

Interim Report

83rd Legislature Senate Bill 1459, Section 31

The Feasibility of Adding Select Populations to
the Law Enforcement and Custodial Officers
Supplemental Retirement Fund (LECOSRF)

September 1, 2014



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Interim Study Requirement

Examining the feasibility of adding select populations to the class of employees eligible to participate in the Law Enforcement and Custodial Officers Supplemental Retirement Fund (LECOSRF)

83rd Legislature, Regular Session Senate Bill 1459, Section 31:

The Employees Retirement System of Texas shall conduct an interim study on the feasibility of adding custodial officers employed by the Texas Juvenile Justice Department to the class of employees eligible to participate in the law enforcement and custodial officer supplemental retirement fund as custodial officers. Not later than September 1, 2014, the retirement system shall report the findings of the study to the governor, the lieutenant governor, the speaker of the house of representatives, and each senate and house committee that has jurisdiction over the retirement system.

Executive Summary

This report addresses the issues and costs associated with adding select populations to the class of employees eligible to participate in the Law Enforcement and Custodial Officers Supplemental Retirement Fund (LECOSRF). The Legislature directed ERS to examine the impact of adding custodial officers from the Texas Juvenile Justice Department (TJJD). ERS added law enforcement officers from the Office of Attorney General (OAG) to the study because, as with TJJD, there has been interest for including this population in LECOSRF.

This report does not make a recommendation, but provides information on the workforce issues and the pension plan funding impacts.

Employees who are eligible for LECOSRF have two primary differences in their total benefits when compared to the benefits payable to ineligible employees. First, LECOSRF-eligible employees receive enhanced early retirement benefits different from the ERS (state employee) plan. Second, these employees are eligible for a supplemental benefit payable from LECOSRF.

Expanding the number and type of members who can participate in a plan increases the plan's cost. Defined benefit pensions are funded over an employee's career. ERS invests member and employer contributions, which grow as the employee works. When adding a new population to a plan, the plan funding policy and contribution level must account for contributions and associated investment returns for future and/or past service, depending on how the plan is altered.

Adding costs would be a consideration for any fund, but the ERS and LECOSRF plans are actuarially unsound, which means that there are not enough assets to pay for all of the promised benefits. Adding new members to LECOSRF would increase these obligations, further jeopardizing the trust fund's ability to pay its obligations to current members. Because adding new members increases costs to the plan, it is considered a benefit enhancement.

State law prohibits benefit enhancements when the fund is not actuarially sound. In addition, the Texas Constitution states that benefits financing must be based on sound actuarial principles.

Combined Funding Impact

Based on the August 31, 2013 actuarial valuation, adding TJJJ and OAG officers to LECOSRF increases costs to both the ERS and LECOSRF funds. The impact to the ERS fund is due to earlier retirement eligibility as a certified peace officer or custodial officer. This plan change would impact costs rates, liabilities, and additional annual contributions.

The funding analysis reflects the combined impact if both TJJJ and OAG officers were added as eligible members of LECOSRF. If the two populations were added, the Legislature would need to make a workforce policy decision on certifying service. The analysis includes two scenarios on certified service, which include:

- a) if future service only at TJJJ and OAG are certified; or
- b) if past and future service at TJJJ and OAG are certified.

Future Service Only

The first scenario assumes only future service at TJJJ and OAG in select custodial and law enforcement positions would be certified for LECOSRF membership.

If future TJJJ and OAG service counted in LECOSRF membership, ERS and LECOSRF would have changes in costs rates, liabilities, and additional annual contributions. Figure 1 shows the changes to cost rates, unfunded liabilities, and additional annual contributions for ERS and LECOSRF under this scenario.

Figure 1

Combined Funding Impacts of Adding TJJJ Custodial Officers and OAG Law Enforcement Officers to LECOSRF

Assumes Future Service Only

Based on the August 31, 2013 Actuarial Valuation

	ERS	LECOSRF
Future Service Only for TJJJ and OAG Officers		
Normal cost for proposed population¹		
Current rate	11.52%	0.00% ²
New rate	12.99%	0.90%
Rate change	1.47%	0.90%
Unfunded Liability and Actuarially Sound Contribution (ASC) Rate		
Change in Unfunded Liability	\$0.4 million	\$3.0 million
Change in ASC Rate	0.02%	(0.11%)
Total ASC Rate	18.75%	2.98%
Additional Annual Contributions		
Additional amount needed to be sound (portion associated with benefit change)	\$1.2 million	\$0.9 million
Total amount needed to be sound	\$247.3 million	\$15.4 million

Note¹: Includes administrative expenses.

Note²: Currently, this population does not accrue benefits under LECOSRF, so there is not a current normal cost rate for it.

Source: Gabriel Roeder Smith.

Under this scenario, both plans would experience increases in normal cost rates, unfunded liabilities, and the additional amounts needed for annual contributions. There would be a small decrease in the actuarially sound contribution rate (ASC) for LECOSRF due to the likelihood that a number of the new members who are in mid-career or late career would be unlikely to work the 20 years required to be eligible for a LECOSRF annuity.

Past and Future Service

The second scenario assumes past and future service at TJJJ and OAG in select custodial and law enforcement positions would be certified for LECOSRF membership.

If past and future TJJJ and OAG service counted in LECOSRF membership, ERS and LECOSRF would have changes in costs rates, liabilities, and additional annual contributions. Figure 2 shows the changes to cost rates, unfunded liabilities, and additional annual contributions for ERS and LECOSRF under this scenario.

Figure 2
Combined Funding Impacts of Adding TJJJ Custodial Officers and OAG Law Enforcement Officers to LECOSRF

Assumes Past and Future Service
 Based on the August 31, 2013 Actuarial Valuation

	ERS	LECOSRF
All Service (Past and Future) for TJJJ and OAG Officers		
Normal cost for proposed population¹		
Current rate	11.52%	0.00% ²
New rate	13.53%	1.84%
Rate change	2.01%	1.84%
Unfunded Liability and Actuarially Sound Contribution (ASC) Rate		
Change in Unfunded Liability	\$3.8 million	\$28.1 million
Change in ASC Rate	0.03%	0.02%
Total ASC Rate	18.76%	3.11%
Additional Annual Contributions		
Additional amount needed to be sound (portion associated with benefit change)	\$1.8 million	\$3.1 million
Total amount needed to be sound	\$247.9 million	\$17.6 million

Note¹: Includes administrative expenses.

Note²: Currently, this population does not accrue benefits under LECOSRF, so there is not a current normal cost rate for it.

Source: Gabriel Roeder Smith.

Under this scenario, both plans would experience increases in normal and ASC cost rates, unfunded liabilities, and the additional amounts needed for annual contributions. While both scenarios increase the cost and liability for the plans, the scenario assuming past and future service adds greater costs than certifying future service only.

Pension Plan Terminology

When evaluating a plan's funding status, there are a few key terms to understand:

- **Funded ratio:** A measure of assets to liabilities.
- **Unfunded Liability:** The portion of benefits earned (liabilities) for which there are not sufficient plan assets to pay.
- **Normal Cost Rate:** The cost of benefits earned in the current year. Normal cost is the best way to measure the relative cost of the provided benefits. The current contributions cover normal cost for ERS and LECOSRF.
- **Actuarially Sound Contribution (ASC) Rate:** The contribution rate needed to pay normal cost and amortizes any unfunded liability over 31 years. The current contributions do not meet the ASC rate.

