


TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director 

RE: Amendments LCPR06-121-A8 and S2239-A14; Permitting PERA-General Coverage and Service Credit Purchase for Certain North St. Paul City Elected Officials by Amendments to S.F. 2239 (Pogemiller); H.F. 2362 (Smith), Omnibus Retirement Bill I, in House and Senate Committees

DATE: March 22, 2006

Summary of Amendments LCPR06-121-A8 and S2239-A14

S.F. 2239 (Pogemiller); H.F. 2362 (Smith), the Commission's Omnibus Retirement Bill I, was amended in the House Governmental Operations Committee (Amendment LCPR06-121-A8) and in the Senate Finance Committee (S2239-A14), by permitting three North St. Paul elected municipal officials, the mayor and two council members, to elect to have future retirement coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and to purchase PERA-General service credit for elected municipal service since January 1, 2001. The purchase is at full actuarial value and the City of North St. Paul is mandated to pay the payment amount in excess of the equivalent member contributions plus interest.

Pension Problem of North St. Paul Elected Municipal Officials

Effective January 1, 2001, the City of North St. Paul increased the salary payable to the mayor and city council members from an amount that was less than the threshold minimum salary qualifying for retirement coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), \$425 in any month, to an amount somewhat in excess of the PERA-General threshold salary amount. In January 2001, the North St. Paul mayor and council members should have been accorded an opportunity to elect PERA-General retirement coverage, which was then optional for local elected officials, but the coverage election opportunity was not provided to the North St. Paul elected officials by the city or by PERA. In 2001 (First Special Session Laws 2001, Chapter 10, Article 11), PERA-General retirement coverage was closed to elected officials after July 1, 2002, and local elected official retirement coverage was restricted to the PERA Defined Contribution Retirement Plan. Three North St. Paul city elected officials remain from 2001, are now aware that through an administrative error by either North St. Paul or PERA were not able to exercise a timely election of PERA-General coverage, and now want the opportunity to elect future PERA-General coverage for their elected official service and to purchase PERA-General service credit for local elected service since January 1, 2001.

Discussion and Analysis

Amendment LCPR06-121-A8 permits three city elected officials from North St. Paul, Minnesota, to elect future retirement coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and to purchase, at full actuarial value, PERA-General allowable service credit for elected official service since January 1, 2001, the date after which the North St. Paul city elected service compensation equaled or exceeded the PERA-General minimum salary threshold for membership, with the City of North St. Paul obligated to pay a majority of the purchase payment.

The amendment raises several pension and related public policy issues for potential Commission consideration and discussion, as follows:

1. Equitable Considerations; Accuracy of Factual Assertions. The policy issue is the accuracy of the factual assertions underlying the proposed North St. Paul elected official retirement coverage and service credit purchase proposed and the weight of favorable and unfavorable equitable considerations with respect to the proposal. The Commission may need to take more testimony to assure itself that the factual assertions underlying the proposal are all accurate. The chief equitable consideration is whether or not there really was an error by the city or by PERA in not according the North St Paul city elected officials with an opportunity to elect PERA-General retirement coverage in January 2001. If the city officials knew that they had the PERA-General membership election option in January 2001, and did not pursue that option, the basis for the special delayed election and service credit purchase now essentially evaporates.

