



S.F. 193
(Betzold)

H.F. 727
(Murphy, M.)

Executive Summary of Commission Staff Materials

<i>Affected Pension Plan(s):</i>	MSRS-Correctional Retirement Plan
<i>Relevant Provisions of Law:</i>	Minnesota Statutes, Section 352.95
<i>General Nature of Proposal:</i>	Disability benefit provision revision
<i>Date of Summary:</i>	February 25, 2009

Specific Proposed Changes

- Defines "occupational disability"
- Renames job-related disability and defines "duty disability, physical or psychological"
- Renames non-job-related disability and defines "regular disability, physical or psychological"
- Defines "normal duties"
- Defines "less frequent duties"
- Diminished non-job-related disability benefit for post-7/1/2009 hires
- Additional employer contribution requirement for awarded duty disabilities
- Converts disability benefits to retirement annuities at age 55
- Retention of MSRS-Correctional coverage for certain reemployed disabilitants

Policy Issues Raised by the Proposed Legislation

1. Impact of proposed changes on likely MSRS-Correctional disability benefit utilization and actuarial cost.
2. Unclear process used to vet changes; unclear membership support.
3. Comparability of proposed MSRS-Correctional disability revisions with recent PERA-P&F revisions.
4. Appropriateness of defining, but not using, an occupational disability (Sec. 2).
5. Unclear impact of "normal duties" and "less frequent duties" definitions (Sec. 3-4).
6. Lack of any proposed maximum disability benefit age eligibility provision.
7. Failure to modify the medical or psychological evidence subdivision to accommodate disability definition changes.
8. Appropriateness of the phase-out of the non-duty short vesting and minimum benefit provision (Section 5).
9. Appropriateness of requiring employing units to pay the present value of duty disabilities as an additional contribution (Sec. 6).
10. Appropriateness of the continuation of MSRS-Correctional coverage upon post-disabilitant state employment (Sec. 8-9):
 - Unclear election process and timing
 - Unclear situation of ongoing MSRS-Correctional disability coverage
 - Post-retirement adjustments during suspension of disability benefit
 - Unclear age 55 benefit calculation
 - Significant budgeting impact on departments other than the Dept. of Corrections or the Dept. of Human Services
 - Unclear disposition of employer disability benefit present value payment
 - Continuing post-retirement medical insurance coverage and cost

Potential Amendments

Technical Amendment:

S0193-1A repositions the new definitions in the general definitions section of MSRS law, makes implicit definitions explicit definitions, clarifies the disability benefit present value additional employer contribution determination process, and makes language style and usage changes.

Substantive Amendments:

S0193-2A untangles the occupational disability definition, the regular disability definition, and the regular disability definition.

S0193-3A updates the disability evidence and determination process to accommodate the disability definition changes.

S0193-4A makes the regular disability vesting increase and minimum benefit amount elimination applicable to post-June 30-2009, disabilities rather than post-June 30, 2009, hires.

S0193-5A includes employing units in the disability determination process if employing units have a significant extra employer contribution in connection with duty disabilities.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *JAM*
RE: S.F. 193 (Betzold); H.F. 727 (Murphy, M.): MSRS-Correctional; Revising Disability Benefit Provisions
DATE: February 24, 2009

General Summary of the Proposed Legislation

S.F. 193 (Betzold); H.F. 727 (Murphy, M.) amends Minnesota Statutes, Section 352.95, the disability benefit provisions of the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) by making nine changes:

1. Defines "Occupational Disability". A definition of "occupational disability" is added to replace the job-related disability and non-job-related disability qualifying requirement of a physical or mental inability to perform the duties of a correctional employee's employment position (Section 2);
2. Renames Job-Related Disability and Defines "Duty Disability, Physical or Psychological". The current job-related disability is renamed as "duty disability" and a definition is added of a "duty disability, physical or psychological" for disabling conditions incurred during or arising out of covered correctional position normal or less-frequent duties (Sections 1 and 2);
3. Renames Non-Job-Related Disability and Defines "Regular Disability, Physical or Psychological". The current non-job-related disability is renamed as a regular disability and a definition is added of a "regular disability, physical or psychological" for disabling conditions incurred outside of employment or during employment duties without inherent correctional employment dangers (Sections 2 and 5);
4. Defines "Normal Duties". A definition of "normal duties" is added, meaning duties designated in the correctional employee's job description for performance on a day-to-day basis, but excluding less frequent duties (Section 3);
5. Defines "Less Frequent Duties". A definition of "less frequent duties" is added, meaning duties designated on the correctional employee's job description, but performed outside of the correctional employee's normal routine (Section 4);
6. Diminished Non-Job-Related Disability Benefit for Post 7/1/2009 Hires. The period of correctional employee service required for vesting for a regular disability benefit for a correctional employee first hired after July 1, 2009, is extended from one year to three years and the regular disability benefit for a correctional employee first hired after July 1, 2009, will be computed without the 15 years of assumed correctional employee service minimum applicable to current correctional employees (Section 5);
7. Additional Employer Contribution Requirement for Awarded Duty Disabilities. For duty disabilities awarded, an additional funding charge is levied on the applicable employing unit, equal to the present value of the disability benefit from the start of payment until age 55, payable upon request by the Minnesota State Retirement System (MSRS) (Section 6);
8. Converts Disability Benefits to Retirement Annuities at Age 55. The age at which disability benefits are converted to retirement annuities is reduced from age 65 to age 55 (Section 7); and
9. Retention of MSRS-Correctional Coverage for Certain Reemployed Disabilitants. A disabled correctional employee with at least ten years of correctional service who is reemployed by the state otherwise covered by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) is permitted to retain future MSRS-Correctional coverage for that reemployment until age 55, with the MSRS-Correctional disability benefit suspended during the reemployment period (Sections 8 and 9).

Background Information and Attachments

- A. Attachment A contains background information on MSRS-Correctional;
- B. Attachment B contains actuarial valuation data 2002-2008 of MSRS-Correctional;
- C. Attachment C contains actuarial valuation results 2007-2008 of the statewide public safety plans; and
- D. Attachment D provides a comparison of the differing disability treatments between the Public Employees Police and Fire Plan (PERA-P&F) and MSRS-Correctional.

Clarifying/Technical Amendment

Amendment S0193-1A attempts to improve the form and style of the proposed legislation without changing its substance, as follows:

1. Repositions Definitions to the MSRS Definitions Section. The explicit definitions of “occupational disability,” “normal duties,” and “less frequent duties” are added to Minnesota Statutes, Section 352.01, the Minnesota State Retirement System (MSRS) general definitions section, rather than buried within Minnesota Statutes, Section 352.95, the MSRS-Correctional disability provision. In 2006 and 2008, when the Public Employees Retirement Association (PERA) revised the PERA-P&F disability provisions, the pertinent definitions were included with Minnesota Statutes, Section 353.01, the PERA general definition section.
2. Makes Implicit Definitions Explicit Definitions. The informal definitions of “duty disability, physical or psychological” and “regular disability, physical or psychological” are made into formal definitions and are added to Minnesota Statutes, Section 352.01, the MSRS general definitions section.
3. Present Value Determination Process Certification. The determination of the present value amounts for MSRS-Correctional duty disability benefits is clarified to be done under a procedure that is certified as accurate, rather than approved, by the MSRS actuary, reflecting the return of present value determinations as a question of technical accuracy rather than policy judgment and reflecting a general policy aversion of delegating issue determinations to non-elected non-governmental persons or bodies. The payment period is also clarified as to length based on benefit payment dates rather than birthdates. The payment of the present value amount is also clarified by replacing a payment request system with a certification process and a payment due date.
4. Stylistic and Usage Conformity. Various aspects of the amended or added statutory provisions are modified to reflect current legislative drafting styles and usage customs.

Unofficial Engrossment S0193-E1 indicates what the proposed legislation would look like after the technical amendment would be added.

Analysis and Discussion

S.F. 193 (Betzold); H.F. 727 (Murphy, M.) makes a number of potentially significant changes in the disability program of the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), including the addition of a definition of an “occupational disability,” the renaming of the job-related disability benefit and of the non-job-related disability benefit, the diminishment of non-job-related disability benefit coverage for correctional employees hired after July 1, 2009, the addition of a special present-value-based employer contribution for newly awarded duty disabilities, the conversion of disability benefits to retirement annuities at age 55 rather than age 65, and the retention of MSRS-Correctional coverage rather than General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) for reemployed MSRS-Correctional disability beneficiaries.

The proposed legislation raises a number of pension and related public policy issues that merit consideration and potential discussion by the Commission, as follows:

1. Impact of Proposed Changes on Likely MSRS-Correctional Disability Benefit Utilization and Actuarial Cost. The policy issue is the likely impact that the proposed changes in the disability benefit program of the MSRS-Correctional can be expected to have on disability benefit utilization and plan actuarial costs. MSRS-Correctional has experienced a tripling of the number of disability beneficiaries over the past decade and a doubling of the percentage of disability beneficiaries compared to active members over the past decade, indicating a utilization problem with rates that is likely to be unaffordable over the long-term future. The following sets forth a comparison of MSRS-Correctional disability benefit utilization 1999-2008 with those of the other statewide public safety and quasi-public safety retirement plans (the State Patrol Retirement Plan, the Public Employees Police and Fire Plan (PERA-P&F), and the Local Government Correctional Service Retirement Plan (PERA-Correctional)).

Year	MSRS-Correctional		State Patrol		PERA-P&F		PERA-Correctional	
	No.	% of Actives	No.	% of Actives	No.	% of Actives	No.	% of Actives
1999	60	2.08%	23	2.79%	412	4.35%	0	0.00%
2000	75	2.42%	22	2.65%	482	5.01%	3	0.11%
2001	92	2.89%	25	3.04%	543	5.51%	17	0.53%
2002	115	3.54%	29	3.58%	574	5.77%	26	0.80%
2003	135	4.14%	31	3.85%	614	6.17%	37	1.17%
2004	154	4.63%	34	4.08%	700	6.96%	50	1.54%
2005	150	4.16%	35	4.21%	686	6.70%	59	1.76%
2006	168	4.30%	41	4.82%	765	7.22%	70	1.98%
2007	174	4.02%	41	4.86%	803	7.49%	87	2.44%
2008	184	4.07%	42	5.00%	824	7.52%	92	2.48%

While the portion of the plan normal cost attributable to the disability benefit coverage is not the largest normal cost portion, it is significant and growing, as the following actuarial valuation normal cost comparison 2005-2008 for MSRS-Correctional, the State Patrol Retirement Plan, PERA-P&F, and PERA-Correctional suggests:

