



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director *JAM*

RE: S.F. 804 (Kleis); H.F. ____ (): MSRS-Correctional; Inclusion of Reshape Program Director in Coverage

DATE: March 8, 2001

Summary of S.F. 804 (Kleis); H.F. ____ ()

S.F. 804 (Kleis); H.F. ____ () amends Minnesota Statutes, Section 352.91, Subdivision 3d, which specifies a number of correctional employment positions for inclusion in coverage by the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), by adding the director of the Reshape Program to MSRS-Correctional Plan coverage, effective on July 1, 2001.

Background Information On The MSRS-Correctional Employees Retirement Plan

The Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) was established in 1973 as a result of collective bargaining by the State of Minnesota with the American Federation of State, County and Municipal Employees (AFSCME), Council 6, and the resulting implementing legislation. Up to that point, correctional guards and most other correctional system employees were covered by the General State Employees Retirement Plan (MSRS-General). Some correctional system employees were covered by the Teachers Retirement Association (TRA). MSRS-Correctional was created as a separate plan, with the membership in 1973 largely limited to correctional guards and correctional counselors in adult correctional facilities. In subsequent years, by amendments to the coverage group of the plan, the coverage group was expanded to include additional correctional positions in both adult and juvenile correctional facilities. The initial coverage group was given credit for prior State employment service in the MSRS Correctional Employees Retirement Plan, with service credit in the prior plan being forfeited. As a modest number of other groups and job titles were added over the period 1974-1995, MSRS-Correctional Plan service credit was typically prospective only.

In 1996, the MSRS-Correctional Plan membership was increased by more than 400 State employees by virtue of the inclusion of 33 additional employment classifications who were certified by the Department of Corrections or the Department of Human Services as having at least 75 percent inmate or patient contact. The affected employees were allowed to retain their prior MSRS-General or TRA retirement coverage if they so desired. For State employees newly included in the MSRS-Correctional Plan, an option was provided to transfer prior State employment service to the plan if there were no breaks in the prior service of more than 180 days, and the prior service was comparable to service eligible for Correctional Plan coverage. To transfer the service, the State employee had to contribute in a lump sum the differential, if positive, between 4.9 percent of salary and the member contribution made to the prior plan, plus six percent interest. For those individuals transferring past coverage, assets representing the funded portion of the present value of the benefits earned to date were transferred from TRA or MSRS-General, as applicable, to MSRS-Correctional.

In 1999, the MSRS-Correctional Plan membership was increased by an estimated 115 State employees employed in nine employment positions with the Minnesota Extended Treatment Option (METO) on-campus program at the Cambridge Regional Human Services Center, with the affected employees allowed to retain their prior MSRS-General retirement coverage if they so desired. Newly included METO employees had an option to transfer prior State employment service to MSRS-Correctional, with a lump sum contribution differential payment by the transferring employee. For the METO employees transferring past coverage, assets representing the funded portion of the present value of the benefits earned to date were transferred from MSRS-General to MSRS-Correctional.

The attraction of the MSRS-Correctional Plan for groups seeking this coverage is that the plan pays higher benefits than a general employee plan and has an earlier normal retirement age. Because of the better benefits and earlier retirement age, the plan is more costly than a regular employee plan. The plan offers a hybrid of general employee plan and public safety plan features. MSRS-Correctional Plan members are coordinated members, unlike Public Employees Retirement Association Police and Fire Plan (PERA-P&F) members. Like a public safety plan, members can retire without a reduction for early retirement at

age 55 or with a reduction at age 50. This annuity is computed using a 2.4 percent yearly service benefit accrual factor. Duty-related disability benefits are generous, typical of a public safety plan. The duty-related disability receives 50 percent of high five average salary, plus 2.4 percent of high five average salary for each year in excess of 20 years of allowable service. Also like a public safety plan, the MSRS-Correctional Plan uses an occupational definition of disability rather than the total impairment disability definition used by the MSRS-General Plan.

