



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek *EB*

RE: Amendment LCPR01-166: Derived from S.F. 1439 (Johnson, Dean); H.F. 1482 (Murphy)

DATE: April 4, 2001

S.F. 1439 (Johnson, Dean); H.F. 1482 (Murphy) are companion bills containing seven articles with provisions for various Minnesota State Retirement System (MSRS) plans, the Public Employees Retirement Association (PERA), and the Teachers Retirement Association (TRA). The provisions made current refund policy retroactive in all plans included in the bills and increased the refund interest rate in the MSRS Judges Plan, enhanced surviving child and surviving spouse benefits, revised early retirement policy in the Elected State Officer Plan and Judges Plan, and made various changes of an administrative nature.

Amendment LCPR01-166: Derived from S.F. 1439 (Johnson, Dean); H.F. 1482 (Murphy) contains provisions from the bill which are largely administrative in nature but which raise some policy issues which the Commission may wish to consider. The amendment is drawn as a blind amendment, with provisions which could be added in any vehicle that the Commission deemed appropriate.

For purposes of discussion, the sections summarized below are numbered in the order in which they appear in the amendment. Policy issues applicable to the section appear after the summary of the section.

Section 1 (page 1, lines 3 to 24, and page 2, lines 1 to 9). Amends Section 352.04, Subdivision 8, an MSRS omitted salary deduction provision, by imposing an 8.5 percent-of-principal penalty after 30 days, rather than after 60 days, after the date the deductions should have been made.

Policy issue: An advantage of this change is that it encourages MSRS-covered employing units to promptly remit contributions to MSRS, because penalties will be imposed sooner than is the case in current law. Prompt remittance allows the contributions to be invested sooner. The LCPR may, however, wish to seek reassurance that a 30-day period, rather than a 60-day period, is practical and will not lead to complaints from employing units.

Section 2 (page 2, lines 11 to 26). Revises Section 352.87, Subdivision 4, the MSRS Fire Marshal Division section, non-duty disability provision, by permitting the provision to apply to individuals who are age 55 or over.

Section 3 (page 2, lines 27 to 36, and page 3, lines 1 to 6). Revises Section 352.87, Subdivision 5, the MSRS Fire Marshal Division section, duty disability provision, by permitting the provision to apply to individuals who are age 55 or over.

Section 4 (page 3, lines 8 to 36, and page 4, lines 1 to 7). Revises Section 352.95, Subdivision 4, the MSRS Correctional Plan disability medical examination provision, by clarifying that evidence in support of a disability request may be psychological evidence; by permitting examinations by psychologists; and by indicating that disabilitants shift to the retirement roles at age 65 or the five-year anniversary of the effective date of the disability, whichever is later, rather than at age 62.

Section 5 (page 4, lines 8 to 36, and page 5, line 1). Revises Section 352.95, Subdivision 5, the MSRS Correctional Plan Disabilitant shift-in-status-at-retirement-age provision, by specifying that the shift occurs at age 65 or the five-year anniversary of the effective date of the disability, whichever is later, rather than at age 62.

Policy issues. Sections 2 to 5 revise MSRS Fire Marshall and MSRS Correctional Plan law in a manner consistent with changes that MSRS, PERA, and TRA proposed several years ago to deal with age discrimination concerns in some of the plans. Those changes proposed by the plans were enacted into law, but it was never fully clear why these changes were required, or why they were proposed for some plans in

some provisions of applicable plan law but not others. At the current time, by this drafting MSRS is indicating that changes in recently enacted MSRS Fire Marshal provisions, and more long-standing MSRS Correctional provisions, are needed to avoid age discrimination law suit concerns. The LCPR may wish to hear brief testimony to seek assurance that these changes are necessary and appropriate. As a longer term consideration, the LCPR may wish to consider whether similar changes are necessary in other plans. MSRS General, PERA General, and first class city teacher plan law continue to specify that the transition of a disabilitant to retirement status occurs at normal retirement age, rather than at “age 65, or the five year anniversary of the disability, whichever is later,” as proposed here.

Section 6 (page 5, lines 3 to 18). Revises Section 352.95, Subdivision 7, the MSRS Correctional Plan disability resumption of employment provision, by basing the disability benefit adjustment on the total earnings on the date of disability adjusted for wage increases over time as reflected in an inflation index, rather than upon current wages from similar occupations, plus worker’s compensation benefits, if any.