Normal Cost Item	MSRS-Correctional		State Patrol		PERA-P&F		PERA-Correctional		
	Year	% Pay	\$	% Pay	\$	% Pay	\$	% Pay	\$
<u>Normal Cost Item</u>	<u>2005</u>								
Retirement Benefits		11.09%	\$16,343,222	18.25%	\$10,063,280	16.78%	\$104,986,926	8.29%	\$10,719,121
Disability Benefits		1.60%	2,361,696	2.50%	1,376,491	3.42%	21,396,862	1.53%	1,970,794
Survivors		0.22%	320,848	1.44%	793,981	0.59%	3,694,719	0.36%	468,394
Deferred Retirement Benefits		1.05%	1,542,522	0.67%	371,842	1.49%	9,306,280	2.13%	2,750,298
Refunds		<u>1.05%</u>	<u>1,543,171</u>	<u>0.17%</u>	<u>93,213</u>	<u>0%</u>	<u>0</u>	<u>0%</u>	<u>0</u>
Total		15.01%	\$22,111,459	23.03%	\$12,698,807	22.28%	\$139,384,787	12.31%	\$15,908,607
<u>Normal Cost Item</u>	<u>2006</u>								
Retirement Benefits		13.02%	\$21,194,230	20.46%	\$11,819,740	16.78%	\$112,097,421	8.09%	\$11,410,132
Disability Benefits		3.06%	4,985,596	2.34%	1,352,260	3.42%	22,845,505	1.49%	2,107,194
Survivors		0.20%	326,900	0.99%	571,241	0.63%	4,188,089	0.36%	502,487
Deferred Retirement Benefits		0.68%	1,099,062	0.50%	286,634	1.49%	9,966,693	2.21%	3,114,290
Refunds		<u>0.73%</u>	<u>1,180,926</u>	<u>0.12%</u>	<u>68,591</u>	<u>0%</u>	<u>0</u>	<u>0%</u>	<u>0</u>
Total		17.69%	\$28,786,714	24.41%	\$14,098,466	22.32%	\$149,097,708	12.15%	\$17,134,103
<u>Normal Cost Item</u>	<u>2007</u>								
Retirement Benefits		12.98%	\$24,314,658	20.68%	\$12,716,574	16.79%	\$117,516,403	8.02%	\$11,930,777
Disability Benefits		3.15%	5,898,691	2.46%	1,512,347	3.18%	22,272,592	1.48%	2,202,418
Survivors		0.20%	365,693	1.00%	613,302	0.73%	5,090,494	0.36%	529,189
Deferred Retirement Benefits		0.65%	1,226,585	0.49%	303,802	1.49%	10,449,012	2.23%	3,322,640
Refunds		<u>0.70%</u>	<u>1,318,662</u>	<u>0.12%</u>	<u>73,327</u>	<u>0%</u>	<u>0</u>	<u>0%</u>	<u>0</u>
Total		17.68%	\$33,124,289	24.75%	\$15,219,352	22.19%	\$155,328,501	12.09%	\$17,985,024
<u>Normal Cost Item</u>	<u>2008</u>								
Retirement Benefits		13.18%	\$27,091,000	21.37%	\$13,628,000	16.93%	\$126,430,000	8.69%	\$14,249,000
Disability Benefits		2.91%	5,990,000	2.16%	1,379,000	3.75%	28,027,000	1.92%	3,145,000
Survivors		0.32%	665,000	1.06%	679,000	0.89%	6,611,000	0.39%	642,000
Deferred Retirement Benefits		0.81%	1,656,000	0.48%	304,000	1.50%	11,205,000	2.37%	3,882,000
Refunds		<u>1.02%</u>	<u>2,098,000</u>	<u>0.08%</u>	<u>51,000</u>	<u>0%</u>	<u>0</u>	<u>0%</u>	<u>0</u>
Total		18.24%	\$37,500,000	25.15%	\$16,041,000	23.07%	\$172,273,000	13.37%	\$21,918,000

Presumably, the changes promoted by MSRS contained in this proposed legislation are intended to slow the pattern of utilization of disability benefits in MSRS-Correctional and reduce the plan's actuarial cost, but the plan administration has not indicated the expected magnitude of the actuarial impact of these changes.

2. Unclear Process Used to Vet Changes; Unclear Membership Support. The policy issue is the lack of clarity about the process that MSRS used in assembling the proposed changes and about the extent of membership support. Some or all of the suggested MSRS-Correctional disability coverage revisions could be considered to be benefit coverage reductions, depending on the factual situation of each future potential MSRS-Correctional disability benefit applicant. When PERA proposed revisions in PERA-P&F disability provisions, those changes were developed with considerable input over time by representatives of the plan membership and was favored by several plan membership organizations. The extent of membership involvement in fashioning reforms that could involve benefit plan reductions provides comfort that the proposed reforms are not unproportional and are not unfair. If MSRS has had significant involvement in the assembling of these proposals, a summary of that process should be added to the Commission's record about the proposed legislation. If the proposed revisions have not been subjected to longstanding and extensive scrutiny by membership organizations and groups, the Commission should consider taking testimony from plan members about the proposed revisions and obtaining their input.

3. Comparability of Proposed MSRS-Correctional Disability Revisions With Recent PERA-P&F Revisions. The policy issue is the adequacy of the proposed revisions in the disability benefit program of the MSRS-Correctional in comparison with the 2004-2007 revisions in the disability benefit program of PERA-P&F. In 2004, the PERA-P&F disability benefit application and service procedures were revised. The applicant must apply for benefits in writing on forms provided by the executive director. The application must include adequate proof of a disability including a written report by a licensed physician, chiropractor, or psychologist. The individual must release all medical records, both for purposes of the initial benefit application or for later benefit continuation purposes. If the application is filed within two years of the date of the injury or illness, the disability determination depends on whether the individual is capable of performing the duties of the position held on the date of the injury or illness. If the application is filed more than two years after the injury or illness, the determination is whether the individual can perform the duties assigned during the 90 days before filing the application. Applications can be filed after termination of service, but if the application is filed more than three years after the individual terminates from PERA-P&F covered employment, the individual must provide evidence that the disability is the direct result of an injury or illness contracted while the individual was a PERA-P&F covered employee. Every duty-related application must include a first report of injury, as specified under workers' compensation law. The employer must provide input regarding the individual's ability to provide services. If a disability benefit application is approved but the individual does not terminate service or is not placed on an authorized leave within 45 days after the application is approved, the application is voided and another may not be filed within one year. Individuals may repay a refund up to six months after the effective date of the disability benefits. Benefits can accrue up to 90 days before the filing of an application, but not prior to the date of the disabling injury or illness. An individual applying for or receiving disability benefits must submit to an independent medical evaluation paid for by PERA. Any applicant who is denied initial benefits or a benefit continuation may appeal the executive director's decision to the PERA board within 45 days of receipt of a certified letter notifying the individual of denial of benefits or benefit continuation.

In 2007, the PERA-P&F disability benefit provisions for post-2007 disabilities were revised. Two revised disability categories were created, duty disability and regular disability, replacing the prior "duty" and "non-duty" categories, and the duty disability category was further divided into a total and permanent duty disability subgroup and other duty disability subgroup. The duty disability subcategory was defined as a physical or psychological disability caused by performing job-related duties protecting the property and personal safety of others that present inherent dangers (rather than being any disability that occurs or is related to being on duty), and which results in the individual being unable to perform the normal duties of the position for a period of at least one year. In contrast, a total and permanent duty disability was defined as a duty disability for which the individual qualifies under the total and permanent disability standard usually used for general employee plans. To meet a total and permanent disability standard, the individual was required to be unable to perform any gainful employment. The regular disability subcategory was defined as any job-related disability resulting from activity that did not present inherent danger, and all disabilities resulting from any non-duty activity. Total and permanent duty disability benefits were 60 percent of the high-five salary, plus three percent of the high-five for each year of service over 20. Duty disabilities other than total and permanent duty disabilities were capped at 60 percent of the high-five salary, rather than 60 percent plus three percent of the high-five for each year of service over 20. Regular disabilities were capped at 45 percent of the high-five salary, rather than being computed like a service annuity based on actual service, with a minimum benefit of 45 percent of the high five. Duty-related disabilitants who do not meet the total and permanent disability standard and all regular disabilitants who are at least age 55 at the time of disability but have less than 20 years service in duty disability cases, or 15

years service in regular disability cases, were eligible to receive disability benefits for five years, then the disability benefit terminates. The disability benefit, except those received by total and permanent duty disabilitants, was required to be converted to a retirement annuity when the member reaches age 55; or for those who are 55 when the disability commenced, on the five-year anniversary of the disability; or when a member elects to convert to an early retirement annuity rather than the disability benefit. Disability benefits were allowed to be retroactive for up to 90 days if salary or salary-equivalent benefits were not received during that period. Disability benefits were not allowed if disability is due to illegal drug use and the individual has not taken part in a rehabilitation program and ceased drug use. Early retirement by any individual who becomes a PERA-P&F member after June 30, 2007, or by a former member who is reinstated after that date required a reduction of two-tenths of one percent for each month that the individual is under age 55, rather than one-tenth.

S.F. 193 (Betzold); H.F. 727 (Murphy, M.) is not nearly as comprehensive in its disability benefit provision revisions as the recent PERA-P&F legislation. None of the 2004 application and service procedure revisions are included in the proposed legislation. The proposed legislation renames the two disability benefits and attempts to limit duty disabilities to those disabilities arising out of inherently dangerous occupational duties, requires the disability to be expected to last for at least 12 months, recomputes disability benefits at age 55 rather than age 65, charges employing units an additional full actuarial value contribution payment for any duty disability benefits incurred by its employees, and encourages disabilitants to return to state employment by allowing them to retain future MSRS-Correctional coverage for subsequent non-correctional service employment. If both MSRS-Correctional and the PERA-P&F are suffering from over-utilization of disability benefits and if recent PERA-P&F revisions have successfully addressed that over-utilization, it would appear to be reasonable to attempt to replicate as many of those revisions as are feasible or effective, but it is unclear that this was the MSRS approach. Also, the Commission's Pension Policy Principles (Principle II.C.6.) indicates that there should be equal pension treatment in terms of the relationship between benefits and contributions among various plans. **Attachment D** is a comparison which provides some graphic sense of the differing disability benefit coverage between PERA-P&F and MSRS-Correctional. A simple example of a lack of equal treatment would be disabilities related in whole or in part to illegal drug use, where a PERA-P&F member would not qualify for a disability benefit, but an MSRS-Correctional member would qualify for a disability benefit.

4. Appropriateness of Defining, But Not Using, an Occupational Disability (Section 2). The policy issue is the appropriateness of adding an occupational disability definition to MSRS-Correctional retirement plan law, but then not actually utilizing the definition. The occupational disability definition appears to be intended to replace the current provisions of Minnesota Statutes, Section 352.95, Subdivisions 1 and 2, that entitles an individual to disability benefits if the person becomes unable to perform the duties of their occupation, but by combining the occupational disability definition with two other definitions in the same subdivision and replicating portions of the occupational disability definition in the "duty" disability definition and the "regular" disability definition, it is unclear whether the 12-month expected disability duration requirement and whether the potential "normal duties" inability requirement actually are operational.

Amendment S0193-2A attempts to untangle the three definitions currently set forth in Section 2 and to actually utilize the occupational disability definition.

5. Unclear Impact of "Normal Duties" and "Less Frequent Duties" Definitions (Sections 3 and 4). The policy issue is the lack of clarity of the effect of adding the definitions of "normal duties" and "less frequent duties." The two defined phrases are referenced in Section 2, but neither definition appears to result in different benefit levels. It is unclear that such a limited impact of the two definitions is intended. It may be helpful to have MSRS testify about how it plans to use the two new definitions operating within the MSRS-Correctional disability provisions and how the two definitions will moderate or reduce the high level of use of MSRS-Correctional disability benefits.
6. Lack of Any Proposed Maximum Disability Benefit Age Eligibility Provision. The policy issue is the appropriateness of revising MSRS-Correctional disability benefit provisions, including a proposal for converting MSRS-Correctional disability benefits as retirement annuities at age 55 rather than age 65, but not imposing an upper age limitation on the eligibility for an MSRS-Correctional disability benefit. In the 2007 PERA-P&F disability revisions, eligibility for a duty disability benefit or a regular disability benefit was eliminated if the person qualified for a normal retirement annuity (age 55). Although there is a strong incentive for an MSRS-Correctional member to terminate active state employment at age 55 due to the collectively bargained post-retirement health insurance coverage provided to retirees, any MSRS-Correctional member who does continue in state employment after age 55 retains full potential eligibility for a disability benefit under those revisions even though the

person could draw a normal retirement annuity instead. It may be appropriate to seek testimony from MSRS administrators as to the rationale for not imposing any age limitation on disability benefit eligibility.

