



S.F. 191
(Betzold)

H.F. 723
(Murphy, M.)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS-General, MSRS-Correctional, State Patrol Retirement Plan
Relevant Provisions of Law: M.S., Sections 352.113; 352.95; 352B.10
General Nature of Proposal: Establishes time limit for disability application filing; requires written applications; reduces maximum age for MSRS-Correctional and State Patrol disability benefit eligibility
Date of Summary: February 25, 2009

Specific Proposed Changes

- Creates time limit for filing disability applications at 18 months after termination of service.
- Reduces MSRS-Correctional and State Patrol Retirement Plan maximum age for receiving disability benefit from age 65 to age 55.

Policy Issues Raised by the Proposed Legislation

1. Proper length of time for disability benefit filing.
2. Disability provisions: ADA compliance.
3. Cost/savings implications.
4. Implementation problem: lack of clarity regarding coverage.
5. Likely omitted section.
6. Drafting issue regarding filing deadline.

Potential Amendments

Effective Date Amendments:

- S0191-A1 inserts July 1, 2009, effective dates for each section.
- S0191-A2 makes the provisions effective July 1, 2009, and also makes the provisions apply to those currently disabled.
- S0191-A3, a third effective date alternative, would make the provisions effective July 1, 2009, and does not mention existing disabilitants, leaving the question of whether these provisions have application to existing disabilitants unspecified.

Filing Deadline Time Period Amendments:

- S0191-A4 allows the Commission to specify a filing date time period other than 18 months. The Commission would need to specify the length of time by filling in the blanks in the amendment.
- S0191-A5, an alternative to S0191-A4, deletes section 1, leaving the existing law time period unchanged, remaining at 180 days.

Omitted Section Amendments:

- S0191-A6 adds the State Patrol Retirement Plan termination of disability benefit provision which appears to have been omitted, M.S., Section 352B.105, and revises it to transfer at age 55 or the five-year anniversary of the disability, whichever is later.
- S0191-A7, an alternative to S0191-A6 and S0191-A8, is identical to S00191-A6 except the effective date language is comparable to that used in S0191-A2.
- S0191-A8, an alternative to S0191-A6 and S0191-A7, is comparable to S00191-A6, except the effective date language is comparable to that used in S0191-A3.

Technical Amendment:

- S0191-A9 revises sections 2 and 5 for clarity.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director **EB**
RE: S.F. 191 (Betzold); H.F. 723 (Murphy, M.): MSRS-General, MSRS-Correctional; State Patrol Retirement Plan; Extending Time Permitted for Filing Disability Applications; Requiring Written Applications; Reducing Age Limit for Disability Benefit Eligibility
DATE: February 16, 2009

Summary of S.F. 191 (Betzold); H.F. 723 (Murphy, M.)

S.F. 191 (Betzold); H.F. 723 (Murphy, M.) allows disability benefit applications for the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the MSRS Correctional State Employees Retirement Plan (MSRS-Correctional), and the State Patrol Retirement Plan to be filed within 18 months after termination of service rather than within 180 days (approximately six months). The bill also revises various MSRS-Correctional and State Patrol Plan disability provisions by specifying that disabilitants transfer from disability status to normal retirement at age 55 rather than age 65.

Background Information

Background information is attached for the following topics:

- A. Disability Benefit Application Time Limits (**Attachment A**)
- B. Age Discrimination Issues (**Attachment B**)

Discussion and Analysis

The bill revises disability benefit application deadlines for the MSRS-General, MSRS-Correctional, and MSRS State Patrol Plans and revises various MSRS-Correctional Plan and State Patrol Plan disabilitant transfer to normal retirement status provisions.

