CHAPTER 5

WRS needs administrative flexibility, plus more formal legislative oversight of the system

Chapter Summary

As a state government agency, WRS lacks flexibility to carry out its charge.

Statutes entrust the WRS board with managing a $6 billion dollar portfolio, but they control and limit the resources available to the system to carry out that work. These constraints are becoming more apparent as the system continues to grow in assets and membership. Compared to similarly-situated programs in surrounding states, WRS has more responsibilities and less flexibility with which to accomplish its charge. WRS appears to have outgrown the status of a "regular" agency, and needs more flexibility to carry out its required functions.

WRS also lacks a "legislative home," or a committee to which it routinely reports.

At the same time, we believe legislative understanding of the growing complexity of retirement issues in general, and of the WRS system in particular, has been limited by the separateness of WRS. While considered an agency for most purposes, WRS receives less oversight from the Legislature than other agencies do. No single legislative standing committee has purview over retirement issues or has developed expertise in those matters. Legislative liaisons have provided a good starting point toward greater understanding and communication, but a more formal venue is needed for regular interaction, and to develop deeper understanding.

WRS operates like a state agency

WRS complies with requirements for state agencies, but also runs a large investment business.

Statutorily, WRS is similar to other state agencies in that it must comply with budget and reporting requirements and produce strategic plans. WRS also complies with executive branch personnel rules despite some lack of statutory clarity: W.S. 9-3-406(a) states that "compensation of employees shall be fixed by the board" but such compensation is "subject to confirmation and approval by the personnel division…." WRS has other characteristics and functions that differentiate it from state agencies: responsibility for administering and operating the system is vested solely and exclusively with the board; it manages a multi-billion dollar investment portfolio; and its operating costs come from system assets, not from General Fund appropriations. These large differences notwithstanding, WRS operations often resemble those of other state agencies.

Agency requirements are not always compatible with the activities of large-scale investing.

WRS carries out two distinct functions: performing the ministerial duties associated with administering public pensions; and managing the more complicated institutional investment side, with a diverse and growing financial portfolio. While the placement and structure of WRS within state government are compatible with the function of administering benefits, they are less conducive to running a large investment business. As WRS grows and policy and investing decisions become even more complex, we believe this structure is likely to become more of an obstacle.

WRS operates with a low administrative cost

WRS has been frugal with administrative expenditures.

For years, WRS has been cognizant that every dollar spent on operational costs comes from member contributions. The frugality resulting from this mindset has produced a low administrative cost of about .0017, or .17 percent, of total covered payroll. Focus on the "bottom line" has led it to make few requests for additional staff, despite the increased responsibilities that have come from the additional plans and members assigned to it. Similarly, WRS has not sought exemptions from salary and classification requirements; while these requirements may help keep the system's personnel costs low, they may also limit its ability to recruit specialized expertise.

State agency staffing patterns are not always congruent with the need to operate like a business

A $6 billion financial portfolio necessitates investing expertise.

While a focus on controlling costs has many positive aspects, that same determination may, in the long term, give rise to staffing deficiencies and system inefficiencies. WRS is responsible for a financial portfolio that has tripled in size since our 1996 report, and now amounts to over $6 billion. The staffing expertise necessary to support investing of this magnitude is not easily achieved under the state's personnel system, which involves a lengthy approval process for new positions. Also, we heard concerns that the state's salary structure may not be competitive in attracting specialty skills and knowledge.

WRS has full authority regarding millions in investment-related fees.

The WRS staff-to-member ratio has been described as not just low, but perhaps the lowest among state retirement systems. The WRS Board has little or no discretion with regard to staffing costs and other administrative expenses, which comprise less than 15 percent of the system's total expenses. However, the board has full authority over the remaining expenses, which consist of millions of dollars in investment-related fees.

But staffing costs and other operating expenses, which are much smaller, are state-controlled.

