

# Temporary Duty Disability Preliminary Report

Washington State Law Enforcement  
Officers' and Fire Fighters' Plan 2  
Retirement Board

April 26, 2006

# Brief Overview

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- Problems with current provisions
  - Injuries over 6 months
  - Not all members eligible for leave supplement
  - Injuries during FAS period
- Recent change in PERS policy
- Coordination with SCPP

# Current Provisions

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## Temporary Duty Disability (TDD)

- Injury in the line of duty
- Receiving leave supplement (Title 51)
- Purchase up to 6 months service credit per incident
- Service beyond 6 months limit may be purchased through Authorized Leave of Absence

# Current Provisions - TDD

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- Purchased TDD time includable in FAS
- Member, employer, and state pay contributions
- Cost based on compensation that would have been earned
- No statutory deadline for recovery

# Proposal Summary

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Adopt PERS Plan 2 policy (2005 - SB 5522)

- Purchase up to 24 consecutive months
- Must be receiving Workers' Compensation benefits

# Other Washington Systems

<b>Plan</b>	<b>Purchase Limit</b>	<b>Eligibility</b>
PERS Plan 2	24 months	■ Injured on the job ■ Receiving Workers' Comp Benefits
SERS Plan 2	12 months	
PSERS	12 months	
TRS Plan 2	No TDD provision	No TDD provision

# Impact of Proposal

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- Members have improved TDD coverage
  - Retain Leave Supplement benefits
  - TDD provisions NOT linked to Leave Supplement
- All members eligible for TDD purchase

# Impact of Proposal

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- Purchase amount increased to 24 months
- Increased amount includable in FAS
- Five year deadline for recovery
- Recovery Interest



# Potential Joint Legislation

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- SCPP Executive Committee approved Service Credit Purchase for injury study in 2006 interim

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# Questions?

# LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

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### 1. Issue

Problems exist in the current provisions of Temporary Duty Disability (TDD) for LEOFF Plan 2 including eligibility for the benefit, the amount of service that may be purchased, and the inclusion in Final Average Salary (FAS) for an injury in the FAS period. In 2005, the Public Employees' Retirement System (PERS) Plan 2 TDD policy changed increasing the period of service credit that could be purchased by an employee who is on a leave of absence for an injury on the job. The Select Committee on Pension Policy will be studying an extension of the policy change to other plans.

### 2. Staff

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### 3. Members Impacted

Any active LEOFF Plan 2 member who is injured on the job may be affected. As of September 30, 2004 there were 14,754 active members as reported in *The Office of the State Actuary's 2004 LEOFF 2 Actuarial Valuation Report*.

### 4. Current Situation

The purchase of service credit for periods of temporary leave for a disability is accomplished through a two part process for LEOFF Plan 2 members. A member who is receiving a leave supplement or similar benefit can purchase service credit for a period up to six months through the provisions of temporary duty disability. A member may purchase service credit for periods of leave beyond the 6 months through the provisions of authorized leave of absence.

## **5. Background Information and Policy Issues**

The Public Employees' Retirement System (PERS), Teachers' Retirement System (TRS), School Employees' Retirement System (SERS), Washington State Patrol Retirement System (WSPRS) and the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) provide retirement benefits to most Washington State and local government employees. Except for TRS, each of these systems include provisions for Plan 2 members to purchase service credit for periods of temporary leave related to a disability resulting from an injury on the job, commonly referred to as "Temporary Duty Disability" or "TDD". Each plan determines its requirements to complete such a purchase.

Under the current LEOFF Plan 2 provisions, some members may have difficulty purchasing service credit utilizing the temporary duty disability provisions because of possible eligibility restrictions or the service credit purchase limits. When compared to other Plan 2 systems, LEOFF Plan 2 has stricter eligibility requirements and a lower service credit purchase limit. Members not eligible to purchase service credit under temporary duty disability provisions or who are purchasing more than the limit may purchase the service credit under authorized leave of absence provisions, which are more costly to the member.

The first section of this report provides a description of the temporary duty disability provisions in LEOFF Plan 2 and is followed by a comparison to other Washington Plan 2 systems in the second section. The third section provides a description of the authorized leave of absence service credit purchase provisions. Following the third section, Appendix A provides a comparison table which summarizes the temporary duty disability and authorized leave of absence provisions in each of the Plan 2 systems.

### **Temporary Duty Disability – LEOFF Plan 2**

If a member does not earn full service credit because of leave associated with a temporary duty disability, a member may have the option to purchase up to six months of service credit for each covered duty disability.

Eligibility to purchase service credit for temporary duty disability is contingent upon the member receiving a disability leave supplement or similar benefits provided by their employer. Also, the disability must have occurred in the line of duty.