2. Appropriateness of Transfer in Light of the Legislative Policy Favoring Elected Official Defined Contribution Plan Coverage. The policy issue is the appropriateness of this proposed transfer from defined contribution plan coverage to defined benefit plan coverage for an elected official when the Legislature has been mandating defined contribution plan coverage for most elected officials. In 1997 (Laws 1997, Chapter 233, Article 2), the Legislators Retirement Plan and the Elected State Officers Retirement Plan were closed to new entrants, with future legislators, future constitutional officers, and elected existing legislators and constitutional officers covered by the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified). During the 1997-1998 interim, the Commission reassessed the coverage change for legislators and constitutional officers and declined to recommend a modification in the 1997 law. In 2001 (First Special Session Laws 2001, Chapter 10, Article 11), future elected local government officials other than county sheriffs were excluded from the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) in favor of the PERA-Defined Contribution Retirement Plan. Thus, with the exception of judges and county sheriffs, all recently elected officials in the State have defined contribution plan coverage. The proposed change, substituting defined benefit plan coverage for previously elected defined contribution plan coverage, runs contrary to the policy decisions of the Legislature in 1997 and 2001 to provide defined contribution plan retirement coverage to most local elected officials.
3. Appropriate Portion of the Additional Payment Amount to be Borne by the City of North St. Paul. The policy issue is the appropriate portion of the payment required in addition to the account transfer to be borne by the City of North St. Paul as part of the proposed retirement coverage transfer. The proposal limits the member responsibility by the three elected officials to the equivalent member contributions that they would have paid during the period 2001-2006, plus compound interest at the rate of 8.5 percent annually, and makes the City of North St. Paul responsible for the balance of the full actuarial value payment price. The Commission has allocated the prior service credit purchase payment amounts in this manner when it has determined in the past that the employer made an error that caused the service credit loss. Testimony may be needed to determine the extent of city responsibility for the failure to provide the three officials with an opportunity to elect coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and about the likely full actuarial value purchase payment amounts involved.
4. Appropriateness of a Local Approval Requirement. The policy issue is whether a local approval requirement is appropriate. Article XII of the Minnesota Constitution regulates local and special legislation and, in Section 2 of that article, provides that legislation that applies to a single local governmental unit is a special law and is effective only upon local approval. This legislation obligates North St. Paul to pay a portion of a pension obligation. As such, it could be special legislation absolutely requiring local approval to become effective. If the Legislature wishes to avoid any contention that it is local legislation requiring local approval and potential future litigation on the issue, a local approval section could be added.
5. Precedent. The policy issue is whether or not there are precedents in past legislation for this proposed legislation and whether or not this proposed legislation, if recommended by the Commission and enacted by the Legislature, could constitute a binding precedent for similar future legislative requests. In the past, a service credit purchase has been enacted for elected officials who failed to elect General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) retirement coverage, including St. Paul (see First Special Session Laws 2001, Chapter 10, Article 17, Section 9, relating to former St. Paul Council member and former Transportation Department Commissioner Len Levine), and that special legislation covers situations essentially identical to this proposal and could be considered to be a precedent. The 2001 St. Paul special legislation, however, was premised on either misinformation by the city, a clerical error by another city employee, or an error by PERA, and no comparable third party error or culpability has been alleged in this case. This proposed special legislation, if enacted, would likely be cited by any other local governmental elected official who does not have PERA-General coverage for that elected service but would benefit from the coverage. The distinguishing feature could be the fact that these elected officials were grandparented in for PERA-General coverage eligibility, which grandparenting ended on June 30, 2002, and any elected officials taking office after that date would not have had that PERA-General option.

March 13, 2006

Senator Charles Wiger
75 Dr. Rev. Martin Luther King Jr. Boulevard, Room 301
St. Paul, MN 55155

Re: Request for Legislative Remedy for Pension Coverage

Dear Senator Wiger:

This letter is on behalf of William Sandberg, Mayor of North St. Paul, and Council Members Michael Kuehn and Jan Walczak. A lack of communication prevented them from joining the Coordinated Pension Plan prior to the June 30, 2002 cutoff date for new participation.

A request to allow retroactive participation in the plan as of January 1, 2001 was submitted to the Board of Trustees for the plan. They, in turn, referred the matter to the Office of the Attorney General for a decision. Their request was denied, even though their case had merit. Administrative officials for the plan suggested that the situation should be fixed by legislative action. Please review the attached documentation to see if you could support a legislative remedy to this problem.