Because the plans are not sound as defined by law, the plans must receive an actuarially sound contribution to comply with statute. This requires continuing annual contributions to both plans. As part of its analysis, ERS was asked to consider whether groups could be added if the Legislature were able to cover these additional costs to the plan. ERS determined that existing statute has a broad intent of preventing additional costs and liabilities being added to the pension plans when they are not financially strong enough to absorb new costs. Both the Texas Government Code §811.006 and Article XVI § 67(a)(1) of the Texas Constitution reflect that sound actuarial funding of existing ERS benefits is a prerequisite to increases in benefits to ERS members, including members of LECOSRF.

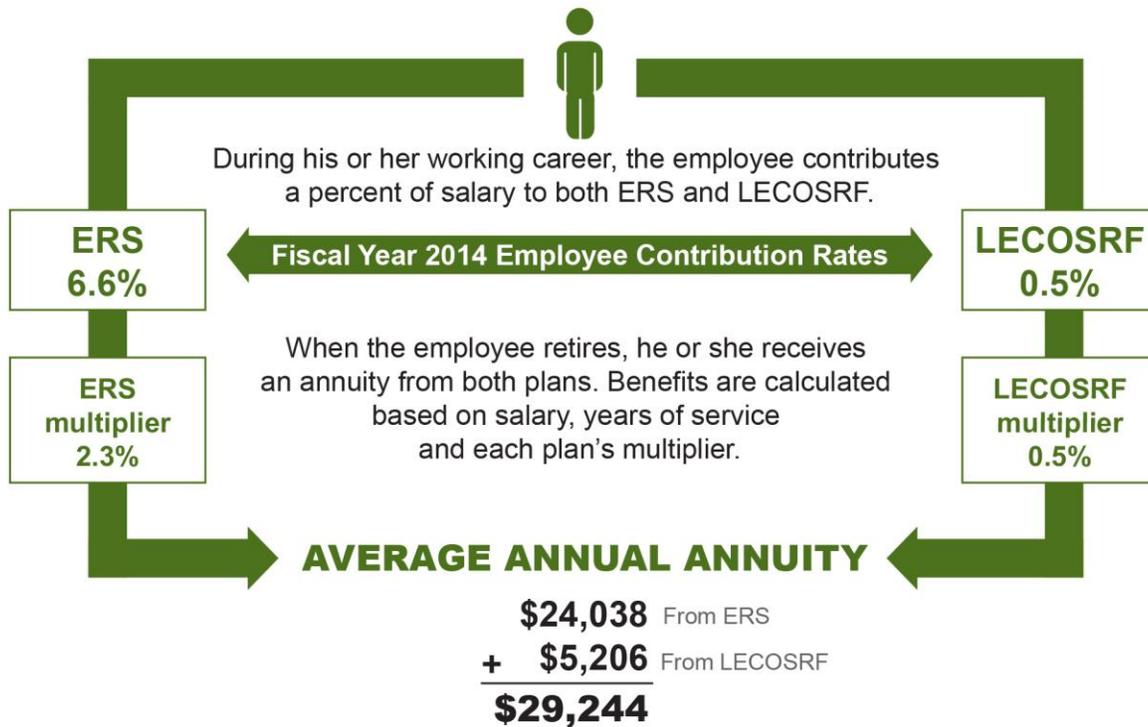
LECOSRF History and Background

The Law Enforcement and Custodial Officer Supplemental Retirement Fund (LECOSRF) is a trust fund that exists to pay supplemental retirement and occupational disability benefits to certain law enforcement and custodial officers employed by the State of Texas. Members of LECOSRF are also members of the State Employees Retirement plan, which provides an annuity from the main ERS pension trust fund.

How LECOSRF Membership Enhances Retirement Benefit

An employee who is eligible for LECOSRF receives benefits from the ERS plan plus the supplemental benefit from LECOSRF. The employee's LECOSRF membership provides a supplemental benefit in recognition of his or her particular job responsibilities. These duties include public safety and criminal justice job functions, such as patrols, criminal investigations, and overseeing the custody and care of offenders. Money in LECOSRF can only be used to pay this supplemental retirement, as well as occupational disability retirement benefits. Figure 3 shows how the two plans combine into one annuity for a LECOSRF-eligible employee.

Figure 3
Combined Annuity for LECOSRF-eligible employees, August 2013
 A LECOSRF-eligible member will receive a benefit from the ERS and LECOSRF plans.



For the average LECOSRF retiree,
82% of his or her annuity is from the ERS plan and 18% is from LECOSRF.

Note: Average annual annuity is based on annuity payroll from August 2013. Average annuities are based on an average salary of \$44,480.

Source: Employees Retirement System.

In general, LECOSRF eligibility provides a greater benefit compared to regular, non-LECOSRF employees including:

- The ability to retire at an earlier age with a full, unreduced annuity from both the ERS main fund and LECOSRF;
- An annuity from the main ERS fund that is 9.85% more valuable;
- A combined main fund and supplemental annuity that is 25% more valuable; and
- An average annual supplemental annuity of \$5,206.

Plan History

The Texas Legislature created LECOSRF in 1979. Before its creation, law enforcement officers and custodial officers could retire with 20 years of creditable Certified Peace Officer/Custodial Officer (CPO/CO) service, regardless of their age. This retirement eligibility allowed them to retire earlier than other state employees, but they did not receive any supplemental benefit.

With LECOSRF's creation, law enforcement and custodial officers employed by the following agencies formed the initial eligible population:

- Department of Public Safety (DPS);

- Texas Alcoholic Beverage Commission (TABC);
- Texas Parks and Wildlife Department (TPWD); and
- Texas Department of Corrections (later Texas Department of Criminal Justice or TDCJ).

Since the creation of LECOSRF, the Texas Legislature has added several groups to the definition of "law enforcement officer" or "custodial officer." These include former TDCJ employees who were reemployed at the University of Texas Medical Branch (UTMB) and Texas Tech University Health Science Center in 1993 when the State transferred its correctional managed care program for offenders. The Board of Pharmacy law enforcement officers were added in 1995, but later removed in 2005. Employees of the Board of Pardons and Paroles were added as custodial officers in 1999. Finally, investigators employed by the Office of the Inspector General at the Texas Youth Commission (TYC), which later became TJJD, were added to LECOSRF in 2007. Figure 4 provides a snapshot of current LECOSRF membership. Generally, the circumstances that permitted additional membership in LECOSRF were different:

- The membership was a reclassification of existing LECOSRF members to another agency (TDCJ staff transferred to UTMB or Texas Tech for managed care);
- The ERS Fund and LECOSRF were actuarially sound or overfunded, such as when officers from the Board of Pharmacy were added in 1995 or the Board of Pardon and Paroles staff in 1999;
- Officers at the Texas Youth Commission's Office of Inspector General (OIG) were added in 2007 when the OIG was created. While the LECOSRF funding status had declined, when OIG officers were added the fund was still actuarially sound. LECOSRF became unsound at the next valuation in August 2007, primarily due to a 14-year contribution holiday.

Figure 4
Agencies with Eligible LECOSRF Membership, August 2014¹

Law Enforcement Officers	Custodial Officers
<p>Department of Public Safety (DPS)</p> <p>Texas Alcoholic Beverage Commission (TABC)</p> <p>Office of the Inspector General at the Texas Juvenile Justice Department (TJJD)</p> <p>Texas Parks and Wildlife Department (TPWD)</p> <p>Texas Board of Pharmacy <i>(if employed prior to September 1, 2005)</i></p>	<p>Board of Pardons and Paroles</p> <p>Texas Department of Criminal Justice (TDCJ)</p> <p>University of Texas Medical Branch (UTMB) and Texas Tech University Health Services <i>(transfers from TDCJ for managed care; only if they were certified as custodial officers at TDCJ)</i></p>

Note¹: Only employees with law enforcement or custodial officer duties at each agency are eligible for LECOSRF. Source: Texas Government Code, Sections 811.001(8) and 811.001(9).

