



S.F. 223
(Wiger)

H.F. 231
(Lillie)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-General
Relevant Provisions of Law: Special law provision
General Nature of Proposal: Retroactive exclusion from plan membership;
Restoration of eligibility for deferred annuities augmentation
Date of Summary: March 4, 2009

Specific Proposed Changes

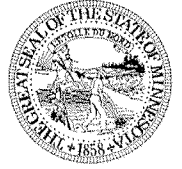
- The proposed legislation would retroactively exclude a constituent from PERA-General plan membership and restore eligibility for deferred annuities augmentation for a former state employee planning to retire under the "Rule of 90" early normal retirement age provision.

Policy Issues Raised by the Proposed Legislation

1. Adequacy of the proposed legislation to resolve the constituent problem.
2. Availability of non-legislative remedy.
3. Appropriateness of special legislative remedy; equitable considerations.
4. Precedent.
5. General or special legislation.

Potential Amendments

There are no technical or substantive amendments suggested by the Commission staff.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *LAM*
RE: S.F. 223 (Wiger); H.F. 231 (Lillie): PERA-General; Retroactive Exclusion from Coverage for Certain MSRS-General Retiree
DATE: March 4, 2009

Summary of S.F. 223 (Wiger); H.F. 231 (Lillie)

S.F. 223 (Wiger); H.F. 231 (Lillie) permits Kathryn Freimuth, described as the likely sole member of a general class of individuals, to be excluded retroactively from General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) coverage for her Roseville teacher assistant service in 2006 following her termination of State of Minnesota employment and to regain eligibility for deferred annuities augmentation from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) for that period, with a refund of PERA-General member and employer contributions for the period, with interest.

Public Pension Problem of Kathryn Freimuth

Kathryn Freimuth is a former local government employee who terminated her initial period of PERA General Employee Retirement Plan (PERA-General) covered service in July 1999, who was subsequently employed by the State of Minnesota, who terminated that employment in April 2006, and who became employed as a teacher's assistant for the Roseville Public School District in December 2007. Ms. Freimuth apparently intends to retire when she is eligible under the "Rule of 90" early normal retirement provision (on October 17, 2009, for the MSRS General State Employees Retirement Plan (MSRS-General) and on November 1, 2009, for PERA-General). Ms. Freimuth has received retirement benefit estimates in mid-2006 from PERA-General and Minnesota State Retirement System (MSRS)-General, which included deferral periods until "Rule of 90" eligibility. Ms. Freimuth's Roseville Public School employment ended in June 2008. In June 2008, Ms. Freimuth contacted PERA to determine what impact her additional six months of service credit from her Roseville Public School employment would have. PERA did not promptly provide Ms. Freimuth with a revised retirement annuity estimate and when a PERA estimate was provided in late October 2008, her revised PERA-General annuity was substantially less than previously estimated and she was told that her MSRS-General annuity also would be less than previously estimated. PERA indicated that her Roseville Public School employment interrupted her deferral period, eliminating the augmentation otherwise applicable. Ms. Freimuth would like to waive her PERA-General coverage for her Roseville Public School employment and become again qualified for PERA-General and MSRS-General deferred annuities augmentation.

Background Information

Attached is background information on deferred annuities augmentation (Attachment A) and on the Combined Service Annuity intra-Minnesota portability mechanism (Attachment B).

Discussion and Analysis

S.F. 223 (Wiger); H.F. 231 (Lillie) allows Kathryn Freimuth to undo the adverse ramifications of her post-state service employment with the Roseville Public Schools and regain deferred annuities augmentation for the period since the conclusion of her state employment.

The proposed legislation raises the following pension and related public policy issues for consideration by the Commission:

1. Adequacy of the Proposed Legislation to Resolve the Constituent Problem. The policy issue is whether or not the proposed solution contained in the proposed legislation actually resolves the problem of the constituent. Ms. Freimuth's problem is a function of the loss of deferred annuities augmentation caused by her re-entry into public employment her retirement annuity deferral period. Deferred annuities augmentation is governed by Minnesota Statutes, Section 352.72, Subdivision 2, for the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-