If a member's employer does not provide a disability leave supplement or similar benefits, the member is ineligible to purchase service credit under temporary duty disability provisions. A disability leave supplement must be provided by an employer if the employee is receiving temporary total disability benefits under Title 51, unless the employer is a city or town with a population of less than twenty-five hundred or a county with a population of less than ten thousand. If the member is not eligible under temporary duty disability, the member may be eligible to purchase the service credit under the authorized leave of absence provisions.

When purchasing service credit under Temporary Duty Disability, the member is responsible for payment of the employee contributions and the employer is responsible for payment of the employer contributions. Recovery interest is not charged on LEOFF Plan 2 temporary duty disability billings. The purchase cost is based on the compensation the member would have earned had the member been working. While there is no statutory deadline for requests to purchase service credit for temporary duty disability, full payment for the purchase must be received prior to retirement.

The purchased service credit is includable in a member's service credit summary for retirement eligibility and pension computation purposes. The compensation information used to compute the cost of the purchase is includable within the Final Average Salary calculation.

**Temporary Duty Disability in Other Washington Systems**

Except for TRS Plan 2, all of the Plan 2 systems have a provision allowing for the purchase of temporary duty disability. While the basic provisions in each plan are similar, there are a couple of notable differences.

One difference is the amount of service credit that can be purchased for each incident of temporary duty disability. The table below shows the limits for each of the Plan 2 systems:

<b>Plan</b>	<b>Purchase Limit Per Incident</b>
PERS Plan 2	24 months
SERS Plan 2	12 months
PSERS	12 months
LEOFF Plan 2	6 months
TRS Plan 2	No TDD provision

Senate Bill 5522, passed by the 2005 Legislature, expanded the service credit purchase for temporary duty disability in PERS. Prior to Senate Bill 5522, members of PERS could only purchase up to 12 months of service credit for temporary duty disability. Senate Bill 5522, increased the period of unearned service credit that a member of PERS could purchase to 24 months, doubling the per incident amount of service credit.

The second key difference between the LEOFF Plan 2 temporary duty disability and other Plan 2 temporary duty disability provisions is the eligibility criteria for a temporary duty disability purchase.

- In PERS, SERS, and PSERS a person is eligible to purchase service credit for temporary duty disability if they are receiving benefits under Title 51 RCW or a similar federal workers' compensation program.
- In LEOFF Plan 2, a person must be receiving a disability leave supplement or similar benefits provided by their employer.

As noted above, some cities and counties may not be required to provide a disability leave supplement, which means that a period of leave for an uncovered member could only be purchased through authorized leave of absence provisions.

Lastly, PERS and SERS charge both the member and employer recovery interest on temporary duty disability billings. The current recovery interest rate is 8%. LEOFF Plan 2 temporary duty disability billings do not currently charge recovery interest.

### **Temporary Duty Disability in Other States**

Statewide law enforcement and fire fighter retirement system in other states treat temporary duty disabilities in one of three ways:

- Allowing some form of service credit purchase thereby keeping the member's account whole.
- Providing disability benefit payments during the period of disability and not allowing the member to recover the period of service.
- Not extending benefits for temporary leave of absence related to an on the job injury.

Out of the twelve comparison systems, seven systems provide for the recovery of lost service credit through some sort of service credit purchase mechanism. Among these seven systems, service credit can be recovered in the following amounts:

- Two systems have no limit on the amount of service that can be recovered.
- Two systems allow the recovery of five years.
- Two systems allow the recovery of two years.
- One system allows the recovery of one year.

In the remaining comparison systems, three provide disability benefits payments and two systems do not provide any benefits. See Appendix C.

## **Authorized Leave of Absence**

A member who is not eligible to purchase a period of service utilizing temporary duty disability provisions may purchase the service under authorized leave of absence provisions. A LEOFF Plan 2 member may not be eligible to purchase a period of service if they were not receiving a disability leave supplement or if the temporary duty disability period exceeded the 6-month temporary duty disability purchase limit. Below is a description of the authorized leave of absence provisions.

The following provisions apply to all of the Plan 2 systems (LEOFF, PERS, TRS, SERS), except WSPRS Plan 2 which does not have an authorized leave of absence provision.