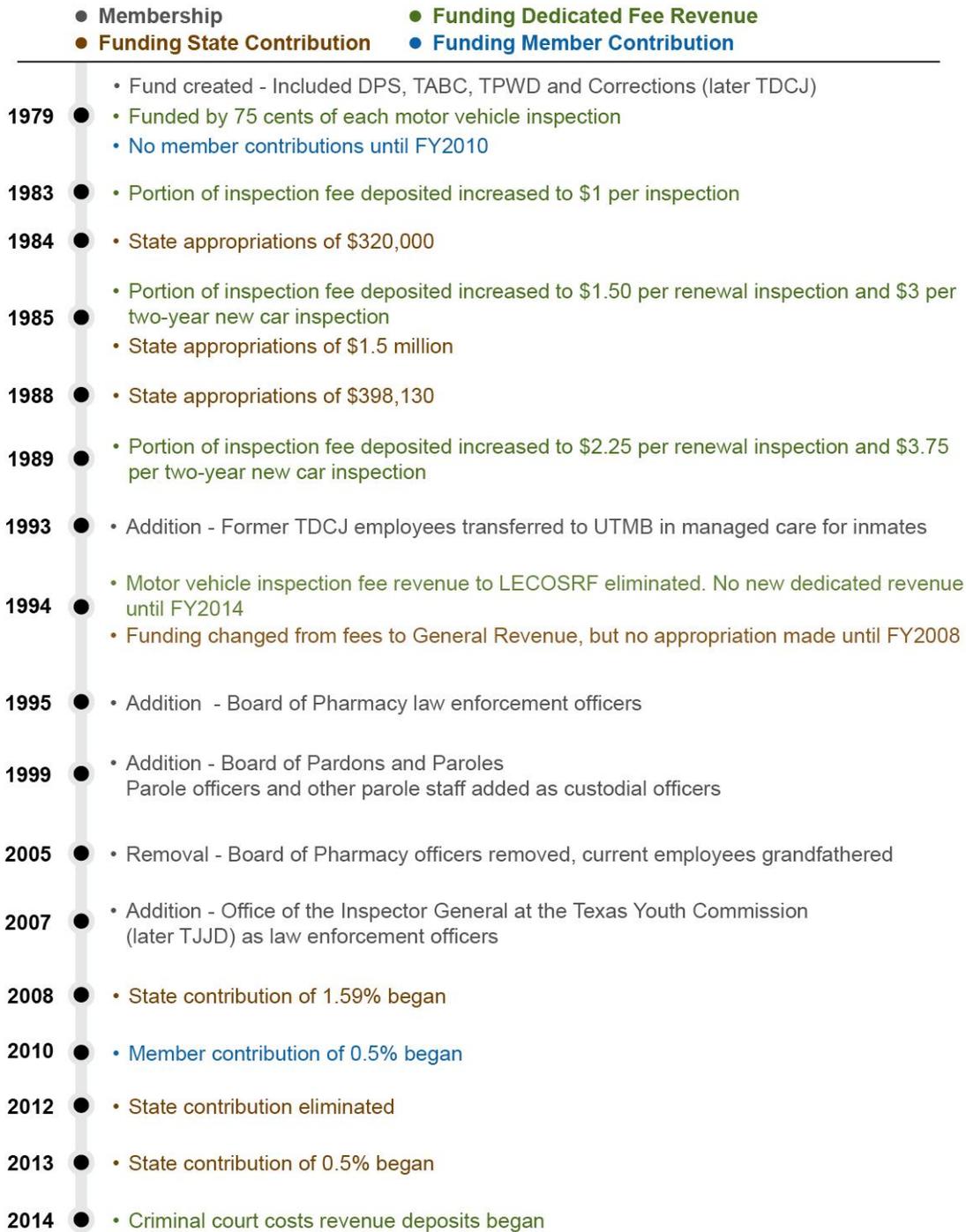
When created in 1979, LECOSRF was initially funded by depositing 75 cents from each motor vehicle inspection fee to the fund. This fee and the portion received by the LECOSRF increased multiple times between 1979 and 1993. By August 1993, the LECOSRF was significantly overfunded, with a funded ratio (ratio of plan assets to liabilities) of 247% and \$221 million more in assets than were needed to pay benefits. In 1993, the legislature changed the source of funding from the inspection fee to general revenue.

Beginning in 1995, statutory amendments required the state to contribute 2.13% of compensation for law enforcement and custodial officer participants to be deposited in the LECOSRF. The Texas Legislature did not begin funding state appropriations from General Revenue to the LECOSRF until fiscal year 2008, contributing 1.59% of payroll. By that time, the plan had more liabilities than expected assets. This contribution continued for four years. A budget shortfall eliminated the state contribution for fiscal year 2012. The contribution resumed at a lower rate of 0.5% in fiscal year 2013.

Within the ERS main fund, all state employees have been required to contribute to the retirement fund since the plan's inception. By contrast, law enforcement and custodial officers did not make member contributions to LECOSRF until fiscal year 2010. Legislation from 2009 required a LECOSRF member contribution equal to 0.5% of his or her payroll to the supplemental fund. Other 2009 reforms included a new tier of benefits that reduced ongoing costs for law enforcement or custodial officers hired on or after September 1, 2009. These included a final average salary averaged over a longer period at retirement, limitations on using unused sick and annual leave to become eligible, and a maximum 25% reduction of the annuity at retirement before age 55.

The Texas Legislature made additional changes in 2011 and 2013. Legislation from 2011 dedicated a portion of the consolidated court cost revenues to LECOSRF. Beginning in fiscal year 2014, the comptroller is required to deposit 11.1426% of the consolidated court cost revenues into the trust fund. In 2013 legislation added further reforms for a third tier for the ERS and LECOSRF plans. Figure 5 provides a visual history of LECOSRF membership and funding.

**Figure 5
LECOSRF Membership and Funding History**



Source: Texas Government Code, Chapter 811 and relevant legislation.

As of August 2013, LECOSRF had 65,706 members. Figure 6 shows the number of each member type.

