



S.F. 1407
(Tomassoni)

H.F. 1358
(Mahoney)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS-Unclassified
Relevant Provisions of Law: Minnesota Statutes, Section 352D.02, Subdivisions 1 and 3
General Nature of Proposal: MSRS-General coverage options for post-1997 legislators
Date of Summary: February 11, 2010

Specific Proposed Change(s)

- Permits legislators to elect MSRS-General Plan coverage within first year after election.
- Permits legislators with ten years of elective service to elect MSRS-General Plan coverage.

Policy Issues Raised by the Proposed Legislation

1. Appropriateness of permitting legislators to elect MSRS-General coverage from career start.
2. Appropriateness of permitting legislators with lengthy MSRS-Unclassified coverage to transfer past service to MSRS-General coverage.
3. Appropriateness of allowing long-service judges to elect service credit transfer from the MSRS-Unclassified Program to the MSRS-General Plan.
4. Consistency of proposed MSRS-Unclassified changes with earlier Commission-approved MSRS-Unclassified changes.

Potential Amendments

Technical Amendment

Amendment S1407-1A clarifies that the election of MSRS-General retirement plan coverage during the initial year of employment does not apply to long-serving judges and reorganizes the paragraph structure of the provision.

Substantive Amendment

Amendment S1407-2A would eliminate allowing long-service judges to elect to transfer service credit from the MSRS-Unclassified Program to the MSRS-General Plan.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *LAM*
RE: S.F. 1407 (Tomassoni); H.F. 1358 (Mahoney): MSRS-Unclassified;
Transfer Option to MSRS-General for Legislators
DATE: February 11, 2010

Summary of S.F. 1407 (Tomassoni); H.F. 1358 (Mahoney)

S.F. 1407 (Tomassoni); H.F. 1358 (Mahoney) amends Minnesota Statutes, Section 352D.02, Subdivisions 1 and 3, the coverage and transfer of coverage provisions of the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) by making the following changes:

1. Permits Legislators to Elect MSRS-General Plan Coverage Within First Year After Election. Legislators, like all other state employees who are eligible for MSRS-Unclassified Program coverage, other than constitutional officers and long-serving judges, are permitted to elect General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) retirement coverage if they do so within the first year of the start of that employment (Section 1); and
2. Permits Legislators With Ten Years of Elective Service to Elect MSRS-General Plan Coverage. Legislators who have rendered ten or more years of elective state service covered by the MSRS-Unclassified Program are permitted to elect to transfer past MSRS-Unclassified Program service to MSRS-General plan coverage (Section 2).

Background Information

The following background information may be helpful to the Commission in considering the proposed legislation:

- A. **Attachment A** contains background information on and the history of coverage by the Legislators Retirement Plan.
- B. **Attachment B** contains background information on the 1997 change in legislators' pension coverage.
- C. **Attachment C** contains background information on and the history of coverage by the MSRS-Unclassified Retirement Program.
- D. **Attachment D** contains background information on the MSRS-Unclassified Program provision allowing an MSRS-General plan transfer.

Discussion and Analysis

S.F. 1407 (Tomassoni); H.F. 1358 (Mahoney) would modify the retirement coverage options for members of the Minnesota Legislature who first became legislators after July 1, 1997, or who transferred from the Legislators Retirement Plan to the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) under Laws 1997, Chapter 233, Article 2, by permitting newly elected legislators to elect retirement coverage by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) during their first year of legislative service and by permitting legislators who are covered by the MSRS-Unclassified Program and who have at least ten years of legislative service to elect to transfer their retirement coverage to the MSRS-General plan.

The proposed legislation raises several pension and related public policy issues for consideration and potential discussion by the Legislative Commission on Pensions and Retirement, as follows:

1. Appropriateness of Permitting Legislators to Elect MSRS-General Coverage From Career Start. The policy issue is whether or not it is appropriate to allow legislators to elect defined benefit retirement plan coverage in MSRS-General from the start of their career rather than be covered by the MSRS-Unclassified, a defined contribution retirement plan. Since 1997, all newly elected legislators have been covered by MSRS-Unclassified. As a defined contribution plan, when the retirement benefit is promised level of contributions rather than a promised level of a person's average final compensation, MSRS-Unclassified is similar to 401(k) retirement plans, 403(b) plans, and 408 Individual Retirement

Account plans that have increasingly proliferated in the private sector since 1974. If the goal is to provide portable retirement coverage to individuals who only serve as legislators for a relatively brief period of time or if the goal is to have elected official retirement coverage match the predominant type of retirement coverage that their constituents have, the current practice of covering legislators by MSRS-Unclassified would be appropriate. If the goal is to have new legislators receive retirement coverage that is broadly comparable to the coverage of pre-1997 legislators or that is identical to the retirement coverage provided general state or public employees, the proposed change permitting MSRS-General retirement plan coverage from career start would be appropriate.