7. Failure to Modify the Medical or Psychological Evidence Subdivision to Accommodate Disability Definition Changes. The policy issue is the appropriateness of adding disability definitions without accommodating the procedure provision governing the determination of disabilities. Currently, MSRS requires an applicant for a disability benefit from MSRS-Correctional to provide evidence of a disability from a medical doctor, a chiropractor, or a psychologist. This triggers an additional recommendation by an expert designated by the MSRS medical advisor, generating written reports about the question of disablement. If the medical advisor finds the person disabled based on the reports, a recommendation is forwarded to the MSRS executive director, who makes the initial determination of disability benefit entitlement. Although the standards for qualifying for an MSRS-Correctional disability have changed and become more nuanced under the proposed legislation, the determination procedure and expert opinion provision is not amended to conform to those changes.

Amendment S0193-3A adds some conforming references to the proposed legislation consistent with the technical amendment or Amendment S0193-2A.

8. Appropriateness of the Phase-Out of the Non-Duty Short Vesting and Minimum Benefit Provision (Section 5). The policy issue is the appropriateness of restricting the current non-duty disability benefit provision (renamed regular disability benefit) to pre-July 1, 2009, hires and of increasing the one-year vesting requirement to three years and of eliminating the 15 years of service credit minimum disability benefit level for post-June 30, 2009, hires. The phase-out of these benefit provisions could reduce the cost of the disability benefit program, but that cost savings likely will not be realized for more than a decade. Since the enumeration of disabilitants in the MSRS-Correctional actuarial valuation does not differentiate between duty and non-duty disabilitants, it is unclear whether the greatest potential over-utilization of MSRS-Correctional disabilities is from duty disabilitants or from non-duty disabilitants. The Commission may wish to inquire about the relative numbers of disabilitants in the two groups and to what extent these proposed changes could reduce the number of disability benefits payable in the future. The Commission also may wish to inquire about why the changes in this section were not made for post-July 1, 2009, disabilities rather than post-June 30, 2009, hires, following the effective date practices used by PERA-P&F in 2007.

If the Commission wishes to make the changes effective for post-June 30, 2009, disabilitants, **Amendment S0193-4A** speeds up the effective impact of the provision.

9. Appropriateness of Requiring Employing Units to Pay the Present Value of Duty Disabilities as an Additional Contribution (Section 6). The policy issue is the appropriateness of creating an additional employer contribution requirement with respect to its employees who suffer duty disabilities. The contribution requirement is an amount equal to the present value of the disability benefit payable from the date of disability until age 55 and is payable in a lump sum. The size of a present value payment could be very large. For an MSRS-Correctional member who becomes disabled at age 25, with a future 30-year disability benefit at the current average disability benefit amount of \$16,102, the present value amount at 8.5 percent interest is roughly \$130,000. Requiring periodic additional employer contributions of anything like this magnitude should have some significant effect on the unfunded accrued actuarial liability of the MSRS-Correctional retirement plan, but MSRS has not provided any specific estimates of the contribution deficiency reductions expected from this provision. With the potentially large cost for an employer that will be attributable to the awarding of a duty disability benefit, employing units would have a considerable interest in remedial efforts to reduce the potential for duty disabilities in correctional and security facilities generally and in contesting disability awards specifically. There is, however, no specific role under MSRS-Correctional law for an employing unit to play in a disability benefit application beyond certifying whether or not a disability benefit applicant is on a sick leave of absence under Minnesota Statutes, Section 352.95, Subdivision 4, and, although a governmental unit is a "person" under Minnesota Statutes, Section 356.96, Subdivision 1, Paragraph (e), the pension plan appeals process is largely not drafted with the expectation that employers could or would appeal the award of a disability benefit to one of its employees to the retirement plan governing board or to the Court of Appeals.

Amendment S0193-5A would include an employer in the disability determination process to a greater degree in order to allow an employer to argue against the award of an unwarranted duty disability.

10. Appropriateness of the Continuation of MSRS-Correctional Coverage Upon Post-Disabilitant State Employment (Sections 8 and 9). The policy issue is the appropriateness of the new authority for an MSRS-Correctional disabilitant with at least ten years of covered correctional service to become

subsequently employed by the state, in employment other than a covered correctional position, to have the MSRS-Correctional disability benefit suspended, and to have MSRS-Correctional coverage for that state employment until age 55. The provision obviously is aimed at encouraging MSRS-Correctional disabilitants with an occupational-based disability to return to gainful employment by the state, because these former employees reportedly will not return to state employment without the continued MSRS-Correctional retirement coverage. However, this proposal for the continuation of quasi-public safety pension coverage for non-public safety employment raises significant potential problems or complications, including:

- Unclear Election Process and Timing. The provision specifies no election process for a disabilitant to exercise the authority to have continued MSRS-Correctional coverage and sets forth no timing requirements or limitations on the exercise of that authority.
- Unclear Situation of Ongoing MSRS-Correctional Disability Coverage. The provision continues full MSRS-Correctional retirement coverage into the future, including its disability benefit coverage, without indicating the parameters of qualifying for a subsequent/additional disability benefit.
- Post-Retirement Adjustments During Suspension of Disability Benefit. The provision includes a suspension of the MSRS-Correctional disability benefit, but does not clarify the ongoing status of that suspended disability benefit and the disposition of any post-retirement adjustments payable during the suspension period.
- Unclear Age 55 Benefit Calculation. The provision allows MSRS-Correctional retirement coverage for non-correctional employment until age 55, with a suspension of the disability benefit, but provides no guidance for how the MSRS-Correctional retirement annuity is to be combined with the suspended disability benefit and computed at age 55.
- Significant Budgeting Impact on Departments Other Than the Department of Corrections or the Department of Human Services. When the contribution rate increases for MSRS-Correctional are fully implemented in 2010, the MSRS-Correctional employer rate will be 12.1 percent of coverage pay, compared to 5.0 percent of covered pay for the MSRS-General, or \$3,053 annually for the average MSRS-Correctional member. A department employing an MSRS-Correctional disabilitant will bear that substantial greater employer contribution cost.
- Unclear Disposition of Employer Disability Benefit Present Value Payment. For an MSRS-Correctional duty disabilitant who returns to state employment and who would otherwise be covered by the MSRS-General retirement plan, a significant present value additional payment was previously made by either the Department of Corrections or the Department of Human Services based on continued disability benefit receipt until age 55, but that disability benefit is suspended without any provision for the crediting of the balance of the present value additional contributions against future regular contributions by the Department of Corrections or the Department of Human Services.
- Continuing Post-Retirement Medical Insurance Coverage and Cost. Since the continuance of post-retirement medical insurance coverage is dependent on MSRS-Correctional coverage, the continuation of MSRS-Correctional Plan coverage will leave some employer liable for the cost of the medical insurance coverage after age 55, presumably the most recent employer, although a significant portion of the person's career (at least ten years) has been rendered in either the Department of Corrections or the Department of Human Services.

Attachment A

Background Information on the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional)

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 of the Minnesota State Retirement System (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. In 1996, MSRS-Correctional 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. In 1999, MSRS-Correctional 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.

One of the attractions of MSRS-Correctional for groups seeking this coverage is that the plan pays higher benefits than a general employee plan and has an earlier normal retirement age. While this coverage is advantageous to the employee, it is more expensive for the employer because of the higher benefits and earlier retirement age in MSRS-Correctional compared to MSRS-General. MSRS-Correctional offers a hybrid of general employee plan and public safety plan features. MSRS-Correctional members are coordinated members, like members of MSRS-General and unlike members of the Public Employees Retirement Association Police and Fire Plan (PERA-P&F). 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 per-year-of-service benefit accrual factor. (For each year of covered service, the individual will receive 2.4 percent of the high-five average salary, which is the five years of covered salary which produces the highest average). 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, MSRS-Correctional uses an occupational definition of disability rather than the total impairment disability definition used by MSRS-General.

Another attraction of MSRS-Correctional coverage is that post-retirement health care coverage may be provided by the employer. MSRS administrators indicate that eligibility may depend upon the specific union to which the member belongs. In cases where employer-paid health care is an option, the individual must retire between ages 50 and 55 to be eligible for that coverage.

The premise for MSRS-Correctional coverage is that certain employment positions in correctional or analogous security hospital or psychopathic personality treatment center service place the individual in a high degree of physical danger, 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.

Actuarial Valuation Data

Correctional State Employees Retirement Fund

(MSRS-C)

	2008*	2007*	2007**	2006	2005	2004	2003	2002
Membership								
Active Members	4,520	4,332	3,910	3,607	3,326	3,262	3,249	
Service Retirees	1,293	1,210	1,101	1,025	943	843	754	
Disability	184	174	168	150	154	135	115	
Survivors	123	118	106	104	91	82	69	
Deferred Retirees	888	851	817	738	678	601	550	
Nonvested Former Members	<u>548</u>	<u>494</u>	<u>388</u>	<u>351</u>	<u>339</u>	<u>340</u>	<u>268</u>	
Total Membership	7,556	7,179	6,490	5,975	5,531	5,263	5,005	
Funded Status								
Accrued Liability	\$760,363,000	\$708,291,710	\$647,480,269	\$546,117,680	\$524,215,028	\$484,974,000	\$446,426,000	
Current Assets	<u>\$572,719,000</u>	<u>\$559,851,700</u>	<u>\$535,356,819</u>	<u>\$503,573,272</u>	<u>\$486,617,032</u>	<u>\$470,716,000</u>	<u>\$457,416,000</u>	
Unfunded Accrued Liability	\$187,644,000	\$148,440,010	\$112,123,450	\$42,544,408	\$37,597,996	\$14,258,000	(\$10,990,000)	
Funding Ratio	75.32%	79.04%	82.68%	92.21%	92.83%	97.06%	102.46%	
Financing Requirements								
Covered Payroll	\$205,537,000	\$187,309,014	\$162,744,640	\$147,385,402	\$134,117,624	\$138,518,000	\$131,232,000	
Benefits Payable	\$30,932,000	\$28,564,915	\$26,506,726	\$19,025,766	\$17,265,693	\$17,276,000	\$17,105,000	
Normal Cost	\$37,500,000	\$33,124,289	\$28,786,714	\$22,111,459	\$20,066,740	\$20,857,000	\$19,646,000	
Administrative Expenses	<u>\$452,000</u>	<u>\$412,080</u>	<u>\$341,764</u>	<u>\$294,771</u>	<u>\$268,235</u>	<u>\$305,000</u>	<u>\$276,000</u>	
Normal Cost & Expense	18.46%	17.90%	17.90%	15.21%	15.16%	15.26%	15.18%	
Normal Cost & Expense	18.46%	17.90%	17.90%	15.21%	15.16%	15.26%	15.18%	
Amortization	5.20%	5.54%	5.44%	2.50%	2.31%	0.57%	(0.45%)	
Total Requirements	23.66%	24.44%	23.34%	17.71%	17.48%	15.83%	14.73%	
Employee Contributions	7.00%	6.40%	5.69%	5.69%	5.69%	5.69%	5.69%	
Employer Contributions	10.10%	9.10%	7.98%	7.98%	7.98%	7.98%	7.98%	
Employer Add'l Cont.	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
Direct State Funding	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
Other Govt. Funding	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
Administrative Assessments	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	
Total Contributions	17.10%	15.50%	13.67%	13.67%	13.67%	13.67%	13.67%	
Total Requirements	23.66%	24.44%	23.34%	17.71%	17.48%	15.83%	14.73%	
Total Contributions	<u>17.10%</u>	<u>15.50%</u>	<u>13.67%</u>	<u>13.67%</u>	<u>13.67%</u>	<u>13.67%</u>	<u>13.67%</u>	
Deficiency (Surplus)	6.56%	8.94%	9.67%	4.04%	3.81%	2.16%	1.06%	
Amortization Target Date	2038	2023	2023	2020	2020	2032	2032	
Actuary	Segal	Segal	Segal	Segal	Segal	Milliman USA	Milliman USA	