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

1. Proper Length of Time for Disability Benefit Filing. The issue is whether disability applications in MSRS-General, MSRS-Correctional, and the State Patrol Retirement Plan should be permitted up to 18 months after termination of service, rather than 180 days. This may create some additional disability benefit applications for review by MSRS administrators, and it may add slightly to the cost of the given plan's disability benefit provisions if cases are approved which would have been rejected previously because the filing was not timely. However, the move is consistent with past legislative changes approved for comparable Public Employees Retirement Association (PERA) and Teachers Retirement Association (TRA) plans. Adoption of the proposed legislation would create a uniform policy across the statewide plans.
2. Disability Provisions: ADA Compliance. The issue is whether the proposed transfer of individuals from disability status to retirement status at age 55 rather than age 65 is compatible with the Americans with Disabilities Act (ADA). This same issue was relevant when the Commission considered similar changes for PERA a few years ago. The Commission at that time was comfortable with the change.
3. Cost/Savings Implications. The issue is the fiscal impact these changes are expected to have on the plan. Presumably, these changes are expected to help control plan costs, since automatic survivor coverage will end at age 55 rather than age 65, although the longer time period for submitting applications might slightly increase costs. The Commission may wish to request testimony from the MSRS Executive Director regarding the net cost savings of the proposed changes.
4. Implementation Problem: Lack of Clarity Regarding Coverage. The issue is the lack of effective dates for any of the provisions of the bill, and the lack of any language indicating if or how these changes apply to those who are already in disability status. Section 4, for example, revises MSRS-Correctional plan law to transfer disabilitants to retirement status at age 55 rather than 65. But there is no language indicating if this applies just to individuals who become disabled after the (unspecified)

effective date, or whether it is intended to also apply to those already disabled. If it is intended to apply to those already disabled, there may also be a need to consider language indicating when those already age 55 or older will be transferred, and how long the disabilitant and spouse have to make decisions regarding a joint-and-survivor annuity. Revising times of transfer for existing disabilitants will have benefit takeaway implications because individuals will have to begin paying for surviving spouse coverage if that coverage is desired. Any benefit takeaway from individuals in benefit receipt status might be challenged through the courts.

5. Likely Omitted Section. The issue is whether all of the MSRS-Correctional and State Patrol Retirement Plan sections needing language changed from age 65 to age 55 have been included in the bill. Section 6 of the bill revises the age at which a State Patrol Retirement Plan disabilitant can elect an optional annuity, because transfer from disability status to retirement status is to be made a general age 55 rather than general age 65. However, Minnesota Statutes, Section 352B.105, the provision which actually specifies that transfer, has the "age 65" language within it, but is not included in the bill. Presumably, that was an omission which should be addressed by an amendment.
6. Other Drafting Issue. The Commission may also wish to consider an amendment to sections 2 and 5 to more clearly specify that the MSRS plans will use an 18-month after termination filing deadline.

Potential Amendments for Commission Consideration:

- Amendment S0191-A1 would insert effective date language for each section. The amendment is consistent with the Commission's handling of the PERA disability benefit revisions in 2007. The provisions would become effective on the start of the fiscal year (July 1, 2009), and would be effective for disability applications from individuals who terminate employment after June 30, 2009. This leaves anyone currently in disability status unchanged, minimizing possible court challenges. However, the effective date provisions as specified in this amendment may reduce possible short-term cost savings.
- Amendment S0191-A2, an alternative to Amendment S0191-A1, makes the provisions effective July 1, 2009, but also makes the provisions apply to those currently disabled. Existing disabilitants who must transfer to retired status are given 90 days to elect an optional annuity. This approach would maximize potential cost savings but increases the risk of being successfully challenged in the courts because it impacts those currently in disability status.
- Amendment S0191-A3, a third effective date alternative, would make the provisions effective July 1, 2009, and does not mention existing disabilitants, leaving the question of whether these provisions have application to existing disabilitants unspecified.
- Amendment S0191-A4 would allow the Commission to specify a filing date time period other than 18 months, by striking the 18 month language where it appears. The Commission would need to specify another length of time by filling in the blanks in the amendment.
- Amendment S0191-A5, an alternative to Amendment S0191-A4, deletes section 1 from the bill, which would leave the time period in existing law unchanged, remaining at 180 days.
- Amendment S0191-A6 adds to the bill the section which appears to have been omitted, Minnesota Statutes Section 352B.105, the State Patrol Retirement Plan termination of disability benefit provision, and revises it to transfer at age 55 or the five-year anniversary of the disability, whichever is later, rather than age 65 or the five-year anniversary of the disability, whichever is later. The effective date language in this amendment is comparable to the effective date language in Amendment S0191-A1.
- Amendment S0191-A7, an alternative to amendments S0191-A6 and S0191-A8, is identical to Amendment S00191-A6, except the effective date language is comparable to that used in amendment S0191-A2.
- Amendment S0191-A8, an alternative to amendments S0191-A6 and S0191-A7, is comparable to Amendment S00191-A6, except the effective date language is comparable to that used in amendment S0191-A3.
- Amendment S0191-A9 revises sections 2 and 5 for clarity.