2. Appropriateness of Permitting Legislators with Lengthy MSRS-Unclassified Coverage to Transfer Past Service to MSRS-General Coverage. The policy issue is whether or not post-1997 legislators covered by MSRS-Unclassified should be permitted, akin to other MSRS-Unclassified participants, to elect to transfer past retirement coverage to MSRS-General with at least ten years of service. The answer to issue #1 about the broad appropriateness of defined contribution plan retirement coverage or defined benefit plan retirement coverage for legislators will largely address this issue. If comparability to the retirement coverage of a likely majority of Minnesotans is the goal, the current MSRS-Unclassified coverage arrangement is the most appropriate option. If comparability to other Minnesota public sector retirement plan participants is the goal, the proposed legislation is the most appropriate option. Additionally, any shift to defined benefit plan coverage at this time could be viewed by the general public as a benefit increase or benefit advantage for legislators and the general public was not very receptive to any benefit increase or advantage for legislators when legislative pensions were an election issue in 1978. If a shift from defined contribution plan coverage to defined benefit plan coverage addresses and corrects a perceived defect in the compensation and benefits package provided to legislators, that coverage change would assist in the recruitment and retention of legislators, which is the broad policy purpose for Minnesota public pension plan coverage identified in the Commission's Pension Policy Principles.
3. Appropriateness of Allowing Long-Service Judges to Elect Service Credit Transfer from the MSRS-Unclassified Program to the MSRS-General Plan. The policy issue is the appropriateness of including the handful of long-service judges who have reached the service credit maximum of the Uniform Judges Retirement Plan and have the post-maximum service now covered by MSRS-Unclassified to have that MSRS-Unclassified coverage period transferred to MSRS-General under Minnesota Statutes, Section 352D.02, Subdivision 3. This change in the proposed legislation may be an unintended drafting error. When the Commission recommended and the Legislature enacted the inclusion of post-service credit maximum judges in MSRS-Unclassified about a decade ago, the Commission consciously determined that some retirement coverage was needed for these long-serving judges, but decided that defined contribution plan coverage was the most appropriate. The proposed legislation would reverse that decision, providing defined benefit coverage in the form of MSRS-General coverage for the post-maximum judicial service. Since MSRS-Unclassified coverage for those judges only covers the judge's member contributions, with the employer contribution for these judges continuing to be paid to the Uniform Judges Retirement Plan, and the judge's member contribution is less in total than the amount transferred to MSRS-General by all other MSRS-Unclassified transferees, the proposed legislation in this regard would impose an actuarial cost on MSRS-General. If the proposed change is not deemed to be appropriate by the Commission, **Amendment S1407-2A** would eliminate this proposed change.
4. Consistency of Proposed MSRS-Unclassified Changes With Earlier Commission-Approved MSRS-Unclassified Changes. The policy issue is the appropriateness of the changes in the proposed legislation if they are not consistent with the MSRS-Unclassified proposed changes already recommended by the Commission and included in the 2010 Omnibus Retirement Bill. S.F. 889 (Betzold); H.F. xxx (Document S0889-E2) was added to the 2010 Omnibus Retirement Bill at the February 5, 2010, Commission meeting and modified the initial coverage by MSRS-Unclassified and the election of MSRS-General coverage in lieu of MSRS-Unclassified coverage as follows:
 - a. Modified MSRS-Unclassified Default Coverage for Most New Employees. Employees first hired after June 30, 2010, will be covered by the MSRS-Unclassified Program unless they elect the MSRS-General retirement plan, with an option to transfer to MSRS-General limited to within the first seven years of service.
 - b. Elimination of Late-Career Transfer to MSRS-General for Post-2010 Hires. For employees first hired after June 30, 2010, the right to transfer from MSRS-Unclassified to MSRS-General at any time after ten years of covered MSRS service is eliminated and any right to retain MSRS-Unclassified Program coverage upon moving to an unclassified position not included in the plan is restricted to those hired before July 1, 2010.

The following is a side-by-side comparison of this proposed legislation and the same statutory provisions modified in the 2010 Omnibus Retirement Bill:

- 1.6 Section 1. Minnesota Statutes 2008, section 352D.02, subdivision 1, is amended to
1.7 read:
- 1.8 Subdivision 1. **Coverage.** (a) Employees enumerated in paragraph (c), clause (1),
1.9 are participants in the unclassified program under this chapter. Employees enumerated
1.10 in paragraph (c), ~~clauses (2), (3), (4), (6) to (14), and (16) to (18), clauses (2) to (18),~~ if
1.11 they are in the unclassified service of the state or Metropolitan Council and are eligible
1.12 for coverage under the general state employees retirement plan under chapter 352, are
1.13 participants in the unclassified program under this chapter unless the employee gives
1.14 notice to the executive director of the Minnesota State Retirement System within one year
1.15 following the commencement of employment in the unclassified service that the employee
1.16 desires coverage under the general state employees retirement plan. For the purposes of
1.17 this chapter, an employee who does not file notice with the executive director is deemed to
1.18 have exercised the option to participate in the unclassified program.
- 1.19 (b) ~~Persons referenced in paragraph (c), clause (5), are participants in the unclassified~~
1.20 ~~program under this chapter unless the person was eligible to elect different coverage under~~
1.21 ~~section 3A.07 and elected retirement coverage by the applicable alternative retirement~~
1.22 ~~plan.~~ Persons referenced in paragraph (c), clause (15), are participants in the unclassified
1.23 program under this chapter for judicial employment in excess of the service credit limit in
1.24 section 490.121, subdivision 22.
- 2.1 (c) Enumerated employees and referenced persons are:
- 2.2 (1) the governor, the lieutenant governor, the secretary of state, the state auditor,
2.3 and the attorney general;
- 2.4 (2) an employee in the Office of the Governor, Lieutenant Governor, Secretary
2.5 of State, State Auditor, Attorney General;
- 2.6 (3) an employee of the State Board of Investment;
- 2.7 (4) the head of a department, division, or agency created by statute in the unclassified
2.8 service, an acting department head subsequently appointed to the position, or an employee
2.9 enumerated in section 15A.0815 or 15A.083, subdivision 4;
- 2.10 (5) a member of the legislature;
- 2.11 (6) a full-time unclassified employee of the legislature or a commission or agency of
2.12 the legislature who is appointed without a limit on the duration of the employment or a
2.13 temporary legislative employee having shares in the supplemental retirement fund as a
2.14 result of former employment covered by this chapter, whether or not eligible for coverage
2.15 under the Minnesota State Retirement System;
- 2.16 (7) a person who is employed in a position established under section 43A.08,
2.17 subdivision 1, clause (3), or in a position authorized under a statute creating or establishing
2.18 a department or agency of the state, which is at the deputy or assistant head of department
2.19 or agency or director level;
- 2.20 (8) the regional administrator, or executive director of the Metropolitan Council,
2.21 general counsel, division directors, operations managers, and other positions as designated
2.22 by the council, all of which may not exceed 27 positions at the council and the chair;
- 2.23 (9) the executive director, associate executive director, and not to exceed nine
2.24 positions of the Minnesota Office of Higher Education in the unclassified service, as
2.25 designated by the Minnesota Office of Higher Education before January 1, 1992, or
2.26 subsequently redesignated with the approval of the board of directors of the Minnesota
2.27 State Retirement System, unless the person has elected coverage by the individual
2.28 retirement account plan under chapter 354B;
- 2.29 (10) the clerk of the appellate courts appointed under article VI, section 2, of the
2.30 Constitution of the state of Minnesota, the state court administrator and judicial district
2.31 administrators;
- 2.32 (11) the chief executive officers of correctional facilities operated by the Department
2.33 of Corrections and of hospitals and nursing homes operated by the Department of Human
2.34 Services;
- 2.35 (12) an employee whose principal employment is at the state ceremonial house;
- 2.36 (13) an employee of the Agricultural Utilization Research Institute;
- 3.1 (14) an employee of the State Lottery who is covered by the managerial plan
3.2 established under section 43A.18, subdivision 3;
- 3.3 (15) a judge who has exceeded the service credit limit in section 490.121,
3.4 subdivision 22;
- 3.5 (16) an employee of Enterprise Minnesota, Inc.;
- 3.6 (17) a person employed by the Minnesota State Colleges and Universities as faculty
3.7 or in an eligible unclassified administrative position as defined in section 354B.20,
3.8 subdivision 6, who was employed by the former state university or the former community
3.9 college system before May 1, 1995, and elected unclassified program coverage prior to
3.10 May 1, 1995; and
- 3.11 (18) a person employed by the Minnesota State Colleges and Universities who
3.12 was employed in state service before July 1, 1995, who subsequently is employed in an
3.13 eligible unclassified administrative position as defined in section 354B.20, subdivision
3.14 6, and who elects coverage by the unclassified program.
- 3.15 Sec. 2. Minnesota Statutes 2008, section 352D.02, subdivision 3, is amended to read:
- 3.16 Subd. 3. Transfer to general plan. (a) An employee credited with employee shares
3.17 in the unclassified program, after acquiring credit for ten years of allowable service and
3.18 not later than one month following the termination of covered employment, may elect
3.19 to terminate participation in the unclassified program and be covered by the general
3.20 plan by filing a written election with the executive director. The executive director
3.21 shall then redeem the employee's total shares and shall credit to the employee's account
3.22 in the general plan the amount of contributions that would have been so credited had
3.23 the employee been covered by the general plan during the employee's entire covered
3.24 employment or elective state service. The balance of money so redeemed and not credited
3.25 to the employee's account shall be transferred to the general plan retirement fund, except
3.26 that (1) the employee contribution paid to the unclassified program must be compared
3.27 to (2) the employee contributions that would have been paid to the general plan for the
3.28 comparable period, if the individual had been covered by that plan. If clause (1) is
3.29 greater than clause (2), the difference must be refunded to the employee as provided in
3.30 section 352.22. If clause (2) is greater than clause (1), the difference must be paid by the
3.31 employee within six months of electing general plan coverage or before the effective
3.32 date of the annuity, whichever is sooner.
- 3.33 (b) An election under paragraph (a) to transfer coverage to the general plan is
3.34 irrevocable during any period of covered employment.
- 4.1 (c) Notwithstanding paragraph (a), employees enumerated in subdivision 1,
4.2 paragraph (c), clause (1), are not eligible for transfer to the general plan.
- 7.32 Sec. 5. Minnesota Statutes 2008, section 352D.02, subdivision 1, is amended to read:
- 8.1 Subdivision 1. Coverage. (a) Employees enumerated in paragraph (c), clauses (2),
8.2 ~~(3), (4), (6) to (14), and (16) to (18),~~ if they are in the unclassified service of the state
8.3 or Metropolitan Council and are eligible for coverage under the general state employees
8.4 retirement plan under chapter 352, are participants in the unclassified program under this
8.5 chapter unless the employee gives notice to the executive director of the Minnesota State
8.6 Retirement System within one year following the commencement of employment in the
8.7 unclassified service that the employee desires coverage under the general state employees
8.8 retirement plan. For the purposes of this chapter, an employee who does not file notice
8.9 with the executive director is deemed to have exercised the option to participate in the
8.10 unclassified program.
- 8.11 (b) Persons referenced in paragraph (c), clause (5), and first elected before July 1,
8.12 2010, are participants in the unclassified program under this chapter unless the person was
8.13 eligible to elect different coverage under section 3A.07 and elected retirement coverage by
8.14 the applicable alternative retirement plan. Persons referenced in paragraph (c), clause (15),
8.15 are participants in the unclassified program under this chapter for judicial employment in
8.16 excess of the service credit limit in section 490.121, subdivision 22.
- 8.17 (c) Enumerated employees and referenced persons are:
- 8.18 (1) the governor, the lieutenant governor, the secretary of state, the state auditor,
8.19 and the attorney general;
- 8.20 (2) an employee in the Office of the Governor, Lieutenant Governor, Secretary
8.21 of State, State Auditor, Attorney General;
- 8.22 (3) an employee of the State Board of Investment;
- 8.23 (4) the head of a department, division, or agency created by statute in the unclassified
8.24 service, an acting department head subsequently appointed to the position, or an employee
8.25 enumerated in section 15A.0815 or 15A.083, subdivision 4;
- 8.26 (5) a member of the legislature;
- 8.27 (6) a full-time unclassified employee of the legislature or a commission or agency of
8.28 the legislature who is appointed without a limit on the duration of the employment or a
8.29 temporary legislative employee having shares in the supplemental retirement fund as a
8.30 result of former employment covered by this chapter, whether or not eligible for coverage
8.31 under the Minnesota State Retirement System;
- 8.32 (7) a person who is employed in a position established under section 43A.08,
8.33 subdivision 1, clause (3), or in a position authorized under a statute creating or establishing
8.34 a department or agency of the state, which is at the deputy or assistant head of department
8.35 or agency or director level;
- 9.1 (8) the regional administrator, or executive director of the Metropolitan Council,
9.2 general counsel, division directors, operations managers, and other positions as designated
9.3 by the council, all of which may not exceed 27 positions at the council and the chair;
- 9.4 (9) the executive director, associate executive director, and not to exceed nine
9.5 positions of the Minnesota Office of Higher Education in the unclassified service, as
9.6 designated by the Minnesota Office of Higher Education before January 1, 1992, or
9.7 subsequently redesignated with the approval of the board of directors of the Minnesota
9.8 State Retirement System, unless the person has elected coverage by the individual
9.9 retirement account plan under chapter 354B;
- 9.10 (10) the clerk of the appellate courts appointed under article VI, section 2, of the
9.11 Constitution of the state of Minnesota, the state court administrator and judicial district
9.12 administrators;
- 9.13 (11) the chief executive officers of correctional facilities operated by the Department
9.14 of Corrections and of hospitals and nursing homes operated by the Department of Human
9.15 Services;
- 9.16 (12) an employee whose principal employment is at the state ceremonial house;
- 9.17 (13) an employee of the Agricultural Utilization Research Institute;
- 9.18 (14) an employee of the State Lottery who is covered by the managerial plan
9.19 established under section 43A.18, subdivision 3;
- 9.20 (15) a judge who has exceeded the service credit limit in section 490.121,
9.21 subdivision 22;
- 9.22 (16) an employee of Enterprise Minnesota, Inc.;
- 9.23 (17) a person employed by the Minnesota State Colleges and Universities as faculty
9.24 or in an eligible unclassified administrative position as defined in section 354B.20,
9.25 subdivision 6, who was employed by the former state university or the former community
9.26 college system before May 1, 1995, and elected unclassified program coverage prior to
9.27 May 1, 1995; and
- 9.28 (18) a person employed by the Minnesota State Colleges and Universities who
9.29 was employed in state service before July 1, 1995, who subsequently is employed in an
9.30 eligible unclassified administrative position as defined in section 354B.20, subdivision
9.31 6, and who elects coverage by the unclassified program.
- 9.32 EFFECTIVE DATE. This section is effective June 30, 2010.
- 11.10 Sec. 9. Minnesota Statutes 2008, section 352D.02, subdivision 3, is amended to read:
- 11.11 Subd. 3. Transfer to general employees retirement plan. (a) An employee
11.12 referred to in subdivision 1, paragraph (c), clauses (2) to (4), (6) to (14), and (16) to
11.13 (18), who is credited with employee shares in the unclassified program, after acquiring
11.14 and who has credit for ten years of allowable service and, not later than one month
11.15 following the termination of covered employment, may elect to terminate participation
11.16 in the unclassified program and be covered by the general employees retirement plan by
11.17 filing a written election with the executive director, if the employee was employed before
11.18 July 1, 2010, and has at least ten years of allowable service as of the date of the election or
11.19 if the employee was employed after June 30, 2010, and has no more than seven years of
11.20 allowable service as of the date of the election.
- 11.21 (b) If the transfer election is made, the executive director shall then redeem the
11.22 employee's total shares and shall credit to the employee's account in the general employees
11.23 retirement plan the amount of contributions that would have been so credited had the
11.24 employee been covered by the general employees retirement plan during the employee's
11.25 entire covered employment. The balance of money so redeemed and not credited to the
11.26 employee's account shall must be transferred to the general employees retirement plan
11.27 retirement fund, except that (1) the employee contribution paid to the unclassified program
11.28 must be compared to (2) the employee contributions that would have been paid to the
11.29 general employees retirement plan for the comparable period, if the individual had been
11.30 covered by that plan. If clause (1) is greater than clause (2), the difference must be
11.31 refunded to the employee as provided in section 352.22. If clause (2) is greater than
11.32 clause (1), the difference must be paid by the employee within six months of electing
11.33 general employees retirement plan coverage or before the effective date of the annuity,
11.34 whichever is sooner.
- 12.1 (b) (d) An election under paragraph (a) or (b) to transfer coverage to the general
12.2 employees retirement plan is irrevocable during any period of covered employment.
- 12.3 (e) A person referenced to in subdivision 1, paragraph (c), clause (1) or (15), who is
12.4 credited with employee shares in the unclassified program is not permitted to terminate
12.5 participation in the unclassified program and be covered by the general employees
12.6 retirement plan.
- 12.7 EFFECTIVE DATE. This section is effective June 30, 2010.