If you are inclined to submit an amendment to a bill on their behalf, to allow retroactive participation in the Coordinated Pension Plan as of January 1, 2001, there is a Pension Omnibus Bill sponsored by Senator Pogemiller that may be appropriate. This bill, S.F. #2239, has about a dozen situations where pension problems for specific individuals are being remedied.

Plan administrators suggested that if you decide to support this effort, you should forward a request to the Pension Commission (651-296-2750) for their assistance in drafting the language for an amendment.

Please let me know if you have any questions. My telephone number is 651-777-5820.

Sincerely,

David Walczak
David Walczak

Information Needed to Draft Language for Legislation

NAME	DATE OF BIRTH
William Sandberg, Mayor	January 29, 1932
Michael Kuehn, Council Member	March 1, 1951
Jan Walczak, Council Member	December 7, 1951

ANNUAL COMPENSATION

YEAR	MAYOR	COUNCIL MEMBER
1987	\$3,000	\$1,800
1988-2000	\$4,200	\$3,000
2001-2006	\$6,400	\$5,200

Optional Enrollment in the Coordinated Plan.

See attached e-mail from Cheryl Keating, PERA Manager

Funding Policy

The required contribution for the prior service pension cost will be determined in accordance with Minnesota Statutes, Section 356.551. The eligible person will pay an amount equal to the employee contribution rate or rates in effect beginning with 2001 applied to actual salary rates beginning with 2001 accumulated with 8 ½% interest through the date of purchase. The City of North St. Paul pays the balance of the total prior service credit purchase payment amount under Minnesota Statutes, Section 356.551.

david walczak

From: <Cheryl.Keating@state.mn.us>
To: <davidpwalczak@msn.com>
Cc: <Lance.Lafrombois@state.mn.us>; <Mary.Vanek@state.mn.us>
Sent: Tuesday, March 07, 2006 10:21 AM
Subject: Examples of pension proposals

Dear David Walczak,

As we discussed on the telephone, PERA officials generally support the purchase of past uncovered service by individuals who had met the applicable membership criteria of the Coordinated Plan when the purchase is made under Minnesota Statutes 356.551. There are provisions within the proposed 2006 Omnibus Pension Bill covering some purchases of public service by other individuals, which I suggest you review to get a sense of the language that has been included in current pension bills. The omnibus pension bill for 2006 can be found under the Legislative Commission on Pensions and Retirement Website (link is below). Look under the tab "Pension Legislation" for Omnibus Pension Bill. Once on this page, click the link that is provided in the text "currently in the form of delete-all amendment LCPR06-121"

www.commissions.leg.state.mn.us/lcpr/lcprmain.htm

Once you have the omnibus pension bill open, go to Article 15 and you will find a few proposals relating to purchasing PERA Coordinated Plan credit (sections 4, 6, and 11 for example). Please be aware that when you draft legislation for the purchase of past elected service you also need to include a provision that allows the North St. Paul Mayor and two City Council members to optionally join the Coordinated Plan. This is needed because the current provisions of MS 353.01, subdivision 2d, do not state that persons holding governing-body elected positions have the right to file a written election for membership in the Coordinated Plan.

I have asked Lance LaFrombois from our office to call you at 651-777-5820 and discuss the legislative process with you. I hope that I have sufficiently responded to your information request. Please contact me if you need anything further from our office.

Cheryl Keating, Manager
Public Employees Retirement Association of MN
Account Information Management Division
Phone: 651-355-0055

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This e-mail and any files transmitted with it are intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance



William T. Sandberg-Mayor
2400 Margaret Street
North St. Paul, MN 55109
<http://www.ci.north-saint-paul.mn.us>
Office: 651-747-2400

December 22, 2005

Mr. Mark Lindner
Public Employees Retirement Association
60 Empire Drive, Suite 200
St. Paul, MN 55103

Re: Participation in the PERA Coordinated Plan for North St. Paul
Officials elected before July 1, 2002

Dear Mr. Lindner:

In November of 2004, the mayor and the city council members of the City of North St. Paul were asked to complete enrollment forms for retirement plan coverage. All of the elected officials were surprised by this request because they had never been informed prior to this date that they could have participated in any type of retirement program for this year or any other year.

