



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director

RE: S.F. 2192 (Kelley); H.F. 2365 (Latz): PERA-P&F: Providing Survivor Benefit to Spouse of PERA-P&F Member Killed in Action in Iraq

DATE: April 13, 2005

Summary of S.F. 2192 (Kelley); H.F. 2365 (Latz)

S.F. 2192 (Kelley); H.F. 2365 (Latz) provides a Public Employees Police and Fire Plan (PERA-P&F) surviving spouse annuity to the spouse of a PERA-P&F plan member who had been a member for less than one year and who was killed while on active military duty in Iraq, to be effective on the day after final enactment.

Background

The bill covers the spouse of David Day, a St. Louis Park police officer who was killed in Iraq on February 21, 2005, while serving with the military. Mr. Day had been a member of Public Employees Police and Fire Plan (PERA-P&F) for less than one year. His surviving spouse is not eligible for a survivor annuity under general law. The individual had less than one year of PERA-P&F service at the date of death, and the death did not occur in the course of providing police service to his employing city, St. Louis Park. An annuity would be payable under general law if the deceased had provided one or more years of PERA-P&F-covered service prior to death.

Background Information on PERA-P&F and Surviving Spouse Provisions

- a. General. Under PERA-P&F law, the surviving spouse in this case is not entitled to a surviving spouse annuity because the marriage occurred less than one year prior to the plan member's death and the death did not occur while performing duties as a St. Louis Park patrol officer. Section 353.657 is the PERA-P&F survivor benefit section. Subdivision 1 of the survivor benefit section specifies that a surviving spouse benefit can be paid to the surviving spouse in situations where the death is not duty-related if the marriage occurred at least one year prior to the employee's death. If the death was duty-related the one-year requirement is waived. If payable, the surviving spouse benefit is a monthly annuity of half the member's monthly salary, based on the salary received in the last six month's prior to death.

If the member died after becoming eligible to receive a retirement annuity under the plan (which is age 50 in PERA-P&F), Section 353.657, Subdivision 2a, specifies that the annuity is a 100 percent joint-and-survivor annuity based on the annuity to which the member was entitled on the date of death, and waiving any early retirement penalty that otherwise would be applied. In these death-while-eligible situations, the subdivision does not indicate a one-year-of-marriage requirement. This suggests that PERA interprets this law as providing, if the member's death occurred in a death-while-eligible situation, an annuity to the spouse without any restrictions related to the length of the marriage.

- b. Length of Marriage Issues in PERA-P&F Death-While-Active Surviving Spouse Provisions. PERA-P&F law appears to apply no length-of-marriage requirements if death occurs after the member reaches age 50 (became benefit-eligible). If death occurs prior to benefit-eligible age, PERA-P&F law waives any length-of-marriage requirement if the death is in the line of duty. If death occurs prior to benefit-eligible age, but the death is not related to duty, the marriage must have occurred at least one year prior to death. Otherwise, the surviving spouse is not eligible for an annuity (only a death refund, if the spouse has been named as the beneficiary).

It is not possible to determine with certainty the specific policy motives behind the length-of-marriage requirements relating to PERA-P&F surviving spouse benefits, but possible arguments can be noted. A common argument for not requiring any length-of-marriage requirement in duty-related death situations under public safety plans is that public safety personnel, in the course of doing their jobs, should not have any concerns regarding the financial welfare of their families if death should occur. Police officers and firefighters at times must put themselves in life-threatening situations to assist their follow police officers and firefighters and to protect the general public. The families of public safety officers who die in the line of duty deserve financial security.

A length-of-marriage requirement for surviving spouse annuities may not be unreasonable in situations where the death is not duty related, particularly when that benefit is generous and identical to that provided in duty-related situations, as is the case under PERA-P&F law. One argument for a length-of-marriage requirement is concern about deathbed marriages. The PERA-P&F survivor benefit provisions apply to active members and disabled members. Particularly with disabilitants, some of these individuals could be in frail health. Perhaps one intention of the length-of-marriage requirement is to avoid paying survivor benefits in cases where marriage is motivated by a desire to gain access to the survivor benefits. When death occurs well before normal retirement age, the liability created by paying the survivor annuity may be considerably higher than the liability recognized for the plan member if that member had lived. Another possible reason for the marriage duration requirement is to limit plan liability when an active member's death is not related in any way to assisting fellow public safety officers or to protecting the public. However, PERA-P&F law appears to not apply a one-year-of-marriage requirement in non-duty-related situations when the employee was benefit eligible. A possible justification in these situations is that paying the surviving spouse annuity does not add any liability above that recognized for the employee at the time of death.

The Minnesota State Retirement System (MSRS) State Patrol Retirement Plan is a statewide public safety plan similar in nature to PERA-P&F. The State Patrol Plan is an older plan than PERA-P&F. The State Patrol Plan traces back to the 1940s, PERA-P&F to the 1960s. The State Patrol Plan makes greater use of the one-year-of-marriage requirement. That plan appears to apply the one-year-of-marriage requirement to all its surviving spouse annuities, both duty-related and non-duty-related. The various possible annuities or benefits payable to a "surviving spouse" in death-while-active situations are stated in Section 352B.11, Subdivision 2. For purposes of any of those annuities in this State Patrol Retirement Plan, a "surviving spouse" is defined in relevant part in the definition section (Section 352B.01, Subdivision 9) as a legally married spouse who *was married to the member or former member for a period of at least one year.* [Emphasis added.]