Attachment A

Background information on Disability Benefit Application Time Limits

Minnesota public pension plans generally specify time limits for filing a disability benefit application. Typically, an application cannot be filed while the individual remains an active employee, or at a minimum will not become effective while the individual remains active or is receiving some form of continuing salary. The justification for that policy is obvious: to qualify as disabled the individual must be incapable, due to injury or illness, of continuing employment. If the individual remains in employment, then the individual is not disabled. General employee plans use a total and permanent definition of disability. Under that definition, to qualify as disabled the individual must be incapable of performing any gainful employment. Public safety plans use a less stringent standard, an occupation specific standard. Typically, a public safety plan member can qualify as disabled if the individual is incapable of continuing in the current employment position.

The plans typically place and end date on when an application can be filed. The shortest seems to be 180 days (about six months) after termination of service, although a few plans have no limit. Disability benefits are payable from our public plans for a disabling event or illness that occurred while the individual was a public employee. If an event or illness is sufficient to cause the individual to be disabled, that should be evident within a reasonable time frame. Also, at some point in time following termination of service, it becomes too difficult to determine whether the disabling event or illness can be traceable to the employment period, rather than to an injury, re-injury, or illness that occurred after the individual left public employment.

The statutes governing the various Minnesota general employee plans, major statewide public safety plans, and Correctional employee retirement plans are not consistent in the time limits for filing a disability benefit application. Presumably, creating more uniformity across similar plans has merit, since this would cause similar employees to be treated more consistently. The following compares the existing law applicable statutory provisions and notes the time limits, if any, for filing a disability benefit application:

A. General Employee Retirement Plans

1. General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). Disability benefit application required to be filed within 180 days of the termination of state employment (*M.S., Sec. 352.113, Subd. 4, Para. (e)*).
2. General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General). Disability benefit application required to be filed within 18 months of the termination of public employment (*M. S., Sec. 353.031, Subd. 3*).
3. Teachers Retirement Association (TRA). Disability benefit application required to be filed within 18 months after termination of teaching service (*M.S., Sec. 354.48, Subd. 2*).
4. First Class City Teacher Retirement Fund Associations. No limitation on disability benefit applications (*M.S., Sec. 354A.36*).
5. Minneapolis Employees Retirement Fund (MERF). No limitation on disability benefit applications (*M.S., Sec. 422A.18*).

B. Public Safety Employee and Quasi-Public Safety Employee Retirement Plans

1. MSRS Correctional State Employees Retirement Plan (MSRS-Correctional). No limitation on disability benefit application, but application is not permitted before state employment ends (*M.S., Sec. 352.95, Subd. 3*).
2. State Patrol Retirement Plan. No limitation on disability benefit application (*M.S., Sec. 352B.101*).
3. Public Employees Police and Fire Retirement Plan (PERA-P&F). Disability benefit application required to be filed within 18 months of the termination of public employment (*M.S., Sec. 353.031, Subd. 3*).
4. PERA Local Government Correctional Employees Retirement Plan (PERA-Correctional). Disability benefit application required to be filed within 18 months of the termination of public employment (*M.S., Sec. 353.031, Subd. 3*).

Currently, TRA and PERA require disability applications to be filed within 18 months of termination. The 18 month restriction was created in TRA by Laws 1981, Chapter 160, Section 8. Prior to 1981, TRA had no time limit. PERA moved to an 18 month limit recently, in 2007 (Laws 2007, Chapter 134, Article 4, Section 8). Before then, time limits varied between PERA plans. PERA General and PERA-Correctional permitted applications within three years following termination, while the limit in PERA P&F was two years. PERA administrators concluded that two or three years was too long, and proposed restricting the time limit to 18 months, comparable to TRA's. At the current time, MSRS is proposing to move from six months to 18 months, which would create uniformity between all the statewide plans.

