



**S.F. 2680**  
(Eken)

**H.F. 1352**  
(Marquart)

### **Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* PERA-P&F  
*Relevant Provisions of Law:* Special Law Provision  
*General Nature of Proposal:* Extended deadline for disability benefit application.  
*Date of Summary:* March 14, 2014

### **Specific Proposed Changes**

- Permits David Shaw of Lake Park, Minnesota, to apply for a disability benefit from the Public Employees Police and Fire Retirement Plan (PERA-P&F) despite failing to file the disability application within the 18-month period following the termination of public employment application deadline.

### **Policy Issues Raised by the Proposed Legislation**

1. Adherence to applicable Commission policy principles
2. Equitable considerations relating to the application delay.
3. Unclear status of other law enforcement employment beyond Wadena County Sheriff's Department.
4. Unclear likelihood of an eventual affirmative PERA determination of the existence of a disability.
5. Precedents for and potential for the creation of future adverse precedents by the proposed legislation.

### **Potential Amendments**

H1352-1A resets the special disability benefit application extension authority to account for 2014 hearing of 2013 proposed legislation.

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TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: S.F. xxxx; H.F. 1352 (Marquart): PERA-P&F; Disability Benefit Application  
Deadline Extension for a Certain Former Wadena County Sheriff's Deputy

DATE: February 7, 2014

Summary of S.F. xxxx; H.F. 1352 (Marquart)

S.F. xxxx; H.F. 1352 (Marquart) permits a described qualified person to file an application for a duty disability benefit with the Public Employees Police and Fire Retirement Plan (PERA-P&F) on or before June 30, 2013, despite the current statutory limits on the filing of PERA-P&F disability benefit applications.

Public Pension Problem of Dave Shaw of Lake Park, Minnesota

Dave Shaw is a former part-time Wadena County Sheriff's Department deputy, a former part-time Battle Lake police officer, and a former Wadena city Police officer who, on March 11, 2006, attempted to stop a driver near the driver's home for three driving-related offenses, engaged in a short vehicle pursuit, ultimately faced a driver brandishing a firearm, and, when the man would not relinquish the firearm, shot and non-fatally wounded the man. After suffering from self-diagnosed mental health-related issues after the shooting incident for several years, Mr. Shaw resigned from his law enforcement employment or employments in October 2010, and began receiving medical assistance for his mental health-related issues in late 2011. Because he did not apply for a disability benefit from the Public Employees Police and Fire Retirement Plan (PERA-P&F), the Minnesota defined benefit retirement plan covering local government law enforcement officers, within 18 months of the termination of public employment (by April or May 2012), Mr. Shaw is no longer eligible to apply for a PERA-P&F disability benefit. Mr. Shaw wants an extension on the time period during which he may file for a PERA-P&F disability benefit.

Background Information on Relevant Topics

The following attachments provide background information on topics relevant to the proposed legislation:

- Attachment A:** Background information on filing deadlines for Minnesota general employee public retirement plan benefits.
- Attachment B:** Background information on disability benefit application deadline extensions.
- Attachment C:** Background information on disability benefit application time limits.
- Attachment D:** Background information on the 2004 disability benefit application and determination reforms.
- Attachment E:** Background information on PERA-P&F disabilitants and the benefits provided to those disabled after June 30, 2007.
- Attachment F:** Comparison of the PERA-P&F disability benefit plan after 1996 and before 1997.

Discussion and Analysis

S.F. xxxx; H.F. 1352 (Marquart) of Lake Park, Minnesota, to apply for a disability benefit from the Public Employees Police and Fire Retirement Plan (PERA-P&F) despite failing to file the disability application within the 18-month period following the termination of public employment application deadline.