General) and by Minnesota Statutes, Section 353.71, Subdivision 2, for the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General). Both provisions entitle vested deferred plan members to augmentation in a deferred annuity if there has been a separation from active service that has not been interrupted by a return to active retirement plan coverage for at least two years. The two-year definition of “uninterrupted service” has been part of the two provisions since augmentation was introduced in 1971 (see Laws 1971, Chapter 274, Section 3, for MSRS-General and Laws 1971, Chapter 412, Section 5, for PERA-General). Because of her post-2006 reemployment in the public sector, with Minnesota public employee retirement coverage, she gained additional PERA-General service credit and earlier eligibility for the “Rule of 90” early normal retirement annuity, but did so at the cost of the deferred annuity augmentation that she otherwise would have earned. The goal of deferred annuity augmentation, according to written materials on file with the Commission from the late Dr. Franklin Smith, the consulting actuary retained by the Pension Commission at the time, was to maintain the purchasing power of the amounts of previously earned retirement annuities for employees who change employment during their career. With the 1975 enactment of the Combined Service Annuity provision (Minnesota Statutes, Section 356.30), Minnesota public pension plan portability was provided to Minnesota public employees who change employment within Minnesota, using a common final average salary that wholly accommodated inflationary impacts. For Ms. Freimuth, who resumed public employment after a period of deferral, she did so at the expense of a significant portion of the deferred annuities augmentation included in the benefit estimates made before the resumption of public employment.

2. Availability of Non-Legislative Remedy. The policy issue is whether or not Ms. Freimuth has a non-legislative remedy that could provide her the relief that she seeks. Ms. Freimuth does have a potential non-legislative remedy, but that potential remedy is unlikely to find in favor of her and to provide her with the greater retirement annuity amount that she thought that she was to receive under prior benefit estimates. Under Minnesota Statutes, Section 356.96, Ms. Freimuth can appeal her benefit determination to the Public Employees Retirement Association (PERA) board and, potentially, to the Minnesota Court of Appeals if the PERA board finds against her. Because the basis for PERA’s revised benefit estimate is statutory (Minnesota Statutes, Section 353.71, Subdivision 2), because the relevant portion of the statutory provision has not been changed since enactment, and because the statutory provision is not readily susceptible to variable interpretations, Ms. Freimuth is unlikely to prevail upon a subsequent appeal to the PERA board and upon appeal to the Minnesota Court of Appeals.
3. Appropriateness of Special Legislative Remedy; Equitable Considerations. The policy issue is whether or not the special legislative remedy is appropriate from a public policy perspective and whether or not the equitable considerations of the constituent merit the special remedy. Although nothing in the Commission’s Principles of Pension Policy deals specifically with deferred annuities augmentation or plan membership in subsequent employment, the two factors underlying Ms. Freimuth’s problem, the pension policy principles generally and frequently require that the special remedy to a pension problem not violate equitable notions. There are equitable considerations both in the creation of the problem and in the potential solution. On the period of time immediately prior to the Roseville employment that caused the deferred annuity augmentation loss problem, it is unclear what level of information Ms. Freimuth sought or obtained about the impact that taking the Roseville School District employment would have on her subsequent pension benefits. If Ms. Freimuth did not pursue any advice from the Public Employees Retirement Association (PERA) on the impact of renewed public employment or if she took the Roseville School District employment with the belief that she could thereby improve her pension benefit, either in amount or in the date for a “Rule of 90” retirement, the special legislation could be viewed as rewarding inactivity or a lack of diligence in gaining information or as rewarding an attempt for an arguably undeserved additional benefit. The special legislation, which permits Ms. Freimuth to receive a refund of her member contributions for her Roseville Public Schools employment with interest while also increasing her PERA General Employee Retirement Plan (PERA-General) and MSRS General State Employees Retirement Plan (MSRS-General) retirement benefit amounts, could be viewed as providing her with an undeserved double benefit (i.e., a higher benefit and a refund). If Ms. Freimuth has complaints about the quality and timeliness of the benefit counseling that she received from PERA and MSRS, an equitable consideration favorable to her, she should be prepared to set forth those objections in testimony on the proposed special legislation.
4. Precedent. The policy issue is the extent to which there is a precedent for this type of potential legislation and, if enacted, the extent to which the potential legislation would set an adverse precedent for additional legislation. The closest precedent of the potential legislation relating to regular public employees who also were local elected officials, who were covered by the General Employee

Retirement Plan of the Public Employees Retirement Association (PERA-General) for both employments, and who sought to retire from their primary public employment while continuing their elective service. On four occasions, employees with this combined regular and elective service were allowed to either discontinue PERA-General coverage for their elective service, with a refund, or transfer contributions on elective service compensation to the PERA Defined Contribution Retirement Plan (see Laws 1993, Chapter 307, Article 8; Laws 1998, Chapter 390, Article 3, Section 19; First Special Session Laws 2003, Chapter 12, Article 15, Section 5; and Laws 2008, Chapter 349, Article 16, Section 1). If enacted, the potential legislation would extend this “ex post facto” PERA-General Plan membership exclusion solution exclusively from local governmental elective service situations only to any local government employment situation, with the expectation that it could be precedent for a considerably larger number of future legislative requests.

