have to pay its share. By lowering the contributions by \$75 million, the state could save \$15 million. (See [HB 2068](#)) I know it sounds dumb on its face, but that is how the proposal came about. Lower pension contributions by \$75 million with no thought as to how to ever pay it back so that you do not have to pay \$15 million you owe.

The sad fact is that the money would never be paid back and LEOFF 2 would start its move from a healthy well-funded plan to be another PERS or TRS plan in deficit.

The principal LEOFF 2 organizations obviously objected to this proposal. Even the Association of Washington Cities is against it. It would be the first step into the abyss of underfunded pensions.

The answer?

If one dumb idea causes problems let's come up with another dumb idea to replace it.

Now remember, among the budget gurus, \$15 million is considered dust. It is a small amount when you are dealing with billions of dollars and does little to address the greater problem.

Since the LEOFF 2 Organizations opposed the bill they were asked to provide some alternatives. They suggest the LEOFF 2 plan be allowed to issue pension bonds. This was rejected. They then suggested the state could sell surplus assets, i.e. property and buildings and the proceeds could be applied to the plan as the state's \$15 million share. This, too, was rejected.

Finally they suggested merging LEOFF 1 & 2 with the idea that somehow the combined earnings of the new funds would, over 20 years or so, generate enough extra money to make up the \$15 million. How these numbers could work out is beyond my understanding. All of the earnings from both funds are already accounted for by the State Actuary and no explanation of how this extra money would be developed by combining the funds has been offered. It is magic! I.e. it is smoke and mirrors.

The product of this effort was [HB 2097](#). It appears that the Washington State Council of Fire Fighters is the lead on this effort. WACOPS and COMPAS, the other two organizations of public safety unions, have come out in support of the bill.

This bill is opposed by LEOFF 1 groups. It is opposed by the AWC. It must be defeated. It is a bad bill and we explain why in this article.

DONE IN SECRET

Take a look at the timeline here. HB 2068, the bill that is blamed for the need to create HB 2097 was first read on **April 9, 2011** and referred to the House Ways and Means Committee.

Prior to that time lobbyists from Washington Council of Fire Fighters were already working against 2068. According to them, somewhere between April 4th and April 8th the proposal to combine LEOFF 1 and LEOFF 2 was conceived. This was a revival of a concept put forth in discussion only back in 2009. On **April 6, 2011** Representatives Sullivan and Van De Wege instructed Steve Nelson to "flesh out a bill" based on the concept of combining LEOFF 1 and LEOFF 2. Steve was to have the draft bill created by Monday, **April 11, 2011**.

Steve Nelson is the Executive Director of the LEOFF 2 Pension Board. He is highly respected by everyone dealing with pension issues and is considered a "straight shooter" without a political agenda.

Steve Nelson reported that he reviewed the proposal and sought to structure it so that it would accomplish the goals. He asked for special permission to seek legal advice from Robert Klausner, a nationally known pension attorney that generally works for unions but was utilized by the Senate in 2001 when they proposed SB 6166. Klausner is generally considered a bad word within the LEOFF 1 community. As of Friday, April 15th Steve did not have a report from Mr. Klausner. Steve Nelson also requested some actuarial information from Matt Smith, the State Actuary to use in the development of the proposal. As of Friday, April 15th Steve did not have a report from the Actuary.

Even absent this information Steve developed the draft bill. Don't blame him it is his job. He felt that his proposal protected the LEOFF 1 system and added some governance authority that was preferable to the current system. Steve admitted that the effort was difficult and probably imperfect as the two pension plans are very complicated. Steve reported that he did an actuarial analysis and a legal analysis in the process of constructing the draft. No data was offered to support this position.

In summary:

- This concept was talked about in 2009 but nothing was done.
- Beginning not later than **April 4, 2011**, lobbyists from the Washington Council of Fire Fighters began discussing this concept with Representatives seeking budget cuts.
- We assume it was the product of objecting to the \$75 million dollar plan.
- On **April 6, 2011** Steve Nelson was instructed to develop the bill with the draft to be completed by **April 11, 2011**.
- On **April 11, 2011** the bill to lower the pension contributions was first read.