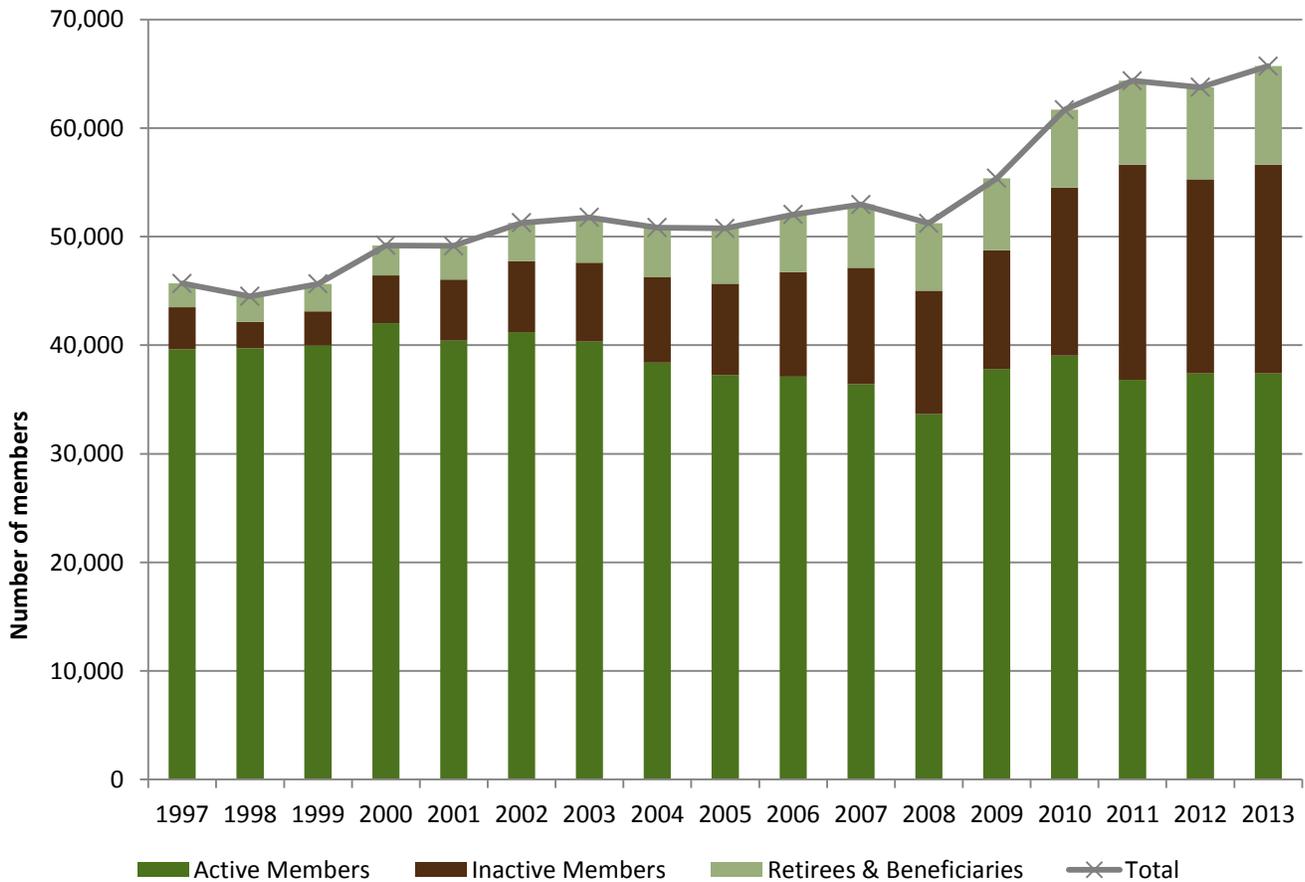
Figure 6
LECOSRF Membership by Member Type, August 2013

Member Type	Number of Members
Active employees	37,415
Inactive members	19,202
Retirees and beneficiaries	9,089
Total Members	65,706

Source: ERS Actuarial Valuation and ERS Customer Benefits, August 2013.

LECOSRF membership has grown over time. Since 1997, active (currently employed) membership has decreased by 5.6%. However, in the same period, inactive non-contributing membership has increased 395% and retiree membership has increased by 316%. This trend in the ratio of active members to retirees increases the costs of a plan over the long term, because the plan's funding is based on a declining payroll base. If LECOSRF was actuarially sound, the declining payroll base would not matter. This trend only matters when there is an unfunded liability. Figure 7 shows the historical membership levels by member type.

Figure 7
Historical LECOSRF Membership, 1997-2013



Source: Employees Retirement System, Customer Benefits Division.

LECOSRF Workforce

As of July 2014, there were approximately 35,000 members contributing to LECOSRF. As shown in Figure 8, approximately 87% of LECOSRF contributing members work for TDCJ. The majority of the TDCJ's LECOSRF members serve as correctional officers.

Figure 8
LECOSRF Contributing Members by Agency, July 2014

Agency	Number	Percent
TDCJ	30,708	87%
DPS	3,428	10%
TPWD	679	2%
TABC	235	Less than 1%
UTMB	64	Less than 1%
TJJD	15	Less than 1%
Board of Pharmacy	2	Less than 1%

Source: Employees Retirement System, Customer Benefits Division.

Within LECOSRF, employees in eligible positions performed a variety of public safety and criminal justice related tasks. Figure 9 highlights some of the job duties for LECOSRF-eligible positions.

Figure 9
Job Functions of LECOSRF Eligible Positions

Law Enforcement	Custodial Officers
Criminal apprehension and arrests	Oversee custody and care of offenders
Criminal investigations	Emergency and disaster response affecting offender facilities
Court case preparation	Supervise offenders on work detail in agricultural duties, food service, and laundry
Disaster and emergency response	Provide counseling, healthcare and case management to offenders
Executing search warrants	Monitor offenders on parole
Firearm and weapons training	
Inspection of licensed premises	
Traffic stops	
Patrols	

Source: Texas State Auditor's Office.

As shown in Figure 10, the agencies and positions with active LECOSRF members vary. The recruitment and retention issues differ between law enforcement and custodial officers. Salary and retirement benefits both play a role in recruitment and retention for the LECOSRF-eligible

populations. In fiscal year 2013, state law enforcement positions had a 5% aggregate turnover rate, which was lower than the 17.6% overall state turnover rate.

The three primary law enforcement agencies with LECOSRF-eligible staff are DPS, TPWD, and TABC. Representatives of all three employers indicate that many of their law enforcement officers make lifelong careers at their agencies. All three indicate a prestige associated with being a game warden, park police officer, trooper, or agent. For these agencies, a majority of the turnover among law enforcement positions (with the exception of park police officers) comes from staff retiring at the end of their careers. By contrast, custodial officer positions at TDCJ, specifically the correctional officer positions, have a higher rate of turnover than the overall state employee population.

In addition, except for park police officers, law enforcement positions at these three agencies are eligible for Schedule C salary groups. Within state employment, most positions fall under salary groups for Schedules A, B or C. Schedule C was developed for law enforcement in the 1990s to provide an accelerated career ladder. For the 2014-15 biennium, a new targeted pay increase was included for Schedule C salary groups. These agencies, particularly DPS, indicate that the salary increases have had a noticeable impact on their recruitment efforts and expanded the pool of applicants for these positions.

Figure 10
LECOSRF Active Employees by Agency and Position, 2013-2014

LECOSRF Member Type	Agency	Eligible Positions	Headcount July 2014	Position Turnover FY13	Average Years of Agency Service	Eligible for Schedule C?	
Law Enforcement	DPS	Trooper Trainee/ Probationary Trooper	458	17.9%	< 1.0	Probationary Trooper Only	
		Trooper	1,707	3.3%	12.0	Yes	
		Corporal	246	5.0%	19.6	Yes	
		Sergeant/Lieutenant/ Captain/Major	1,274	4.1%	22.7	Yes	
		Commander	1	0.0%	19.0	Yes	
	TABC	Agent Trainee	28	7.5%	Not available	Yes	
		Agent	154	8.1%	Not available	Yes	
		Sergeant/Lieutenant/ Captain/Major	49	14.7%	Not available	Yes	
	TPWD	Game Warden Trainee/Probationary Game Warden	28	15.9%	1.0	Yes	
		Game Warden	400	2.9%	11.0	Yes	
		Sergeant/Lieutenant/ Captain/Major	82	0.0%	19.0	Yes	
		Assistant Commander/ Commander	7	14.8%	19.0	Yes	
			Park Ranger (Park Police)	150 ²	11.9% ³	Not available	No

LECOSRF Member Type	Agency	Eligible Positions	Headcount July 2014	Position Turnover FY13	Average Years of Agency Service	Eligible for Schedule C?
Custodial Officers	TDCJ ¹	Correctional Officers	23,367	24.6%	8.1	No
		Correctional Officer Sergeant/Lieutenant/Captain/Major	3,015	10.5%	13.4	No
		Administrative Assistant	619	12.7%	10.9	No
		Agriculture Specialist	113	15.8%	13.8	No
		Case Manager	235	13.1%	10.7	
		Chaplain	117	18.8%	7.2	No
		Clerk	873	17.9%	6.6	No
		Correctional Transportation Officer	116	20.0%	11.2	No
		Food Service Manager	811	18.5%	9.7	No
		Investigator	95	28.3%	13.5	No
		Laundry Manager	671	15.3%	14.4	No
		Maintenance Supervisor	835	18.4%	10.8	No
		Parole Officer	1,719	13.3%	8.2	No
		Warden	179	8.7%	24.3	No

Note¹: Due to the scope and number of TDCJ employees who are eligible for LECOSRF, this table does not include every possible job classification. In addition, the agency's 2014 headcount is as of May 2014.