We note a need for WRS to have professional staff to devote to system analysis, both prospective and retrospective. Lean staffing has been sufficient to carry out administrative responsibilities for members, but it appears to have hampered development of a cadre of specialized analytical personnel who can:

- Carry out planning and policy development
- Analyze WRS' abundant data
- Respond to board member and legislator research requests
- Monitor changes that may impact benefit liabilities
- Conduct analysis on the sufficiency of retiree benefits and maintenance of retiree purchasing power

The effects of resource constraints are becoming more apparent

Frugality has constrained some functions.

We reviewed several aspects of WRS operations to determine whether this fiscally cautious mindset may be impacting different functions. Each of the following examples alone is not a critical problem, but together they point to operational functions limited by constraints on internal resources. The result is that long-term operational goals are superseded by day-to-day needs.

WRS has developed a flexible, customized IT system.

IT system and staffing Data management is critical to nearly every function WRS performs, from maintaining membership data and calculating payroll contributions to estimating benefits. The information technology (IT) function of WRS is supported by one out-of-state programmer at a fraction of the cost other state retirement systems pay for their programs. By contracting with this programmer, WRS has been able to develop a system customized to its own needs, that has the flexibility to adapt and grow, and that by all accounts performs as intended.

The system relies on one out-of-state programmer.

Nevertheless, the system uses a language, Clarion, that has been described as eccentric; extensive understanding of Clarion is needed to navigate and program without error. WRS is cognizant of the potential weaknesses in relying on one out-of-state programmer and using an unusual programming language. In its 2000 contract cover letter, WRS stated an intention to have at least two staff members be fully competent in Clarion. Also, the 2000-01 contract between WRS and the programmer provided that the "consultant will provide appropriate training, to the satisfaction of WRS, to enable WRS personnel to operate any software, hardware or other deliverables…."

At present, however, in-house IT staff consists of two full-time positions, neither of whom is proficient in this computer language. The current contract with the programmer does not require that individual to train IT staff at WRS. This shifts the burden of IT training from consultant to system, yet WRS staff appears to be spread too thin to afford the luxury of attending training for something that is not an immediate need.

Some information is difficult to find on WRS website

WRS website The WRS website provides information on the defined benefit and Deferred Compensation plans, as well as links to other useful sites. Geared to disseminate facts and updates to members and employers, the website provides much of the same type of information that is standard on other states' retirement websites, although in the case of WRS, some information can be difficult to find.

Beyond this purpose, other states also use their websites as a forum for explaining their actions and positions on various topics, to prepare membership for upcoming benefit and plan changes, to allow dialogue with stakeholders, and to provide a broad range of information and tools in user-friendly formats. WRS acknowledges that enhancements to the website could assist members in understanding their plan, but cites a lack of personnel and funding to make such changes.

Chief investment officer position The WRS director manages the pension or benefit side of the system, carrying out duties that range from preparing reports and handling personnel issues to staffing the board. The director is also, in effect, acting as the chief investment officer (CIO) by reviewing investment reports from money managers, communicating with consultants, actuaries, and auditors, and summarizing performance information for the board. The board hires approximately 14 different money managers to invest assets, but because WRS does not employ in-house investment staff, the director is responsible for monitoring those managers. The system also contracts with a financial consultant to advise the board, but this consultant is out-of-state, has other clients, and attends only two board meetings per year; consequently, the director has assumed responsibility in this area as well.

The director also acts as chief investment officer, coordinating 14 money managers.

In recognition of a finding in WRS's 2004 financial audit, the director attempted in the next year to reclassify an existing position and create a new position of CIO/internal auditor. This change was intended to accommodate WRS' increased responsibilities that call for sophisticated skills in such areas as strategic allocation, investment decision-making, and internal operation controls. However, because the approval process involves the state budget and personnel offices, and consent from both was not forthcoming, the position became solely that of internal auditor.

Board members have expressed interest in hiring a CIO, seeing this as a critical staff position for bringing information together in a cohesive manner for the board's use, and for conducting regular on-site visits with money managers. Board members point to other states with smaller pension systems and half the assets of WRS that have found it prudent to employ a CIO. Several board members believe WRS would benefit from having

Board members see a CIO as a critical staff position.

a professional staff person versed in and dedicated to institutional investing, thus relieving the director of the need to do double duty.