The proposed legislation raises a number of pension and related public policy issues for consideration by and possible discussion between Commission members, as follows:

1. Adherence to Applicable Commission Policy Principles. The policy issue is the extent to which the proposed legislation conforms with the Commission's Principles of Pension Policy. The applicable Pension Policy Principle is Principle II.C.11., which provides that:
  - II.C.11. Deadline Extensions and Waivers  
Deadline extensions or waivers should be permitted only if, on a case-by-case basis, it is determined that there is a sufficient equitable basis for the extension or waiver, the extension or waiver does not involve broader applicability than the pension plan members making the request, and that the extension or waiver is unlikely to constitute an inappropriate precedent for the future.

The question of equitable considerations to justify the deadline extension is addressed in policy issue #2. The question of the potential for any adverse future precedent is addressed as part of policy issue #5. The lack of broad applicability is clear, based on the specificity of the demographic and employment

characteristics set forth as eligibility requirements in the proposed legislation that were based on the information supplied on behalf of or by Mr. Shaw.

2. Equitable Considerations Relating to the Application Delay. The policy issue is whether or not there exists sufficient equitable considerations favoring Mr. Shaw related to the delay in making a timely disability application to the Public Employees Retirement Association (PERA), which administers the Public Employees Police and Fire Retirement Plan (PERA-P&F). The information that has been provided does not specifically address the issue, other than to indicate that Mr. Shaw has suffered from and is suffering from a self-diagnosed mental health problem of depression and/or post-traumatic stress disorder. Additional information will be needed regarding the reason or reasons why Mr. Shaw did not apply for a PERA-P&F disability benefit earlier. Alternative possible rationales for the application delay, beyond complications from his mental health issues, would be a misunderstanding about the applicable deadline (i.e., the application deadline was shortened from three years to 18 months in 2004), or misinformation about the deadline from the employing unit's human resources department or from PERA. Since Mr. Shaw undoubtedly needed to obtain an alternative source of income upon his termination of active employment by Wadena County in 2010, and that income would normally be (or include) a disability benefit from PERA-P&F if he believed he was qualified, it is unclear why Mr. Shaw would neglect to pursue this income source. Mr. Shaw may be requested by the Commission to provide a clarification of his post-2010 financial situation.
3. Unclear Status of Other Law Enforcement Employment Beyond Wadena County Sheriff's Department. The policy issue is the unclear situation of Mr. Shaw's eligibility to apply for a PERA-P&F disability benefit because a March 14, 2006, Brainerd Dispatch account of the shooting incident indicates that Mr. Shaw, in addition to law enforcement employment by the Wadena county sheriff's department, was a part-time police officer employed by the city of Battle Lake and was a part-time police officer employed by the city of Wadena. If Mr. Shaw's employment with Battle Lake or Wadena terminated after October 2010, the disability benefit application deadline potentially would have been later, changing the equities. If Mr. Shaw remains a Battle Lake police officer or a Wadena police officer, he would unlikely be considered by PERA to be disabled because of that fact or would not need the deadline extension if he is disabled, but employed. Mr. Shaw may be requested by the Commission for a clarification of his post-March 2006 public employment.
4. Unclear Likelihood of an Eventual Affirmative PERA Determination of the Existence of a Disability. The policy issue is the lack of clarity about the likelihood that PERA would find Mr. Shaw to be disabled from the aftermath of the March 2006 shooting incident if the deadline were extended. If Mr. Shaw is not likely to be successful in pursuing a disability claim upon a future application, a legislatively granted extension of the disability benefit deadline would be a waste of limited and valuable legislative time. The questions about Mr. Shaw's condition, from the limited information available, arise from the length of time (4.5 years) between the shooting incident that apparently triggered the disability and his disability benefit application, the initial self-diagnosis of depression and/or post-traumatic stress disorder as the disabling condition, the length of time (more than five years) during which Mr. Shaw did not seek any expert medical assistance for his mental health condition, the lack of clarity whether or not his current medical practitioners concur with his self diagnosis of disability, the lack of clarity about Mr. Shaw's employment by Battle Lake and Wadena, the reason(s) for his termination(s) of those employment(s), if any, and the lack of clarity about whether or not Mr. Shaw is receiving Workers Compensation benefits based on his claimed disability. Mr. Shaw may be requested by the Commission to provide additional information about his claimed disability and its determination.
5. Precedents for and Potential for the Creation of Future Adverse Precedents by the Proposed Legislation. The policy issue is the dual questions of whether there are past precedents sufficiently similarly situated to argue for this proposed legislation and whether the proposed legislation, if enacted, would create a potential precedent for future extension request that would be problematic. Part b. of Attachment B discusses past precedents for disability deadline extensions. Beginning in 2000, the Legislature has approved six disability benefit application deadline extensions, of which five were recommended by the Legislative Commission on Pensions and Retirement. Four of the six special law provisions involved general employee retirement plans, where the disability standard was a total and permanent disability (i.e., no significant post-disablement gainful employment), and two involved public safety employee retirement plans, where the disability standard is the incapacity to continue to perform the person's public safety employment position. The 2002 extension parallels the current situation very closely. The proposed extension here has no greater adverse future precedential value than the 2002 Blooming Prairie police officer extension, which also involved depression and post-traumatic stress disorder. Because these disability causes may have a longer time horizon in their ultimate recognition, the reduction in the PERA-General and PERA-P&F disability application deadline period from three years to 18 months in 2009 may give rise to more of these extension requests, and, if so, may necessitate a future change in the deadline period for mental health disabilitants.