Note²: Estimated based on interview with Ken White, Human Resources Director, Texas Parks and Wildlife Department.

Note³: Turnover rate for FY 2013 based upon Park Ranger position. This combines park police and interpretative park rangers.

Source: Department of Public Safety; Texas Alcoholic Beverage Commission; Texas Department of Criminal Justice; Texas Parks and Wildlife Department; and Texas State Auditor's Office.

Texas Juvenile Justice Department Custodial Officers

As of July 2014, the Texas Juvenile Justice Department (TJJD) employed about 2,500 staff. Of those, 1,961 spend at least half or more of their time in direct contact with offenders.

TJJD's direct contact workers have a range of job functions. These positions include correctional officer, case manager, parole officer, halfway house staff, social worker, psychologist, and educational staff, such as teachers. Two-thirds of the direct contact employees are juvenile correctional officers. Figure 11 shows the direct contact staff that TJJD would like added to LECOSRF. According to TJJD, all of these positions are located in a secure facility, a halfway house, or a district parole office. None of these positions are eligible for Schedule C, which is only for commissioned law enforcement agents and generally provides higher salaries.

TJJD regularly competes with TDCJ for staff. TJJD is comparable to TDCJ regarding turnover. For FY13, TJJD had a turnover rate of 30.3%, and TDCJ had a turnover rate of 20.6%. Within both agencies, the correctional officer position makes up the majority of the staff and is the major driver of each agency's turnover. TJJD has indicated it has matched salary on its positions that are comparable to TDCJ. The agency believes that offering the LECOSRF benefit to direct offender contact staff would be an additional recruitment and retention tool to help mitigate turnover.

Figure 11
Potential TJJD Employees for LECOSRF

Positions	Headcount July 2014	Position Turnover FY13	Average Agency Service (in years)
Administrative Assistant ¹	8	17.4%	10.9
Case Manager	135	23.0%	7.5
Chaplain	5	36.4%	3.7
Clerk ¹	7	21.2%	12.8
Cook	63	20.2%	6.9
Dorm Supervisor	26	14.6%	13.2
Food Service Manager	17	23.8%	9.5
Halfway House Superintendent/ Assistant Superintendent	13	6.3%	10.8
Human Services Specialist	28	3.1%	13.9
Investigator ^{1,2}	20	9.4%	11.0
Juvenile Correctional Officer	1,331	37.9%	6.6
Manager ¹	17	9.1%	11.8
Parole Officer	27	6.9%	15.1
Program Specialist ³	18	15.3%	12.7
Program Supervisor ⁴	14	14.0%	16.9
Psychologist/Associate Psychologist	37	24.3%	4.3
Social Worker	8	68.6%	8.9
Teacher Aide	32	11.6%	8.1
Teacher/Coaches/Principal	144	26.8%	8.0
Youth Facility Superintendent/ Assistant Superintendent	11	28.6%	11.4

Note¹: Turnover figure includes all employees in job class, not just hazardous duty employees.

Note²: Excludes Office of Inspector General Investigators who are already members of LECOSRF.

Note³: Program specialists include family liaisons, youth rights specialists, and re-entry liaisons.

Note⁴: Program supervisors include parole supervisors/regional managers, alcohol and other drug (AOD) program supervisors.

Source: Texas Juvenile Justice Department and Texas State Auditor's Office.

Figure 12 shows the duties of correctional officers at TDCJ and juvenile correctional officers at TJJD, based on the job descriptions available from the Texas State Auditor's Office.

Figure 12
Job Duties for Correctional Officers

TDCJ Correctional Officers	TJJD Juvenile Correctional Officers
Care and custody of offenders	Care and custody of juveniles
Emergency and disaster response affecting offender facilities	Oversees juvenile activities, programs and behaviors
Controls offender movement within facilities	Ensures juveniles are accounted and any escapes reported
Conducts searches of buildings, dorms, cellblocks for contraband	Performs health and safety inspections
Provides security of offenders providing technical skills (construction, maintenance, laundry, etc.)	Transports juveniles as appropriate
Conducts security counts of offenders	Investigates incidents
Controls opening and closing of doors with locks and monitors perimeter	

Source: Texas State Auditor's Office.

Office of the Attorney General Law Enforcement Investigators

The Office of the Attorney General (OAG) currently employs about 160 law enforcement officers in its criminal justice divisions. The job duties include criminal investigations, arrests, and preparing cases for trial. These divisions use law enforcement officers to investigate a variety of crimes, including human trafficking, fugitive apprehension, white-collar crime, Medicaid fraud, cybercrimes involving the exploitation of children, public corruption cases, and money laundering. This function began as a pilot in the early 1990s, with the scope and staff size expanding over time.

The typical candidate for this position has at least five years of law enforcement experience. About 30% of employees come from other state agencies, such as DPS; 60% from local law enforcement; and the remainder from other sectors, such as the federal government or the private sector.

The average OAG investigator has about 5.5 years of service with the agency. For the 2012-2013 biennium, the agency lost 28 law enforcement officers, an 18% turnover rate for investigator positions. When OAG investigators leave the agency for other employment, they typically go to local law enforcement or the private sector. The agency has identified two areas that it feels could improve its recruitment and retention: adding investigators to the State's Schedule C for law enforcement salaries and adding them to the LECOSRF for retirement benefits.

Figure 13 shows the duties of certain law enforcement officers at DPS and the OAG, based on the job descriptions available from OAG and the Texas State Auditor's Office.

Figure 13
Job Duties for DPS and OAG Officers

DPS Troopers	OAG Investigators
Conducts criminal investigations	Conducts criminal investigations, including suspect interrogations
Conducts patrols in high crime areas and assigned areas (including state office buildings and Capitol Complex)	Interviews witnesses
Conducts Driving While Intoxicated (DWI) and traffic-related investigations	Participates in raids, searches and manhunts
Makes arrests	Makes arrests
Performs disaster rescue operations	Executes court orders and serves warrants
Apprehends criminals	Testifies as witness in trials and hearings
Testifies in court	Documents investigative process

Source: Office of the Attorney General and Texas State Auditor's Office.

Figure 14 provides a snapshot of funding status for both plans based on the August 31, 2013 actuarial valuation.