- c. Nature of PERA-P&F Plan. Public Employees Police and Fire Plan (PERA-P&F) is a statewide public safety plan, covering police officers and paid firefighters throughout the state, except for a few remaining local police and paid fire relief associations. Thus, PERA-P&F is a multi-employer plan. The plan's benefits reflect the public safety nature of the plan. The individuals in these plans are assumed to be subject to high risk of injury or death due to the nature of the employment, compared to other public employees covered by general employee plans. A relatively young, vigorous workforce is needed, thus the plan provides high benefits per year of service and transitions individuals into retirement at relatively young ages. The plan provides a retirement benefit of 3.0 percent of the high-five average salary (the average of the salaries in the five-year period providing the highest average) per year of service. Members can retire as early as age 50 with modest reductions due to early retirement, or at age 55 (the normal retirement age for this plan) with no reduction. An individual retiring at age 55 with a high-five average salary of \$50,000 and with 30 years of service credit would receive an annual pension of \$45,000. ($\$50,000 \times 0.03 \times 30 \text{ years} = \$45,000$.) Public safety plan members need a disability benefit program which will provide for their families if the member becomes disabled due to injury, even if that disability occurs shortly after becoming a firefighter or police officer. The plan provides a minimum disability benefit for duty-related disabilitants of 50 percent of the high-five average salary. For disabilitants with longer service, the disability benefit would be computed like a retirement benefit, but without any reductions due to early receipt, if that provides a higher benefit. The surviving spouse benefits are also generous in death-while-active situations, and have been previously described.

Discussion of a Previous Comparable Situation

A fairly recent situation bearing some relationship to the current one was handled in the Legislature a few years ago. In 2000, H.F. 3931 (Holsten); S.F. 3625 (Laidig) was introduced which would have provided a PERA-P&F surviving spouse annuity to the spouse of a St. Paul firefighter who was killed while engaged in a recreational activity (snowmobiling), who was not married long enough to meet PERA-P&F surviving spouse benefit eligibility requirements. The couple had been married only a few months. The Commission heard the bill on February 28, 2000, and after discussion the bill was laid over and no further legislative action occurred. In 2003, another bill was introduced to address the same situation, H.F. 1507 (Smith); S.F. 1426 (Pogemiller). The Commission heard the bill on April 22, 2003, and after discussion the bill was laid over for interim discussion on a motion by Representative Phil Krinkie. However, language covering the affected spouse appeared in the Senate position document prepared for purposes of negotiating a final pension bill with the House. Applicable language for the individual was included in the omnibus pension bill that passed during the 2003 Special Session (Laws 2003, First Special Session, Chapter 12, Article 15, Section 3). That language waived the minimum one-year duration requirement in the general law and provided a surviving spouse benefit to the wife of the deceased firefighter, with the benefit made retroactive to the date of the firefighter's death.

Discussion and Analysis

S.F. 2192 (Kelley); H.F. 2365 (Latz) provides a PERA-P&F surviving spouse annuity to the spouse of a PERA-P&F plan member who had been a member for less than one year and who was killed while on active military duty in Iraq, to be effective on the day after final enactment.

The bill raises the following pension and related public policy issues:

1. Alternative Actions. As an alternative to legislative action on this bill, the city could provide a payment to the surviving spouse equal to the full value of the surviving spouse annuity, or some portion of that annuity's value.
2. Waiver of Requirement Issues. The PERA-P&F survivor benefit provision requires that marriage occur at least one year prior to death in relatively short-service, non-duty-related death situations. The language in the bill requires waiving that minimum one-year marriage requirement. This length-of-marriage requirement seems intended to avoid having large liabilities added to the plan by deathbed marriage situations, where a plan member with minimal service who is either a terminally ill active member or a disabilitant marries shortly before death, potentially exposing the pension fund to the liability of providing a surviving spouse benefit far in excess of the liability carried by the plan for the covered plan member. The situation presented by this bill is much different; this is a case where a young, vigorous plan member died while serving in the armed forces, protecting the interests of his country. If death had occurred while performing police duties for his community, the surviving spouse would be entitled to a surviving spouse benefit. In this case, the individual did not die while serving his local community; rather, he died while serving his country.
3. Equity Issue. The issue is whether the situation has sufficient equity or compassion issues to justify waiving the length-of-marriage requirement. The Commission, when it heard bills for the spouse of a deceased St. Paul firefighter in 2000 and 2003, was somewhat reluctant to support those bills; however, the language for that survivor did eventually pass. That case was less compelling than the situation currently presented. That firefighter died while engaged in a recreational activity, snowmobiling. In contrast, the police officer specified in the current bill died serving his country. Neither death occurred while performing duties as a St. Paul firefighter (in the case of the 2000 and 2003 bills) or while performing duties as a St. Louis Park patrol officer (the current legislation). But the Legislature may conclude that the military service being provided by the St. Louis Park patrol officer when death occurred creates a considerably stronger argument for providing a benefit.
4. Estimated Cost of the Proposed Benefit. PERA has indicated that the cost of providing a surviving spouse benefit will create considerable liability for PERA-P&F. The required reserves for the benefit are estimated to be \$346,478, and the survivor benefit will be approximately \$1,747 per month. If a survivor benefit is not provided by special legislation, under general law the spouse's only benefit would be a refund of the member's employee contributions to PERA-P&F, plus six percent interest. The total refund would be a one-time payment of \$1,831. That refund is minimal because the individual had such short service, contributing to the plan for a fraction of one year prior to death.
5. Question of Need. At the 2000 Commission meeting when the Commission considered the firefighter spouse bill, some Commission members suggested that information such as insurance settlements related to the employee's death, other payments or benefits provided to the surviving spouse by the city, state, or federal government, and information on the surviving spouse's employment may help the Commission establish whether some form of further payment or payments could be justified based on compassion. Presumably, the Commission would have weighed these factors against pension policy and precedent concerns. In the current case, we have no information on what other benefits the surviving spouse may have received, or about that individual's employment, if any, and the general financial condition of that individual.
6. Current Actuarial Condition of PERA-P&F. The issue is the current financial condition of PERA-P&F and its ability to absorb additional liability. Although the plan is 101 percent funded according to the 2004 actuarial valuation, difficulties are looming in the near future. The plan has a contribution deficiency of 6.55 percent of payroll, meaning that the contributions are 6.55 percent of payroll less than needed to keep this plan fully funded. Unfunded liabilities are likely in the near future. A bill has been introduced (S.F. 621 (Betzold, by request); H.F. 1756 (Smith)), which would revise PERA-P&F contribution rates to address this problem. The bill has not yet been heard by the Commission, but it is one that the Commission may hear in the next few weeks.

**PERA-P&F Actuarial Valuation Results
2004**

<u>Membership</u> Active Members	10,055
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Service Retirees		4,547
Disabilitants		700
Survivors		1,385
Deferred Retirees		878
Nonvested Former Members		750
Total Membership		18,315
<u>Funded Status</u>		
Accrued Liability		\$4,692,190,387
Current Assets		\$4,746,834,494
Unfunded Accrued Liability		(\$54,644,107)
Funding Ratio	101.16%	
<u>Financing Requirements</u>		
Covered Payroll		\$593,944,656
Benefits Payable		\$237,442,200
Normal Cost	22.37%	\$132,886,767
Administrative Expenses	0.12%	\$712,734
Normal Cost & Expense	22.49%	\$133,599,501
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Amortization	(0.44%)	(\$2,613,356)
Total Requirements	22.05%	\$130,986,145
Employee Contributions	6.20%	\$36,824,569
Employer Contributions	9.30%	\$55,236,853
Employer Add'l Cont.	0.00%	\$0
Direct State Funding	0.00%	\$0
Other Govt. Funding	0.00%	\$0
Administrative Assessment	0.00%	\$0
Total Contributions	15.50%	\$92,061,422
Total Requirements	22.05%	\$130,986,145
Total Contributions	15.50%	\$92,061,422
Deficiency (Surplus)	6.55%	\$38,924,723

7. Payment for the Benefit, Distribution of Burden. It would be possible to shield other PERA-P&F employing units from absorbing the cost of this benefit by having the city of St. Louis Park make an addition contribution to the PERA-P&F fund sufficient to cover all liability for the benefit above that recognized for the member at the time of death. This type of approach was considered as part of the 2000 and 2003 discussion on the St. Paul deceased firefighter spouse bill, but the approach did not seem to have had any broad support on the Commission.
8. Whether to Add Retroactivity. The bill does not include retroactivity, and the issue is whether to add retroactivity. Without it, some monthly survivor benefits may not be paid because of the gap between the date of death of the plan member and the effective date of the legislation. The similar 2003 legislation did include retroactivity.

Amendments

The Commission may wish to consider the following amendments. The first three are delete-everything amendments that could be considered as alternatives to the bill.

Amendment LCPR05-250 provides technical cleanup, adds requirements that the surviving spouse apply for the benefit, and requires the individual to provide to the executive director of the Public Employees Retirement Association (PERA) any additional information needed to determine eligibility for the benefit.

The amendment also includes a substantive change, providing retroactivity back to the date of death of the PERA-P&F member. The language also includes authority to repay a death refund if one has been received in order to reestablish the right to a survivor annuity.

Amendment LCPR05-251 is identical to LCPR05-250, except that it does not provide retroactivity.

Amendment LCPR05-252 is identical to LCPR05-250, except that it also provides that the city of St. Louis Park shall pay the cost of the surviving spouse annuity. This amendment includes retroactivity. If the Commission does not want retroactivity, it can be removed by verbal amendment. The provision has a local approval clause.

Amendment LCPR05-257, which could be used with LCPR05-250 or LCPR05-251, would allow the PERA Board to decide on this matter. The bill would not be effective unless approved by the PERA Board.