Attachment B

Background Information on Age Discrimination Issues

The Age Discrimination Act of 1967 (ADA) forbids workplace discrimination based on age. In 1993, the Minnesota State Retirement System (MSRS), the Public Employees Retirement Association (PERA), and the Teachers Retirement Association (TRA) attempted to revise their plans for ADA compliance. Although the staff memo at the time advised delaying any action so time could be devoted to further review ADA issues, various provisions of MSRS, PERA, and TRA plans were revised through an administrative bill and enacted as Laws 1993, Chapter 307, Article 2. These plan revisions had the effect of revising benefits in various plans, in some cases improving those benefits.

One area that was reviewed was mandatory retirement ages. Mandatory retirement at a specified age can be deemed discriminatory because it does not focus on the individual and his or her ability to continue to perform their job. Rather it is based on a rough proxy--age. Another area was service accrual caps. Some systems, notably the MSRS-administered State Patrol Retirement Plan, did not permit further service credit accrual by plan members beyond age 60. This could be viewed as discriminatory because an older member of the plan is being treated differently in the retirement plan than a younger member. Repeal of this service credit cap was sought because MSRS received a letter of non-compliance from the Equal Employment Opportunity Commission (EEOC), due to a complaint to that organization from a member of the State Patrol Plan who was subject to this cap.

Changes were also made to various disability provisions specifying when disabilitants were deemed to be retired rather than disabled, and provisions specifying when disabilitants could elect joint-and-survivor coverage. Prior to the 1993 changes, in most MSRS, PERA, and TRA plans eligibility for disability benefits ended at the plan's normal retirement age, typically age 65 for general employee plans and age 55 for public safety plans. The logic of the pre-1993 approach was that rather than continuing to be involved in the process of overseeing a disability case, the individual should simply be treated as a retirement annuitant, since the individual had reached an age where he or she was eligible to retire without reduction under the plan's retirement annuity provisions. However, administrators were concerned that under the ADA these policies might be viewed as discriminatory and punitive. Perhaps individuals who do not want to retire should not be forced to retire. Also, if an individual recovered from the disability sufficiently to return to employment covered by the same plan, the individual would not be able to accrue additional service credit because he or she would be treated as a reemployed retiree rather than as a recovered disabilitant returning to work. The change that was adopted in 1993 for most of the included plans was to terminate disability status and transfer the individual to retiree status not at the plan's normal retirement age, but at age 65 or the five-year anniversary of the disability, whichever is later. While this would not create much difference for general employee plans, that same requirement was used for the MSRS public safety plans, so that rather than transferring at age 55, the transfer would occur a minimum of ten years later. That is of some significance, because in the public safety plans individuals in disability status receive surviving spouse coverage without cost to the disabilitant. In contrast, a retiree who wants spousal coverage must take a joint-and-survivor annuity, which requires a reduction from the monthly annuity amount to finance that coverage. The "age 65 or the five-year anniversary of the disability, whichever is later" language was added to the MSRS, PERA, and TRA general employee plans, and to the MSRS public safety plans, apparently based on the advice of a PERA-retained actuarial consultant who deemed the change necessary for all of these plans. For some unknown reason, however, PERA did not take this approach with its Public Employees Police and Fire Retirement Plan (PERA-P&F). Rather than revise the PERA-P&F disabilitant-transfer-to-retirement provision, the 1993 law repealed that PERA-P&F provision. As a consequence of that repealer, rather than transferring from disability to retirement at some specified age, PERA-P&F disabilitants remained in disability status indefinitely, with free spousal coverage. It was not until 2007 (Laws 2007, Chapter 134, Article 4, Section 21) that PERA-P&F law was revised to require PERA-P&F disabilitants to transfer to retirement status at the plan's normal retirement age.

The age discrimination compliance changes enacted in 1993 were premature for several reasons. First, there was insufficient understanding of what changes were needed. The ADA was little more than a general statement that employers cannot discriminate based on age, with little guidance as to what constituted discrimination. The EEOC was mandated to adopt rules to implement the ADA, but had not done so as of 1993, when most of the age discrimination changes to Minnesota public plans were adopted. In suggesting changes in the MSRS, PERA, and TRA laws, the executive directors were relying on MSRS's experience of a non-compliance letter from the EEOC regarding the age 60 service credit cap in the State Patrol Retirement Plan, and advice from an actuarial and consulting firm employed by PERA. The consultant's advice was claimed to be based on discussions with EEOC staff, but discussions are not a perfect substitute for rules. A second reason was that despite relying on the same sources for guidance, the MSRS, PERA, and TRA plan

administrators proposed changes were not fully consistent across comparable plans. A third problem was that the scope of the included plans was incomplete. While MSRS, PERA, and TRA were proposing changes, no ADA compliance changes were proposed for first class city teacher retirement plans, the Minneapolis Employees Retirement Fund (MERF), or local police and paid fire plans. A fourth reason for taking more time to review the matter was that some of the changes were benefit enhancements which increased plan costs. If it was later determined that some of these changes were unnecessary for ADA compliance, it might be difficult to remove these changes at a later date.