#### Potential Amendment for Commission Consideration

**H1352-1A** extends the sunset date on the special disability benefit application from July 1, 2014, to July 1, 2015, adjusting the date on proposed legislation introduced in 2013 for legislative action in 2014.

## Background Information on Filing Deadlines for Minnesota General Employee Public Retirement Plan Benefits

For general employee public retirement plans in Minnesota, time limits or deadlines sometimes exist, presumably for the primary reason of administration efficiency and convenience.

The following summarizes the filing deadlines or time limits applicable to statewide and major local Minnesota general employee retirement plans:

	MSRS-General	PERA-General	TRA	1 <sup>st</sup> Class City Teacher Plans	MERF
Retirement Annuity Application Time Limit	Application may not be filed more than 90 days before employment terminates. <i>[352.115, Subd. 8]</i>	No application filing time limit. <i>[353.29, Subd. 4]</i>	Application may not be filed more than 120 days before the termination of teaching service. <i>[354.44, Subd. 3]</i>	Application may not be filed more than 60 days before teaching service terminates. <i>[354A.31, Subd. 2]</i>	No application filing time limit. <i>[MS 2008, Sec. 422A.14]</i>
Disability Benefit Application Time Limit	Application must be filed within 18 months of the date of the termination of public employment. <i>[352.113, Subd. 4, Para. (d)-(e)]</i>	Application must be filed within 18 months of the date of the termination of public employment. <i>[353.33, Subd. 2]</i>	Application must be filed within 18 months of the date of the termination of teaching service. <i>[354.48, Subd. 2]</i>	No application filing time limit. <i>[354A.36, Subd. 1-2]</i>	No application filing time limit. <i>[MS 2008, Sec. 422A.14]</i>
Survivor Benefit Application Time Limit	No application filing time limit. <i>[352.12, Subd. 2]</i>	No application filing time limit. <i>[353.22, Subd. 1a]</i>	No application filing time limit. <i>[354.46, Subd. 2]</i>	No application filing time limit. <i>[354A.35, Subd. 2]</i>	No application filing time limit. <i>[MS 2008, Sec. 422A.23, Subd. 5]</i>

Where there is a limit on how early an application for a retirement annuity may be filed (General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the Teachers Retirement Association (TRA), and the first class city teacher retirement fund associations (Duluth Teachers Retirement Fund Association (DTRFA) and St. Paul Teachers Retirement Fund Association (SPTRFA)), the limit likely is intended to reduce the administrative burden on the plan administration to keep track of binding documents over an extended period, a consideration that may have been important before the widespread computerization of pension plan record keeping practices, and to reduce the potential for inadvertent errors or errors resulting from changing circumstances between the time the application was filed and the actual retirement.