Policy issues, Section 6. This section revises the way continuing disability benefits will be computed in cases of partial reemployment. The proposal is to base the determination on the total earnings on the date of disability adjusted for wage increases over time, rather than upon current wages from the same or similar occupations. The change may make the determination easier, and eliminates problems that can occur if the employment classification held by the individual at the time of disability no longer exists. MSRS would not have to determine what current position is sufficiently similar. Rather, in all cases, the original salary adjusted for inflation will be used in the determination. If this proposed change is implemented, disability benefit payments in partial reemployment situations will differ from those that would occur if current law is continued. The direction of the change is not fully determinable. It depends on how salary levels change over time compared to inflation. A related policy issue is that no corresponding change is being proposed in the similar MSRS General provision. This is an area where if the proposed change is appropriate for the MSRS Correctional Plan, presumably it makes sense in various other plans. If the Commission recommends the provision to pass, that may create a model for similar requests in the future.

Section 7 (page 5, lines 20 to 36 and page 6, lines 1 to 9). Revises Section 352.B.01, Subdivision 11, the MSRS State Patrol Plan definition of average salary for pension purposes, by clarifying that average salary does not include lump sum amounts for annual leave and overtime that are made at the time of separation from service.

Policy issue, Section 7. The proposal is consistent with language found in law for other plans. The purpose is to avoid loading of the high-five average salary, resulting in a pension that is not reflecting of actual salary in the years close to retirement. The LCPR should be aware, however, that if the proposal is passed, legislators may hear complaints from some constituents.

Section 8 (page 6, lines 11 to 27). Revises Section 352B.10, Subdivision 3, MSRS State Patrol Plan disabilitant partial resumption of employment provision, by basing the disability benefit adjustment on the total earnings on the date of disability with an adjustment for wage increases over time, rather than upon current wages from similar occupations.

Policy issues, Section 8. The proposal is essentially the same as in Section 6 above, and raises the same issues.

Section 9 (page 6, lines 29 to 35). Revises Section 490.121, Subdivision 4, a Judges Plan allowable service provision, by basing partial year service credit on calendar months, rather than fractional parts of a year.

Policy issues, Section 9. Presumably, this change reflects a clarification, rather than any substantive change.

Section 10 (page 7, lines 1 to 3). EFFECTIVE DATE. All sections are effective on July 1, 2001.

1 M moves to amend, as follows:

2 Page, after line, insert:

3 "Sec. Minnesota Statutes 2000, section 352.04,
4 subdivision 8, is amended to read:

5 Subd. 8. [DEPARTMENT REQUIRED TO PAY OMITTED SALARY
6 DEDUCTIONS.] (a) If a department fails to take deductions past
7 due for a period of 60 30 days or less from an employee's salary
8 as provided in this section, those deductions must be taken on
9 later payroll abstracts.

10 (b) If a department fails to take deductions past due for a
11 period in excess of 60 30 days from an employee's salary as
12 provided in this section, the department, and not the employee,
13 must pay on later payroll abstracts the employee and employer
14 contributions and an amount equivalent to 8.5 percent of the
15 total amount due in lieu of interest, or if the delay in payment
16 exceeds one year, 8.5 percent compound annual interest.

17 (c) If a department fails to take deductions past due for a
18 period of 60 30 days or less and the employee is no longer in
19 state service so that the required deductions cannot be taken
20 from the salary of the employee, the department must
21 nevertheless pay the required employer contributions. If any
22 department fails to take deductions past due for a period in
23 excess of 60 30 days and the employee is no longer in state
24 service, the omitted contributions must be recovered under

1 paragraph (b).

2 (d) If an employee from whose salary required deductions
3 were past due for a period of ~~60~~ 30 days or less leaves state
4 service before the payment of the omitted deductions and
5 subsequently returns to state service, the unpaid amount is
6 considered the equivalent of a refund. The employee accrues no
7 right by reason of the unpaid amount, except that the employee
8 may pay the amount of omitted deductions as provided in section
9 352.23."

10 Page , after line , insert:

11 "Sec. Minnesota Statutes 2000, section 352.87,
12 subdivision 4, is amended to read:

13 Subd. 4. [NON-JOB-RELATED DISABILITY BENEFITS.] An
14 eligible member described in subdivision 1, ~~who-is-less-than-55~~
15 ~~years-of-age-and~~ who becomes disabled and physically or mentally
16 unfit to perform the duties of the position because of sickness
17 or injury while not engaged in covered employment, is entitled
18 to a disability benefit amount equivalent to an annuity computed
19 under subdivision 3 assuming the member has 15 years of service
20 qualifying under this section and waiving the minimum age
21 requirement. If the eligible member becomes disabled under this
22 subdivision with more than 15 years of service covered under
23 this section, the eligible member is entitled to a disability
24 benefit amount equivalent to an annuity computed under
25 subdivision 3 based on all years of service credited under this
26 section and waiving the minimum age requirement.