The premise for coverage by the MSRS-Correctional Plan is that certain employment positions in correctional or analogous security hospital or psychopathic personality treatment center service are sufficiently hazardous and there is sufficient need for a particularly vigorous workforce in these specific positions to warrant a separate plan with larger retirement benefits payable at an earlier normal retirement age.

As of July 1, 2000, the MSRS-Correctional Plan membership consisted of 3,098 state employees in over 100 employment classifications working in 15 state facilities or institutions. MCF-Stillwater, MCF-Lino Lakes, MCF-St. Cloud, MCF-Faribault, MCF-Willow River, and the St. Peter Security Hospital are the facilities or institutions with the largest numbers of MSRS-Correctional members. The average MSRS-Correctional member is 40.3 years old, has 7.8 years of service credit, and receives a salary of \$41,174. The member makes an average annual contribution of \$2,343, while the applicable State department makes an average annual employer contribution of \$3,286.

Discussion

S.F. 804 (Kleis); H.F. ____ () adds the director of the Reshape Program at the Minnesota Correctional Facility-St. Cloud to the membership of the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) for service in that position, beginning July 1, 2001.

The proposed legislation raises a number of pension and other policy issues that merit Commission consideration, as follows:

1. Appropriateness Of The Inclusion Of Reshape Program Director Employment In Public Safety Employee Pension Coverage. The policy issue is the appropriateness of the proposed inclusion of the Department of Corrections Reshape Program director position in the MSRS-Correctional Plan, a public safety employee pension plan. The Reshape Program director position is currently considered to be a general (non public safety) employee employment position and the person now seeks coverage by a pension plan that is designed for public safety employees. Unless employment as the director of the Reshape Program actually involves the same type or degree of physical hazard and risk that police officers and firefighters face and unless the director's job actually requires the same level of physical capabilities that public safety officers are expected to possess and exhibit, the provision of public safety employee retirement coverage to the Reshape Program director position would not be appropriate. Information provided by the Minnesota State Retirement System with respect to the proposed legislation indicates that the Reshape Program serves between 25 and 40 inmates who eat, sleep, and work within that unit. The Reshape Program is apparently the successor to the former Phoenix Treatment/Behavior Change Program, which was the subject of controversial 2000 inclusion legislation. The Reshape Program director is reported to office within the unit. No information was provided by MSRS about the nature of the day-to-day activities of the director position, the nature of the routine physical hazards and risks faced by the Reshape Program director, or the level of physical capabilities that the director is required to maintain. No information has been provided to the Commission staff about the number of inmate incidents experienced by the Reshape Program director, about whether or not the director is expected to be a primary responder to any inmate incidents or altercations, or about any work time lost or workers' compensation claims filed by the director because of employment-related hazards. The Commission should consider taking additional testimony about the nature of this potential inclusion and the similarity of the position and that of public safety employees.
2. Failure Of the Reshape Program Position To Have Been Included In 1996 MSRS-Correctional Expansion. The policy issue is the appropriateness of a request for transfer from MSRS-General to MSRS-Correctional at this time, for service rendered, in a program that was not included in past, department-sponsored, plan expansions, the most recent of which occurred in 1996. The MSRS-Correctional Plan was established in 1973 and was initially limited in its coverage to prison guards, now titled correctional officers. It has been expanded to cover other Department of Corrections and Department of Human Services personnel, but only based on an assessment that the hazards of the position were comparable to that of a police officer and that there was a need to have a particularly

physically vigorous person employed in the position. In 1996, the Department of Corrections and Department of Human Services testified that they evaluated every single position in the State's correctional and related institutions and had determined which positions should be added to MSRS-Correctional Plan coverage, resulting in the expansion of the MSRS-Correctional membership by 401 employees in 23 employment classifications. The Reshape Program position was not part of that expansion. If the position should have been included in the 1996 plan membership expansion, either the incumbent or the Department of Corrections will need to explain the reason for that omission and why that 1996 departmental determination should now be overturned.