For the retirement plans where there is a specific limit on how much longer after a disability or after the termination of public employment a disability benefit application can be filed (MSRS-General, General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), and TRA), the limit is likely intended to make the determination of a disability more accurate and timely. For general employee retirement plans, the standard for receiving a disability benefit is the existence of a total and permanent disability when employment terminated, meaning that the employee is no longer able to engage in any gainful employment for an extended expected period. To determine the inability to be employed and to connect it with the end of public employment, the medical and related documentation of the disability must be assembled reasonably contemporaneously with the injury or illness causing the disability. Where the disability is the result of a chronic illness, such as multiple sclerosis, ascertaining the start of the disability and when the illness made continued employment impossible may be difficult, making the time limit hard to determine. For the retirement plans that lack a time limit on the filing of a disability application (the first class city teacher retirement plans and the former Minneapolis Employees Retirement Fund (MERF)), that lack of a time limit is combined with a lack of retroactivity beyond (earlier) the disability application date.

None of the general employee retirement plans place a time limit on how long after the date of death giving rise to a survivor benefit application can be filed. The lack of a time limit is offset by the absence of any benefit retroactivity before the date of the application.

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## Background Information on Disability Benefit Application Deadline Extensions

1. Applicable Commission Pension Policy Principle. The Legislative Commission on Pensions and Retirement has formulated a pension policy principle, Principle II.C.11, relating to extensions or waivers of benefit application deadlines, including disability benefit application deadlines.

The principle provides:

II.C.11. Deadline Extensions and Waivers

Deadline extensions or waivers should be permitted only if, on a case-by-case basis, it is determined that there is a sufficient equitable basis for the extension or waiver, the extension or waiver does not involve broader applicability than the pension plan members making the request, and that the extension or waiver is unlikely to constitute an inappropriate precedent for the future.

Deadline extensions or waivers are legislatively authorized waivers of time requirements relating to public pension coverage or public pension benefits. The various Minnesota public pension plans have numerous deadlines for exercising coverage options, making payments in lieu of member contribution deductions, repaying refunds, or applying for benefits. Like any administrative deadline, due to unfortunate occurrences, procrastination, or neglect a deadline may be missed and the remedy of a deadline extension or waiver sought. In the Commission policy principle, the Commission has emphasized both individual and group equities, in requiring that the extension be meritorious without overriding adverse individual considerations, that any broader application to individuals with comparable equitable considerations be gauged, and that no adverse future precedent will be created.

Deadlines exist in public pension plan provisions to provide closure in applications, payments, and elections, and to avoid the same "adverse election" or "election against the fund" phenomenon that occurs with purchases of prior service. Deadlines also function for administrative considerations and convenience, to keep paperwork moving smoothly. Grants of deadline extensions to individuals are comparatively rare special legislation occurrences, unlike purchase of prior service special legislation. Deadline extensions and waivers can allow an individual pension plan member to control the circumstances as to the date on which a retirement benefit can be obtained, thus departing from generally applicable averages on which actuarial assumptions are formulated, and potentially increasing the actuarial accrued liability of the pension plan involved.