* Reflects 2007 Asset Valuation Method change; ** Current Assets and Amortization results do not reflect the 2007 Asset Valuation Method change

Actuarial Valuation Results: Two-Year Comparison

Statewide Public Safety Plans

	MSRS-Correctional		State Patrol		PERA-P&E		PERA-Correctional		Total Statewide Public Safety Plans	
	2008*	2007*	2008*	2007*	2008*	2007*	2008*	2007*	2008*	2007*
Membership										
Active Members	4,320	4,332	840	844	10,961	10,720	3,710	3,566	20,031	19,462
Service Retirees	1,293	1,210	660	645	5,079	4,938	211	175	7,243	6,968
Disability	184	174	42	41	824	803	92	87	1,142	1,105
Survivors	123	118	194	190	1,291	1,291	15	13	1,623	1,612
Deferred Retirees	888	851	35	32	1,242	1,200	1,520	1,337	3,685	3,420
Nonvested Former Members	548	484	7	9	1,291	914	1,473	1,291	2,907	2,607
Total Membership	7,556	7,179	1,778	1,760	20,276	19,766	7,021	6,469	36,631	35,174
Funded Status										
Accrued Liability	\$780,363,000	\$708,291,710	\$693,686,000	\$673,443,671	\$5,918,061,000	\$5,669,346,646	\$192,572,000	\$162,169,250	\$7,564,682,000	\$7,213,251,277
Current Assets	\$572,719,000	\$559,651,700	\$595,082,000	\$617,900,887	\$5,233,015,000	\$5,198,921,940	\$192,937,000	\$159,547,801	\$5,593,753,000	\$5,536,222,328
Unfunded Accrued Liability	\$187,644,000	\$148,440,010	\$86,604,000	\$55,542,784	\$685,046,000	\$470,424,706	(\$365,000)	\$2,621,449	\$970,929,000	\$677,028,949
Funding Ratio	75.32%	79.04%	85.79%	91.75%	88.42%	91.70%	100.19%	96.38%	87.16%	90.61%
Financing Requirements										
Covered Payroll	\$205,537,000	\$187,309,014	\$63,771,000	\$61,497,551	\$746,743,000	\$699,841,244	\$163,937,000	\$148,793,559	\$1,179,988,000	\$1,097,441,368
Benefits Payable	\$30,932,000	\$28,564,915	\$42,804,000	\$40,581,617	\$295,994,000	\$280,266,868	\$2,268,000	\$1,835,548	\$371,998,000	\$351,248,948
Normal Cost	\$37,500,000	\$33,124,289	\$16,041,000	\$15,219,351	\$172,273,000	\$155,328,501	\$21,916,000	\$17,985,024	\$247,732,000	\$221,657,165
Administrative Expenses	\$452,000	\$412,080	\$115,000	\$116,645	\$821,000	\$699,841	\$229,000	\$193,432	\$1,617,000	\$1,422,198
Normal Cost & Expense	\$37,952,000	\$33,536,369	\$16,156,000	\$15,336,196	\$173,094,000	\$156,028,342	\$22,147,000	\$18,178,456	\$249,349,000	\$223,079,363
Normal Cost & Expense Amortization	\$37,952,000	\$33,536,369	\$16,156,000	\$15,336,196	\$173,094,000	\$156,028,342	\$22,147,000	\$18,178,456	\$249,349,000	\$223,079,363
Total Requirements	\$10,688,000	\$12,250,010	\$5,638,000	\$5,050,279	\$39,055,000	\$43,320,173	(\$16,000)	\$208,311	\$55,565,000	\$56,828,773
Employee Contributions	\$14,388,000	\$11,987,777	\$6,250,000	\$5,596,277	\$67,207,000	\$57,386,982	\$9,558,000	\$8,674,664	\$97,403,000	\$83,645,700
Employer Contributions	\$20,759,000	\$17,045,120	\$9,310,000	\$8,363,667	\$100,810,000	\$86,080,473	\$14,344,000	\$1,319,436	\$145,223,000	\$112,808,696
Employer Add'l Cont.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Direct State Funding	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Govt. Funding	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Administrative Assessment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Contributions	\$35,147,000	\$29,032,897	\$15,560,000	\$13,959,944	\$168,017,000	\$143,467,455	\$23,902,000	\$9,994,100	\$242,626,000	\$196,454,396
Total Requirements	\$48,640,000	\$45,786,379	\$21,994,000	\$18,386,475	\$212,149,000	\$199,348,515	\$22,131,000	\$18,386,767	\$304,914,000	\$281,908,136
Total Contributions	\$35,147,000	\$29,032,897	\$15,560,000	\$13,959,944	\$168,017,000	\$143,467,455	\$23,902,000	\$9,994,100	\$242,626,000	\$196,454,396
Deficiency (Surplus)	\$13,493,000	\$16,753,482	\$6,434,000	\$6,426,531	\$44,132,000	\$55,881,060	(\$1,771,000)	\$8,392,667	\$62,288,000	\$85,453,740

* Current Assets and Amortization results reflect the 2007 Asset Valuation Method change

PERA-P&F

353.01 DEFINITIONS.

Subd. 41. **Duty disability.** "Duty disability," physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the public employees police and fire plan, and that is the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties or the actual performance of less frequent duties, either of which are specific to protecting the property and personal safety of others and that present inherent dangers that are specific to the positions covered by the public employees police and fire plan.

Subd. 42. **Less frequent duties.** "Less frequent duties" means tasks which are designated in the applicant's job description as either required from time to time or as assigned, but which are not carried out as part of the normal routine of the applicant's job.

Subd. 43. **Line of duty death.** "Line of duty death" means a death that occurs while performing or as a direct result of performing normal or less frequent duties which are specific to protecting the property and personal safety of others and that present inherent dangers that are specific to the positions covered by the public employees police and fire plan.

Subd. 44. **Normal duties.** "Normal duties" means specific tasks which are designated in the applicant's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties which may be requested to be done by the employer from time to time.

Subd. 45. **Not line of duty death.** For purposes of survivor benefits under the public employees police and fire plan, a "not line of duty death" is any death not specified under subdivision 43.

Subd. 46. **Regular disability.** "Regular disability," physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the public employees police and fire plan, and which results from a disease or an injury that arises from any activities while not at work, or while at work and performing those normal or less frequent duties that do not present inherent dangers that are specific to the occupations covered by the public employees police and fire plan.

MSRS-Correctional

Minnesota Statutes 2008, section 352.95.

Subd. 1b. **Occupational disability.** "Occupational disability," for purposes of determining eligibility for disability benefits, means a disabling condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the state correctional retirement plan. Occupational disability benefits are awarded either as:

(1) duty disability, physical or psychological, which means a disabling condition that is the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties or the performance of less frequent duties either of which are specific to the positions covered by the state correctional retirement plan;

Subd. 1d. **Less frequent duties.** "Less frequent duties" means tasks designated in the applicant's job description as either required from time to time or as assigned, but which are not carried out as part of the normal routine of the applicant's job.

Subd. 1c. **Normal duties.** "Normal duties" means specific tasks designated in the applicant's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties which may be requested to be done by the employer from time to time.

Subd. 1b. **Occupational disability.** "Occupational disability," for purposes of determining eligibility for disability benefits, means a disabling condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the state correctional retirement plan. Occupational disability benefits are awarded either as:

(2) regular disability, physical or psychological, which means a disabling condition resulting from a disease or an injury that arises from any activities while not at work or while at work from performing normal or less frequent duties that do not present inherent dangers specific to the occupations covered by the state correctional retirement plan.

353.031 DISABILITY DETERMINATION PROCEDURES.

Subdivision 1. **Application.** This section applies to all disability determinations for the public employees general fund, the public employees police and fire fund, and the local government correctional service retirement plan and any other disability determination subject to approval by the board, except as otherwise specified in section 353.33, 353.656, or 353E.05. These requirements and the requirements of section 353.03, subdivision 3, are in addition to the specific requirements of each plan and govern in the event there is any conflict between these sections and the procedures specific to any of those plans under section 353.33, 353.656, or 353E.06.

Subd. 2. **Plan document policy statement.** Disability determinations for the public employees general fund must be made subject to section 353.01, subdivision 19; and for the police and fire plan and the local government correctional service retirement plan must be made consistent with the legislative policy and intent set forth in section 353.63.

Subd. 3. **Procedure to determine eligibility; generally.** (a) Every claim for a disability benefit must be initiated in writing on an application form and in the manner prescribed by the executive director and filed with the executive director. An application for disability benefits must be made within 18 months following termination of public service as defined under section 353.01, subdivision 11a.

(b) All medical reports must support a finding that the disability arose before the employee was placed on any paid or unpaid leave of absence or terminated public service, as defined under section 353.01, subdivision 11a.

(c) An applicant for disability shall provide a detailed report signed by a licensed medical doctor and at least one additional report signed by a medical doctor, psychologist, or chiropractor. The applicant shall authorize the release of all medical and health care evidence, including all medical records and relevant information from any source, to support the application for initial, or the continuing payment of, disability benefits.

(d) All reports must contain an opinion regarding the claimant's prognosis, the duration of the disability, and the expectations for improvement. Any report that does not contain and support a finding that the disability will last for at least one year may not be relied upon to support eligibility for benefits.

(e) Where the medical evidence supports the expectation that at some point in time the claimant will no longer be disabled, any decision granting disability may provide for a termination date upon which disability can be expected to no longer exist. In the event a termination date is made part of the decision granting benefits, prior to the actual termination of benefits, the claimant shall have the opportunity to show that the disabling condition for which benefits were initially granted continues. In the event the benefits terminate in accordance with the original decision, the claimant may petition for a review by the board of trustees under section 353.03, subdivision 3, or may reapply for disability in accordance with these procedures and section 353.33, 353.656, or 353E.06, as applicable.

(f) Any claim to disability must be supported by a report from the employer indicating that there is no available work that the employee can perform in the employee's disabled condition and that all reasonable accommodations have been considered. Upon request of the executive director, an employer shall provide evidence of the steps the employer has taken to attempt to provide reasonable accommodations and continued employment to the claimant. The employer shall also provide a certification of the member's past public service; the dates of any paid sick leave, vacation, or any other employer-paid salary continuation plan beyond the last working day; and whether or not any sick or annual leave has been allowed.

(g) An employee who is placed on leave of absence without compensation because of a disability is not barred from receiving a disability benefit.

(h) An applicant for disability benefits may file a retirement annuity application under section 353.29, subdivision 4, simultaneously with an application for disability benefits. If the application for disability benefits is approved, the retirement annuity application is cancelled. If disability benefits are denied, the retirement annuity application must be processed upon the request of the applicant. No member of the public employees general plan, the public employees police and fire plan, or the local government correctional service retirement plan may receive a disability benefit and a retirement annuity simultaneously from the same plan.

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

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

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

Subd. 4. **Additional requirements; eligibility for police and fire or local government correctional service plan disability benefits.** (a) If an application for disability benefits is filed within two years of the date of the injury or the onset of the illness that gave rise to the disability application, the application must be supported by evidence that the applicant is unable to perform the duties of the position held by the applicant on the date of the injury or the onset of the illness causing the disability. The employer must provide evidence indicating whether the applicant is able or unable to perform the duties of the position held on the date of the injury or onset of the illness causing the disability and the specifications of any duties that the individual can or cannot perform.

(b) If an application for disability benefits is filed more than two years after the date of injury or the onset of an illness causing the disability, the application must be supported by evidence that the applicant is unable to perform the most recent duties that are expected to be performed by the applicant during the 90 days before the filing of the application. The employer must provide evidence of the duties that are expected to be performed by the applicant during the 90 days before the filing of the application, whether the applicant can or cannot perform those duties overall, and the specifications of any duties that the applicant can or cannot perform.