In retrospect, the language added to many of the MSRS, PERA, and TRA plans, which required transfer of disabilitants to retirement status at “age 65 or the five-year anniversary of the disability, whichever is later,” is at best incomplete, and for many plans it may be wrong. Use of age 65 may have been justified under an argument that it was the normal retirement age specified in plan law for individuals who might be retiring in 1993 or the next several years thereafter. However, for many, age 65 is not the applicable normal retirement age. In general employee plans age 66, rather than age 65, is the normal retirement age for individuals first employed after June 30, 1989. And for public safety plans the use of age 65 as the transfer age may never have made logical sense. The public safety plans (State Patrol Retirement Plan and PERA P&F) and the correctional employees plans (MSRS-Correctional and PERA-Correctional) have a normal retirement age of 55.

If it is appropriate or acceptable under ADA to transfer disabilitants to retirement status at a plan’s normal retirement age, then it is reasonable to make that transfer at age 55 in statewide public safety and correctional plans.

In recent years, the PERA and MSRS administrators have proposed revising public safety plan and correctional officer plan disability provisions to use age 55 rather than age 65, as the age for transferring from disability status to retirement status, and as the age when disabilitants must decide whether to take an optional annuity to continue spousal coverage. The 2006 and 2007 Legislature approved these types of changes in PERA plans. In 2007, MSRS proposed changes in disability procedure similar to those now under consideration by the Commission, but MSRS withdrew those just prior to being heard by the Commission.

1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:

1.2 Page 2, after line 12, insert:

1.3 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to disability
1.4 benefit applicants whose last day of public employment was after June 30, 2009."

1.5 Page 2, after line 19, insert:

1.6 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to disability
1.7 benefit applicants whose last day of public employment was after June 30, 2009."

1.8 Page 3, after line 13, insert:

1.9 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to disability
1.10 benefit applicants whose last day of public employment was after June 30, 2009."

1.11 Page 4, after line 1, insert:

1.12 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to disability
1.13 benefit applicants whose last day of public employment was after June 30, 2009."

1.14 Page 4, after line 8, insert:

1.15 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to disability
1.16 benefit applicants whose last day of public employment was after June 30, 2009."

1.17 Page 4, after line 19, insert:

1.18 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to disability
1.19 benefit applicants whose last day of public employment was after June 30, 2009."

1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:

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1.10 benefit applicants whose last day of public employment was after June 30, 2009."

1.11 Page 4, after line 1, insert:

1.12 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to
1.13 disability benefit applicants whose last day of public employment was after June 30, 2009,
1.14 and to those currently in disability status. Current disabilitants age 55 or older, who have
1.15 an effective date of the disability benefit at least five years before July 1, 2009, must
1.16 transfer to retired status 90 days after the effective date of this section. Any optional
1.17 annuity election must occur before the transfer to retired status."

1.18 Page 4, after line 8, insert:

1.19 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to disability
1.20 benefit applicants whose last day of public employment was after June 30, 2009."

1.21 Page 4, after line 19, insert:

1.22 "EFFECTIVE DATE. This section is effective July 1, 2009, and applies to
1.23 disability benefit applicants whose last day of public employment was after June 30,
1.24 2009, and to those currently in disability status. Any optional annuity election must occur
1.25 before the transfer to retired status."

1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:

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1.10 Page 4, after line 8, insert:

1.11 "EFFECTIVE DATE. This section is effective July 1, 2009."

1.12 Page 4, after line 19, insert:

1.13 "EFFECTIVE DATE. This section is effective July 1, 2009."