Technical Amendment

Amendment S1407-1A clarifies that the election of MSRS-General retirement plan coverage during the initial year of employment does not apply to long-serving judges and reorganizes the paragraph structure of the provision.

Background Information on the Legislators' Retirement Plan

Retirement coverage for legislators is provided by either the Legislators' Retirement Plan or by the Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified).

- a. Legislators First Elected Before July 1, 1997. Legislators who were first elected to the Legislature before July 1, 1997, were covered by the Legislators' Retirement Plan, which is governed by Minnesota Statutes, Chapter 3A, and is a defined benefit plan. Many pre-July 1, 1997, legislators chose to switch coverage to MSRS-Unclassified through an irrevocable election. The Legislators' Retirement Plan was a basic plan, meaning that individuals did not pay into the Social Security system due to the Legislative employment and generated no credit toward the Social Security Old Age Program. Those who wanted Social Security coverage were permitted to elect MSRS-Unclassified coverage, which is coordinated with Social Security. In 2002, another election was held for legislators who had earlier chosen to stay in the Legislators' Retirement Plan. In this second election, a legislator could choose to have Social Security coverage while remaining in the Legislators' Retirement Plan, providing they agreed to cover both the employee and employer Social Security contribution requirements.
- b. Legislators First Elected After June 30, 1997. Legislators first elected to the Legislature after June 30, 1997 (and those pre-July 1, 1997, legislators who chose to transfer coverage), are covered by MSRS-Unclassified under Minnesota Statutes, Sections 3A.07, Paragraph (b), and 352D.02, Subdivision 1, Paragraph (b). MSRS-Unclassified is a defined contribution plan governed by Minnesota Statutes, Chapter 352D.

The Legislators' Retirement Plan was enacted in 1965. It is the successor to the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) as the retirement coverage for members of the Legislature. At that time, PERA-General was a basic plan and no contributions were made into the federal Social Security program for the covered service. PERA-General in 1965 used a career average salary and had back-loaded accrual rates, heavily favoring long-time employees.