(c) Any report supporting a claim to disability benefits under section 353.656 or 353E.06 must specifically relate the disability to its cause; and for any claim to duty disability from an injury or illness arising out of an act of duty, the report must relate the cause of disability to specific tasks or functions required to be performed by the employee in fulfilling the employee's duty-related acts which must be specific to the inherent dangers of the positions eligible for membership in the police and fire fund and the local government correctional service retirement plan. Any report that does not relate the cause of disability to specific acts or functions performed by the employee may not be relied upon as evidence to support eligibility for benefits and may be disregarded in the executive director's decision-making process.

(d) Any application for duty disability must be supported by a first report of injury as defined in section 176.231.

(e) If a member who has applied for and been approved for disability benefits before the termination of service does not terminate service or is not placed on an authorized leave of absence as certified by the governmental subdivision within 45 days following the date on which the application is approved, the application shall be canceled. If an approved application for disability benefits has been canceled, a subsequent application for disability benefits may not be filed on the basis of the same medical condition for a minimum of one year from the date on which the previous application was canceled.

Subd. 5. **Medical adviser.** The executive director may contract with licensed physicians or physicians on the staff of the state commissioner of health, as designated by the commissioner, to be the medical adviser of the association. The medical adviser shall review all medical reports submitted to the association, including the findings of an independent medical examination requested under this section, and shall advise the executive director.

Subd. 6. **Independent medical examination.** Any individual applying for or receiving disability benefits must submit to an independent medical examination if requested by the executive director. The medical examination must be paid for by the association.

Subd. 7. **Refusal of examination or medical evidence.** If a person applying for or receiving a disability benefit refuses to submit to a medical examination under subdivision 6, or fails to provide or to authorize the release of medical evidence under subdivision 3, the association shall cease the application process or shall discontinue the payment of a disability benefit, whichever is applicable. Upon the receipt of the requested medical evidence, the association shall resume the application process or the payment of a disability benefit upon approval for the continuation, whichever is applicable.

Subd. 8. **Proof of continuing disability.** (a) A disability benefit payment must not be made except upon adequate proof furnished to the executive director of the association that the person remains disabled.

(b) During the time when disability benefits are being paid, the executive director of the association has the right, at reasonable times, to require the disabled member to submit proof of the continuance of the disability claimed.

(c) Adequate proof of a disability must include a written expert report by a licensed physician, a licensed chiropractor, or, with respect to a mental impairment, a licensed psychologist.

Subd. 9. **Application approval or denial; decision of executive director.** Any decision of the executive director is final, except that a member whose application for disability benefits or whose continuation of disability benefits is denied may appeal the executive director's decision to the board of trustees within 60 days of receipt of a certified letter notifying the member of the decision to deny the application or continuation of benefits. In developing the record for review by the board when a decision is appealed, the executive director may direct that the applicant participate in a fact-finding session conducted by an administrative law judge assigned by the Office of Administrative Hearings, and, as applicable, a vocational assessment conducted by the qualified rehabilitation counselor on contract with the Public Employees Retirement Association.

Subd. 10. **Restoring forfeited service.** To restore forfeited service, a repayment of a refund must be made within six months after the effective date of disability benefits or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service or payment made in lieu of salary deductions otherwise authorized under section 353.01 may be made after the occurrence of the disability for which an application is filed under this section.

History: 2007 c 134 art 4 s 8

353.656 DISABILITY BENEFITS.

Subdivision 1. **Duty disability; computation of benefits.** (a) A member of the police and fire plan who is determined to qualify for duty disability as defined in section 353.01, subdivision 41, shall receive disability benefits during the period of such disability in an amount equal to 60 percent of the average salary as defined in section 353.01, subdivision 17a, plus an additional percentage specified under section 356.315, subdivision 6, of that average salary for each year of service in excess of 20 years.

(b) To be eligible for a benefit under paragraph (a), the member must have:

(1) not met the requirements for a retirement annuity under section 353.651, subdivision 1; or

(2) met the requirements under that subdivision, but does not have at least 20 years of allowable service credit.

(c) If paragraph (b), clause (2), applies, the disability benefit must be paid for a period of 60 months from the disability benefit accrual date and at the end of that period is subject to provisions of subdivision 5a.

(d) If the disability under this subdivision occurs before the member has at least five years of allowable service credit in the police and fire plan, the disability benefit must be computed on the average salary from which deductions were made for contribution to the police and fire fund.

Subd. 1a. MS 2006 [Renumbered, subd 1b]

Subd. 1a. **Total and permanent duty disability; computation of benefits.** (a) A member of the police and fire plan whose disabling condition is determined to be a duty disability that is also a permanent and total disability as defined in section 353.01, subdivision 19, is entitled to receive, for life, disability benefits in an amount equal to 60 percent of the average salary as defined in section 353.01, subdivision 17a, plus an additional percent specified in

Subd. 6. **Disability benefit for certain employees with regular plan service.** If the employee is entitled to receive a disability benefit as provided in subdivision 1 or 2 and has credit for less covered correctional service than the length of service upon which the correctional disability benefit is based, and also has credit for regular plan service, the employee is entitled to a disability benefit or deferred retirement annuity based on the regular plan service only for that service which when combined with the correctional service exceeds number of years on which the correctional disability benefit is based. The disabled employee who also has credit for regular plan service must in all respects qualify under section 352.113 for a disability benefit based on the regular plan service, except that the service may be combined to satisfy length of service requirements. Any deferred annuity to which the employee is entitled based on regular plan service must be augmented as provided in section 352.72 while the employee is receiving a disability benefit under this section.

Subdivision 1. ~~Job-related disability~~ Duty disability computation of benefit.

A covered correctional employee who becomes disabled and who is expected to be physically or mentally unfit to perform the duties of the position for at least one year as a direct result of an injury, sickness, or other disability that incurred in or arose out of any act of duty that makes the employee physically or mentally unable to perform the duties, as defined under subdivision 1b, clause (1), is entitled to a disability benefit. The disability benefit may must be based on covered correctional service only. The benefit amount is 50 percent of the average salary defined in section 352.93, plus an additional percent equal to that specified in section 356.315, subdivision 5, for each year of covered correctional service in excess of 20 years, ten months, prorated for completed months.

Subd. 3. **Regular disability benefit.** (a) A member of the police and fire plan who qualifies for a regular disability benefit as defined in section 353.01, subdivision 46, is entitled to receive a disability benefit, after filing a valid application, in an amount equal to 45 percent of the average salary as defined in section 353.01, subdivision 17a.

(b) To be eligible for a benefit under paragraph (a), the member must have at least one year of allowable service credit and have:

- (1) not met the requirements for a retirement annuity under section 353.651, subdivision 1, or
- (2) met the requirements under that subdivision, but does not have at least 15 years of allowable service credit.

(c) If paragraph (b), clause (2), applies, the disability benefit must be paid for a period of 60 months from the disability benefit accrual date and, at the end of that period, is subject to provisions of subdivision 5a.

(d) For a member who is employed as a full-time firefighter by the Department of Military Affairs of the state of Minnesota, allowable service as a full-time state Military Affairs Department firefighter credited by the Minnesota State Retirement System may be used in meeting the minimum allowable service requirement of this subdivision.

Subd. 3a. **Total and permanent regular disability; computation of benefits.** (a) A member of the police and fire plan whose disabling condition is determined to be a regular disability under section 353.01, subdivision 46, that is also a permanent and total disability as defined in section 353.01, subdivision 19, is entitled to receive, for life, a disability benefit in an amount equal to 45 percent of the average salary as defined in section 353.01, subdivision 17a, plus an additional percent specified in section 356.315, subdivision 6, of that average salary for each year of service in excess of 15 years.

(b) A disability benefit payable under paragraph (a) is subject to eligibility review under section 353.33, subdivision 6, but the review may be waived if the executive director receives a written statement from the association's medical advisor that no improvement can be expected in the member's disabling condition that was the basis for payment of the benefit under paragraph (a). A member receiving a disability benefit under this subdivision who is found to no longer be permanently and totally disabled as defined under section 353.01, subdivision 19, but continues to meet the definition for receipt of a regular disability under section 353.01, subdivision 46, is subject to subdivision 3 upon written notice from the association's medical advisor that the person is no longer considered permanently and totally disabled.

(c) A member approved for disability benefits under this subdivision may elect to receive a normal disability benefit or an actuarial equivalent optional annuity. If the election of an actuarial equivalent optional annuity is not made at the time the total and permanent disability benefit accrues, an election must be made within 90 days before the member attains normal retirement age as defined in section 353.01, subdivision 37, paragraph (b), or having collected disability benefits for 60 months, whichever is later. No surviving spouse benefits are payable if the member dies during the period in which a normal total and permanent disability benefit is being paid. If a member receiving disability benefits who has dependent children dies, subdivision 6a, paragraph (c), applies.

Subd. 4. **Limitation on disability benefit payments.** (a) No member is entitled to receive a disability benefit payment when there remains to the member's credit unused annual leave, sick leave, or any other employer-provided salary continuation plan, or under any other circumstances when, during the period of disability, there has been no impairment of the person's salary as a police officer, a firefighter, or a paramedic as defined in section 353.64, subdivision 10, whichever applies.

(b) If a disabled member resumes a gainful occupation with earnings that, when added to the normal disability benefit, and workers' compensation benefit if applicable, exceed the disability benefit, the amount of the disability benefit must be reduced as provided in this paragraph. The disability benefit must be reduced to the greater of:

- (1) the salary earned at the date of disability; or
- (2) 125 percent of the base salary currently paid by the employing governmental subdivision for similar positions.

(c) The disability benefit must be reduced by one dollar for each three dollars by which the total amount of the current disability benefit, any workers' compensation benefits if applicable, and actual earnings exceed the greater disability benefit limit. In no event may the disability benefit as adjusted under this subdivision exceed the disability benefit originally allowed.

Subd. 5. [Repealed, 2007 c 134 art 4 s 36]

Subd. 5a. **Cessation of disability benefit.** (a) The association shall cease the payment of any disability benefit the first of the month following the reinstatement of a member to full time or less than full-time service in a position covered by the police and fire fund.

(b) A disability benefit paid to a disabled member of the police and fire plan, that was granted under laws in effect after June 30, 2007, terminates at the end of the month in which the member:

- (1) reaches normal retirement age;
- (2) if the disability benefit is payable for a 60-month period as determined under subdivisions 1 and 3, as applicable, the first of the month following the expiration of the 60-month period; or
- (3) if the disabled member so chooses, the end of the month in which the member has elected to convert to an early retirement annuity under section 353.651, subdivision 4.

(c) If the police and fire plan member continues to be disabled when the disability benefit terminates under this subdivision, the member is deemed to be retired. The individual is entitled to receive a normal retirement annuity or an early retirement annuity under section 353.651, whichever is applicable, as further specified in paragraph (d) or (e). If the individual did not previously elect an optional annuity under subdivision 1a, paragraph (a), the individual may elect an optional annuity under subdivision 1a, paragraph (b).

(d) A member of the police and fire plan who is receiving a disability benefit under this section may, upon application, elect to receive an early retirement annuity under section

Subd. 2. ~~Non-job-related Regular disability benefit.~~ A covered correctional employee who was hired prior to July 1, 2009, after rendering at least one year of covered correctional service, or a covered correctional employee who was first hired after June 30, 2009, after rendering at least three years of covered correctional plan service, becomes disabled and who is expected to be physically or mentally unfit to perform the duties of the position for at least one year because of sickness or injury that occurred while not engaged in covered employment as defined under subdivision 1b, clause (2), is entitled to a disability benefit based on covered correctional service only. The disability benefit must be computed as provided in section 352.93, subdivisions 1 and 2, and, The benefits of a covered correctional employee who was first hired prior to July 1, 2009, and is determined to be disabled under this subdivision must be computed as though the employee had at least 15 years of covered correctional service.