1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:

1.2 Page 1, line 25, delete "18 months" and insert "....."

1.3 Page 2, line 3, delete "18 months" and insert "....."

- 1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:
- 1.2 Page 1, delete section 1
- 1.3 Renumber the sections in sequence
- 1.4 Amend the title accordingly

1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:

1.2 Page 4, after line 19, insert:

1.3 "Sec. 7. Minnesota Statutes 2008, section 352B.105, is amended to read:

1.4 **352B.105 TERMINATION OF DISABILITY BENEFITS.**

1.5 Disability benefits payable under section 352B.10 must terminate on the transfer
 1.6 date, which is the end of the month in which the disabilitant becomes ~~65~~ 55 years old or
 1.7 the five-year anniversary of the effective date of the disability benefit, whichever is later.
 1.8 If the disabilitant is still disabled on the transfer date, the disabilitant must be deemed to
 1.9 be a retired member and, if the disabilitant had chosen an optional annuity under section
 1.10 352B.10, subdivision 5, must receive an annuity under the terms of the optional annuity
 1.11 previously chosen. If the disabilitant had not chosen an optional annuity under section
 1.12 352B.10, subdivision 5, the disabilitant may then choose to receive either a normal
 1.13 retirement annuity computed under section 352B.08, subdivision 2, or an optional annuity
 1.14 as provided in section 352B.08, subdivision 3. An optional annuity must be chosen within
 1.15 90 days of attaining the transfer date. If an optional annuity is chosen, the optional annuity
 1.16 accrues on the first of the month next following the transfer date.

1.17 **EFFECTIVE DATE.** This section is effective July 1, 2009, and applies to disability
 1.18 benefit applicants whose last day of public employment was after June 30, 2009."

1.19 Amend the title accordingly

1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:

1.2 Page 4, after line 19, insert:

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 1.8 If the disabilitant is still disabled on the transfer date, the disabilitant must be deemed to
 1.9 be a retired member and, if the disabilitant had chosen an optional annuity under section
 1.10 352B.10, subdivision 5, must receive an annuity under the terms of the optional annuity
 1.11 previously chosen. If the disabilitant had not chosen an optional annuity under section
 1.12 352B.10, subdivision 5, the disabilitant may then choose to receive either a normal
 1.13 retirement annuity computed under section 352B.08, subdivision 2, or an optional annuity
 1.14 as provided in section 352B.08, subdivision 3. An optional annuity must be chosen within
 1.15 90 days of attaining the transfer date. If an optional annuity is chosen, the optional annuity
 1.16 accrues on the first of the month next following the transfer date.

1.17 **EFFECTIVE DATE.** This section is effective July 1, 2009, and applies to disability
 1.18 benefit applicants whose last day of public employment was after June 30, 2009, and to
 1.19 those currently in disability status. Current disabilitants age 55 or older, who have an
 1.20 effective date of the disability benefit at least five years before July 1, 2009, must transfer
 1.21 to retired status 90 days after the effective date of this section. Any optional annuity
 1.22 election must occur before the transfer to retired status."

1.23 Amend the title accordingly

1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:

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1.6 date, which is the end of the month in which the disabilitant becomes ~~65~~ 55 years old or
1.7 the five-year anniversary of the effective date of the disability benefit, whichever is later.

1.8 If the disabilitant is still disabled on the transfer date, the disabilitant must be deemed to
1.9 be a retired member and, if the disabilitant had chosen an optional annuity under section

1.10 352B.10, subdivision 5, must receive an annuity under the terms of the optional annuity
1.11 previously chosen. If the disabilitant had not chosen an optional annuity under section

1.12 352B.10, subdivision 5, the disabilitant may then choose to receive either a normal
1.13 retirement annuity computed under section 352B.08, subdivision 2, or an optional annuity

1.14 as provided in section 352B.08, subdivision 3. An optional annuity must be chosen within
1.15 90 days of attaining the transfer date. If an optional annuity is chosen, the optional annuity

1.16 accrues on the first of the month next following the transfer date.

1.17 **EFFECTIVE DATE.** This section is effective July 1, 2009.

1.18 Amend the title accordingly

1.1 moves to amend S.F. No. 191; H.F. No. 723, as follows:

1.2 Page 2, line 18, delete "that meets the requirements" and insert "within the time
1.3 frame specified"

1.4 Page 4, line 7, delete "that meets the requirements" and insert "within the time
1.5 frame specified"

Senator Betzold introduced—

S.F. No. 191: Referred to the Committee on State and Local Government Operations and Oversight.