5. General or Special Legislation. The policy issue, related to the precedent issue, is whether or not the potential legislation should be general legislation rather than special legislation. The proposed special legislation will provide a solution desired by Ms. Freimuth, but would be limited to her. General legislation would be appropriate if enacting the solution for Ms. Freimuth is likely to become a request by a number of similarly situated current or former public employees and the remedy is not sufficiently problematic if it were extended broadly. A shift from special legislation to general legislation changes the manner in which the potential proposed legislation is presented to the Commission and to the standing committees of the Legislature with jurisdiction because the very specific focus and factual basis for the request becomes broader and less certain upon it becoming a general provision.

Attachment A

Background Information on Deferred Annuities Augmentation

- a. Definition. Deferred annuity augmentation refers to increasing the amount of a deferred retirement annuity by a percentage or dollar amount over time prior to receipt. This replaces all or part of any lost purchasing power in the unpaid retirement annuity due to inflation. Under current law, for members who terminate from statewide or major local retirement plan coverage after 1989 and who have a right to a deferred annuity due to their covered service, the deferred annuity increases (augments) by three percent annually until the first of the year after the individual turns age 55, and by five percent per year thereafter. Deferred annuity augmentation was added in 1971 to Public Employees Retirement Association (PERA) plans, Minnesota State Retirement System (MSRS) plans, the Teachers Retirement Association (TRA), and was also added to first class city teacher plans in 1989, and also applies to the Minneapolis Employees Retirement Fund (MERF).

Minnesota public pension plans are relatively unique among public and private defined benefit plans in providing deferred annuities augmentation. To the best knowledge of the Commission staff, only the Oregon statewide public employee defined benefit plans also provide deferred annuity augmentation.

The Minnesota and Oregon plans that have deferred annuities augmentation are defined benefit plans. Defined benefit plans utilize a fixed formula to determine pension benefit amounts (typically years of service multiplied by a percentage benefit accrual rate amount and applied to a final salary or final average salary base). Since the benefit is fixed or specified in law from the individual's salary and service, the variable element is the contributions needed to fund those benefits. Defined benefit plans are distinguished from defined contribution plans, such as the Higher Education Individual Retirement Account Plan (IRAP), Individual Retirement Accounts (IRAs), or Section 401(k) plans, where the fixed element is the level of contributions funding the plan, and the variable element is the benefit to be derived, which is dependent on the investment earnings over time on the stream of contributions and the age of the individual at retirement. When an individual covered by a defined contribution plan changes employment and thus is no longer eligible for the employer's plan, the value of the account will continue to increase over time due to investment earnings on the account. Thus, the eventual retirement annuity that can be supported by the account's value will increase. Deferred annuity augmentation in a defined benefit plan provides a somewhat comparable effect. The individual's deferred retirement annuity is not locked in amount at the time the individual leaves covered service. It continues to grow over time by the percentages specified in law.

Deferred annuity augmentation in a defined benefit plans does add to plan cost. Because of the augmentation, the deferred annuitants receive higher benefits at the time of retirement than would be the case if the benefit were fixed at the time of termination of the covered employment.

- b. Application in Service in More Than One Plan Provisions. When deferred annuities augmentation was first added to various Minnesota plans in 1971, the record suggests that the Legislature wanted to add a tool to complement the service in more than one retirement plan provisions (Minnesota Statutes, Section 352.72 (MSRS-General); Minnesota Statutes, Section 353.71 (PERA); and Minnesota Statutes, Section 354.60 (TRA)), to make that portability provision more adequate. However, the Legislature did not restrict its use solely to that provision. Deferred annuity augmentation applied to all deferred annuities, including those where the service in more than one plan provisions do not apply.

The service in more than one plan provisions were early portability provisions, preceding the Combined Service Annuity provision, Minnesota Statutes, Section 356.30, which was enacted in 1975. The service in more than one plan provisions, which still exist in law, allow service with one of the plans covered by these provisions to be used for purposes of vesting in another covered retirement plan. This was an important feature back in the 1970s and early 1980s because vesting normally required ten years of service. Without the service in more than one plan provisions, individuals who were employment-mobile, moving to various positions covered by various Minnesota public plans within different systems, might fail to vest in some of the plans due to the long vesting requirement. By allowing service in one fund to be used for purposes of vesting in another, the service in more than one plan provisions helped job mobile individuals to vest in the applicable plan or plans and made them eligible to receive benefits.

While this helped employment-mobile individuals to vest, these individuals still faced a problem. The value of the benefit from the early plans would erode considerably in value over time if the benefit was fixed at the time the individual left that service. Deferred annuities augmentation addressed that problem by allowing the annuity from the early plan or plans that provided coverage to increase over time, providing a benefit at retirement that was at least somewhat similar to what would have occurred if coverage had been provided by a single plan for the individual's entire public service.