27 Sec. Minnesota Statutes 2000, section 352.87,
28 subdivision 5, is amended to read:

29 Subd. 5. [JOB-RELATED DISABILITY BENEFITS.] An eligible
30 member defined in subdivision 1, ~~who-is-less-than-55-years-of~~
31 ~~age-and~~ who becomes disabled and physically or mentally unfit to
32 perform the duties of the position because of sickness or injury
33 while engaged in covered employment, is entitled to a disability
34 benefit amount equivalent to an annuity computed under
35 subdivision 3 assuming the member has 20 years of service
36 qualifying under this section and waiving the minimum age

1 requirement. An eligible member who becomes disabled under this
2 subdivision with more than 20 years of service credited under
3 this section is entitled to a disability benefit amount
4 equivalent to an annuity computed under subdivision 3 based on
5 all years of service credited under this section and waiving the
6 age requirement."

7 Page , after line , insert:

8 "Sec. Minnesota Statutes 2000, section 352.95,
9 subdivision 4, is amended to read:

10 Subd. 4. [MEDICAL OR PSYCHOLOGICAL EVIDENCE.] (a) An
11 applicant shall provide medical or psychological evidence to
12 support an application for disability benefits. The director
13 shall have the employee examined by at least one additional
14 licensed physician or psychologist designated by the medical
15 adviser. The physicians shall make written reports to the
16 director concerning the employee's disability, including medical
17 opinions as to whether the employee is disabled within the
18 meaning of this section. The director shall also obtain written
19 certification from the employer stating whether the employee is
20 on sick leave of absence because of a disability that will
21 prevent further service to the employer, and as a consequence
22 the employee is not entitled to compensation from the employer.

23 (b) If on considering the physicians' reports and any other
24 evidence supplied by the employee or others, the medical adviser
25 finds the employee disabled within the meaning of this section,
26 the advisor shall make appropriate recommendation to the
27 director in writing, together with the date from which the
28 employee has been disabled. The director shall then determine
29 the propriety of authorizing payment of a disability benefit as
30 provided in this section.

31 (c) Unless payment of a disability benefit has terminated
32 because the employee is no longer disabled, or because the
33 employee has reached age ~~62~~ 65 or the five-year anniversary of
34 the effective date of the disability benefit, whichever is
35 later, the disability benefit shall cease with the last payment
36 received by the disabled employee or which had accrued during

1 the employee's lifetime. While disability benefits are paid,
2 the director has the right at reasonable times to require the
3 disabled employee to submit proof of the continuance of the
4 disability claimed. If any examination indicates to the medical
5 adviser that the employee is no longer disabled, the disability
6 payment must be discontinued upon reinstatement to state service
7 or within 60 days of the finding, whichever is sooner.

8 Sec. Minnesota Statutes 2000, section 352.95,
9 subdivision 5, is amended to read:

10 Subd. 5. [RETIREMENT STATUS AT NORMAL RETIREMENT AGE.] The
11 disability benefit paid to a disabled correctional employee
12 under this section shall terminate at the end of the month in
13 which the employee reaches age ~~62~~ 65, or the five-year
14 anniversary of the effective date of the disability benefit,
15 whichever is later. If the disabled correctional employee is
16 still disabled when the employee reaches age ~~62~~ 65, or the
17 five-year anniversary of the effective date of the disability
18 benefit, whichever is later, the employee shall be deemed to be
19 a retired employee. If the employee had elected an optional
20 annuity under subdivision 1a, the employee shall receive an
21 annuity in accordance with the terms of the optional annuity
22 previously elected. If the employee had not elected an optional
23 annuity under subdivision 1a, the employee may within 90 days of
24 attaining age 65 or reaching the five-year anniversary of the
25 effective date of the disability benefit, whichever is later,
26 either elect to receive a normal retirement annuity computed in
27 the manner provided in section 352.93 or elect to receive an
28 optional annuity as provided in section 352.116, subdivision 3,
29 based on the same length of service as used in the calculation
30 of the disability benefit. Election of an optional annuity must
31 be made within 90 days before attaining age 65 or reaching the
32 five-year anniversary of the effective date of the disability
33 benefit, whichever is later. If an optional annuity is elected,
34 the optional annuity shall begin to accrue on the first of the
35 month following the month in which the employee reaches age 65
36 or the five-year anniversary of the effective date of the

1 disability benefit, whichever is later."