1.1 A bill for an act
 1.2 relating to retirement; extending filing deadlines; requiring written applications;
 1.3 amending disability benefit provisions; amending Minnesota Statutes 2008,
 1.4 sections 352.113, subdivision 4; 352.95, subdivisions 3, 4, 5; 352B.10,
 1.5 subdivision 5, by adding a subdivision.

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

1.7 Section 1. Minnesota Statutes 2008, section 352.113, subdivision 4, is amended to read:

1.8 Subd. 4. **Medical or psychological examinations; authorization for payment of**
 1.9 **benefit.** (a) An applicant shall provide medical, chiropractic, or psychological evidence to
 1.10 support an application for total and permanent disability.

1.11 (b) The director shall have the employee examined by at least one additional
 1.12 licensed chiropractor, physician, or psychologist designated by the medical adviser. The
 1.13 chiropractors, physicians, or psychologists shall make written reports to the director
 1.14 concerning the employee's disability including expert opinions as to whether the employee
 1.15 is permanently and totally disabled within the meaning of section 352.01, subdivision 17.

1.16 (c) The director shall also obtain written certification from the employer stating
 1.17 whether the employment has ceased or whether the employee is on sick leave of
 1.18 absence because of a disability that will prevent further service to the employer and as a
 1.19 consequence the employee is not entitled to compensation from the employer.

1.20 (d) The medical adviser shall consider the reports of the physicians, psychologists,
 1.21 and chiropractors and any other evidence supplied by the employee or other interested
 1.22 parties. If the medical adviser finds the employee totally and permanently disabled, the
 1.23 adviser shall make appropriate recommendation to the director in writing together with the
 1.24 date from which the employee has been totally disabled. The director shall then determine
 1.25 if the disability occurred within ~~180 days~~ 18 months of filing the application, while still

2.1 in the employment of the state, and the propriety of authorizing payment of a disability
2.2 benefit as provided in this section.

2.3 (e) A terminated employee may apply for a disability benefit within ~~180 days~~ 18
2.4 months of termination as long as the disability occurred while in the employment of the
2.5 state. The fact that an employee is placed on leave of absence without compensation
2.6 because of disability does not bar that employee from receiving a disability benefit.

2.7 (f) Unless the payment of a disability benefit has terminated because the employee is
2.8 no longer totally disabled, or because the employee has reached normal retirement age as
2.9 provided in this section, the disability benefit must cease with the last payment received
2.10 by the disabled employee or which had accrued during the lifetime of the employee unless
2.11 there is a spouse surviving. In that event, the surviving spouse is entitled to the disability
2.12 benefit for the calendar month in which the disabled employee died.

2.13 Sec. 2. Minnesota Statutes 2008, section 352.95, subdivision 3, is amended to read:

2.14 Subd. 3. **Applying for benefits; accrual.** No application for disability benefits
2.15 shall be made until after the last day physically on the job. The disability benefit shall
2.16 begin to accrue the day following the last day for which the employee is paid sick leave
2.17 or annual leave but not earlier than 180 days before the date the application is filed. A
2.18 terminated employee must file a written application that meets the requirements under
2.19 section 352.113, subdivision 4, paragraph (e).

2.20 Sec. 3. Minnesota Statutes 2008, section 352.95, subdivision 4, is amended to read:

2.21 Subd. 4. **Medical or psychological evidence.** (a) An applicant shall provide
2.22 medical, chiropractic, or psychological evidence to support an application for disability
2.23 benefits. The director shall have the employee examined by at least one additional licensed
2.24 physician, chiropractor, or psychologist who is designated by the medical adviser. The
2.25 physicians, chiropractors, or psychologists with respect to a mental impairment, shall
2.26 make written reports to the director concerning the question of the employee's disability,
2.27 including their expert opinions as to whether the employee is disabled within the meaning
2.28 of this section. The director shall also obtain written certification from the employer
2.29 stating whether or not the employee is on sick leave of absence because of a disability that
2.30 will prevent further service to the employer, and as a consequence, the employee is not
2.31 entitled to compensation from the employer.