To demonstrate, the following compares the total retirement annuity of a public employee retiring in 2000 with 30 years of public service under three different scenarios. Scenario A shows coverage by three different plans and without deferred annuity augmentation. Scenario B shows coverage by three

different plans with deferred annuity augmentation. Scenario C shows coverage by one plan for all service. The individual is assumed to begin service in 1970 with TRA coverage, and the individual leaves that service after ten years with a high-five average salary of \$22,500. The individual then moves to PERA-covered employment, having that coverage until 1990, with a high-five from that service of \$33,100. The individual then moves to MSRS-covered employment, retiring in 2000 with a high-five of \$46,660. Without deferred annuities augmentation, Scenario A, the sum of the three retirement annuities is \$13,492 per year. Under Scenario B, deferred annuities augmentation is applied and it boosts the value of the TRA and PERA pensions, creating a total from the three plans of \$17,117 per year. Under Scenario C, the individual spends all 30 years of employment under a single plan, the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). The individual's pension is \$23,796 per year. While deferred annuities augmentation does help, in this example, it falls short of providing the same pension that would have occurred if all service had been under a single plan.

Scenario A		Scenario B		Scenario C	
Coverage by TRA, 1970-1980		Coverage by TRA, 1970-1980		Coverage by MSRS, 1970-2000	
Final Average Salary	\$22,500	Final Average Salary	\$22,500	Final Average Salary	\$46,660
Annual Deferred Retirement Annuity	\$2,250	Initial Annual Deferred Retirement Annuity	\$2,250	Annual Retirement Annuity	\$23,796.60
Coverage by PERA, 1980-1990		Coverage by PERA, 1980-1990			
Final Average Salary	\$33,100	Final Average Salary	\$33,100		
Annual Deferred Retirement Annuity	\$3,310	Annual Deferred Retirement Annuity	\$3,310		
Coverage by MSRS, 1990-2000		Coverage by MSRS, 1990-2000			
Final Average Salary	\$46,660	Final Average Salary	\$46,660		
Annual Retirement Annuity	\$7,932	Annual Retirement Annuity	\$7,932		
Total Annual Annuity		Total Annual Annuity			
TRA Annuity	\$2,250.00	TRA Annuity	\$4,503.60		
PERA Annuity	\$3,310.00	PERA Annuity	\$4,682.00		
MSRS Annuity	\$7,932.00	MSRS Annuity	\$7,932.00		
Total	\$13,492.00	Total	\$17,117.60		

- c. Combined Service Annuity Provision. Service in more than one fund provisions are less used now than in the distant past. In 1975, the Legislature enacted the Combined Service Annuities law, Section 356.30, which was an improvement in many cases over the service in more than one fund provisions. The Combined Service Annuities law applies to those Minnesota public defined benefit plans which base annuities on the high-five average salary. Local police or paid fire plans are not included under the Combined Service Annuities provision because those plans base their annuities on the salary of a certain position, usually a top grade patrol officer or firefighter. The Combined Service Annuities calculation begins by determining the high-five average salary of the individual, which could include service under more than one employer, and that common high-five average salary is then used to compute the annuities from all the plans included in the calculation. Thus, the salary used to compute the annuities from the earlier plan or plans may be much higher than the salary the individual was receiving before terminating that earlier employment. The benefit computed from each of the applicable plans is determined using the most recent version of law, thus allowing the individual to access any benefit improvements that occurred in the earlier plans after the individual left service covered by the applicable plan. The individual must begin drawing annuities from all the plans included in the person's Combined Service Annuities benefit calculation within a one-year period. The use of Combined Service Annuities is in lieu of deferred annuities augmentation from the earlier covered plans.

Some individuals have service in more than one of the plans covered by the Combined Service Annuities law, but choose not to use that provision. In these cases, deferred annuity augmentation would apply if the plan has an applicable provision. This can occur in cases where the normal retirement ages in the plans that provided coverage to the individual are very different. If an individual age 55 had prior Public Employees Police and Fire Plan (PERA-P&F) coverage (a plan with normal retirement age of 55), and the individual is now covered by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) (which has an age of 65 or 66 normal retirement age), the individual may be reluctant to leave current employment in order to use the Combined Service Annuities provision. He would face a stiff early retirement penalty from the MSRS plan if he begins drawing an MSRS annuity at age 55. Instead, the individual may choose

to draw the PERA-P&F annuity, including any deferred annuity augmentation on that benefit, and continue working in MSRS-General covered employment.

Thus, at the current time, deferred annuities augmentation is used by individuals who could be covered by the Combined Service Annuities but choose not to use that provision, by individuals moving among Minnesota public plans not all of which are included in the Combined Service Annuities law, and by individuals who move from public to private sector employment.