Several modifications in the Legislators' Retirement Plan have occurred:

- In 1965, when the Legislature created a separate Legislators' Retirement Plan, current members and new members with prior PERA-General coverage had an option to retain PERA-General coverage. The motivation for establishing a separate Legislators' Retirement Plan probably came from a growing recognition that the back-loaded PERA-General plan was not well suited to provide legislative retirement coverage, since the typical legislator would not be providing many decades of service. Prior to 1977, the Legislators' Retirement Plan provided a retirement benefit of 40 percent of the average monthly salary received during the final term of office for the first eight years of service, and an additional 2.5 percent per year for each year beyond eight.
- Beginning with the 1979 Legislative Session, the maximum benefit accrual rate for any new legislative service was set at 2.5 percent. This lower accrual rate was adopted in recognition of the changing nature of legislative work. Until the early 1970s, legislative salaries were minimal. In order to provide any meaningful retirement benefit, a high benefit accrual rate was used. As legislative salaries increased in recognition that legislative work was becoming more like a full-time occupation, the Legislature recognized that it needed to revise the benefit accrual rates downward. The legislative salary for pension purposes was redefined to exclude an additional compensation for leadership positions. A 20-year cap on creditable service was also imposed.
- The Legislators' Retirement Plan was revised in 1978 and 1979 to use the high-five average salary rather than the average salary in the final term in office and the normal retirement age was increased from age 60 to age 62, with age 60 becoming the earliest age for retirement with a reduced annuity. Vesting for a retirement annuity was reduced from eight years to six years.
- In 1989, the definition of salary was changed to include regular and special session per diem payments, the deferred annuity augmentation rates were revised to three percent per year up to the year in which the former legislator becomes age 55, and five percent per year thereafter, the reduction factors for early retirement were revised to require a more substantial penalty, and the 20-year cap on service credit was removed. Members who were no longer accruing service credit because their service exceeded 20 years were authorized to again begin accruing service credit.

- The 1989 removal of the Legislators' Retirement Plan service credit cap was made retroactive in 1992.
- Long-term legislators, including those in deferred status with uncredited service prior to June 2, 1989, were authorized to purchase service credit for the uncredited period and the affected legislators were required to contribute nine percent of salary received during the uncredited period plus six percent interest from the midpoint of the period of uncredited service to the date of payment. Payment had to be received prior to retirement or by January 1, 1994, whichever was earlier.
- In 1997, the annual benefit accrual rates for the Legislators' Retirement Plan were revised (from the 5.0 percent pre-1978 service accrual rate and 2.5 percent post-1978 service accrual rate) to that annual individual benefit accrual rate that has the same actuarial value following implementation of the one percent annual post-retirement adjustment benefit reduction imposed by the same legislation.
- In 2002, legislators who had chosen to remain in the Legislators' Retirement Plan were given an opportunity to elect Social Security coverage while remaining in the Legislators' Retirement Plan, provided that they agreed to cover the Social Security employee and employer contribution requirement.

Background Information on Legislator Pension Coverage, 1997 Change

Before 1997, legislators were provided with defined benefit plan coverage and after 1997 (for legislators newly elected after July 1, 1997,) newly elected legislators and short service (as of 1997) sitting legislators are covered by defined contribution plan coverage. Defined benefit plan coverage utilizes a formula to determine the retirement annuity, typically fashioned as a percentage benefit accrual rate per year of service applied to a designated salary base and payable on or after a specified normal retirement age. Defined contribution plan coverage, akin to a 401(k) plan or an IRA, amasses contributions and investment returns that either can be taken as a lump sum payment upon retirement or can be converted to an annuity for life based on reserve factors with a set interest rate and adjusted for the age at which the annuity commences.

Before 1965, legislators were covered (optionally) by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General). As elected officials under PERA-General, legislators had the option to have PERA-General coverage or to decline PERA-General coverage following each election. In 1965, the Legislature established the Legislator's Retirement Plan, Minnesota Statutes, Chapter 3A, to replace PERA-General coverage. The Legislator's Retirement Plan initially provided a dollar amount (\$100 per month) benefit with ten years of service (the vesting requirement), plus \$4 per month for each year of service in excess of ten years, not to exceed \$200 per month, payable at age 65. The legislative salary in 1965 was \$4,800 annually. The Legislator's Plan converted to a percentage benefit accrual plan during the early 1970's, with the benefit in 1977 set at five percent of salary per year of service for the first eight years of service (the vesting requirement) and 2.5 percent of salary per year of service in excess of eight years of service, payable at age 60. In 1978, the plan was downsized in combination with an increase in the legislative salary, with any service rendered after 1978 with a 2.5 percent benefit accrual rate, with vesting reduced to six years of service, and with the retirement age increased to age 62. The Legislators Retirement Plan was a Basic Plan, meaning that the plan did not supplement Social Security coverage.

In 1997, as part of major benefit increase legislation assembled by the Minnesota State Retirement System (MSRS), PERA, and the Teachers Retirement Association (TRA), retirement coverage for all newly elected legislators and for sitting legislators who elected to change coverage was provided by the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified), a defined contribution retirement plan. The legislation (Laws 1997, Chapter 233, Article 2) also added Social Security coverage for legislators and included a required study by the Commission of the appropriateness of the coverage change (see Laws 1997, Chapter 233, Article 2, Section 16.) The Commission completed the mandated study during the 1997-1998 Interim and concluded that the change was appropriate and recommended no change in the 1997 coverage change. The shift from defined benefit plan coverage to defined contribution plan coverage for legislators also occurred for the State's Constitutional officers in 1997 and for local elected officials, other than County Sheriffs, in 2001.