3. Unclear Application of Potential Inclusion to Past Service. The policy issue is the unclear extent of the potential inclusion provided for in the proposed legislation. From information provided by the Minnesota State Retirement System, it appears that two Department of Corrections employees are pursuing the proposed legislation, the current Reshape Program director and the former Reshape Program director, and that both employees seek a transfer of past service credit for their director service. The proposed legislation, as drafted, would transfer coverage for prospective (after July 1, 2001) service only. In the past (the 1996 general expansion, the 1999 Minnesota Extended Treatment Options (METO) expansion, and the 2000 Phoenix Program and other Correctional Department expansions), past service credit in the transferred position has been transferred at the employee's option, with past MSRS General State Employees Retirement Plan (MSRS-General) assets transferred to the MSRS-Correctional Plan, additional member contributions paid by the employee to match the contribution rate differential between MSRS-General and MSRS-Correctional, and the additional pension liability to be borne by the Department of Corrections and the Department of Human Services. Past service also could be handled as a traditional prior service purchase, without a direct pension plan subsidy. Amendment LCPR01-21 provides for a past service transfer, with an MSRS-General Plan asset transfer and MSRS-Correctional Plan subsidy. Amendment LCPR01-22 authorizes the Reshape Program director and former director to purchase service credit under the traditional full actuarial value service credit purchase payment procedure.
4. Precedent. The policy issue is the precedent that the proposed MSRS-Correctional Plan expansion would constitute for additional MSRS-Correctional Plan expansions of less potential merit. Due to the broad range of public sector employment and due to the large number of Minnesota public pension plans, any public pension plan change has the risk of creating an adverse precedent, where a narrow decision on a particular legislative request either actually constitutes an unwitting decision on a much broader pension change (i.e., granting unreduced early retirement to one general employee group becomes a decision on the same change for all general employee groups, such as the 1980 Public Employees Retirement Association (PERA) "Rule of 90" becoming the 1989 expansion to all general employee pension plans) or where a decision on a narrow factual circumstance is used by allegedly similarly-situated individuals as a basis for similar benefit or other pension change demands that will be difficult politically or otherwise, after-the-fact, to turn down (i.e., numerous service credit purchase requests and various optional annuity form change requests). To avoid creating a poor precedent, the Commission should consider creating a thorough factual record for any pension change and specify the basis for any favorable legislative decision either on the record or as part of the potential legislation. To avoid establishing an adverse precedent, the uniqueness of the Commission's understanding of the situation of the Reshape Program and the factors that argue for this remedy to the perceived pension problem should be established.

Technical Commission Staff Amendment

Commission staff amendment LCPR01-23 is a technical amendment that clarifies the reference to the Reshape Program as a program within the Department of Corrections.



OFFICE MEMORANDUM

Date: March 1, 2001

From: Paige Purcell, Legislative Coordinator *PP*

To: Edward Burek, Deputy Director

Subject: Proposed Legislation/Additional Correctional Plan Position

The "Reshape" program has been in place for about 21 years. It is an enclosed unit within the St. Cloud facility. Between 25 and 40 inmates eat, sleep and work in the unit. The director of the program has an office right within the unit. The Phoenix program listed in § 352.91, subd. 3(c) (added in 2000 legislation) was absorbed directly into the Reshape program.

The proposed legislation would currently affect two individuals the current and former director of the Reshape program. The former director bought service as a corrections agent and corrections caseworker, but service in the Reshape program was not eligible to be purchased.

It appears that these two individuals desire the option to purchase past service in the class and any other classes that are now included in the corrections plan. Let me know if you need more information.

LOP & R 3 01 2001

LOP & R MAR 01 2001

1 M moves to amend S.F. No. 804; H.F. No.
2, as follows:

3 Page 2, after line 13, insert:

4 "Sec. 2. [COVERAGE FOR PRIOR STATE SERVICE.]