Actuary Commentary from 1978 on Augmentation Provisions

Dr. Franklin C. Smith was an actuary who was retained as a consultant by the Legislative Commission on Pensions and Retirement during the 1970s. In a 1978 memo, he notes that following the enactment of the Combined Service Annuities provision in 1975, deferred annuities augmentation provisions were no longer of much use to individuals who move to different positions within the public sector. Its main value is to assist those who move to non-public employment. Since protecting that group had not been a stated policy priority by the Legislature, he suggested that the Legislature consider repealing augmentation provisions. The Legislature did not act on the suggestion in the 1970s, but has reduced the augmentation rate over time.

Deferred Annuities Augmentation Provisions, as Amended Over Time

The 1971 Legislature created deferred annuities augmentation. The 1971 legislation specified that deferred annuities will augment at the same rate as the investment earnings assumption used by the plan. The level of deferred annuities augmentation therefore changed as the investment return assumption was revised. The assumption was 3.5 percent in 1971, but was revised in 1973 (Laws 1973, Chapter 653, Section 45) to five percent. Deferred annuity augmentation provisions were revised again by the 1978 Legislature, which amended the deferred annuity augmentation provisions by removing the tying of the augmentation rate to the investment return assumption, and instead set the augmentation rate at three percent per year after January 1, 1981. By using a January 1, 1981, effective date on the deferred annuities augmentation provision, the 1978 Legislature provided a few years of lead time on the benefit reduction. The 1989 Legislature again revised the provisions, this time enhancing the deferred augmentation provisions by increasing augmentation after age 55. As revised in 1989, the provisions provided three percent per year augmentation until the first of the year after the individual turns age 55, and five percent annually thereafter. The 1989 revisions were part of a major benefit increase bill which in part increased the accrual rates in many plans, created subsidized joint-and-survivor annuities, and enhanced the deferred annuity augmentation provisions. In 2006, for public employees newly employed after June 30, 2006, the deferred annuities augmentation rate was reduced to 2.5 percent annually for all periods of deferral, irrespective of age.

Plans with Deferred Annuity Augmentation Provisions

The deferred annuity augmentation provisions in law are:

- Section 3A.02, Subdivision 4, applies to the Legislators' Plan and is substantively identical to the PERA/PERA-P&F provision.
- Section 352.72, Subdivision 2, applies to MSRS General and MSRS-Correctional Plan, and is substantively identical to the PERA/PERA-P&F provision.
- Section 352B.30, Subdivision 2, applies to the MSRS State Patrol Plan, and provides three percent augmentation per year until age 55, which is the normal retirement age for the plan.
- Section 352C.033 is substantively identical to that found in PERA law and applies to the Elected State Officers Plan.
- Section 353.71, Subdivision 2, is the PERA/PERA-P&F provision, which provides three percent augmentation per year until the year in which the individual turns age 55, and five percent per year thereafter. The provision was probably also meant to apply to PERA Local Government Correctional Plan members, although the applicable law is somewhat unclear.
- Section 354.55, Subdivision 11, is the TRA provision, which is substantively identical to the PERA/PERA-P&F provision.
- Section 354A.37, Subdivision 2, is the first class city teacher provision, which is substantively identical to the PERA/PERA-P&F provision.
- Section 422A.16, Subdivision 10, is the MERF provision, providing three percent augmentation per year.

MSRS Plan with No Apparent Augmentation Provision

The Judges Retirement Plan has no deferred annuities augmentation provision. That may reflect an assumption that judges will continue in office until retirement.

Attachment B

Background Information on the Combined Service Annuity

The Combined Service Annuity provision, found in Minnesota Statutes, Section 356.30, was enacted in 1975. This law provides portability between the Minnesota public pension plans included in the provision. Before 1975, if a person shifted employment between a city, covered by the Public Employees Retirement Association General Employees Retirement Plan (PERA), and state employment, covered by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) or some other MSRS plan, the person would receive separate benefits from each pension plan calculated without reference to the other public employment. The PERA benefit would be those determined under the applicable laws at the time the individual left PERA covered employment. The MSRS-General benefit would be determined under laws in effect when the individual left MSRS-General covered employment. Both are high-five average salary defined benefit pension plans, but the salaries used to compute the benefits would be different, since one reflects recent salary while the other may be based on salary received years or even decades earlier.