The 1997 change in legislators retirement coverage was the source of the proposed legislation, H.F. 3223 (Mahoney); S.F. 3054 (Tomassoni), that was initially made part of the 2008 Omnibus Retirement Bill by the Commission on April 9, 2008, but was removed from the 2008 Omnibus Retirement Bill on the Senate Floor (Betzold Amendment) on May 2, 2008, with the Senate position prevailing in Conference on May 15, 2008. H.F. 3223 (Mahoney); S.F. 3054 (Tomassoni) proposed revising the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) plan coverage provision (Minnesota Statutes, Section 352D.02, Subdivision 1) to allow legislators, judges, the governor, lieutenant governor, secretary of state, state auditor, and attorney general, within their first year of service, to choose between the MSRS-Unclassified Plan defined contribution plan and the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) defined benefit plan, rather than being restricted to the MSRS-Unclassified Plan; and revising the transfer-to-MSRS-General plan provision (Minnesota Statutes, Section 352D.02, Subdivision 3) to permit these same elected official groups, if they initially select MSRS-Unclassified Plan coverage, to switch to MSRS-General after providing ten years of service. H.F. 3223 (Mahoney); S.F. 3054 (Tomassoni) represents the concerns of legislators who have defined contribution plan coverage as a result of the 1997 legislation, but are dissatisfied with that defined contribution plan coverage and seek to obtain alternative defined benefit plan coverage.

**Background Information on and History of Coverage by the
Unclassified Employees Retirement Program
of the Minnesota State Retirement System (MSRS-Unclassified)**

The Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) was established in 1971 (Laws 1971, Chapter 604), and is governed by Minnesota Statutes, Chapter 352D.

- a. Establishment and Membership. MSRS-Unclassified is a defined contribution plan established by Minnesota Statutes, Chapter 352D. It covers a number of state employees or officers in the unclassified service of the state on a mandatory or optional basis.

The following positions are members of the program on a mandatory basis:

1. The governor, the lieutenant governor, the secretary of state, the state auditor, and the attorney general.
2. Legislators first elected after June 30, 1997.
3. Judges, for service in excess of 24 years (M.S., Sec. 490.121, Subd. 22).

The following group was permitted to choose between the Legislators' Retirement Plan and MSRS-Unclassified:

4. Legislators first elected before July 1, 1997.

The remaining positions have the option to elect to be members of the program rather than being a member of the MSRS General State Employees Retirement Plan (MSRS-General):

5. An employee of the State Board of Investment.
6. The head of a department, division, or agency created by statute in the unclassified service.
7. A permanent, full-time unclassified employee of the legislature or a commission or an agency of the legislature.
8. The regional administrator or executive director of the Metropolitan Council, general counsel, Division directors, operations managers, and other positions as designated by the council.
9. The executive director, associate executive director of the Higher Education Services Office in the unclassified service.
10. The clerk of the appellate court.
11. The chief executive officers of correctional facilities, hospitals, and nursing homes.
12. An employee of the state ceremonial house.
13. An employee of the Minnesota Educational Computing Corporation.
14. An employee of the World Trade Center board.
15. An employee of the State Lottery board.
16. An employee of Minnesota Technology Incorporated.
17. Minnesota State Colleges and Universities System (MnSCU) employees employed by the former state university system or community college system before May 1, 1995, or other MnSCU unclassified administrators in service before July 1, 1995, who elected MSRS-Unclassified coverage.

- b. Plan Governance and Administration. An 11-member board, the MSRS Board of Directors is chaired by a board member and performs the policy-making function of the MSRS-Unclassified. The MSRS administrative staff and the Minnesota State Board of Investment carry out the general administration of the MSRS-Unclassified Program. The MSRS staff executes the recordkeeping and the communication functions of the plan. The State Board of Investment and its staff perform the investment function of the plan.

- c. Contribution Rates and Collection.

1. Member Contribution Rates. Except for the long-service judges covered by the program, the MSRS-Unclassified employee contribution rate is four percent of gross salary. The member contribution rate for the long-service judges is eight percent of salary.
2. Employer Contribution Rates. The employer must contribute six percent of the employee's gross salary, except for the long-service judges. There is no employer contribution to MSRS-Unclassified for long-service judges covered by the program.
3. Collection. Both member and employer contributions, which are not taxable, are collected at payday every two weeks and credited to the employee's account each month. The contributions generally are collected electronically by MSRS. An 8.5 percent fee applies for late collection or payment.

- d. Administrative Expenses. All administrative and investment expenses are borne by participants, who are charged 0.08 percent of total program assets a year for the plan administrative expenses, compared to the 0.22 percent of covered pay for MSRS-General.
- e. Plan Investments. The plan investments are directed individually by each participant, who makes the actual choice in the composition of investment securities in the person's own account. Under Minnesota Statutes, Section 11A.17, the investments are shares in one account or in a combination of accounts, including the Income Share Account, the Growth Share Account, the International Share Account, the Money Market Account, the Bond Market Account, the Fixed Interest Account, and the Common Stock Index Account. The contributions are invested in the month in which they are received. Actual investments are made through outside vendors who enter into competitively bid five-year contracts with the State Board of Investment. The contracts are reviewed periodically by the State Board of Investment.
- f. Plan Communication, New Member Processing, and Benefit Counseling. MSRS provides information to plan members through newsletters, quarterly benefit statements, a plan handbook, and financial reports each year. MSRS also presents to every new member a welcome letter, forms for membership, and the plan handbook. Finally, for an employee approaching retirement, MSRS provides an estimate of the person's benefit, the tax impact on the benefit if the participant either opts for a lump sum payment or an annuity. An annuity may be purchased at age 55 or older using the accumulated balance of the participant's account.
- g. Option to Switch to Defined Benefit Plan Coverage. Under Minnesota Statutes, Section 352D.02, Subdivision 3, a participant in MSRS-Unclassified with at least ten years of state service is permitted up to one month following termination of employment to elect to transfer coverage to MSRS-General, a defined benefit plan governed by Minnesota Statutes, Chapter 352. The MSRS-General retirement annuity is 1.7 percent of a member's highest five successive years' average salary per year of covered service, payable in full at age 65 and reduced actuarially if the annuity commenced before age 65, with the earliest reduced benefit retirement age of 55.
- h. Actuarial Impact of Coverage Transfer Option. The option to transfer coverage from MSRS-Unclassified to defined benefit plan coverage by MSRS-General has an actuarial cost for MSRS-General. The July 1, 2004, MSRS-General actuarial valuation calculated the actuarial liability for the active members of MSRS-Unclassified under the MSRS-Unclassified Program asset value or the present value of the MSRS-General benefit, whichever is greater. As of July 1, 2007, the MSRS-General transfer provision creates a \$64.8 million unfunded actuarial accrued liability in MSRS-General. The normal cost under the MSRS-General defined benefit plan for the MSRS-Unclassified active participants was 8.91 percent of covered pay, compared to the normal cost for MSRS-General active members of 8.4 percent of covered pay.