Figure 14
Funding Status of ERS and LECOSRF, August 2013

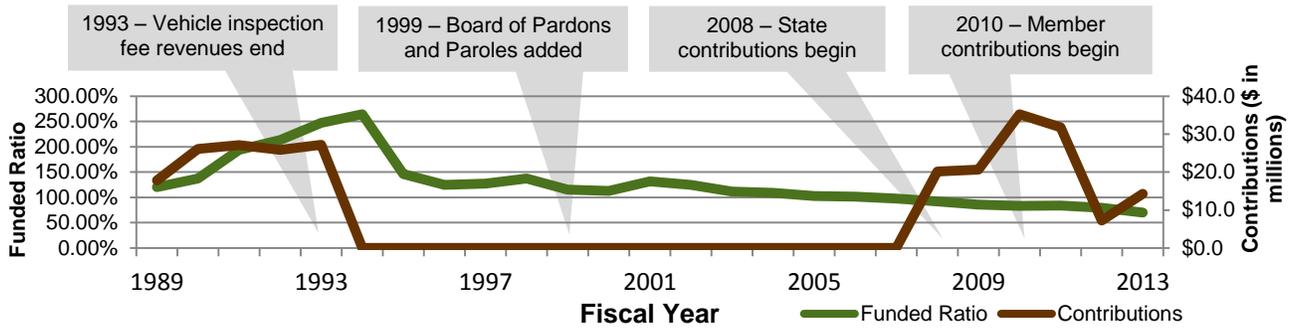
	ERS	LECOSRF
Funded Ratio	77.40%	70.40%
Unfunded Liability	\$7.2 billion	\$354.1 million
Normal Cost Rate	11.57%	1.80%
FY 2014 - Actuarial Sound Contribution (ASC) Rate	18.73%	3.09%
FY 2014 - Total Contribution Rate	14.60%	2.20% ¹
Contribution Rate Shortfall	(4.13%)	(0.89%)
Funding Period	Never	Never

Note¹: Includes appropriated criminal court costs, which are estimated to be 1.20% of LECOSRF payroll.

Source: ERS and LECOSRF 2013 Actuarial Valuations.

Historically, LECOSRF has been at or over 100% funded ratio. This status was due in large part to the amount of revenue deposited to the LECOSRF trust fund from the dedicated motor vehicle revenue source from 1979 to 1993, before the funding source was changed to General Revenue. However, 14 years without any contributions had a significant impact on its funded status. Figure 14 shows some of the history of the LECOSRF funded ratio and contributions.

Figure 15
LECOSRF Historical Funded Ratio and Contributions, 1989-2013



Source: ERS LECOSRF Actuarial Valuations.

As of August 31, 2013, ERS and LECOSRF are not fully funded and are considered actuarially unsound (assuming plan assumptions are met). Both plans have an unfunded liability, funding ratios below 80%, and an infinite funding period. An infinite funding period means that if ERS maintains current contribution rates, the unfunded liability will grow indefinitely. It will never be paid off.

Adding Texas Juvenile Justice Department (TJJD) Custodial Officers to LECOSRF

Currently, custodial officers at TJJD are members of the State Employee Retirement plan funded by the main ERS trust fund. They earn regular, non-CPO/CO service. Adding approximately 2,000 TJJD custodial officers as LECOSRF-eligible members impacts both the ERS and LECOSRF plans.

The current overall impact of adding TJJD custodial officers to the LECOSRF is small due to the size of the population (less than 2,000 employees). Due to the restrictions of the Texas Government Code § 811.006, to make a benefit enhancement, the full actuarially sound contribution rate (ASC) rate would need to be provided to both ERS and LECOSRF. Over time, as mid- and late-career employees are replaced with younger employees who will work longer as LECOSRF members, the cost associated with this population will increase.

For employee service length at TJJD, among this population 1,341 employees have less than 10 years of service; 480 employees have 10-20 years of service (mid-career) and 140 employees have more than 20 years of service (late career).

Future Service Only for TJJD

If future TJJD service counted in LECOSRF membership, ERS and LECOSRF would have changes in cost rates, liabilities, and additional annual contributions. Figure 16 shows the changes to normal cost rates, unfunded liabilities and additional annual contributions for ERS and LECOSRF under this scenario.

Figure 16

Funding Impacts of Adding TJJJ Custodial Officers to LECOSRF

Assuming Only Future TJJJ Service is Certified

Based on the August 31, 2013 Actuarial Valuation

	ERS	LECOSRF
Future TJJJ Custodial Officer (CO) Service Only		
Normal cost for proposed TJJJ CO population¹		
Current rate	11.45%	0.00% ²
New rate	12.90%	0.91%
Rate change	1.45%	0.91%
Unfunded Liability and Actuarially Sound Contribution (ASC) Rate		
Change in Unfunded Liability	\$0.4 million	\$2.7 million
Change in ASC Rate	0.02%	(0.09%)
Total ASC Rate	18.75%	3.00%
Additional Annual Contributions		
Additional amount needed to be sound (portion associated with benefit change)	\$1.2 million	\$1.0 million
Total amount needed to be sound	\$247.3 million	\$15.5 million

Note¹: Includes administrative expenses.

Note²: This population does not currently accrue benefits under LECOSRF, so there is not a current normal cost rate for them.

Source: Gabriel Roeder Smith.

If only future service counts, it is anticipated that some mid- and late-career TJJJ custodial officers would not benefit from the LECOSRF addition. The mid-career population of 480 members and late-career population of 140 employees may not work long enough to meet the 20-year requirement for LECOSRF retirement eligibility; they do not have enough custodial officer state service overall or their prior TJJJ custodial officer service would not count.

Past and Future Service for TJJJ

If TJJJ Custodial Officers were added to LECOSRF, the cost rates, liability and additional contribution needed are higher in this scenario than if only future service counts. Figure 17 shows the changes to normal cost rates, unfunded liabilities, and additional annual contributions for ERS and LECOSRF under this scenario.

Figure 17

Funding Impacts of Adding TJJJ Custodial Officers to LECOSRF

Assuming Past and Future TJJJ Service is Certified

Based on the August 31, 2013 Actuarial Valuation

	ERS	LECOSRF
All TJJJ Custodial Officer (CO) Service (Past and Future)		
Normal cost for proposed TJJJ CO population¹		
Current rate	11.45%	0.00% ²
New rate	13.44%	1.83%
Rate change	1.99%	1.83%
Unfunded Liability and Actuarially Sound Contribution (ASC) Rate		
Change in Unfunded Liability	\$3.5 million	\$25.4 million
Change in ASC Rate	0.03%	0.02%
Total ASC Rate	18.76%	3.11%
Additional Annual Contributions		
Additional amount needed to be sound (portion associated with benefit change)	\$1.8 million	\$2.8 million
Total amount needed to be sound	\$247.9 million	\$17.3 million

Note¹: Includes administrative expenses.

Note²: This population does not currently accrue benefits under LECOSRF, so there is not a current normal cost rate for it.

Source: Gabriel Roeder Smith.

Adding Office of the Attorney General (OAG) Law Enforcement Officers to LECOSRF

Currently, law enforcement officers at the OAG are members of the State Employee Retirement plan funded by the main ERS trust fund. They earn regular, non-Certified Peace Officer/Custodial Officer (CPO/CO) service. Adding approximately 150 OAG law enforcement officers as LECOSRF-eligible members affects both the ERS and LECOSRF plans.

The current overall impact of adding OAG officers to LECOSRF is minimal due to the small size of the population (less than 200 employees). Due to the restrictions of the Texas Government Code § 811.006, to make a benefit enhancement, the full actuarially sound contribution rate (ASC) rate would need to be provided to both ERS and LECOSRF. Over time, as mid-career and late-career employees are replaced with younger employees who will work longer as LECOSRF members, the cost associated with this population will increase.

For employee service at OAG, among this population 123 employees have less than 10 years of service; 23 employees have 10-20 years of service (mid-career) and five employees have more than 20 years of service (late career).

Future Service Only for OAG

If future OAG service counted in LECOSRF membership, ERS and LECOSRF would have changes in costs rates, liabilities, and additional annual contributions. Figure 18 shows the changes to normal cost rates, unfunded liabilities, and additional annual contributions for ERS and LECOSRF under this scenario.