- A member may request to purchase service after returning to work from an authorized leave of absence. Requests for recovery of service credit and payment must be received within five years from the initial date of return to work, or prior to retirement, whichever occurs first.
- A member is allowed to purchase a maximum of twenty-four months of service credit for an authorized leave of absence during his or her entire working career.
- The member is responsible for payment of both the employee and employer contributions, plus applicable interest. This makes an authorized leave of absence service credit purchase more expensive than a temporary duty disability service credit purchase.
- The purchase cost is based on the average of the member's compensation earnable at the time the authorized leave was granted, and the time the member resumed employment.
- The purchased service credit is includable in a member's service credit summary for retirement eligibility and pension computation purposes. The compensation information used to compute the cost of the purchase is not includable within the Final Average Salary calculation.

## **6. Policy Options**

### **Option 1: Adopt policy from Senate Bill 5522 (2005)**

Adopting the policy from Senate Bill 5522, passed in 2005 for the Public Employees' Retirement System (PERS) would make two changes to LEOFF Plan 2. First, the new policy would increase the per incident amount of service credit a member could purchase, for absence from an injury incurred in the line of duty from 6 months to 24 months. Second, the new policy would change the eligibility requirement from receiving a leave supplement from an employer to receiving benefits under state workers' compensation (Title 51 RCW) or a similar federal workers' compensation program.

These changes would create consistency with the PERS policy established in 2005, allows the purchase of a longer period of service for LEOFF Plan 2 members, and eliminates the possibility that a member will not qualify to purchase such service credit due to working for an employer that does not provide a leave supplement.

## 7. Supporting Information

- **Appendix A:** Temporary Duty Disability & Authorized Leave of Absence Comparison
- **Appendix B:** Leave Supplement Statutes
- **Appendix C:** Temporary Duty Disability Provisions in Other States



## Appendix A: Temporary Duty Disability & Authorized Leave of Absence Comparisons

### Temporary Duty Disability Comparison

Plan	Eligibility	Purchase Limits	Computation	Payment	Include In FAS
LEOFF Plan 2	Receiving a disability leave supplement or similar benefits provided by their employer	6 months for each time-loss incident	Based on regular compensation member would have earned	Member pays member contributions through employer  Employer pays employer contributions. State pays state contributions	Yes
PERS Plan 2	Receiving benefits under Title 51 RCW or a similar federal workers' compensation program	24 months for each time-loss incident	Based on regular compensation member would have earned	Member pays member contributions plus interest  Employer pays employer contributions plus interest	Yes
SERS Plan 2	Receiving benefits under Title 51 RCW or a similar federal workers' compensation program	12 months for each time-loss incident	Based on regular compensation member would have earned	Member pays member contributions plus interest  Employer pays employer contributions plus interest	Yes
TRS Plan 2	No temporary duty disability provision	NA	NA	NA	NA
PSERS	Receiving benefits under Title 51 RCW or a similar federal workers' compensation program	12 months for each time-loss incident	Based on regular compensation member would have earned	Member pays member contributions plus interest  Employer pays employer contributions plus interest	Yes
WSPRS Plan 2	Relieved from duty by the Chief of Washington State Patrol for an injury on the job	No statutory limit	Based on regular compensation member would have earned	Member pays member contributions plus interest  Employer pays employer contributions plus interest	Yes

### Authorized Leave of Absence Comparison

System	Eligibility	Purchase Limits	Cost Computation	Payment	Include In FAS
LEOFF Plan 2	Return to work in an eligible position following unpaid authorized leave of absence  Deadline: 5 years from return to employment	24 months in a working career	Based on average of compensation earnable at the time leave granted and the time employment resumed	Member pays member, employer, and state contributions, plus interest	No
PERS Plan 2	Return to work in an eligible position following unpaid authorized leave of absence  Deadline: 5 years from return to employment	24 months in a working career	Based on average of compensation earnable at the time leave granted and the time employment resumed	Member pays both member and employer contributions, plus interest	No
SERS Plan 2	Return to work in an eligible position following unpaid authorized leave of absence  Deadline: 5 years from return to employment	24 months in a working career	Based on average of compensation earnable at the time leave granted and the time employment resumed	Member pays both member and employer contributions, plus interest	No
TRS Plan 2	Return to work in an eligible position following unpaid authorized leave of absence  Deadline: 5 years from return to employment	24 months in a working career	Based on average of compensation earnable at the time leave granted and the time employment resumed	Member pays both member and employer contributions, plus interest	No
PSERS	Return to work in an eligible position following unpaid authorized leave of absence  Deadline: 5 years from return to employment	24 months in a working career	Based on average of compensation earnable at the time leave granted and the time employment resumed	Member pays both member and employer contributions, plus interest	No
WSPRS Plan 2	No authorized leave of absence provision	NA	NA	NA	NA