With the Combined Service Annuity law, the benefit calculations for a person with multiple public pension plan coverage are very similar to those for a person who changed employment between employers covered by the same plan. To provide benefit treatment for the public employee who changed employment to another public employer covered by a different retirement system that is similar to that of a public employee who changes jobs all covered by the same retirement plan, the Combined Service Annuity law requires the benefit to be computed using a common high-five average salary, with the years used for determining the high-five average salary to include the most recent employment, the prior employment, or a combination of the two, whichever provides the highest average. The common high-five average salary is then used to compute the benefits from all plans to be included in the calculations. The accrual rates and other plan features used to compute the benefits are those in effect for each included plans on the date the individual terminated from the last plan. Under the Combined Service Annuity provision, the individual is advantaged by receiving benefits from all the plans based on the recent high-five average salary, and the individual receives any benefit improvements or other plan changes that occurred since the individual terminated from the prior plan or plans. If two plans are involved, the benefit is computed by the first plan using the years of service credit the individual had under that plan. The second plan would compute its benefit based on the years of service credit the individual had under the second plan. Thus, an individual with 15 years of service under one plan and 5 years of service under another would receive two benefit checks, one from each plan, but the total of the two benefit checks should be the same, or very close, to the single retirement check received each month by a comparable individual, in comparable employment, with 20 years of service credit within a single plan.

From: Sen.Chuck Wiger [Sen.Chuck.Wiger@senate.mn]
Sent: Tuesday, October 28, 2008 3:07 PM
To: Lisa Diesslin
Subject: Pension question
Attachments: PERA Revised.doc

Dear Legislative Commission on Pensions & Retirement,

I have a constituent who is concerned that she is no longer eligible for deferred interest on her PERA and MSRS pension benefits because she worked as a part-time Teacher's Assistant for Roseville Public Schools after retiring from State of Minnesota employment. I've attached a letter from her describing the situation and below are questions she asked as well as responses developed by research staff in the House.

I would greatly appreciate it if you could review my constituent's situation and offer feedback. I would like to know if there are any other options for resolving the situation (other than what is discussed in the response to question #4), if you have come across any other cases like this, and what your thoughts are on what the outcome might be if special legislation was presented.

Thank you,
Chuck

Senator Charles "Chuck" Wiger
District 55
Chair, Education Committee
75 Dr. Rev. Martin Luther King Jr. Blvd
St. Paul, MN 55155
651-296-6820

CONSTITUENT EMAIL:

I respectfully request answers to the following questions in regards to the October 8, 2008 re-determination and reduction of my deferred PERA and MSRS combined retirement benefits:

1. Governing statute(s), how they read, and effective dates?
2. Original intent of statute(s), it's interpretation, and subsequent application in policy and procedure?
3. Do the State statutes grant affected my husband and I any rights to an administrative hearing or appeal of PERA & MSRS benefit calculations or decisions?
4. Your recommendations for further actions to be taken?

Please review the attached document. It is my attempt to describe the issues and to provide background information.

RESPONSES TO CONSTITUENT'S QUESTIONS:

1.Governing statute(s), how they read, and effective dates?

The governing statute for this issue is 353.71, Subd. 2, Deferred annuity computation; augmentation. The salient passage reads "Uninterrupted service for the purpose of this subdivision means periods of covered employment during which the employee has not been separated from public service for more than two years."

This particular part of Subd. 2 was enacted in 1971 and does not appear to have been amended since its enactment (although other parts of this section of statute have been amended since enactment).

2.Original intent of statute(s), its interpretation, and subsequent application in policy and procedure?

In plain terms, if a person defers receipt of a benefit and goes back to work within less than two years, the service is "uninterrupted" and treated as one continuous period of public employment, thus not subject to deferred interest for the break between jobs. If the person returns to work more than two years later, that first piece is calculated separately and will include the deferred interest. The new service earned in the new position would be calculated separately and that amount added to the "deferred benefit" amount as the total retirement payment.

How this applies to you is that since you went back to work in a

PERA-eligible position less than two years after you left all public employment, you were not out of all public service for more than two years, thus "uninterrupted." Due to this reason you lost all deferred interest on your past service. You would have had to be either collecting your benefits already, or had to have had a full two year break in service to get the deferred interest on your benefits. This is also the reason why your payments are lower than the original estimate.

From my understanding, the original intent of the statute was to provide clear definition of what "uninterrupted service" meant so that public pension plans could define someone as completely and fully retired and could figure their benefits on that basis. Someone who moves in and out of employment under this deferred interest program could defer and earn that interest, reinstate and defer again, with the accrual of the interest over time being quite significant. In the end, it would be costly to the financial health of PERA funds.

3. Do the State statutes grant my husband and I any rights to an administrative hearing or appeal of PERA & MSRS benefit calculations or decisions?

PERA and MSRS do have an appeals process. Participants and benefit recipients have the right to petition the PERA Board and Trustees for review of benefit and eligibility decisions made by PERA. However, as fiduciaries, the PERA Board must follow the law. In this particular case PERA would not be able to grant an appeal that went against MN Statute 353.71, Subd. 2.

4. Your recommendation for further actions to be taken?

There is an option to draft special legislation. These kinds of bills are drafted so that it would only apply to one person. They usually have a clause that states that the individual has to take advantage of the option allowed by a certain date or that option expires.