Figure 18

Funding Impacts of Adding OAG Law Enforcement Officers to LECOSRF

Assuming Only Future OAG Service is Recognized

Based on the August 31, 2013 Actuarial Valuation

	ERS	LECOSRF
Future OAG CPO/CO Service Only		
Normal cost for proposed OAG CPO/CO population¹		
Current rate	12.04%	0.00%
New rate	13.73%	0.77%
Rate change	1.69%	0.77%
Unfunded Liability and Actuarially Sound Contribution (ASC) Rate		
Change in Unfunded Liability	Less than \$100,000	Less than \$100,000
Change in ASC Rate	Less than 0.01%	(0.02%)
Total ASC Rate	18.73%	3.07%
Additional Annual Contributions		
Additional amount needed to be sound (portion associated with benefit change)	Less than \$100,000	Less than \$100,000
Total amount needed to be sound\$	\$246.1 million	\$14.5 million

Note¹: Includes administrative expenses.

Note²: This population does not currently accrue benefits under LECOSRF, so there is not a current normal cost rate for it.

Source: Gabriel Roeder Smith.

If only future service counts, it is anticipated that some mid- and late-career OAG law enforcement officers would not benefit from the LECOSRF addition. The current mid-career population of 23 employees and late-career population of five employees may not work long enough to meet the 20-year requirement for LECOSRF retirement eligibility; because they do not have enough CPO state service overall or their prior law enforcement service with OAG would not count.

Past and Future Service for OAG

If OAG Law Enforcement Officers were added to LECOSRF, the cost rate, liability, and additional contribution needed are higher in this scenario than if only future service counts. Figure 19 shows the changes to normal cost rates, unfunded liabilities, and additional annual contributions for ERS and LECOSRF under this scenario.

Figure 19
Funding Impacts of Adding OAG Law Enforcement Officers to LECOSRF
 Assuming Past and Future OAG Service is Recognized
 Based on the August 31, 2013 Actuarial Valuation

	ERS	LECOSRF
All OAG Certified Peace Officer (CPO) Service (Past and Future)		
Normal cost for proposed OAG CO population¹		
Current rate	12.04%	0.00% ²
New rate	14.32%	1.99%
Rate change	2.28%	1.99%
Unfunded Liability and Actuarially Sound Contribution (ASC) Rate		
Change in Unfunded Liability	\$0.3 million	\$2.7 million
Change in ASC Rate	Less than 0.01%	Less than 0.01%
Total ASC Rate	18.73%	3.09%
Additional Annual Contributions		
Additional amount needed to be sound (portion associated with benefit change)	Less than \$100,000	\$0.3 million
Total amount needed to be sound	\$246.1 million	\$14.8 million

Note¹: Includes administrative expenses.

Note²: This population does not currently accrue benefits under LECOSRF, so there is not a current normal cost rate for it.

Source: Gabriel Roeder Smith.

How other states structure law enforcement and custodial officer retirement plans

Other states structure their retirement benefits for state law enforcement and custodial officers in a variety of ways. Benefit structures include being part of one plan with enhanced benefits, being part of a separate plan, or both. According to the National Conference of State Legislatures (NCSL), the only generalization for public safety employees consistent across states is that there are different plans provisions for them when compared to general state employees and teachers.

NCSL also notes that in general, public safety employees:

- Can retire earlier than other employees;
- Are less likely to be covered by Social Security (which does not apply to Texas);
- Have higher levels of their salary replaced by retirement benefits compared to other employees; and
- Contribute a higher percentage of their pay toward their retirement benefits than other employees.

Every state has enhanced benefits for state police or peace officers, although the positions included vary.

At least 21 states other than Texas offer enhanced benefits to state corrections staff, which includes correctional officers and may include other custodial staff comparable to positions at TDCJ.

Legal analysis and implementation steps

If the Texas Legislature would like to consider adding the select law enforcement and custodial officer population to the LECOSRF, it would need to consider certain statutory and constitutional issues and implementation steps.

Limitations under current statute and the Texas Constitution

The Texas Government Code § 811.006 prohibits any action that would increase the amortization period for the ERS and LECOSRF plans:

Section 811.006. ACTION INCREASING AMORTIZATION PERIOD.

(a) A rate of member or state contributions to or a rate of interest required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an actuarial valuation.

The current prohibition on actions increasing the amortization period was added to statute in 1985; this prohibition includes benefit changes that would increase the amortization period. There is a continuing actuarial cost to adding members, as detailed earlier in this report. It is the opinion of ERS legal staff that under § 811.006, the additional populations could not be added to LECOSRF while ERS and LECOSRF are actuarially unsound. To do so would increase benefits, and consequently, increase the amortization period as determined by the actuarial valuation of the proposal.

In addition to the statute, Article XVI § 67(a) (1) of the Texas Constitution states:

Financing of benefits must be based on sound actuarial principles.

The provision was added to the Texas Constitution in 1975. As explained by the Texas Legislative Council when the proposed amendment was presented to Texas voters:

“The sound actuarial requirement is intended to place a high level of fiscal and fiduciary responsibility on the Legislature and administrative bodies concerned with the creation, funding and management of the public retirement systems of Texas and is entirely a new provision.”

Adding new members to LECORSF without providing funds sufficient to make the fund actuarially sound would dilute the assets available to pay benefits to current LECORSF members. Such a dilution would be inconsistent with the fiduciary duties owed to those members.

Together, § 811.006 and Article XVI § 67(a)(1) reflect that sound actuarial funding of existing ERS benefits is a prerequisite to increases in benefits to ERS members, including, increased benefits resulting from adding new members to LECOSRF.

Implementation Steps

Adding select populations to LECOSRF would require the following steps to make ERS and LECOSRF actuarially sound, because a LECOSRF member receives an annuity from both plans.

1. Provide funding that fully addresses the actuarial soundness of the current ERS and LECOSRF plans as follows:
 - a. Appropriations in the 2016-17 General Appropriations Act sufficient to meet the actuarially sound rate for the main ERS fund and LECOSRF for existing members and accrued benefits.
 - b. An appropriation of lump sum payment(s) to the ERS and LECOSRF funds to eliminate unfunded liabilities. Payment of normal costs should then be paid to keep the funds actuarially sound.
 - c. Alternatively, a combination of appropriations described in a and b above that would fully address the requirement that financing of benefits be actuarially sound.
2. Enact a statutory amendment authorizing the addition of TJJJ custodial officers and OAG law enforcement investigators to the LECOSRF.
 - a. The amendment should include a provision that requires newly added LECOSRF members to pay contributions to the main ERS fund and LECOSRF to fully cover their costs. The amendment should clearly state whether it authorizes contributions for service credit for future service only or also for past service.
 - b. If the change covers only covering future service, the statute could include a provision to allow members to buy past CPO/CO service with TJJJ or OAG within a certain timeframe, at an actuarially cost rate, similar to the method currently used for calculating the purchase of Additional Service Credit (ASC) or waiting period service.
3. The TJJJ and OAG would need to certify any newly eligible service for select populations and certify new employees on an ongoing basis.
4. ERS would need to update its internal systems to reflect the membership changes and properly account for retirement service credit, eligibility, and benefits based on certifications from TJJJ and OAG.
5. ERS would factor newly eligible LECOSRF members into future actuarial valuations.

Of these steps, the first is essential to create and maintain a total contribution rate for both plans that matches the actuarially sound contribution rate. This initial step is necessary to comply with Texas Government Code § 811.006 and Article XVI § 67(a) (1) of the Texas Constitution.