Subd. 7. **Resumption of employment.** If the disabled employee resumes gainful work other than under subdivision 8, the disability benefit must be continued in an amount which when added to current earnings and workers' compensation benefits does not exceed the salary rate of the disabled employee at the date of disability as adjusted by the same percentage increase in United States average wages used by Social Security in calculating average indexed monthly earnings for the same period.

Subd. 8. Continuation of correctional plan coverage. An employee who is determined to be disabled under this section and has accrued ten or more years of correctional plan covered service, who accepts employment covered by the general employees retirement plan under section 352.01, may continue coverage under the correctional employee retirement plan until the employee reaches age 55. An employee who accepts employment under this subdivision shall have monthly disability benefits suspended while working in this position.

Subd. 5. **Retirement status at normal retirement age.** The disability benefit paid to a disabled correctional employee under this section shall terminate at the end of the month in which the employee reaches age 65 55, or the five-year anniversary of the effective date of the disability benefit, whichever is later. If the disabled correctional employee is still disabled when the employee reaches age 65 55, or the five-year anniversary of the effective date of the disability benefit, whichever is later, the employee shall be deemed to be a retired employee. If the employee had elected an optional annuity under subdivision 1a, the employee shall receive an annuity in accordance with the terms of the optional annuity previously elected. If the employee had not elected an optional annuity under subdivision 1a, the employee may within 90 days of attaining age 65 55 or reaching the five-year anniversary of the effective date of the disability benefit,

353.651, subdivision 4, at any time after attaining age 50, but must convert to a retirement annuity no later than the end of the month in which the disabled member attains normal retirement age. An early retirement annuity elected under this subdivision must be calculated on the disabled member's accrued years of service and average salary as defined in section 353.01, subdivision 17a, and when elected, the member is deemed to be retired.

(e) When an individual's benefit is recalculated as a retirement annuity under this section, the annuity must be based on clause (1) or clause (2), whichever provides the greater amount:

(1) the benefit amount at the time of reclassification, including all prior adjustments provided under section 11A.18; or

(2) a benefit amount computed on the member's actual years of accrued allowable service credit and the law in effect at the time the disability benefit first accrued, plus any increases that would have applied since that date under section 11A.18.

Subd. 6. [Repealed, 1993 c 307 art 4 s 54]

Subd. 6a. **Disability survivor benefits for pre-July 1, 2007, disabled members.** (a) If a member who is receiving a disability benefit that was granted under the laws in effect before July 1, 2007, dies before attaining normal retirement age as defined under section 353.01, subdivision 37, paragraph (b), or within five years of the effective date of the disability, whichever is later, the surviving spouse shall receive a survivor benefit under section 353.657, subdivision 2, paragraph (a), clause (2); or 2a, unless the surviving spouse elected to receive a refund under section 353.32, subdivision 1. The joint and survivor optional annuity under subdivision 2a is based on the minimum disability benefit under subdivision 1 or 3, or the deceased member's allowable service, whichever is greater.

(b) If the disability benefit was granted under the laws in effect before July 1, 2007, and the disabled member is living at the age required for receipt of a retirement annuity under section 353.651, subdivision 1, or five years after the effective date of the disability, whichever is later, the disabled member may continue to receive a normal disability benefit, or the member may elect a joint and survivor optional annuity under section 353.30. The optional annuity is based on the minimum disability benefit under subdivision 1 or 3, or the member's allowable service, whichever is greater. The election of this joint and survivor annuity must occur within 90 days before attaining normal retirement age as defined under section 353.01, subdivision 37, paragraph (b), or within 90 days before the five-year anniversary of the effective date of the disability benefit, whichever is later. The optional annuity takes effect the first of the month following the month in which the person attains the age required for receipt of a retirement annuity under section 353.651, subdivision 1, or reaches the five-year anniversary of the effective date of the disability benefit, whichever is later.

(c) If any disabled member dies while receiving a benefit and has a dependent child or children, the association shall grant a dependent child benefit under section 353.657, subdivision 3.

Subd. 7. [Repealed, 1992 c 432 art 2 s 51]

Subd. 8. **Application procedure to determine eligibility for police and fire plan disability benefits.** The application procedures to determine eligibility for police and fire plan disability benefits are defined under section 353.031.

Subd. 9. [Repealed, 2007 c 134 art 4 s 36]

Subd. 10. **Accrual of benefits.** (a) Except for a total and permanent disability under subdivision 1a, a disability benefit begins to accrue when the applicant is no longer receiving any form of compensation, whether salary or paid leave 90 days preceding the filing of an application; or, if annual or sick leave, or any other employer-paid salary continuation plan is paid for more than the 90-day period, from the date on which the payment of salary ceased, whichever is later. Except for a total and permanent disability under subdivision 1a, no member is entitled to receive a disability benefit payment when there remains to the member's credit any unused annual leave, sick leave, or any other employer-paid salary continuation benefit, or under any other circumstances when, during the period of disability, there has been no impairment of the person's salary.

(b) Payment of the disability benefit must not continue beyond the end of the month in which entitlement has terminated. If the disabled member dies prior to negotiating the check for the month in which death occurs, payment must be made to the surviving spouse or, if none, to the designated beneficiary or, if none, to the estate.

Subd. 11. [Repealed, 2007 c 134 art 4 s 36]

Subd. 12. [Repealed, 2007 c 134 art 4 s 36]

Subd. 13. **Chemical dependency limitations to disability benefit eligibility.** (a) No benefits are payable for any disability resulting in whole or in part from the member's current use of illegal drugs. This exclusion does not apply to a member who:

(1) has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and is no longer engaging in such use; or

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use.

(b) "Illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under United States Code, title 21, section 801. "Illegal use of drugs" does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by United States Code, title 21, or other provisions of law.

History: 1971 c 297 s 3; 1973 c 753 s 72-74; 1975 c 102 s 20,21; 1975 c 359 s 23; 1976 c 329 s 28; 1977 c 429 s 63; 1978 c 796 s 38; 1979 c 216 s 19; 1981 c 68 s 23,24; 1981 c 180 s 16; 1981 c 224 s 96; 1983 c 85 s 2; 1Sp1985 c 7 s 15; 1986 c 444; 1987 c 284 art 5 s 14,15; 1987 c 372 art 1 s 7; art 9 s 20,21; 1989 c 319 art 3 s 22; art 17 s 14,15; 1990 c 570 art 11 s 9,10; 1991 c 341 s 23; 1992 c 432 art 2 s 19; 1993 c 307 art 4 s 34-39; 1993 c 352 s 5; 1994 c 463 s 1; 1997 c 233 art 1 s 42; 2000 c 461 art 3 s 23,24; 2002 c 392 art 11 s 52; 2004 c 267 art 8 s 20-25; 1Sp2005 c 8 art 1 s 14; 2006 c 212 art 3 s 35; 2006 c 271 art 3 s 29; art 4 s 1-3; 2007 c 134 art 4 s 15-25; 2008 c 349 art 5 s 23; art 12 s 1

whichever is later, either elect to receive a normal retirement annuity computed in the manner provided in section 352.93 or elect to receive an optional annuity as provided in section 352.116, subdivision 3, based on the same length of service as used in the calculation of the disability benefit. Election of an optional annuity must be made within 90 days before attaining age ~~65~~55 or reaching the five-year anniversary of the effective date of the disability benefit, whichever is later. If an optional annuity is elected, the optional annuity shall begin to accrue on the first of the month following the month in which the employee reaches age ~~65~~55 or the five-year anniversary of the effective date of the disability benefit, whichever is later.

Subd. 3. **Applying for benefits; accrual.** No application for disability benefits shall be made until after the last day physically on the job.

The disability benefit shall begin to accrue the day following the last day for which the employee is paid sick leave or annual leave but not earlier than 180 days before the date the application is filed.

1.1 moves to amend S.F. No. 193; H.F. No. 727, as follows:

1.2 Page 1, delete section 2

1.3 Page 1, after line 5, insert:

1.4 "Section 1. Minnesota Statutes 2008, section 352.01, is amended by adding a
1.5 subdivision to read:

1.6 Subd. 17a. **Occupational disability.** "Occupational disability," for purposes of
1.7 determining eligibility for disability benefits for a correctional employee, means a
1.8 disabling condition that is expected to prevent the correctional employee, for a period of
1.9 not less than 12 months, from performing the normal duties of the position held by the
1.10 correctional employee.

1.11 Sec. 2. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
1.12 to read:

1.13 Subd. 17b. **Duty disability, physical or psychological.** "Duty disability, physical
1.14 or psychological," for a correctional employee, means a disabling condition that is the
1.15 direct result of an injury incurred during, or a disease arising out of, the performance of
1.16 normal duties or the performance of less frequent duties either of which are specific to
1.17 the correctional employee.

1.18 Sec. 3. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
1.19 to read:

1.20 Subd. 17c. **Regular disability, physical or psychological.** "Regular disability,
1.21 physical or psychological," for a correctional employee, means a disabling condition
1.22 resulting from a disease or an injury that arises from any activities while not at work or
1.23 while at work from performing normal or less frequent duties that do not present inherent
1.24 dangers specific to covered correctional positions.

1.25 Sec. 4. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
1.26 to read:

1.27 Subd. 17d. **Normal duties.** "Normal duties" means specific tasks designated in the
1.28 applicant's job description and which the applicant performs on a day-to-day basis, but
1.29 do not include less frequent duties which may be requested to be done by the employer
1.30 from time to time.

1.31 Sec. 5. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
1.32 to read:

2.1 Subd. 17e. Less frequent duties. "Less frequent duties" means tasks designated
 2.2 in the applicant's job description as either required from time to time or as assigned, but
 2.3 which are not carried out as part of the normal routine of the applicant's job."

2.4 Page 1, line 12, after "under" insert "section 352.01," and delete "1b, clause (1)"
 2.5 and insert "17b" and before the first "disability" insert "duty" and before the second "
 2.6 disability" insert "duty"

2.7 Page 1, line 13, before the second "benefit" insert "duty disability"

2.8 Page 2, delete sections 3 to 4

2.9 Page 2, line 22, delete "prior to" and insert "before"

2.10 Page 2, line 27, after "under" insert "section 352.01," and delete "1b, clause (2)"
 2.11 and insert "17c"

2.12 Page 2, line 28, before the first "disability" insert "regular" and before the second "
 2.13 disability" insert "regular"

2.14 Page 2, line 29, delete "benefits" and insert "disability benefit"

2.15 Page 2, line 30, delete "prior to" and insert "before" and before "is" insert "who"

2.16 Page 3, line 4, after "disability" insert "under subdivision 1"

2.17 Page 3, line 5, before the first "benefit" insert "duty disability" and before the second "
 2.18 disability" insert "duty" and delete "shall" and insert "must"

2.19 Page 3, line 6, before "as" insert "under a procedure certified" and delete "approved"
 2.20 and insert "accurate" and before "actuary" insert "approved"

2.21 Page 3, line 7, before "disability" insert "duty" and before "accrual" insert "benefit"
 2.22 and after "through" insert "the first of the month occurring before" and after the second "
 2.23 date" insert "on which"

2.24 Page 3, line 8, before "Payment" insert "The executive director shall certify the
 2.25 present value amount to the chief administrative officer of the employing unit of the
 2.26 disabled correctional employee and" and delete the second "shall" and insert "must"
 2.27 and delete "at"

2.28 Page 3, delete line 9 and insert "within 30 days of the certification."

2.29 Page 4, line 7, delete "and" and insert ", who"

2.30 Page 4, line 8, before "who" insert "and"

2.31 Page 4, line 9, after "continue" insert "to have retirement" and delete the second "
 2.32 under" and insert "by"

2.33 Page 4, line 10, after "correctional" insert "state" and after "plan" insert "for
 2.34 subsequent state employment" and after "until" insert "the end of the month during which"

2.35 Page 4, line 11, after "benefits" insert "under this section"

2.36 Renumber the sections in sequence and correct the internal references

3.1 Amend the title accordingly

1.1 A bill for an act
 1.2 relating to retirement; amending certain correctional employee disability benefit
 1.3 provisions; defining terms; amending age limits; amending Minnesota Statutes
 1.4 2008, sections 352.01, by adding subdivisions; 352.95, subdivisions 1, 2, 5, 7,
 1.5 by adding subdivisions.