The bill would likely ask for special permission to treat your time working as a teaching assistant as if it never happened. The individual and the school would receive refunds of the money that they paid into your retirement account and the accrued interest would be reinstated. I believe the outcome of this would be that your retirement benefit would be higher in the end, although the date that you would qualify to retire under "Rule of 90" would be moved back as this extra service would not count any more.

There are several things to consider before pursuing special legislation. If it were laid over for inclusion in the Omnibus Pension bill next year, it would be subject to the legislative process. The entire Pension bill would have to pass and be signed by the governor before she could take advantage of any special legislation passed on your behalf. Other political issues completely unrelated to the merits of your issue could mean that a Pension bill does not pass in 2009.

In addition, the Pension Commission may not find your case compelling. They have to weigh whether this would be good public pension policy, the financial implications, and whether it could set a precedent for others to make the same claim.

**BACKGROUND INFORMATION:
REDUCTION OF MY DEFERRED
PERA AND MSRS RETIREMENT BENEFITS**

My husband and I met with a PERA and an MSRS benefit representatives in two separate meetings on March 27th, 2006. At this time, I received a PERA benefit determination dated March 17th, 2006. It shows that my single-life PERA benefit will be \$2,162 per month if I defer my annuity until I am eligible for the Rule of 90 in 2009. On June 1st 2006, I received an MSRS letter and revised benefit determination form showing that my single life MSRS benefit would be \$685 per month if I deferred my annuity until I became eligible for the Rule of 90 in 2009. At the close of our meeting with the PERA benefit representative, she said that we had successfully turned in all of the required documents and that all we needed to do was to send in an Application for PERA Retirement Benefits form no more than 6 months prior to my Rule of 90 Retirement Begin date.

I officially retired from the MN Department of Public Safety and public service on April 4, 2006 and chose to defer receipt of my PERA and MSRS retirement benefits.

In December of 2007, I was offered a part time Teacher Assistant position by the Roseville School District. As you know, public schools are actively seeking and encouraging professionals to come and work in the public schools. After I accepted the TA position, the Human Resource department informed me that PERA required that Roseville Schools automatically deduct the PERA employee contribution from my paycheck. Near the end of the school year, I received a letter from the Roseville School board stating that my part time TA position would be abolished effective at the end of the school year or June of 2008.

On June 13, 2008 after my teaching assistant job with Roseville Schools ended, I talked with a PERA benefit representative and asked if my 6 months of work would affect my rule of 90 retirement begin date. She replied that it would likely mean that I could apply for and begin receiving my monthly PERA six months earlier than formerly calculated. She went on to say that she would send me a revised PERA Benefit Report, with a new Rule of 90 pension begin date, within 3 to 4 weeks. When I asked if I should contact an MSRS benefit representative, she replied that it would not be necessary because she would contact and coordinate with an MSRS representative.

From June 13, 2008 until Wednesday of last week, I diligently called PERA at least once a month. I was unable to get any kind of answers or revised determination from PERA until I called last week and said that I wanted to talk with a manager. My call was referred to a "lead worker". She promised to respond by the end of the week and to contact MSRS, as this had not yet been done.

Last Friday, I finally received a revised PERA benefit determination. It indicates that my monthly PERA single life benefit amount will be about \$200 less per month than what PERA calculated in April of 2006, when I terminated from State employment.

When I contacted the PERA "lead worker" and her manager today about this discrepancy, I was informed that I unknowingly forfeited 5% interest on the deferred sum in my retirement account, because I worked as a part time Teacher Assistant in the Roseville Public Schools for 6 months. MSRS will likely also decrease my monthly MSRS benefit for the same reason.

Many references were made to some State Statute(s) that govern and require these actions.

From what I have been told, if an employee starts to collect PERA benefits and then returns to their former or another PERA-covered job, no PERA will be deducted from their payroll check and it will not affect their future monthly PERA (and MSRS benefits).

However, if an employee chooses to defer their PERA benefits instead of starting to collect them right away AND later works in another PERA-covered job, PERA requires that retirement contributions automatically be taken out of the employee's payroll check. In addition, the employee automatically forfeits 3% to 5% interest that has been accruing on their retirement contributions fund balance. The end result is a substantial reduction in the monthly and lifetime PERA (and MSRS) benefits that this retiree will receive.

My husband and I have been unable to think of any logical or rational reason why my/our retirement benefits would be substantially reduced because of a 6-month part time TA job in a public school. We welcome any information about what the governing State statutes are and an explanation of the legislative intent and subsequent policy interpretations of these same statutes.