Agency status may be a disadvantage when attracting top professionals.

Board members also expressed concern that retirement of the director and deputy director would leave two key positions needing to be filled. WRS has been able to "grow its own" successors for top management in recent years, but if it should need to recruit and compete for talent at the national level, the state's classification and compensation requirements may stand in the way. It is our sense that to attract top management professionals, WRS is significantly disadvantaged when compared to similar state systems.

Other states offer possible alternatives

State retirement boards often have more budgetary autonomy, personnel exemptions.

Each of the eight comparator states we reviewed in Chapter 2 has adopted flexible budget procedures that allow their retirement systems to run with more autonomy and freedom from constraints than other state agencies. For example, as long as the Nevada retirement system's budget request remains within a prescribed percentage of payroll (contribution) amount, the executive and legislative branches approve the budget request. Utah's retirement board, not its legislature, approves the retirement system budget in that state.

Exempting certain positions can provide flexibility.

The retirement systems in Colorado, Idaho, Nevada, and Utah each have obtained some form of exemption from their state personnel statutes, particularly regarding salary scale. Like Wyoming's, these retirement systems both administer benefits and have investment responsibilities; unlike Wyoming, their staffing includes exempt positions with at-will status. Colorado and Utah exempt their entire staff, while Nevada and Idaho exempt a few positions. Exempting positions from specific constraints in the personnel system allows a retirement system to be more competitive in hiring necessary expertise.

Other states' systems have CIOs.

Of the states whose systems we reviewed, and that have investment responsibilities, all but Wyoming have a CIO to monitor assets and money managers, and to work with the board on changes and strategies. Rather than calling their systems "state agencies," they tend to be "quasi-governmental" or "public" agencies, terms that more accurately reflect the range of responsibilities carried out. Moreover, such terms reflect the manner in which retirement systems operate: in some respects like a state agency, and in others like a business.

Wyoming state agencies' access to administrative flexibility varies

WRS has not tested the limits of its ability to seek competitive pay.

One board member related the perception that WRS is not a typical state agency, but a multi-billion dollar money management organization. With this specialized function, board members see challenges in administering the system effectively while adhering to all executive branch requirements. Although statute gives WRS some measure of administrative flexibility, the language is not explicit, and traditionally WRS has chosen not to explore the limits of this flexibility in matters such as seeking competitive pay for senior administrators.

Other Wyoming agencies use X-band positions for flexibility.

Agencies can request exemptions from state personnel rules regarding hiring and salary structure through what is termed "X-band" employee classification. Agencies can get X-band exemptions by demonstrating that a specific set of skills required for a position is not obtainable within the existing pay structure. This category includes all agency directors, many assistant agency directors, and a wide range of other positions; in 2006, a total of 1,802 employees from 49 agencies, offices, boards, and commissions were classified as X-band. The only X-band employee at WRS is the director.

The Wyoming Business Council is an in-state example of flexible administration

The Business Council has more statutory autonomy.

Although established to carry out a different purpose, the Wyoming Business Council (WBC) is an example of how a policy-oriented, board-governed organization that also performs ministerial functions can maintain autonomy under the state government umbrella. Statutes allow WBC to operate outside some typical executive branch administrative requirements, particularly those regarding hiring and compensating personnel. That agency also receives a lump-sum rather than a line item budget appropriation. Figure 5.1 compares the types of administrative authority the Legislature has granted to WBC and WRS; in general, WBC statutes tend to be more explicit than those covering WRS.