5 Subdivision 1. [ELECTION OF PRIOR STATE SERVICE

6 COVERAGE.] (a) An employee who has future retirement coverage
7 transferred to the correctional employees retirement plan under
8 section 1 is entitled to elect to obtain prior service credit
9 for eligible state service performed after June 30, 1980, and
10 before July 1, 2001, with the department of corrections. All
11 eligible prior service credit must be purchased.

12 (b) The commissioner of corrections shall certify eligible
13 state service under this section to the executive director of
14 the Minnesota state retirement system.

15 (c) A covered correctional plan employee employed on July
16 1,2001, who has past service in a job classification covered
17 under section 1 on July 1, 2001, is entitled to purchase the
18 past service if the department certifies that the employee met
19 the eligibility requirements for coverage. The employee shall
20 pay the difference between the employee contributions actually
21 paid during the period and what should have been paid under the
22 correctional employees retirement plan. Payment for past service
23 must be completed by June 30, 2003.

24 Subd. 2. [PAYMENT FOR PAST SERVICE.] (a) An employee

1 electing to obtain prior service credit under subdivision 1 must
2 pay an additional employee contribution for that prior service.
3 The additional member contribution is the contribution
4 differential percentage applied to the actual salary paid to the
5 employee during the period of the prior eligible state service,
6 plus interest at the rate of six percent per annum, compounded
7 annually. The contribution differential percentage is the
8 difference between 4.9 percent of salary and the applicable
9 employee contribution rate of the general state employees
10 retirement plan during the prior eligible state service.

11 (b) The additional member contribution may be paid only in
12 a lump sum. Payment must accompany the election to obtain prior
13 service credit. No election of payment may be made by the person
14 or accepted by the executive director after June 30, 2003.

15 Subd. 3. [TRANSFER OF ASSETS.] Assets must be transferred
16 from the general state employees retirement plan to the
17 correctional employees retirement plan, in an amount equal to
18 the present value of benefits earned under the general employees
19 retirement plan for each employee transferring to the
20 correctional employees retirement plan, as determined by the
21 actuary retained by the legislative commission on pensions and
22 retirement in accordance with Minnesota Statutes, section
23 356.215. The transfer of assets must be made within 45 days
24 after the employee elects to transfer coverage to the
25 correctional employees retirement plan.

26 Subd. 4. [EFFECT OF THE ASSET TRANSFER.] Upon the transfer
27 of assets in subdivision 3, service credit in the general state
28 employees plan of the Minnesota state retirement system is
29 forfeited and may not be reinstated. The service credit and the
30 transferred assets must be credited to the correctional
31 employees retirement plan.

32 Subd. 5. [PAYMENT OF ACTUARIAL CALCULATION COSTS.] (a) The
33 expense of the legislative commission on pensions and retirement
34 attributable to the calculations of its consulting actuary under
35 subdivision 3 must be reimbursed by the department of
36 corrections.

1 Payment of the expense reimbursement to the legislative
2 commission on pensions and retirement is due 30 days after the
3 receipt of the reimbursement request from the executive director
4 of the legislative commission on pensions and retirement."

5 Page 2, line 15, delete "Section 1 is" and insert "Sections
6 1 and 2 are"

7 Renumber the sections in sequence.

1 M moves to amend S.F. No. 804; H.F. No.
2, as follows:

3 Page 2, after line 13, insert:

4 "Sec. 2. [PURCHASE OF SERVICE CREDIT FOR PRIOR CORRECTIONAL
5 SERVICE.]

6 (a) A person entitled to future correctional employees
7 retirement plan coverage under section 1 is entitled to purchase
8 allowable service credit in the correctional employees
9 retirement plan of the Minnesota state retirement system for
10 service rendered in that position before July 1, 2001.