2.32 (b) If, on considering the reports by the physicians, chiropractors, or psychologists
2.33 and any other evidence supplied by the employee or others, the medical adviser finds
2.34 the employee disabled within the meaning of this section, the advisor shall make the

3.1 appropriate recommendation to the director, in writing, together with the date from which
 3.2 the employee has been disabled. The director shall then determine the propriety of
 3.3 authorizing payment of a disability benefit as provided in this section.

3.4 (c) Unless the payment of a disability benefit has terminated because the employee is
 3.5 no longer disabled, or because the employee has reached either age ~~65~~55 or the five-year
 3.6 anniversary of the effective date of the disability benefit, whichever is later, the disability
 3.7 benefit must cease with the last payment which was received by the disabled employee
 3.8 or which had accrued during the employee's lifetime. While disability benefits are paid,
 3.9 the director has the right, at reasonable times, to require the disabled employee to submit
 3.10 proof of the continuance of the disability claimed. If any examination indicates to the
 3.11 medical adviser that the employee is no longer disabled, the disability payment must
 3.12 be discontinued upon the person's reinstatement to state service or within 60 days of
 3.13 the finding, whichever is sooner.

3.14 Sec. 4. Minnesota Statutes 2008, section 352.95, subdivision 5, is amended to read:

3.15 Subd. 5. **Retirement status at normal retirement age.** The disability benefit
 3.16 paid to a disabled correctional employee under this section shall terminate at the end of
 3.17 the month in which the employee reaches age ~~65~~55, or the five-year anniversary of the
 3.18 effective date of the disability benefit, whichever is later. If the disabled correctional
 3.19 employee is still disabled when the employee reaches age ~~65~~55, or the five-year
 3.20 anniversary of the effective date of the disability benefit, whichever is later, the employee
 3.21 shall be deemed to be a retired employee. If the employee had elected an optional annuity
 3.22 under subdivision 1a, the employee shall receive an annuity in accordance with the
 3.23 terms of the optional annuity previously elected. If the employee had not elected an
 3.24 optional annuity under subdivision 1a, the employee may within 90 days of attaining age
 3.25 ~~65~~55 or reaching the five-year anniversary of the effective date of the disability benefit,
 3.26 whichever is later, either elect to receive a normal retirement annuity computed in the
 3.27 manner provided in section 352.93 or elect to receive an optional annuity as provided
 3.28 in section 352.116, subdivision 3, based on the same length of service as used in the
 3.29 calculation of the disability benefit. Election of an optional annuity must be made within
 3.30 90 days before attaining age ~~65~~55 or reaching the five-year anniversary of the effective
 3.31 date of the disability benefit, whichever is later. If an optional annuity is elected, the
 3.32 optional annuity shall begin to accrue on the first of the month following the month in
 3.33 which the employee reaches age ~~65~~55 or the five-year anniversary of the effective date of
 3.34 the disability benefit, whichever is later.

4.1 Sec. 5. Minnesota Statutes 2008, section 352B.10, is amended by adding a subdivision
4.2 to read:

4.3 Subd. 2a. **Applying for benefits; accrual.** No application for disability benefits
4.4 shall be made until after the last day physically on the job. The disability benefit shall
4.5 begin to accrue the day following the last day for which the employee is paid sick leave
4.6 or annual leave but not earlier than 180 days before the date the application is filed. A
4.7 member who is terminated must file a written application that meets the requirements
4.8 under section 352.113, subdivision 4, paragraph (e).

4.9 Sec. 6. Minnesota Statutes 2008, section 352B.10, subdivision 5, is amended to read:

4.10 Subd. 5. **Optional annuity.** A disabilitant may elect, in lieu of spousal survivorship
4.11 coverage under section 352B.11, subdivisions 2b and 2c, the normal disability benefit or
4.12 an optional annuity as provided in section 352B.08, subdivision 3. The choice of an
4.13 optional annuity must be made in writing, on a form prescribed by the executive director,
4.14 and must be made before the commencement of the payment of the disability benefit, or
4.15 within 90 days before reaching age ~~65~~55 or before reaching the five-year anniversary
4.16 of the effective date of the disability benefit, whichever is later. The optional annuity
4.17 is effective on the date on which the disability benefit begins to accrue, or the month
4.18 following the attainment of age ~~65~~55 or following the five-year anniversary of the
4.19 effective date of the disability benefit, whichever is later.