It is our understanding that participation should have been made available to elected officials in the Coordinated Plan as of January 1, 2001. On that date, the compensation levels for the mayor and the city council members first exceeded the eligibility threshold of \$425 per month. We, the elected officials signing below, would have immediately participated in the Coordinated Plan if we would have been informed of its availability. We were never given the opportunity to elect participation.


Since November of 2004, inquiries have been made at PERA about retroactive participation in the Coordinated Plan back to 2001, but with no success. Chris Arcand, PERA Eligibility Specialist, has stated that the Coordinated Plan is closed to new enrollment as of June 30, 2002.



It is our request that the PERA Board of Trustees review the facts and circumstances of this situation and not deny participation because of any administrative error or lack of communication. We have not enrolled and will not enroll in any alternative retirement program until the Board of Trustees decides upon our eligibility for this Coordinated Plan as of January 1, 2001. If eligibility is granted, we understand that we will be required to remit employee contributions for coverage for 2001 through the current date.

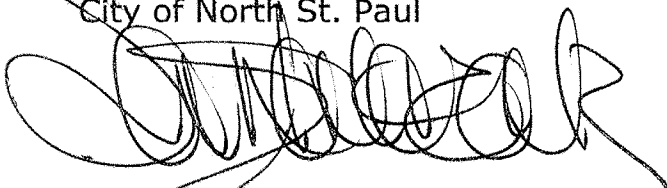
Thank you for your attention to this matter.

Sincerely,


William T. Sandberg
Mayor
City of North St. Paul



Michael Kuehn
Council Member
City of North St. Paul



Jan Walczak
Council Member
City of North St. Paul

Public Employees Retirement Association of Minnesota
60 Empire Drive, Suite 200
Saint Paul, Minnesota 55103-2088
Member Information Services: 651-296-7460 or 1-800-652-9026
Employer Response Lines: 651-296-3636 or 1-888-892-7372
PERA Fax Number: 651-297-2547
PERA Website: www.mnpera.org



PERA ID No.: 6634-00

February 23, 2006

MAYOR WILLIAM T. SANDBERG
CITY OF NORTH ST PAUL
2400 MARGARET ST N
SAINT PAUL MN 55109-3020

Dear Mayor Sandberg:

As you know, we forwarded the request made by you and two members of the North St. Paul City Council for retroactive coverage in the Coordinated Plan from 2001 to the present date to our legal advisor, Assistant Attorney General Jon Murphy. We referred this matter to Jon Murphy because the question of whether such coverage can be granted is more of a legal matter than an administrative one. The PERA Trustees are fiduciaries and must administer the pension plans in accordance with the terms of the plan and in a manner consistent with the governing laws.

PERA law was amended effective July 1, 2002, to provide that governing body elected officials could no longer elect to participate in the Coordinated Plan. PERA staff informed all covered employers of the law change through two editions of the *PERAphrase* newsletters (copies enclosed). As part of this communication, employers were instructed to advise their eligible elected governing body officials of the June 30, 2002, deadline for electing Coordinated Plan coverage.

In the letter we received from you and council members, Michael Kuehn and Jan Walczak, you state that none of you were informed by representatives of North St. Paul City that you had an option to join the Coordinated Plan before July 1, 2002. Based thereon, you all seek retroactive pension coverage back to January 1, 2001, the date that your monthly earnings first reached the membership threshold of \$425. What you seek is essentially a "purchase of prior service" in the Coordinated Plan.

After reviewing the relevant state laws, Mr. Murphy has advised us that there is no legal authority in which the PERA Board can authorize such coverage in the Coordinated Plan. Minnesota Statutes Chapters 353 and 353D do not set forth the nature of the pension contributions or "purchase cost" which could effectuate retroactive coverage if it was authorized. It is Mr. Murphy's opinion that, without the express authority to do so, the PERA Board would be violating its fiduciary duty if it were to authorize retroactive plan coverage under the facts presented.