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

1.7 Section 1. Minnesota Statutes 2008, section 352.01, is amended by adding a
 1.8 subdivision to read:

1.9 Subd. 17a. **Occupational disability.** "Occupational disability," for purposes of
 1.10 determining eligibility for disability benefits for a correctional employee, means a
 1.11 disabling condition that is expected to prevent the correctional employee, for a period of
 1.12 not less than 12 months, from performing the normal duties of the position held by the
 1.13 correctional employee.

1.14 Sec. 2. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
 1.15 to read:

1.16 Subd. 17b. **Duty disability, physical or psychological.** "Duty disability, physical
 1.17 or psychological," for a correctional employee, means a disabling condition that is the
 1.18 direct result of an injury incurred during, or a disease arising out of, the performance of
 1.19 normal duties or the performance of less frequent duties either of which are specific to
 1.20 the correctional employee.

1.21 Sec. 3. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
 1.22 to read:

2.1 Subd. 17c. **Regular disability, physical or psychological.** "Regular disability,
2.2 physical or psychological," for a correctional employee, means a disabling condition
2.3 resulting from a disease or an injury that arises from any activities while not at work or
2.4 while at work from performing normal or less frequent duties that do not present inherent
2.5 dangers specific to covered correctional positions.

2.6 Sec. 4. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
2.7 to read:

2.8 Subd. 17d. **Normal duties.** "Normal duties" means specific tasks designated in the
2.9 applicant's job description and which the applicant performs on a day-to-day basis, but
2.10 do not include less frequent duties which may be requested to be done by the employer
2.11 from time to time.

2.12 Sec. 5. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
2.13 to read:

2.14 Subd. 17e. **Less frequent duties.** "Less frequent duties" means tasks designated
2.15 in the applicant's job description as either required from time to time or as assigned, but
2.16 which are not carried out as part of the normal routine of the applicant's job.

2.17 Sec. 6. Minnesota Statutes 2008, section 352.95, subdivision 1, is amended to read:

2.18 Subdivision 1. ~~Job-related disability~~ Duty disability computation of benefit. A
2.19 covered correctional employee who becomes disabled ~~and who is expected to be physically~~
2.20 ~~or mentally unfit to perform the duties of the position for at least one year as a direct result~~
2.21 ~~of an injury, sickness, or other disability that incurred in or arose out of any act of duty that~~
2.22 ~~makes the employee physically or mentally unable to perform the duties, as defined under~~
2.23 section 352.01, subdivision 17b, is entitled to a duty disability benefit. The duty disability
2.24 benefit ~~may~~ must be based on covered correctional service only. The duty disability benefit
2.25 amount is 50 percent of the average salary defined in section 352.93, plus an additional
2.26 percent equal to that specified in section 356.315, subdivision 5, for each year of covered
2.27 correctional service in excess of 20 years, ten months, prorated for completed months.

2.28 Sec. 7. Minnesota Statutes 2008, section 352.95, subdivision 2, is amended to read:

2.29 Subd. 2. ~~Non-job-related~~ Regular disability benefit. A covered correctional
2.30 employee who was hired before July 1, 2009, after rendering at least one year of covered
2.31 correctional service, or a covered correctional employee who was first hired after June 30,
2.32 2009, after rendering at least three years of covered correctional plan service, becomes

3.1 disabled and who is expected to be physically or mentally unfit to perform the duties of the
3.2 position for at least one year because of sickness or injury that occurred while not engaged
3.3 in covered employment as defined under section 352.01, subdivision 17c, is entitled to a
3.4 regular disability benefit based on covered correctional service only. The regular disability
3.5 benefit must be computed as provided in section 352.93, subdivisions 1 and 2, and. The
3.6 disability benefit of a covered correctional employee who was first hired before July 1,
3.7 2009, and who is determined to be disabled under this subdivision must be computed as
3.8 though the employee had at least 15 years of covered correctional service.

3.9 Sec. 8. Minnesota Statutes 2008, section 352.95, is amended by adding a subdivision
3.10 to read:

3.11 Subd. 2a. Employer payment of present value. The employer of a disabled
3.12 employee who qualifies for a duty disability under subdivision 1 shall be responsible for
3.13 the present value of the duty disability benefit. Present value of the duty disability benefit
3.14 must be determined by the state retirement system, under a procedure certified as accurate
3.15 by the approved actuary retained under section 356.214, for the period beginning with
3.16 the duty disability benefit accrual date through the first of the month occurring before the
3.17 date on which the disabled employee would reach age 55. The executive director shall
3.18 certify the present value amount to the chief administrative officer of the employing unit
3.19 of the disabled correctional employee and Payment must be made by the employer of the
3.20 disabled employee within 30 days of the certification.

3.21 Sec. 9. Minnesota Statutes 2008, section 352.95, subdivision 5, is amended to read:

3.22 **Subd. 5. Retirement status at normal retirement age.** The disability benefit
3.23 paid to a disabled correctional employee under this section shall terminate at the end of
3.24 the month in which the employee reaches age ~~65~~55, or the five-year anniversary of the
3.25 effective date of the disability benefit, whichever is later. If the disabled correctional
3.26 employee is still disabled when the employee reaches age ~~65~~55, or the five-year
3.27 anniversary of the effective date of the disability benefit, whichever is later, the employee
3.28 shall be deemed to be a retired employee. If the employee had elected an optional annuity
3.29 under subdivision 1a, the employee shall receive an annuity in accordance with the
3.30 terms of the optional annuity previously elected. If the employee had not elected an
3.31 optional annuity under subdivision 1a, the employee may within 90 days of attaining age
3.32 ~~65~~55 or reaching the five-year anniversary of the effective date of the disability benefit,
3.33 whichever is later, either elect to receive a normal retirement annuity computed in the
3.34 manner provided in section 352.93 or elect to receive an optional annuity as provided

4.1 in section 352.116, subdivision 3, based on the same length of service as used in the
4.2 calculation of the disability benefit. Election of an optional annuity must be made within
4.3 90 days before attaining age ~~65~~ 55 or reaching the five-year anniversary of the effective
4.4 date of the disability benefit, whichever is later. If an optional annuity is elected, the
4.5 optional annuity shall begin to accrue on the first of the month following the month in
4.6 which the employee reaches age ~~65~~ 55 or the five-year anniversary of the effective date of
4.7 the disability benefit, whichever is later.

4.8 Sec. 10. Minnesota Statutes 2008, section 352.95, subdivision 7, is amended to read:

4.9 Subd. 7. **Resumption of employment.** If the disabled employee resumes gainful
4.10 work other than under subdivision 8, the disability benefit must be continued in an amount
4.11 which when added to current earnings and workers' compensation benefits does not exceed
4.12 the salary rate of the disabled employee at the date of disability as adjusted by the same
4.13 percentage increase in United States average wages used by Social Security in calculating
4.14 average indexed monthly earnings for the same period.

4.15 Sec. 11. Minnesota Statutes 2008, section 352.95, is amended by adding a subdivision
4.16 to read:

4.17 Subd. 8. **Continuation of correctional plan coverage.** An employee who is
4.18 determined to be disabled under this section, who has accrued ten or more years of
4.19 correctional plan covered service, and who accepts employment covered by the general
4.20 employees retirement plan under section 352.01, may continue to have retirement coverage
4.21 by the correctional state employee retirement plan for subsequent state employment until
4.22 the end of the month during which the employee reaches age 55. An employee who
4.23 accepts employment under this subdivision shall have monthly disability benefits under
4.24 this section suspended while working in this position.

1.1 moves to amend S.F. No. 193; H.F. No. 727, as follows:

1.2 Page 1, delete section 2

1.3 Page 1, after line 5, insert:

1.4 "Section 1. Minnesota Statutes 2008, section 352.01, is amended by adding a
1.5 subdivision to read:

1.6 Subd. 17a. **Occupational disability.** "Occupational disability," for purposes of
1.7 determining eligibility for disability benefits for a correctional employee, means a
1.8 disabling condition that is expected to prevent the correctional employee, for a period of
1.9 not less than 12 months, from performing the normal duties of the position held by the
1.10 correctional employee.

1.11 Sec. 2. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
1.12 to read:

1.13 Subd. 17b. **Duty disability, physical or psychological.** "Duty disability, physical
1.14 or psychological," for a correctional employee, means a disabling condition that is the
1.15 direct result of an injury incurred during, or a disease arising out of, the performance of
1.16 normal duties or the performance of less frequent duties either of which are specific to
1.17 the correctional employee.

1.18 Sec. 3. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
1.19 to read:

1.20 Subd. 17c. **Regular disability, physical or psychological.** "Regular disability,
1.21 physical or psychological," for a correctional employee, means a disabling condition
1.22 resulting from a disease or an injury that arises from any activities while not at work or
1.23 while at work from performing normal or less frequent duties that do not present inherent
1.24 dangers specific to covered correctional positions.

1.25 Sec. 4. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
1.26 to read:

1.27 Subd. 17d. **Normal duties.** "Normal duties" means specific tasks designated in the
1.28 applicant's job description and which the applicant performs on a day-to-day basis, but
1.29 do not include less frequent duties which may be requested to be done by the employer
1.30 from time to time.

1.31 Sec. 5. Minnesota Statutes 2008, section 352.01, is amended by adding a subdivision
1.32 to read:

2.1 Subd. 17e. **Less frequent duties.** "Less frequent duties" means tasks designated
 2.2 in the applicant's job description as either required from time to time or as assigned, but
 2.3 which are not carried out as part of the normal routine of the applicant's job."