- On **April 13, 2009** the Washington State Council of Fire Fighters and WACOPS published a plea for attendance at a Ways & Means Committee hearing on **April 14, 2011**. The hearing was to consider HB 2068 and HB 2071. Email flew about. Postings were made to web sites – including this one.
- On **April 14, 2011** sixty fire fighters responding to the call to appear and oppose 2068 and 2071 were tasked by the Council with contacting legislators and securing their signature as sponsors to HB 2097. They managed to end up with 38 sponsors, all but two of them Democrats. This is important because that number of sponsors make it look like there is a large buy-in by the legislators. Actually it was a lot of arm twisting by lobbying that generated all of those sponsors.
- On **April 14, 2011** HB 2097 was read and referred to the Ways and Means Committee. It has not yet been scheduled for a hearing. The next hearing date is April 19th and no agenda has as yet been published.

Throughout this period of April 4 to April 14, Dick Warbrouck, the President of the Retired Fire Fighters of Washington, was in regular contact with Kelly Fox of the Washington Council of Fire Fighters. No mention of this proposal was ever made to Dick. Ken Crowder, the of the WACOPS retired group was never informed. The Retired Seattle Police Officers Association was never informed. Dick Warbrouck informed the LEOFF 1 Coalition on Friday, April 15th and their president reported he was unaware of it. In fact even the Association of Washington Cities was taken by surprise. It should be noted that no one at WACOPS notified Ken Crowder who is one of their own.

No stakeholder except LEOFF 2 was informed or asked for input.

The excuse? According the Council of Fire Fighters-- We were really busy and did not want to have to field a lot of calls from disgruntled individuals.

Yes, it really was done in secret. Should we be mad at these LEOFF 2 organizations? Yes. But, at the same time we need to concede that they were just trying to do their job. LEOFF 2 was coming under its first major attack. Not funding the pension by \$75 million would create a deficit that will probably never be repaid except by promises. LEOFF 2 is facing going down the road of PERS 1 and TRS 1. They thought they did not have the political leverage to stop the contribution decrease. They did not even attempt to recruit the assistance of the AWC who has a lot of clout and a close relationship with the Governor. They panicked and came up with a dumb solution.

Now the bill is out there and WACOPS, WSCFF and COMPAS are all supporting it.

DAMAGE CONTROL

On April 14, 2001 about three hours before HB 2097 was dropped, Kelly Fox, the President of the Washington Council of Fire Fighters informed Dick Warbrouck, the President of the Retired Fire Fighters of Washington that the bill was going to be presented. This was at least ten days after the concept was first developed. Throughout this period Fox and Warbrouck had been in regular contact but the subject had never been mentioned.

A meeting was then scheduled for April 15, 2011 between the Washington Council of Fire Fighters, the Retired Fire Fighters, the Retired Seattle Police Officers and Ken Crowder representing the Retired WACOPS members. The purpose of the meeting was to explain the bill and the WSCFF role in the process.

That meeting was held on April 15th at the WSCFF office in Olympia at 2 PM. In attendance were Kelly Fox, two WSCFF lobbyists, Craig Soucy and another who's name escapes me. From the RFFOW were Dick Warbrouck, Jim Fisher, Jim Fossos, Bob Fuhrman and Bruce Roberts. From RSPOA, Jerry Taylor. From WACOPS retired, Ken Crowder. Also in attendance was Steve Nelson the Executive Director of the LEOFF 2 board and writer of the proposed legislation. No representatives from WACOPS or COMPAS were in attendance.

The meeting lasted for almost three hours and all parties were candid and direct. Much of the information reported earlier in this article was revealed at this meeting. This included explaining the timeline for the development of the proposal.