**Appendix B: Leave Supplement Statutes**

<p><b>RCW 41.04.500</b>  <b>Disability leave supplement for law enforcement officers and fire fighters.</b></p>	<p>County, municipal, and political subdivision employers of full-time, commissioned law enforcement officers and full-time, paid fire fighters shall provide a disability leave supplement to such employees who qualify for payments under RCW 51.32.090 due to a temporary total disability.</p>
<p><b>RCW 41.04.505</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Amount.</b></p>	<p>The disability leave supplement shall be an amount which, when added to the amount payable under RCW 51.32.090 will result in the employee receiving the same pay he or she would have received for full time active service, taking into account that industrial insurance payments are not subject to federal income or social security taxes.</p>
<p><b>RCW 41.04.510</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Payment.</b></p>	<p>The disability leave supplement shall be paid as follows:</p> <p>(1) The disability leave supplement shall begin on the sixth calendar day from the date of the injury or illness which entitles the employee to benefits under RCW 51.32.090. For the purposes of this section, the day of injury shall constitute the first calendar day.</p> <p>(2) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be charged against the accrued paid leave of the employee. In computing such charge, the employer shall convert accumulated days, or other time units as the case may be, to a money equivalent based on the base monthly salary of the employee at the time of the injury or illness. "Base monthly salary" for the purposes of this section means the amount earned by the employee before any voluntary or involuntary payroll deductions, and not including overtime pay.</p> <p>(3) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be paid by the employer.</p> <p>If an employee has no accrued paid leave at the time of an injury or illness which entitles him to benefits under RCW 51.32.090, or if accrued paid leave is exhausted during the period of disability, the employee shall receive only that portion of the disability leave supplement prescribed by subsection (3) of this section.</p>
<p><b>RCW 41.04.515</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Time limitation.</b></p>	<p>The disability leave supplement provided by RCW 41.04.500 through 41.04.530 shall continue as long as the employee is receiving benefits under RCW 51.32.090, up to a maximum of six months from the date of the injury or illness.</p>

<p><b>RCW 41.04.520</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Employee to perform light duty tasks.</b></p>	<p>While an employee is receiving disability leave supplement, the employee, subject to the approval of his or her treating physician, shall perform light duty tasks in the employee's previous department as the employer may require, with no reduction in the disability leave supplement.</p>
<p><b>RCW 41.04.525</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Continuation of employee insurance benefits.</b></p>	<p>The disability leave supplement provided in RCW 41.04.510(3) <b>shall not be considered salary or wages for personal services</b>: PROVIDED, That the employee shall also continue to receive all insurance benefits provided in whole or in part by the employer, notwithstanding the fact that some portion of the cost of those benefits is paid by the employee: PROVIDED FURTHER, That the portion of the cost not paid by the employer continues to be paid by the employee.</p>
<p><b>RCW 41.04.530</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Exhaustion of accrued sick leave.</b></p>	<p>If an employee's accrued sick leave is exhausted during the period of disability, the employee may, for a period of two months following return to active service, draw prospectively upon sick leave the employee is expected to accumulate up to a maximum of three days or three work shifts, whichever is greater. Any sick leave drawn prospectively as provided in this section shall be charged against earned sick leave until such time as the employee has accrued the amount needed to restore the amount used. In the event an employee terminates active service without having restored the sick leave drawn prospectively, the employer shall deduct the actual cost of any payments made under this section from compensation or other money payable to the employee, or otherwise recover such payments.</p>
<p><b>RCW 41.04.535</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Greater benefits not precluded.</b></p>	<p>Nothing in RCW 41.04.500 through 41.04.530 shall preclude employers of law enforcement officers and fire fighters and such employees from entering into agreements which provide benefits to employees which are greater than those prescribed by RCW 41.04.500 through 41.04.530, nor is there any intent by the legislature to alter or in any way affect any such agreements which may now exist.</p>
<p><b>RCW 41.04.540</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Supplement not required in smaller cities, towns, and counties.</b></p>	<p>Cities and towns with a population of less than twenty-five hundred and counties with a population of less than ten thousand shall not be required to provide a disability leave supplement to their commissioned law enforcement officers and full-time paid fire fighters who qualify for payments pursuant to RCW 51.32.090, due to temporary total disability.</p>

<p><b>RCW 41.04.545</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Vested right not created.</b></p>	<p>Chapter 462, Laws of 1985 neither grants employees a vested right to receive a disability leave supplement nor creates a contractual obligation on behalf of the state or its political subdivisions to provide a disability leave supplement.</p>
<p><b>RCW 41.04.550</b>  <b>Disability leave supplement for law enforcement officers and fire fighters -- Not subject to interest arbitration.</b></p>	<p>Disability leave supplement payments for employees covered by chapter 462, Laws of 1985 shall not be subject to interest arbitration as defined in RCW 41.56.430 through 41.56.905.</p>