From: Mary.Vanek@state.mn.us
Sent: Friday, October 31, 2008 1:19 PM
To: Larry Martin
Cc: Dave.Bergstrom@state.mn.us
Subject: Constituent Issue
Attachments: LCPR.Freimuth.doc

I discussed this issue with Laura Sayles, explaining that we do not have the authority to back out the Roseville schools service and reinstate the deferred augmentation that the member lost as a result of returning to this brief period of employment. We would need authorization to do so.

If you have any questions after reviewing our combined explanation, please let us know.

Mary Vanek

<<LCPR.Freimuth.doc>>

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Re: Kathryn Freimuth
From: PERA and MSRS

Ms. Freimuth left her first PERA covered public service in 1999 (July 2, 1999). She left State employment in April 2006.

PERA provided her with a retirement estimate for a May 1, 2006 retirement date of \$1,472 single life annuity; and with deferred retirement estimates* of:

\$1,550 for February 1, 2007
\$1,687 for February 1, 2008
\$1,834 for February 1, 2009
\$2,162 for November 1, 2009 (eligible at this point for Rule of 90)

*these are all single life annuity payment forms; they do not include joint and survivor optional payment forms

Both plans understood Ms. Freimuth to be interested in retirement when she reaches her Rule of 90 eligibility date. The MSRS provided a benefit estimate of \$685 per month effective October 17, 2009.

Ms. Freimuth took a part-time position with Roseville Schools in December 2007, earning more than \$425 per month, which required her participation in PERA once again. As a result, her potential benefit, deferred to Rule of 90, lost all augmentation earned between the end of her state employment (April 2006) and her deferred Rule of 90 eligibility on November 1, 2009. This is due to MN Statutes, section 353.71, subdivision 2, which states in part:

“... If a person has more than one period of uninterrupted service, the required reserves related to each period must be augmented as specified in this paragraph. The sum of the augmented required reserves is the present value of the annuity. **Uninterrupted service for the purpose of this subdivision means periods of covered employment during which the employee has not been separated from public service for more than two years. ...**”

Because Ms. Freimuth did not have a period of more than two years between her employment with the state and her position with Roseville Schools, her periods of service subject to augmentation do not meet the definition of “uninterrupted service.” When she left Roseville Schools in June 2008, we therefore, recalculated her deferred Rule of 90 benefit payment from termination in June 2008 to eligibility on April 1, 2009, earlier than determined in 2006 because of her additional service with Roseville Schools. Her new amount from PERA was determined to be \$1,960, about \$202 less than previous estimates. The difference in her MSRS Rule of 90 benefit due to this interruption in her deferral period is \$78 or a benefit of \$607 per month rather than the estimated \$685.

The average high five year salary used for all calculations is the salary she earned as a state employee; therefore, the salary did not vary in any of the calculations. The variables are the deferred augmentation and the additional months of credited service.

Senator Wiger introduced—

S.F. No. 223: Referred to the Committee on State and Local Government Operations and Oversight.

1.1 A bill for an act
1.2 relating to retirement; excluding certain teacher assistant employment from
1.3 retirement coverage to qualify for deferred annuities augmentation.

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

1.5 Section 1. MSRS-GENERAL AND PERA-GENERAL; PLAN MEMBERSHIP
1.6 EXCLUSION AND DEFERRED ANNUITY AUGMENTATION.

1.7 (a) A qualified person described in paragraph (b) may, upon written application
1.8 filed with the executive director of the Public Employees Retirement Association, elect
1.9 retroactive exclusion from coverage by the general employees retirement plan of the
1.10 Public Employees Retirement Association for any period of teacher assistant service for
1.11 Independent School District No. 623, Roseville, and qualification for deferred annuities
1.12 augmentation for the retroactively excluded period.

1.13 (b) A qualified person is a person who:

1.14 (1) was born on August 13, 1953;

1.15 (2) was employed by the Ramsey County Attorney's Office from January 20, 1995,
1.16 to June 22, 1999;

1.17 (3) was employed by the state of Minnesota from June 22, 1999, to April 4, 2006; and

1.18 (4) was employed by Independent School District No. 623, Roseville, as a teacher
1.19 assistant following terminating state employment from December 13, 2007, to June 6,
1.20 2008.

1.21 (c) If the retroactive exclusion is elected, all member and employer contributions to
1.22 the general employees retirement plan of the Public Employees Retirement Association
1.23 made with respect to Independent School District No. 623, Roseville, teacher assistant
1.24 employment must be refunded with interest under Minnesota Statutes, section 353.27,

2.1 subdivision 7, and the qualified person is entitled, if otherwise eligible, for deferred
2.2 annuities augmentation from the general employees retirement plan of the Public
2.3 Employees Retirement Association and from the general state employees retirement plan
2.4 of the Minnesota State Retirement System for the period of retroactive exclusion.

2.5 (d) Authority to make the election under this section expires September 1, 2009.

2.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.