2.4 Page 1, line 8, strike "becomes disabled"

2.5 Page 1, line 11, after "~~duties~~" insert "is determined to have an occupational disability"

2.6 Page 1, line 12, after "under" insert "section 352.01," and delete "1b, clause (1)"

2.7 and insert "17b" and before the first "disability" insert "duty" and before the second "

2.8 disability" insert "duty"

2.9 Page 1, line 13, before the second "benefit" insert "duty disability"

2.10 Page 2, delete sections 3 to 4

2.11 Page 2, line 22, delete "prior to" and insert "before"

2.12 Page 2, line 24, strike "becomes"

2.13 Page 2, line 25, strike "disabled"

2.14 Page 2, line 27, before "as" insert "is determined to have an occupational disability"

2.15 and after "under" insert "section 352.01," and delete "1b, clause (2)" and insert "17c"

2.16 Page 2, line 28, before the first "disability" insert "regular" and before the second "

2.17 disability" insert "regular"

2.18 Page 2, line 29, delete "benefits" and insert "disability benefit"

2.19 Page 2, line 30, delete "prior to" and insert "before" and before "is" insert "who"

2.20 Page 3, line 4, after "disability" insert "under subdivision 1"

2.21 Page 3, line 5, before the first "benefit" insert "duty disability" and before the second "

2.22 disability" insert "duty" and delete "shall" and insert "must"

2.23 Page 3, line 6, before "as" insert "under a procedure certified" and delete "approved"

2.24 and insert "accurate" and before "actuary" insert "approved"

2.25 Page 3, line 7, before "disability" insert "duty" and before "accrual" insert "benefit"

2.26 and after "through" insert "the first of the month occurring before" and after the second "

2.27 date" insert "on which"

2.28 Page 3, line 8, before "Payment" insert "The executive director shall certify the

2.29 present value amount to the chief administrative officer of the employing unit of the

2.30 disabled correctional employee and" and delete the second "shall" and insert "must"

2.31 and delete "at"

2.32 Page 3, delete line 9 and insert "within 30 days of the certification."

2.33 Page 4, line 7, delete "and" and insert ", who"

2.34 Page 4, line 8, before "who" insert "and"

2.35 Page 4, line 9, after "continue" insert "to have retirement" and delete the second "

2.36 under" and insert "by"

- 3.1 Page 4, line 10, after "correctional" insert "state" and after "plan" insert "for
- 3.2 subsequent state employment" and after "until" insert "the end of the month during which"
- 3.3 Page 4, line 11, after "benefits" insert "under this section"
- 3.4 Renumber the sections in sequence and correct the internal references
- 3.5 Amend the title accordingly

1.1 moves to amend S.F. No. 193; H.F. No. 727, as follows:

1.2 Page 3, after line 9, insert:

1.3 "Sec. 7. Minnesota Statutes 2008, section 352.95, subdivision 4, is amended to read:

1.4 Subd. 4. **Medical or psychological evidence.** (a) An applicant shall provide
1.5 medical, chiropractic, or psychological evidence to support an application for disability
1.6 benefits. The director shall have the employee examined by at least one additional
1.7 licensed physician, chiropractor, or psychologist who is designated by the medical adviser.
1.8 The physicians, chiropractors, or psychologists with respect to a mental impairment,
1.9 shall make written reports to the director concerning the question of the employee's
1.10 disability, including their expert opinions as to whether the employee ~~is disabled~~ has an
1.11 occupational disability within the meaning of ~~this~~ section 352.01, subdivision 17a, and
1.12 whether the employee has a duty disability, physical or psychological, under section
1.13 352.01, subdivision 17b, or has a regular disability, physical or psychological, under
1.14 section 352.01, subdivision 17c. The director shall also obtain written certification from
1.15 the employer stating whether or not the employee is on sick leave of absence because of a
1.16 disability that will prevent further service to the employer performing normal duties as
1.17 defined in section 352.01, subdivision 17d, or performing less frequent duties as defined in
1.18 section 352.01, subdivision 17e, and as a consequence, the employee is not entitled to
1.19 compensation from the employer.

1.20 (b) If, on considering the reports by the physicians, chiropractors, or psychologists
1.21 and any other evidence supplied by the employee or others, the medical adviser finds that
1.22 the employee ~~disabled~~ has an occupational disability within the meaning of ~~this~~ section
1.23 352.01, subdivision 17a, the advisor shall make the appropriate recommendation to the
1.24 director, in writing, together with the date from which the employee has been disabled.
1.25 The director shall then determine the propriety of authorizing payment of a duty disability
1.26 benefit or a regular disability benefit as provided in this section.

1.27 (c) Unless the payment of a disability benefit has terminated because the employee
1.28 ~~is no longer disabled~~ has an occupational disability, or because the employee has reached
1.29 either age 65 or the five-year anniversary of the effective date of the disability benefit,
1.30 whichever is later, the disability benefit must cease with the last payment which was
1.31 received by the disabled employee or which had accrued during the employee's lifetime.
1.32 While disability benefits are paid, the director has the right, at reasonable times, to
1.33 require the disabled employee to submit proof of the continuance of ~~the~~ an occupational
1.34 disability claimed. If any examination indicates to the medical adviser that the employee
1.35 ~~is no longer disabled~~ has an occupational disability, the disability payment must be

- 2.1 discontinued upon the person's reinstatement to state service or within 60 days of the
- 2.2 finding, whichever is sooner."
- 2.3 Renumber the sections in sequence and correct the internal references
- 2.4 Amend the title accordingly

1.1 moves to amend S.F. No. 193; H.F. No. 727, as follows:

1.2 Page 2, line 22, delete "was hired prior to" and insert "suffered an occupational
1.3 disability before"

1.4 Page 2, line 23, delete "was first hired" and insert "suffered an occupational
1.5 disability"

1.6 Page 2, line 30, delete "was first hired prior to" and insert "suffered an occupational
1.7 disability before"

1.1 moves to amend S.F. No. 193; H.F. No. 727, as follows:

1.2 Page 3, delete lines 3 to 9 and insert:

1.3 "Subd. 2a. **Employer payment of present value.** (a) Within seven days of the
1.4 receipt of an application for a duty-related disability benefit under subdivision 1, the
1.5 executive director shall notify the commissioner of the respective department, the chief
1.6 administrative officer of the human relations division of the respective department, and the
1.7 chief administrative officer of the applicable employing institution of that application.

1.8 (b) The employing unit of a correctional employee who has applied for a duty-related
1.9 disability benefit under subdivision 1 may, at its expense, have an independent medical,
1.10 chiropractic, or psychological examination made of the correctional employee submitting
1.11 the disability benefit application. The report of the independent medical examination must
1.12 be provided directly and exclusively to the medical advisor.

1.13 (c) If the director determines that a duty disability benefit is payable to the
1.14 correctional employee, the respective department may appeal that determination to the
1.15 board of directors under section 356.96.

1.16 (d) If the duty disability determination has been upheld under section 356.96, or if
1.17 a timely appeal under section 356.96, subdivision 13, has not been made, the employer
1.18 of a disabled employee who qualifies for a duty disability under subdivision 1 shall be
1.19 responsible to pay as an additional employer contribution the present value of the duty
1.20 disability benefit. Present value of the duty disability benefit must be determined by the
1.21 state retirement system, as certified as accurate by the actuary retained under section
1.22 356.214, for the period beginning with the disability benefit accrual date through the first
1.23 of the month occurring before the date on which the disabled employee would reach age
1.24 55. The executive director shall certify the present value amount to the chief administrative
1.25 officer of the employing unit of the disabled correctional employee and payment must be
1.26 made by the employer of the disabled employee within 30 days of certification."

Senator Betzold introduced--

S.F. No. 193: Referred to the Committee on State and Local Government Operations and Oversight.

1.1 A bill for an act

1.2 relating to retirement; amending certain correctional employee disability benefit
1.3 provisions; defining terms; amending age limits; amending Minnesota Statutes
1.4 2008, section 352.95, subdivisions 1, 2, 5, 7, by adding subdivisions.

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

1.6 Section 1. Minnesota Statutes 2008, section 352.95, subdivision 1, is amended to read:

1.7 Subdivision 1. ~~Job-related disability~~ Duty disability computation of benefit.

1.8 A covered correctional employee who becomes disabled ~~and who is expected to be~~
1.9 ~~physically or mentally unfit to perform the duties of the position for at least one year as a~~
1.10 ~~direct result of an injury, sickness, or other disability that incurred in or arose out of any~~
1.11 ~~act of duty that makes the employee physically or mentally unable to perform the duties,~~
1.12 as defined under subdivision 1b, clause (1), is entitled to a disability benefit. The disability
1.13 benefit ~~may~~ must be based on covered correctional service only. The benefit amount is 50
1.14 percent of the average salary defined in section 352.93, plus an additional percent equal
1.15 to that specified in section 356.315, subdivision 5, for each year of covered correctional
1.16 service in excess of 20 years, ten months, prorated for completed months.

1.17 Sec. 2. Minnesota Statutes 2008, section 352.95, is amended by adding a subdivision
1.18 to read:

1.19 Subd. 1b. Occupational disability. "Occupational disability," for purposes of
1.20 determining eligibility for disability benefits, means a disabling condition that is expected
1.21 to prevent a member, for a period of not less than 12 months, from performing the normal
1.22 duties of the position held by a person who is a member of the state correctional retirement
1.23 plan. Occupational disability benefits are awarded either as:

2.1 (1) duty disability, physical or psychological, which means a disabling condition that
 2.2 is the direct result of an injury incurred during, or a disease arising out of, the performance
 2.3 of normal duties or the performance of less frequent duties either of which are specific to
 2.4 the positions covered by the state correctional retirement plan; or

2.5 (2) regular disability, physical or psychological, which means a disabling condition
 2.6 resulting from a disease or an injury that arises from any activities while not at work or
 2.7 while at work from performing normal or less frequent duties that do not present inherent
 2.8 dangers specific to the occupations covered by the state correctional retirement plan.

2.9 Sec. 3. Minnesota Statutes 2008, section 352.95, is amended by adding a subdivision
 2.10 to read:

2.11 Subd. 1c. **Normal duties.** "Normal duties" means specific tasks designated in the
 2.12 applicant's job description and which the applicant performs on a day-to-day basis, but
 2.13 do not include less frequent duties which may be requested to be done by the employer
 2.14 from time to time.

2.15 Sec. 4. Minnesota Statutes 2008, section 352.95, is amended by adding a subdivision
 2.16 to read:

2.17 Subd. 1d. **Less frequent duties.** "Less frequent duties" means tasks designated in
 2.18 the applicant's job description as either required from time to time or as assigned, but
 2.19 which are not carried out as part of the normal routine of the applicant's job.

2.20 Sec. 5. Minnesota Statutes 2008, section 352.95, subdivision 2, is amended to read:

2.21 Subd. 2. ~~Non-job-related~~ **Regular disability benefit.** A covered correctional
 2.22 employee who was hired prior to July 1, 2009, after rendering at least one year of covered
 2.23 correctional service, or a covered correctional employee who was first hired after June 30,
 2.24 2009, after rendering at least three years of covered correctional plan service, becomes
 2.25 disabled and who is expected to be physically or mentally unfit to perform the duties of
 2.26 the position for at least one year because of sickness or injury that occurred while not
 2.27 engaged in covered employment as defined under subdivision 1b, clause (2), is entitled to
 2.28 a disability benefit based on covered correctional service only. The disability benefit must
 2.29 be computed as provided in section 352.93, subdivisions 1 and 2, and. The benefits of a
 2.30 covered correctional employee who was first hired prior to July 1, 2009, and is determined
 2.31 to be disabled under this subdivision must be computed as though the employee had at
 2.32 least 15 years of covered correctional service.

3.1 Sec. 6. Minnesota Statutes 2008, section 352.95, is amended by adding a subdivision
3.2 to read:

3.3 Subd. 2a. **Employer payment of present value.** The employer of a disabled
3.4 employee who qualifies for a duty disability shall be responsible for the present value
3.5 of the benefit. Present value of the disability benefit shall be determined by the state
3.6 retirement system, as approved by the actuary retained under section 356.214, for the
3.7 period beginning with the disability accrual date through the date the disabled employee
3.8 would reach age 55. Payment shall be made by the employer of the disabled employee at
3.9 the request of the state retirement system.

3.10 Sec. 7. Minnesota Statutes 2008, section 352.95, subdivision 5, is amended to read:

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

3.31 Sec. 8. Minnesota Statutes 2008, section 352.95, subdivision 7, is amended to read:

3.32 **Subd. 7. Resumption of employment.** If the disabled employee resumes gainful
3.33 work other than under subdivision 8, the disability benefit must be continued in an amount
3.34 which when added to current earnings and workers' compensation benefits does not exceed

4.1 the salary rate of the disabled employee at the date of disability as adjusted by the same
4.2 percentage increase in United States average wages used by Social Security in calculating
4.3 average indexed monthly earnings for the same period.

4.4 Sec. 9. Minnesota Statutes 2008, section 352.95, is amended by adding a subdivision
4.5 to read:

4.6 Subd. 8. Continuation of correctional plan coverage. An employee who
4.7 is determined to be disabled under this section and has accrued ten or more years of
4.8 correctional plan covered service, who accepts employment covered by the general
4.9 employees retirement plan under section 352.01, may continue coverage under the
4.10 correctional employee retirement plan until the employee reaches age 55. An employee
4.11 who accepts employment under this subdivision shall have monthly disability benefits
4.12 suspended while working in this position.