Figure 5.1

Statutory authorities of WBC and WRS

Statutory Authorities	Granted to WBC	Granted to WRS
Established as a corporate body	Yes	Yes
Governed by a board	Yes (15 members)	Yes (11 members)
Board members appointed by Governor with consent of Senate	Yes	Yes
Board members paid	No	Yes
Board members receive per diem	Yes	Yes
Board members have a fiduciary responsibility	Yes	Yes
Board members have individual liability	No	Yes
Board hires a director/chief officer serving at pleasure of the board	Yes	Yes
Agency staff are hired by the director/chief officer	Yes	Yes
Exempt from the state Administrative Procedure Act	Yes	No
Exempt from Department of Administration and Information (A&I) statutes	Yes	No
Must have individual positions approved by Governor/Legislature	No	Yes
Must pay staff within market rates established by A&I	No	Yes
Must have rules reviewed	Yes	Yes
Must comply with Open Meetings and Public Records Acts	Yes	Yes
Employees are at-will	Yes	No
Participates in employee benefit programs (health insurance, retirement, etc.)	Yes	Yes
Use Attorney General as legal council	Yes	Yes
Funded with state General Funds	Yes	No

Source: LSO summary of WRS and WBC statutes.

The Legislature appears to recognize WRS as needing some flexibility; nevertheless, WRS statutes are less clear in allowing this than are WBC's. Since the performance of WRS is measured primarily by the extent to which it can pay for promised pension benefits, it has great incentive to be effective in its activities and efficient in its spending. Policymakers need to consider whether structural changes can help WRS adapt and continue to thrive.

Recommendation: WRS should develop a proposal for the Legislature to consider, revising WRS agency status and giving it more flexibility to carry out required functions.

In granting more flexibility, the Legislature can choose from a range of options.

WRS is charged with safeguarding the financial integrity of a large and complex retirement system. To be prudent managers in carrying out its mandated responsibilities, WRS needs to be freed of unnecessary constraints. A range of options is available to the Legislature, from granting specific exemptions from certain state agency requirements and approving additional X-band positions, to reviewing and modifying the authorities it has granted WRS. Going further, in view of the unique purpose and activities of the retirement system, the Legislature could consider changing WRS status to that of a quasi-governmental agency like WBC.

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The Legislature can benefit from more regular interaction with WRS

Legislative liaisons have been beneficial.

LSO's 1996 report on COLAs recommended that the Legislature create a high-level forum to promote better coordination of policy with the WRS Board and its staff. At the time, advocates were circumventing the board to seek changes through the legislative process. In response, the Legislature chose to appoint "legislative liaisons" to WRS; 11 years later, liaisons, board members, and WRS staff agree this involvement has been beneficial to all parties.

Yet several factors indicate that WRS has grown beyond the liaison approach.

However, the function of legislative liaison has not been well defined: liaisons have different understandings of the role, with current approaches ranging from believing they are to carry legislation and advocate positions for the WRS, to simply providing an information conduit to the Legislature. One stakeholder we interviewed estimated that 90 percent of legislators do not understand the ripple effects of some legislation on the system. As an example, the stakeholder cited the Legislature's failure to foresee the impact that large increases in educator salaries in 2006 would have on the retirement system.

Organizational constraints mean WRS lacks a "legislative home"

Retirement-related bills are assigned to many different committees.

Current legislative structure and tradition have WRS taking reports and providing information to the Joint Appropriations Interim Committee (JAC) during the budget review and approval process. During legislative sessions, introduced bills may be assigned to any of a number of different committees, including but not limited to the JAC. Although this arrangement has stood for many years, it does not give WRS a "legislative home" to which it can regularly bring policy concerns and requests for statute changes. Consequently, no single committee has developed deep understanding of retirement's unique issues.

Two passages from LSO's 1996 report have particular relevance to this issue:

> "Traditionally, the JAC considers retirement matters that have budget impact, while other types of retirement legislation are heard in different committees. This fragmented process does not facilitate seamless decision-making at the legislative level, or between the Legislature and the board."

> "A subtle tension exists between the Legislature and the board. The Legislature faces pressure from constituents to grant benefit improvements, while the board attempts to be fiscally prudent with assets. The roles the two parties have adopted each have merit, but have not been effectively communicated and reconciled."

Retirement legislation is not well-coordinated

Legislation related to retirement is brought forward in an uncoordinated and piecemeal fashion. According to WRS staff, the system usually proposes a small number of bills each session, but individual legislators continue to sponsor additional legislation not known to or considered by the board.

Since 1996, 110 retirement-related bills have been introduced.