Because the plans are not sound as defined by law, the plans must receive an actuarially sound contribution to comply with statute. This requires continuing annual contributions to both plans. As part of its analysis, ERS was asked to consider whether groups could be added if the Legislature was able to cover these additional costs to the plan. ERS determined that existing statute has a broad intent of preventing additional costs and liabilities being added to the pension plans when they are not financially strong enough to absorb new costs. Both §811.006 and Article XVI § 67(a)(1) reflect that sound

actuarial funding of existing ERS benefits is a prerequisite to increases in benefits to ERS members, including members of LECOSRF.

In addition to this report, ERS will publish a study in December 2014 that identifies the assets and liabilities specific to the law enforcement and custodial officer members.

Appendix A: Agency Participation in Study

The following agencies participated in this study, providing key data and valuable commentary on their workforce issues for their law enforcement and custodial officer related employee populations.

Agency	Participating Staff
Department of Public Safety	Norma Cortez, Human Resources
Office of the Attorney General	Henry De La Garza, Human Resources Jay Dyer, Intergovernmental Relations David Maxwell, Law Enforcement Division Forrest Mitchell, Law Enforcement Division John Poole, Human Resources Lupe Rodriguez, Human Resources
Texas Alcoholic Beverage Commission	Loretta Doty, Human Resources
Texas Department of Criminal Justice	Paula Gilbert, Human Resources Alicea Kirkland, Human Resources Brenda Lenorman, Human Resources Rhonda Shed, Human Resources
Texas Juvenile Justice Department	Royce Myers, Human Resources
Texas Parks and Wildlife Department	Kent White, Human Resources

Appendix B: Statutory definitions of law enforcement and custodial officer

The Texas Government Code Section 811.001 includes the following definitions for law enforcement officer and custodial officer:

(8)"Custodial officer" means a member of the retirement system who is employed by the Board of Pardons and Paroles or the Texas Department of Criminal Justice as a parole officer or caseworker or who is employed by the correctional institutions division of the Texas Department of Criminal Justice and certified by the department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates or defendants of the correctional institutions division without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the department. The term includes a member who transfers from the Texas Department of Criminal Justice to the managed health care unit of The University of Texas Medical Branch or the Texas Tech University Health Sciences Center pursuant to Section 9.01, Chapter 238, Acts of the 73rd Legislature, 1993, elects at the time of transfer to retain membership in the retirement system, and is certified by the managed health care unit or the health sciences center as having a normal job assignment described by this subdivision.

(9)"Law enforcement officer" means a member of the retirement system who:

(A) has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Department, or the office of inspector general at the Texas Juvenile Justice Department; and

(B) is recognized as a commissioned law enforcement officer by the Texas Commission on Law Enforcement.

Appendix C: Sample Certified Peace Officer (CPO)/Custodial Officer (CO) Retirement Annuity Calculations

Below are two examples of how annuities would be calculated for current LECOSRF-eligible members. These members would receive a portion of their annuity from the state employee plan out of the ERS fund and a portion from LECOSRF. The combined multiplier for these two benefits is 2.8%, with 2.3% applied to the annuity from ERS and 0.5% applied to the annuity from LECOSRF.

Standard annuity for CPO/CO with 20 years of service

The annuity calculation below is for a 50-year-old CPO/CO with 20 years of CPO/CO service credit and a final average salary of \$2,052.50 (highest 36 months' salary).

Percentage Calculation:

CPO/CO Service 20 years @ 2.8% =	56.00%
Total Percentage	56.00%

Standard Annuity Calculation:

Final Average Salary:	\$2,052.50
Percentage x 56.00%	
Total Monthly Standard Annuity	\$1,149.40

Reduced retirement for under-50 CPO/CO

The annuity calculation below is for a 44-year-old CPO/CO with 20 years, four months of CPO/CO service credit and a final average salary of \$1,950.51 (highest 36 months' salary).

Percentage Calculation:

CPO/CO Service 20 years @ 2.8% =	56.00%
4 months @ 0.233 / month =	0.932%
Total Percentage	56.932%

Standard Annuity Calculation:

Final Average Salary:	\$1,950.51
Percentage x 56.932%	
Total Monthly Standard Annuity	\$1,110.46

Because this member is under age 50, he or she qualifies for reduced retirement benefits. The standard monthly annuity will be reduced, based on the age at retirement. In this case, the benefit will be reduced to reflect the member's age of 44 at retirement.

Monthly Standard Annuity	\$1,110.46
Percentage of Full Benefit for Age 44 x 60.2%	
Early Retirement	
Total Monthly Standard Annuity	\$668.50

If the member wants to provide a survivor with a monthly annuity, the early retirement monthly standard annuity would also be reduced according to the Retirement Option selected.

Appendix D: Statutes impacting LECOSRF Funding and Membership

Year	Legislature/Bill	Action
1979	66 th Legislature, Regular Session Senate Bill 43	LECOSRF creation. Initial funding source set as 75 cents of every motor vehicle inspection fee deposited to LECOSRF.
1983	68 th Legislature, Regular Session Senate Bill 444	Portion of motor vehicle inspection fee deposited to LECOSRF increased to \$1 per inspection.
1985	69 th Legislature, Regular Session House Bill 1593	Portion of motor vehicle inspection fee deposited to LECOSRF increased to \$1.50 for renewal inspections and \$3 for two-year new vehicle inspections.
1989	71 st Legislature, Regular Session House 1494	Portion of motor vehicle inspection fee deposited to LECOSRF increased to \$2.25 for renewal inspections and \$3.75 for two-year new vehicle inspections.
1993	73 rd Legislature, Regular Session Senate Bill 1181 (Funding source) Senate Bill 378 (Managed care transfers)	Motor vehicle fee revenue eliminated for LECOSRF, effective September 1, 1993. Revenue source switched to General Revenue effective September 1, 1995 (no appropriations made until FY08). Existing TDCJ custodial officers transferred to University of Texas Medical Branch (UTMB) or Texas Tech University for managed care were permitted to retain LECOSRF membership.
1995	74 th Legislature, Regular Session House Bill 2522	Board of Pharmacy law enforcement officers added to plan membership.
1999	76 th Legislature, Regular Session Senate Bill 1130	Board of Pardons and Paroles custodial officers added to plan membership.
2005	79 th Legislature, Regular Session Senate Bill 262	Future Board of Pharmacy officers removed; current ones grandfathered.
2007	80 th Legislature, Regular Session Senate Bill 103	Office of Inspector General created at the Texas Youth Commission (TYC), later TJJD. The investigators were added as eligible members of LECOSRF.
2009	81 st Legislature, Regular Session House Bill 2559	Required LECOSRF member contributions of 0.5%. Included a new tier of benefits for law enforcement and custodial officers hired on or after September 1, 2009 that impacted final average salary base, limitations on unused sick and annual leave, and a minimum retirement age for an unreduced annuity.
2011	82 nd Legislature, Regular Session Senate Bill 1664	Dedication a portion of the existing consolidated court cost revenues to LECOSRF.
2013	83 rd Legislature, Regular Session Senate Bill 1459	Included a new tier of benefits for law enforcement and custodial officers hired on or after September 1, 2013 that impacted final average salary base, limitations on unused sick and annual leave, and a minimum retirement age for an unreduced annuity.

Contact Information

www.ers.state.tx.us

An electronic version of this report is posted on the About ERS, Reports page

To call:

(877) 275-4377, toll-free

To visit:

200 E. 18th Street, Austin, Texas 78701

To write:

P.O. Box 13207, Austin, Texas 78711-3207

This report was written by:

Jennifer Jones, ERS Governmental Affairs

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ERS Benefits Communications

ERS Operations