11 (b) To purchase the service credit, the applicable person
12 shall pay the amount calculated under Minnesota Statutes,
13 section 356.55 or 356.551, whichever applies, reduced by the
14 amount of any general state employees retirement plan assets
15 transferred under paragraph (c).

16 (c) If an eligible person elects to purchase the service
17 credit, assets must be transferred from the general state
18 employees retirement plan to the correctional employees
19 retirement plan, in an amount equal to the present value of
20 benefits earned under the general employees retirement plan for
21 the employee purchasing service credit in the correctional
22 employees retirement plan, as determined by the actuary retained
23 by the legislative commission on pensions and retirement in
24 accordance with Minnesota Statutes, section 356.215. The

1 transfer of assets must be made within 45 days after the
2 employee elects to purchase service credit in the correctional
3 employees retirement plan.

4 Upon the transfer of assets, service credit in the general
5 state employees plan of the Minnesota state retirement system is
6 forfeited and may not be reinstated. The service credit and
7 transferred assets must be credited to the correctional
8 employees retirement plan. The expense of the legislative
9 commission on pensions and retirement attributable to the
10 calculations of its consulting actuary under this paragraph must
11 be reimbursed by the Minnesota state retirement system and added
12 to the purchase payment amount under paragraph (b). Payment of
13 the expense reimbursement to the legislative commission on
14 pensions and retirement is due 30 days after the receipt of the
15 reimbursement request from the executive director of the
16 legislative commission on pensions and retirement."

17 Page 2, line 15, delete "Section 1 is" and insert "Sections
18 1 and 2 are"

19 Renumber the subsequent sections in sequence.

1 M moves to amend S.F. No. 804; H.F. No.

2, as follows:

3 Page 2, line 13, after "program" insert "of the department
4 of corrections"

5 Amend the title

6 Page 1, line 2, after "retirement;" insert "state
7 correctional employees retirement plan;".

Senators Kleis and Stevens introduced--

S.F. No. 804: Referred to the Committee on State and Local Government Operations.

1 A bill for an act

2 relating to retirement; providing correctional plan
3 coverage for the director of the Reshape program;
4 amending Minnesota Statutes 2000, section 352.91,
5 subdivision 3d.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

7 Section 1. Minnesota Statutes 2000, section 352.91,
8 subdivision 3d, is amended to read:

9 Subd. 3d. [OTHER CORRECTIONAL PERSONNEL.] (a) "Covered
10 correctional service" means service by a state employee in one
11 of the employment positions at a correctional facility or at the
12 Minnesota security hospital specified in paragraph (b), provided
13 that at least 75 percent of the employee's working time is spent
14 in direct contact with inmates or patients and the fact of this
15 direct contact is certified to the executive director by the
16 appropriate commissioner, unless the person elects to retain the
17 current retirement coverage under Laws 1996, chapter 408,
18 article 8, section 21.

19 (b) The employment positions are as follows: baker,
20 chemical dependency counselor supervisor, chief cook, cook, cook
21 coordinator, corrections behavior therapist, corrections
22 behavior therapist specialist, corrections parent education
23 coordinator, corrections security caseworker, corrections
24 security caseworker career, corrections teaching assistant,
25 dentist, electrician supervisor, general repair worker,

1 library/information research services specialist,
2 library/information research services specialist senior, plumber
3 supervisor, psychologist 3, recreation therapist, recreation
4 therapist coordinator, recreation program assistant, recreation
5 therapist senior, stores clerk senior, water treatment plant
6 operator, work therapy technician, work therapy assistant, work
7 therapy program coordinator.

8 (c) "Covered correctional service" also means service as
9 the director or as an assistant group supervisor of the
10 Phoenix/Pomiga treatment/behavior change program of the
11 department of corrections.

12 (d) "Covered correctional service" also means service as
13 the director of the Reshape program.

14 Sec. 2. [EFFECTIVE DATE.]

15 Section 1 is effective July 1, 2001.