Kelly Fox was apologetic for leaving the LEOFF 1 side in the dark. I think now he understands it was a serious violation of trust but at the time he felt it necessary due to the threat to LEOFF 2. We were assured it would not be repeated.

Steve Nelson and Kelly Fox and Craig Soucy explained the bill and tried to point out why they felt it was a positive thing for LEOFF 1. They stressed that the say no threat to LEOFF 1 and emphasized that they felt the governance of the pension plan by the LEOFF 2 board was better than our having to deal with the Select Committee on Pension Policy. They attempted to explain how the finances would work to better insure the long term stability of both systems. No actual data was presented.

The LEOFF 1 members at the meeting countered with our concerns that we would never have an effective presence on the LEOFF 2 board, that the legislation made no proposal to insure any LEOFF 1 presence and that the very process of selecting members while neutral on its face was unlikely to ever give LEOFF 1 any real power to impact governance of the pension system.

Many more items were discussed and are covered later in this article. The conclusion of the meeting did produce some agreements. The Washington Council of Fire Fighters acknowledged that it was a complicated matter and that the information discussed presented new perspectives.

Kelly Fox stated that he was not convinced that HB 2097 was properly conceived but that he sees it as protection against HB 2068 and HB 2071. He stated they would not push for passage of HB 2097 but would work to find some solution that might insure full funding of

LEOFF 2 for at least the first year of the two year period so that the HB 2097 concept could be reviewed and worked on by all stakeholders during the interim. However, Kelly Fox did insist that he might push the issue if they are unable to block HB 2068.

Obviously, this meeting was designed to mitigate the damage done by keeping the proposal secret and even putting forth the proposal at all. The discussion was candid and as informative as possible given the lack of hard data available.

I left the meeting with an uncomfortable feeling. There was no promise to back away from the proposal, no promise to withdraw support. Rather there was the promise not to push the proposal "unless necessary" and to revisit it during the interim.

That spells out a real threat to LEOFF 1.

HR 2097 IS A BAD BILL!

Does not produce the dollars sought

It is a bad bill because it does not address the stated purpose. How the combining of the two systems would generate the \$15 million dollars in savings sought by the state is not explained in any sense. It is simply claimed that combining the two trust funds would somehow generate the extra \$15 million over the next twenty years. It did not make sense in the meeting and does not make sense now. No documentation was provided.

Currently the State Actuary is forecasting that the LEOFF 1 pension plan will dip slightly into deficit in 2023 and then quickly recover. Those figures use assumptions that are more conservative than actual returns. LEOFF 1 is a fully funded closed pension system. It is classified as healthy and is not expected to ever be in danger.

LEOFF 2 is currently healthy but it is an open system under constant danger of being underfunded as proposed in HB 2068. LEOFF 2 members are pushing for significant benefit enhancements, increased multipliers and more. Whether or not it will go the way of TRS and PERS is not yet known. It will always be subject to that threat. Why would we ever want to be a part of that?

Forfeits any effective governance

Currently the governance of the LEOFF 1 pension is through the Select Committee on Pension Police and the Legislature. These people are elected representatives. While we may not have a lot of leverage with them we still have some and they listen to our concerns. Over the years we have been successful in securing significant benefit improvements dealing directly with the legislature. Such things as coverage for spouses, actuarial adjusted coverage for postretirement spouses and many more are the product of working directly with the legislature. It is a system we know and understand. There is no need to change it.

Conversely, the LEOFF 2 pension is governed by the LEOFF 2 Board. That is an eleven member board appointed by the Governor. LEOFF 1 would have almost no chance of ever getting representation on that board and would have effective representation even if we were given a seat – which the legislation does not provide. The net effect would be we give all pension funds to LEOFF 2 and let them manage things as they see fit. How could anybody see that as a good deal?