Background Information on the MSRS-Unclassified Program Provision Allowing a MSRS-General Plan Coverage Transfer

Although the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) is a defined contribution pension plan, the governing law, Minnesota Statutes, Chapter 352D, includes authority for an MSRS-Unclassified participant to elect defined benefit pension plan coverage, the MSRS General State Employees Retirement Plan (MSRS-General), instead of the MSRS-Unclassified benefit if the participant has acquired ten years or more of “state service.” “State service” is service that would qualify as allowable service for either MSRS-General or MSRS-Unclassified. The authorization is coded as Minnesota Statutes, Section 352D.02, Subdivision 3, which provides that

[a]n election to not participate is irrevocable during any period of covered employment. An employee credited with employee shares in the unclassified program, after acquiring credit for ten years of allowable service but prior to termination of covered employment, may, notwithstanding other provisions of this subdivision, elect to terminate participation in the unclassified plan and be covered by the regular plan by filing such election with the executive director. The executive director shall thereupon redeem the employee's total shares and shall credit to the employee's account in the regular plan the amount of contributions that would have been so credited had the employee been covered by the regular plan during the employee's entire covered employment. The balance of money so redeemed and not credited to the employee's account shall be transferred to the state contribution reserve of the state employees retirement fund, except that (1) the employee contribution paid to the unclassified plan must be compared to (2) the employee contributions that would have been paid to the general plan for the comparable period, if the individual had been covered by that plan. If clause (1) is greater than clause (2), the difference must be refunded to the employee as provided in section 352.22. If clause (2) is greater than clause (1), the difference must be paid by the employee within six months of electing general plan coverage or before the effective date of the annuity, whichever is sooner.

The defined benefit plan coverage election authorization in the MSRS-Unclassified Program allows various MSRS-Unclassified Program participants to adversely select or elect against the pension plan, with a significant potential benefit gain for the participant and a significant potential risk of the creation of an unfunded actuarial accrued liability in the MSRS-General Plan.

While, from a participant benefit standpoint, the defined benefit plan election option of MSRS-Unclassified is a very valuable attribute, the authority carries with it numerous opportunities for the creation of unfunded actuarial accrued liabilities within MSRS-General. These actuarial loss potentials include:

1. Investment Loss. Participants in MSRS-Unclassified select their own broad investment strategy by designating the proportion of contributions to be invested in one or more accounts in the State Board of Investment's Supplemental Investment Fund. If that member-directed investment strategy, which can be modified regularly, produces actual investment losses, and the participant gains at least ten years of state service, those losses can be avoided by the selection of MSRS-General defined benefit plan retirement annuity in lieu of MSRS-Unclassified defined contribution retirement annuity.
2. Investment Underperformance Compared To Final Years' Salary Increases. Similar to investment losses, if an MSRS-Unclassified participant's final five years average salary increases much more significantly than the performance of the participant's accumulated contributions in the Supplemental Investment Fund, the participant can take retirement benefit advantage of that late-career salary growth by electing a larger retirement annuity under MSRS-General rather than a smaller retirement annuity under MSRS-Unclassified.
3. Early Retirement. If an MSRS-Unclassified participant changes end-of-career plans and decides to retire at an early age rather than a later age and the participant has at least ten years of state service, the participant can elect to take a greater MSRS-General retirement annuity rather than a lesser MSRS-Unclassified retirement annuity.
4. Late Career Benefit Increase. If a benefit increase is granted to MSRS-General late in the career of an MSRS-Unclassified participant, the participant can elect to take the increased MSRS-General retirement annuity rather than the more static MSRS-Unclassified retirement annuity.
5. Mid-Career or Late Career Mobility With Subsequent Portable Defined Benefit Plan Coverage. A participant in MSRS-Unclassified with at least ten years of state service who makes a career change to public employment with defined benefit plan coverage that is portable with MSRS-General pension coverage will likely elect to shift from MSRS-Unclassified coverage to MSRS-General coverage, in order to take advantage of the Combined Service Annuity portability mechanism.

- 1.1 moves to amend S.F. No. 1407; H.F. No. 1358, as follows:
- 1.2 Page 1, line 8, delete "(c)" and insert "(b)"
- 1.3 Page 1, line 9, after "chapter." insert "Persons referenced in paragraph (b), clause
- 1.4 (15) are participants in the unclassified program under this chapter for judicial employment
- 1.5 in excess of the service credit limit in section 490.121, subdivision 22."
- 1.6 Page 1, line 10, strike "(c)" and insert "(b)" and after "to" insert "(14) and (16) to"
- 1.7 Page 1, line 19, strike "(b) "
- 1.8 Page 1, strike lines 22 to 24
- 1.9 Page 2, line 1, strike "(c)" and insert "(b)"

1.1 moves to amend S.F. No. 1407; H.F. No. 1358, as follows:

1.2 Page 4, line 2, after "(1)" insert "or (15)"

Senators Tomassoni and Koering introduced—

S.F. No. 1407: Referred to the Committee on State and Local Government Operations and Oversight.