Analyzing retirement-related bills brought to the Legislature since our 1996 report, we found that the Legislature enacted 71 (not including budget and supplemental budget bills), and failed to pass another 39, for a total of 110 bills in 11 years. Nearly half (50 of 110) of the proposed bills were directed at overall administration and the big plan (see Appendix G).

Legislation can have major consequences, for example MPERS and board member liability.

Many of these bills were sponsored by legislative liaisons, suggesting that their substance had been reviewed and approved by the WRS Board. In some instances, however, significant legislation has not been considered by WRS prior to passage. One example where the board was minimally involved in pre-legislative deliberations was the Uniform Management of Public Employee Retirement Systems Act (MPERS) in 2005. The bill's effective date was delayed to July 1, 2006, but there continue to be concerns about how MPERS affects WRS administration, particularly in relation to individual board members' trustee or fiduciary liability. Even though actions are taken as a corporate body, MPERS implicitly makes each board member personally liable, a consequence that appears to be unique among state retirement systems.

In addition, retirement-related bills were assigned to number of different committees; this fragmentation is not likely to enhance consistent policy development or understanding of retirement. For retirement-related legislation introduced between 1997 and 2007, 18 of the 24 legislative committees received at least one retirement-related bill. The House Appropriations Committee received the most assignments, 36; the remaining 74 bills, or two-thirds of retirement-related legislation, went to a diverse range of committees.

Other states have developed more rigorous legislative oversight of public pension plans

Three-quarters of comparator states dedicate a legislative committee.

In our comparison of WRS with eight surrounding states in Chapter 2, we also examined how those states' legislatures interact with and oversee their retirement systems. We found that six (Colorado, Montana, Nebraska, Nevada, North Dakota, and South Dakota) of the eight states have established legislative committees dedicated to retirement issues; they either oversee or work collaboratively with their system on continuity issues. Notably, South Dakota also requires that retirement-related legislation be presented to the retirement system governing board before introduction to the legislature.

A reviewing entity can help bridge the information gap

Only part of the complex retirement system is reviewed during the budget process.

Our review of pension literature in 1996 indicated that in addition to their retirement boards, nearly half of states at that time had some type of reviewing entity responsible for pension issues. Wyoming today does not have a reviewing entity of this sort, and its budget process considers only the administrative side of a very large and complex system. As a result, the Legislature sees only a small part of system activity, WRS administrative costs. We are concerned that the Legislature's own structure may provide it with less information than will be needed to make decisions that are well within legislative purview. Examples of such decisions include possible changes to the contribution rate or multiplier, modifications to the Rule of 85, or whether to make the COLA guaranteed.

Since 1996, WRS assets have tripled, membership has grown, and the plan has matured; also during this period, large-scale investors, including WRS, encountered the challenges posed by market returns that were lower than planned for. By 2007, the world of pension systems and investments has become more dynamic and complex, and even moreso now, decisions that affect a retirement plan require both thorough understanding and a consistent approach. At this point, the need for interaction and communication between the Legislature and WRS may have grown beyond what the legislative liaisons are able to achieve on their own.

Recommendation: The Legislature should consider designating a committee to have formal oversight and regular interaction with WRS.

The Legislature can benefit from regular dialogue with WRS.

We believe a $6 billion system that affects such a large number of public employees and their families, merits a more systematic means of interacting with the Legislature than currently exists. A $6 billion system also merits the attention of a core group of legislators willing to deepen their familiarity with and knowledge of pension management issues. This is more likely to come to pass if the Legislature formalizes the expectation of regular interaction and designates a venue for such dialogue.

Each year, WRS should present its valuation report to the same standing committee.

For these reasons, we recommend that the Legislature revisit the option of designating a standing committee to hear retirement issues. At the very least, designating a particular standing committee, a permanent select committee, or a subcommittee of JAC to hear retirement-related issues, including a yearly presentation by WRS on its annual valuation report, could help build legislative capacity to handle complex retirement issues. As well, this might prompt development of expertise by LSO personnel who would staff such legislative efforts.