Threatens current pension benefits

The proposed legislation would forfeit all governance to the LEOFF 2 board. They would have the authority to change any benefits except those that are statutorily granted. They could eliminate disability board, they could eliminate other benefits. We would be placed in a situation where we would be forced to sue and assert our Bakenhaus rights.

The proposed legislation is so devoid of any standards of governance relative to specific LEOFF 1 issues that we could only count on law suits to follow.

Rejects over 40 years of history

LEOFF 1 has been in existence for over forty years. It has an extensive history of legislation and established court rulings. This move would wipe out all of that in a swipe. Neither the legislature nor LEOFF 1 members would be able to rely on past decisions for guidance. Law suits would be filed over issues that have long been settled. This would cost everyone a lot of money.

Forfeits rights of both LEOFF 1 & LEOFF 2

Agreeing to such a combination is tantamount to agreeing that it would be OK to combine all of the pension systems. That is seen as a real threat as both PERS 1 and TRS 1 are in deficit. So a legislature that is willing to decrease pension funding by \$75 million in order to get a \$15 million savings might well be tempted to combine them all and thereby reduce their current liabilities in TRS and PERS.

The current LEOFF 2 governance plan is the result of an initiative. It is old enough now that the legislature could change or eliminate it any time with a simple majority vote. In fact this was the advice of Helen Sommers when the initiative passed.

The initiative campaign cost LEOFF 2 \$1.3 million dollars. All of that could be out the door and we could all find ourselves in the Washington State Law Enforcement, Fire Fighters, Public Employees and Teachers retirement fund.

This is a bad deal for both LEOFF 1 and LEOFF 2.

Threatens Cities, Counties and Fire Districts

I know that the Association of Washington Cities does not like this bill. They also do not like HB 2068 even though they would save some money over the next two years. They know that that money will never be paid back and that LEOFF 2 will start its slide into default.

That is not healthy for cities and they know it.

The legislation is probably illegal

We have had attorneys look at this legislation and they, on first glance, see a lot of problems. At the very least there are Bakenhaus issues and it may have constitutional issues as well. We know that the LEOFF 1 community is ready and prepared to defend their pension in court if necessary. This legislation would most probably put us there.

Another attorney has commented :

1. The system can only be modified to preserve its viability. (Not trying to use legal language).
2. The retirement system is a binding contract if altered could raise federal issues under the no impairment of contract clause in the Constitution.
3. There are IRS regulations and trust issues.

The system is too complicated for this fast track

These observations are just the first look. Because the issues are complex it is obvious that a fast track legislation where the bill was written in three days while still waiting for legal and actuarial input cannot properly address all of the concerns.

Thousands of pensioners and their families will be impacted. Should they not at least have the opportunity to contribute to the development of the legislation?

Forty years of legislation and litigation have made for a complex law that is designed to protect the individual members and assure their pension benefits are properly paid. You simply cannot address all of those issues in a few days. This is particularly true when the person tasked with writing the legislation is the director of another system. This is particularly true when you do not even ask even one member of a system how it might impact them.

It is bad legislation. It is a bad idea following another bad idea.

WHAT CAN YOU DO?

Right now – today, not tomorrow or later.

1. Call your legislator.
2. Ask your legislator to oppose this legislation (HB 2097).
3. Ask your legislator to oppose HB 2068 and HB 2071 to keep full funding for LEOFF 2.
4. At the very latest make your call on Monday.
5. Then, sit down and write a letter to your legislator and to each member of the House Ways and Means Committee. At the very least send them an email.

This bill must be stopped and grass roots action is our only resource. It is extremely important that you act quickly. This bill is fast tracked and could pass out of Ways and Means as early as Tuesday, April 19, 2011.

RESOURCES

[House Ways & Means Email Addresses and Phone Numbers](#)

[Senate & House Email List](#) – You will need to click through to your legislator's page for address and phone number.

[Find your legislator](#) – This link will take you through a process to identify who is your legislator. If you don't know use this and it will tell you. It is easy and fast. You just enter your address.