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February 23, 2006

In light of the opinion from our legal representative, we recommend that you seek a legislative remedy if you and the council members wish to obtain retroactive coverage in the Coordinated Plan. If you pursue special legislation, we suggest that it include some form of funding mechanism for the retroactive pension coverage.

We want to remind you that you are eligible to join PERA's Defined Contribution Plan (DCP) on a prospective basis. Participation in the DCP is voluntary and there is no minimum salary requirement. If you wish to join the DCP, you must submit a signed Membership Election form, which you can get from the payroll or personnel officers of the city or our office. Elected officials participating in the DCP may choose to discontinue the membership at any time.

Please feel free to contact our office if you wish to discuss this matter. My phone number is 651-355-0055 and the telephone number of PERA's Executive Director, Mary Vanek, is 651-296-8358.

Sincerely,

Cheryl Keating
PERA Manager
Account Information Management Division
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

cc: Michael Kuehn, Council Member, City of North St. Paul
Jan Walczak, Council Member, City of North St. Paul
Wally Wysopal, City Manager

1.1 moves to amend the delete everything amendment LCPR06-121 to
1.2 H.F. No. 2362 as follows:

1.3 Page ..., after line ..., insert:

1.4 "Sec. **CERTAIN NORTH ST. PAUL CITY ELECTED OFFICIALS;**
1.5 **SERVICE CREDIT PURCHASES.**

1.6 (a) An eligible person described in paragraph (b) is entitled, upon making written
1.7 application, to purchase service credit in the coordinated program of the general employees
1.8 retirement plan of the Public Employees Retirement Association under paragraph (c) and
1.9 to have future retirement coverage by the coordinated program of the general employees
1.10 retirement plan of the Public Employees Retirement Association for future North St.
1.11 Paul city elected official service.

1.12 (b) An eligible person is an elected official who has been serving the city of North
1.13 St. Paul since January 1, 2001, who was not informed of the option to be a member of the
1.14 coordinated program of the general employees retirement plan of the Public Employees
1.15 Retirement Association on January 1, 2001, when the minimum salary eligibility
1.16 requirement for membership was first met, who was in elected office on June 30, 2002,
1.17 when the coordinated program of the general employees retirement plan of the Public
1.18 Employees Retirement Association was closed to membership by elected officials, and
1.19 who was born on January 29, 1932, March 1, 1951, or December 7, 1951.

1.20 (c) The purchase payment amount for the prior service credit purchase must be
1.21 calculated under Minnesota Statutes, section 356.551. The eligible person must pay an
1.22 amount equal to the employee contributions to the general employees retirement plan of
1.23 the Public Employees Retirement Association that the person would have made from
1.24 january 1, 2001, to the date of the purchase, plus annual compound interest at the rate of
1.25 8.5 percent from the date on which payment should have been made if a membership
1.26 election option had been exercised in 2001 to the date of actual payment. If the eligible
1.27 person makes the required employee contribution equivalent payment, the executive

2.1 director of the Public Employees Retirement Association shall notify the city of North
2.2 St. Paul of the balance of the prior service credit purchase payment amount under
2.3 Minnesota Statutes, section 356.551. The city of North St. Paul shall pay the certified
2.4 payment amount to the Public Employees Retirement Association within 60 days of the
2.5 certification, plus interest at the rate of 0.71 percent per month, compounded monthly,
2.6 from the date of the employee contribution equivalent payment until the date on which the
2.7 balance of the total purchase payment is paid.

2.8 (d) This section expires on January 1, 2007."

2.9 Renumber the sections in sequence and correct the internal references

2.10 Amend the title accordingly

1.1 Senator moves to amend S.F. No. 2239, the first engrossment, as
1.2 follows:

1.3 Page ..., after line ..., insert:

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