## Appendix C: Temporary Duty Disability Provisions In Other States

Alaska	<p><b>Service Credit Recovery:</b> An employee who takes more than 10 days leave of absence without pay in a calendar year because the employee is unable to work due to an on-the-job injury or occupational illness for which the employee is receiving benefits under Alaska Statute 23.30 (Workers' Compensation) may elect to receive credited service for the time on leave of absence without pay status. There is <b><u>no limit</u></b> on the amount of time that may be purchased.</p>
Arizona	<p><b>Disability Benefit:</b> A member may receive benefits for Total and presumably temporary disability, incurred in performance of duty, prior to normal retirement, preventing performance of a reasonable range of duties within the employee's department. The monthly pension is one-twelfth of 50% of annual compensation at time of disability. Payments terminate after <b><u>twelve months</u></b> or return to work. The member must terminate employment to receive this benefit.</p>
Arkansas	<p><b>No Benefit:</b> LOPFI does not offer or extend benefits for temporary disabilities and does not have any service credit purchase provisions that this type of service can be purchased under.</p>
Colorado	<p><b>Disability Benefit:</b> A member injured on the job may be entitled to a Temporary Occupational Disability that is 40% of base salary. Once granted, benefits are payable from the day following the member's last day on the employer's payroll. Minimum of 1 year. Maximum of <b><u>five years</u></b>. At the end of five years the member either returns to employment, upgrades to Permanent Occupational or Total Disability status, or benefits are discontinued.</p> <p>If the member is restored to active service with his/her former employer, FPPA will transfer from the D&amp;D fund the contributions required to fund the money purchase plan (or component) or fund service credit under the defined benefit plan (or component) while the member was on Temporary Disability (up to 16%). If the mandatory contribution amount is above 16%, the employer will make the additional contributions.</p> <p>If the disability is expect to be less than 12 months, short term disability benefits may be provided by the employer. No benefits will be provided by the Statewide defined benefit plan.</p>
Delaware	<p><b>Service Credit Recovery:</b> A member may purchase service credit for a medical leave if the member subsequently accrues at least 1 year of credited service and pays into the Fund prior to the issuance of his or her 1st pension check, contributions determined by multiplying the rates in effect at the time of payment for member contributions and employer contributions times the average of the 60 months of creditable compensation used to calculate the member's pension benefit times the months or fractions thereof so credited. Any credited service purchased for medical leave shall not be used to determine eligibility for benefits.</p>

Kansas	<p><b>Disability Benefit:</b> If you cannot perform duties related to your job due to an injury or illness, you can apply for disability benefits. You receive an annual benefit of 50 percent of your final average salary in on-going monthly payments. There is no child's benefit. If you return to work with any KP&amp;F participating employer, your disability benefits will automatically stop.</p> <p>Participating Service is any service after your membership date. You will automatically receive this type of service credit while you work in a covered position and make contributions to the Retirement System. For Tier II members, this type of service will be credited during any period of approved disability if you qualify for disability benefits.</p>
Maryland	<p><b>Authorized leave of absence purchase:</b> A member who goes on an approved leave of absence due to an injury or illness may purchase up to <b>two years</b> of service credit for the period of leave. The member pays the member contributions that would have been paid if not on leave, plus interest.</p>
Nevada	<p><b>Service Credit Purchase:</b> If a member has five years of creditable service they may purchase up to a maximum of <b>five years</b> of service credit. The cost to purchase service is based on the average compensation times the number of months purchased times the actuarial percentage based on the member's age.</p>
New Jersey	<p><b>Service Credit Recovery:</b> Members are eligible to purchase credit for time spent on official, authorized leaves of absence without pay. Members may purchase up to <b>two years</b> of service credit for leave for personal illness, and up to 3 months for leave for personal reasons. The cost of the purchase is shared equally between the member and the employer.</p>
New York	<p><b>No Benefit:</b> New York does not provide any temporary disability leave purchase, authorized leave of absence purchase, or service credit purchase provisions.</p>
Ohio	<p><b>Service Credit Recovery:</b> If a member is placed on a medical leave of absence due to a medical disability, the member may purchase credit for such a break in service, up to <b>one year</b> per event.</p>
South Carolina	<p><b>Service Credit Recovery:</b> Members may establish service credit for various types of previous employment and leaves of absence, and up to <b>five years</b> of non-qualified service. A member may establish service credit for a period while on leave of absence and receiving Workers' Compensation benefits. The cost is based on contributions plus interest using your earnable compensation at the time of injury.</p>