2 Page, after line, insert:

3 "Sec. Minnesota Statutes 2000, section 352.95,
4 subdivision 7, is amended to read:

5 Subd. 7. [RESUMPTION OF EMPLOYMENT.] If the disabled
6 employee resumes a gainful ~~occupation-from-which-earnings-are~~
7 ~~less-than-the-salary-received-at-the-date-of-disability-or-the~~
8 ~~salary-currently-paid-for-similar-positions,-or-if-the-employee~~
9 ~~is-entitled-to-receive-workers'-compensation-benefits~~ work, the
10 disability benefit must be continued in an amount which when
11 added to current earnings and workers' compensation benefits
12 does not exceed the salary ~~received-at-the-date-of-disability-or~~
13 ~~the-salary-currently-paid-for-similar-positions,-whichever-is~~
14 ~~higher,-if-the-disability-benefit-in-that-case-does-not-exceed~~
15 ~~the-disability-benefit-originally-authorized-and-in-effect~~ rate
16 at the date of disability as adjusted by the same percentage
17 increase in United States average wages used by social security
18 in calculating average indexed monthly earnings."

19 Page, after line, insert:

20 "Sec. Minnesota Statutes 2000, section 352B.01,
21 subdivision 11, is amended to read:

22 Subd. 11. [AVERAGE MONTHLY SALARY.] "Average monthly
23 salary" means the average of the highest monthly salaries for
24 five years of service as a member. Average monthly salary must
25 be based upon all allowable service if this service is less than
26 five years. It does not include any lump sum annual leave
27 payments and overtime payments made at the time of separation
28 from state service, any amounts of severance pay or any reduced
29 salary paid during the period the person is entitled to workers'
30 compensation benefit payments for temporary disability. A
31 member on leave of absence receiving temporary workers'
32 compensation payments and a reduced salary or no salary from the
33 employer who is entitled to allowable service credit for the
34 period of absence may make payment to the fund for the
35 difference between salary received, if any, and the salary the
36 member would normally receive if not on leave of absence during

1 the period. The member shall pay an amount equal to the member
 2 and employer contribution rate under section 352B.02,
 3 subdivisions 1b and 1c, on the differential salary amount for
 4 the period of the leave of absence. The employing department,
 5 at its option, may pay the employer amount on behalf of the
 6 member. Payment made under this subdivision must include
 7 interest at the rate of 8.5 percent per year, and must be
 8 completed within one year of the return from the leave of
 9 absence."

10 Page, after line, insert:

11 "Sec. Minnesota Statutes 2000, section 352B.10,
 12 subdivision 3, is amended to read:

13 Subd. 3. [ANNUAL AND SICK LEAVE; WORK AT LOWER PAY.] No
 14 member shall receive any disability benefit payment when the
 15 member has unused annual leave or sick leave or under any other
 16 circumstances, when during the period of disability there has
 17 been no impairment of salary. Should the member or former
 18 member resume gainful work ~~and-earn-less-than-the-salary~~
 19 ~~received-at-the-date-of-disability-or-the-salary-currently-paid~~
 20 ~~for-similar-positions~~, the disability benefit must be continued
 21 in an amount which when added to current earnings does not
 22 exceed the salary rate received at the date of disability ~~or-the~~
 23 ~~salary-currently-paid-for-similar-positions,-whichever-is~~
 24 ~~higher.--The-disability-benefit-must-not-exceed-the-disability~~
 25 ~~benefit-originally-allowed~~ as adjusted by the same percentage
 26 increase in United States average wages used by social security
 27 in calculating average indexed monthly earnings."

28 Page, after line, insert:

29 "Sec. Minnesota Statutes 2000, section 490.121,
 30 subdivision 4, is amended to read:

31 Subd. 4. [ALLOWABLE SERVICE.] "Allowable service" means a
 32 ~~whole-year,-or-any-fraction-thereof~~ any calendar month, subject
 33 to the service credit limit in subdivision 22, served as a judge
 34 at any time, or served as a referee in probate for all referees
 35 in probate who were in office prior to January 1, 1974."

36 Page, after line, insert:

- 1 "Sec. [EFFECTIVE DATE.]
- 2 Sections to [all sections in LCPR01-166] are
- 3 effective on July 1, 2001."
- 4 Renumber the sections
- 5 Correct internal cross-references
- 6 Amend the title accordingly