A bill for an act

1.1 relating to retirement; amending certain coverage provisions; making certain
1.2 technical changes; amending Minnesota Statutes 2008, section 352D.02,
1.3 subdivisions 1, 3.
1.4

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

1.6 Section 1. Minnesota Statutes 2008, section 352D.02, subdivision 1, is amended to
1.7 read:

1.8 Subdivision 1. **Coverage.** (a) Employees enumerated in paragraph (c), clause (1),
1.9 are participants in the unclassified program under this chapter. Employees enumerated
1.10 in paragraph (c), ~~clauses (2), (3), (4), (6) to (14), and (16) to (18)~~, clauses (2) to (18), if
1.11 they are in the unclassified service of the state or Metropolitan Council and are eligible
1.12 for coverage under the general state employees retirement plan under chapter 352, are
1.13 participants in the unclassified program under this chapter unless the employee gives
1.14 notice to the executive director of the Minnesota State Retirement System within one year
1.15 following the commencement of employment in the unclassified service that the employee
1.16 desires coverage under the general state employees retirement plan. For the purposes of
1.17 this chapter, an employee who does not file notice with the executive director is deemed to
1.18 have exercised the option to participate in the unclassified program.

1.19 (b) ~~Persons referenced in paragraph (c), clause (5), are participants in the unclassified~~
1.20 ~~program under this chapter unless the person was eligible to elect different coverage under~~
1.21 ~~section 3A.07 and elected retirement coverage by the applicable alternative retirement~~
1.22 ~~plan.~~ Persons referenced in paragraph (c), clause (15), are participants in the unclassified
1.23 program under this chapter for judicial employment in excess of the service credit limit in
1.24 section 490.121, subdivision 22.

2.1 (c) Enumerated employees ~~and referenced persons~~ are:

2.2 (1) the governor, the lieutenant governor, the secretary of state, the state auditor,
2.3 and the attorney general;

2.4 (2) an employee in the Office of the Governor, Lieutenant Governor, Secretary
2.5 of State, State Auditor, Attorney General;

2.6 (3) an employee of the State Board of Investment;

2.7 (4) the head of a department, division, or agency created by statute in the unclassified
2.8 service, an acting department head subsequently appointed to the position, or an employee
2.9 enumerated in section 15A.0815 or 15A.083, subdivision 4;

2.10 (5) a member of the legislature;

2.11 (6) a full-time unclassified employee of the legislature or a commission or agency of
2.12 the legislature who is appointed without a limit on the duration of the employment or a
2.13 temporary legislative employee having shares in the supplemental retirement fund as a
2.14 result of former employment covered by this chapter, whether or not eligible for coverage
2.15 under the Minnesota State Retirement System;

2.16 (7) a person who is employed in a position established under section 43A.08,
2.17 subdivision 1, clause (3), or in a position authorized under a statute creating or establishing
2.18 a department or agency of the state, which is at the deputy or assistant head of department
2.19 or agency or director level;

2.20 (8) the regional administrator, or executive director of the Metropolitan Council,
2.21 general counsel, division directors, operations managers, and other positions as designated
2.22 by the council, all of which may not exceed 27 positions at the council and the chair;

2.23 (9) the executive director, associate executive director, and not to exceed nine
2.24 positions of the Minnesota Office of Higher Education in the unclassified service, as
2.25 designated by the Minnesota Office of Higher Education before January 1, 1992, or
2.26 subsequently redesignated with the approval of the board of directors of the Minnesota
2.27 State Retirement System, unless the person has elected coverage by the individual
2.28 retirement account plan under chapter 354B;

2.29 (10) the clerk of the appellate courts appointed under article VI, section 2, of the
2.30 Constitution of the state of Minnesota, the state court administrator and judicial district
2.31 administrators;

2.32 (11) the chief executive officers of correctional facilities operated by the Department
2.33 of Corrections and of hospitals and nursing homes operated by the Department of Human
2.34 Services;

2.35 (12) an employee whose principal employment is at the state ceremonial house;

2.36 (13) an employee of the Agricultural Utilization Research Institute;

3.1 (14) an employee of the State Lottery who is covered by the managerial plan
 3.2 established under section 43A.18, subdivision 3;

3.3 (15) a judge who has exceeded the service credit limit in section 490.121,
 3.4 subdivision 22;

3.5 (16) an employee of Enterprise Minnesota, Inc.;

3.6 (17) a person employed by the Minnesota State Colleges and Universities as faculty
 3.7 or in an eligible unclassified administrative position as defined in section 354B.20,
 3.8 subdivision 6, who was employed by the former state university or the former community
 3.9 college system before May 1, 1995, and elected unclassified program coverage prior to
 3.10 May 1, 1995; and

3.11 (18) a person employed by the Minnesota State Colleges and Universities who
 3.12 was employed in state service before July 1, 1995, who subsequently is employed in an
 3.13 eligible unclassified administrative position as defined in section 354B.20, subdivision
 3.14 6, and who elects coverage by the unclassified program.

3.15 Sec. 2. Minnesota Statutes 2008, section 352D.02, subdivision 3, is amended to read:

3.16 Subd. 3. **Transfer to general plan.** (a) An employee credited with ~~employee~~ shares
 3.17 in the unclassified program, after acquiring credit for ten years of allowable service and
 3.18 not later than one month following the termination of covered employment, may elect
 3.19 to terminate participation in the unclassified program and be covered by the general
 3.20 plan by filing a written election with the executive director. The executive director
 3.21 shall then redeem the employee's total shares and shall credit to the employee's account
 3.22 in the general plan the amount of contributions that would have been so credited had
 3.23 the employee been covered by the general plan during the employee's entire covered
 3.24 employment or elective state service. The balance of money so redeemed and not credited
 3.25 to the employee's account shall be transferred to the general plan retirement fund, except
 3.26 that (1) the employee contribution paid to the unclassified program must be compared
 3.27 to (2) the employee contributions that would have been paid to the general plan for the
 3.28 comparable period, if the individual had been covered by that plan. If clause (1) is
 3.29 greater than clause (2), the difference must be refunded to the employee as provided in
 3.30 section 352.22. If clause (2) is greater than clause (1), the difference must be paid by the
 3.31 employee within six months of electing general plan coverage or before the effective
 3.32 date of the annuity, whichever is sooner.

3.33 (b) An election under paragraph (a) to transfer coverage to the general plan is
 3.34 irrevocable during any period of covered employment.

- 4.1 (c) Notwithstanding paragraph (a), employees enumerated in subdivision 1,
- 4.2 paragraph (c), clause (1), are not eligible for transfer to the general plan.