2. Past Precedent for Disability Benefit Application Deadline Extensions.

- In 1995, H.F. 688 (Dauner); S.F. 643 (Langseth) would have permitted a teacher who was employed as a welding instructor at the Detroit Lakes vocational-technical institute before terminating in 1991, to apply for Teachers Retirement Association (TRA) disability benefits, notwithstanding the 180 days following terminating deadline in TRA law. The Commission heard this disability deadline extension request but took no action.
- In 2000 (Laws 2000, Ch. 461, Art. 19, Sec. 1), a former State Department of Economic Security employee who was disabled in 1994 was permitted to file a late disability benefit application with the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). Testimony in connection with the 2000 special legislation indicated that the state employee involved was misinformed about his disability benefit entitlement until he was employed part-time by the Minnesota Council on Disability.
- In 2002 (Laws 2002, Ch. 392, Art. 14, Sec. 9), a former Blooming Prairie police officer who was injured while conducting traffic management at a highway accident site in 1997 was permitted to file a late disability benefit application with the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) or with the Public Employees Police and Fire Retirement Plan (PERA-P&F). Testimony in connection with the 2002 special legislation indicated that the failure of the Blooming Prairie employee to file a timely disability benefit application was due to depression and post-traumatic stress disorder resulting from the accident causing the disability.
- In 2005 (1<sup>st</sup> Spec. Sess., Laws 2005, Ch. 1, Art. 2, Sec. 159), a former Department of Natural Resources photo lab supervisor who terminated that employment in 1998 was permitted to apply for an MSRS-General disability benefit, notwithstanding the 180-day time limit in MSRS law. The provision did specifically require that the individual provide satisfactory proof that the individual became disabled while a state employee. This provision was never heard by the Commission, but was added to an Agriculture, Environment, and Natural Resources bill.

- In 2007 (Laws 2007, Ch. 134, Art. 12, Sec. 6), a retired Benson school district employee was permitted to file a late disability benefit application with PERA-General.
- In 2009 (Laws 2009, Ch. 169, Art. 12, Sec. 14), former employee of the Minnesota Veterans Home at Silver Bay was permitted to file a late disability benefit application with MSRS-General after the application deadline filing date had passed.
- In 2012 (Laws 2012, Ch. 286, Art. 13, Sec. 6), the widow of a Mahnomen County deputy sheriff who died 18 months after being shot while on duty and who failed to timely apply for PERA-P&F disability benefits prior to death was granted authority to apply for the foregone disability benefit despite the expiration of the application deadline.



## Background Information on Disability Benefit Application Time Limitations

1. Disability Coverage in General. With the exception of the Legislators Retirement Plan and the Elected State Officers Retirement Plan, all statewide or major local Minnesota defined benefit retirement plans provide disability benefit coverage.

Basic retirement plans, where the public pension plan coverage does not supplement Social Security coverage, provide the totality of disability benefit coverage. Coordinated retirement plans provide benefit coverage that supplements Social Security disability benefits and both provide disability coverage. Public safety and quasi-public-safety retirement plans provide disability benefits for inability to perform any significant gainful employment (total and permanent disabilities) or to perform the tasks of the person's particular employment position (occupational disabilities). General employee retirement plans provide disability benefits solely for total and permanent disabilities.

The disability benefit is typically the accrued retirement annuity, unreduced for early commencement.

Some Minnesota and major local Minnesota retirement plans have limitations on the time period after the termination of employment during which a plan member or someone authorized to act on behalf of the plan member can file a disability benefit application.

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

The plans typically place an end date on when an application can be filed. The shortest seems to be 18 months after termination of service, although a few plans have no limit. Disability benefits are payable from our public plans for a disabling event or illness that occurred while the person was a public employee. If an event or illness is sufficient to cause the person to be disabled, that should be evident within a reasonable timeframe. Also, at some point in time following termination of service, it becomes too difficult to determine whether the disabling event or illness can be traceable to the employment period, rather than to an injury, re-injury, or illness that occurred after the person left public employment.

The statutes governing the various Minnesota general employee plans, major statewide public safety plans, and correctional employee retirement plans are not consistent in the time limits for filing a disability benefit application. Presumably, creating more uniformity across similar plans has merit, since this would cause similar employees to be treated more consistently.

3. Applicable Commission Pension Policy Principle. The applicable pension policy principle established by the Legislative Commission on Pensions and Retirement is Principle 2.c.11., covering deadline extensions and waivers. The principle provides:

11. Deadline Extensions and Waivers

Deadline extensions or waivers should be permitted only if, on a case-by-case basis, it is determined that there is a sufficient equitable basis for the extension or waiver, the extension or waiver does not involve broader applicability than the pension plan members making the request, and that the extension or waiver is unlikely to constitute an inappropriate precedent for the future.

Deadline extensions or waivers are legislatively authorized waivers of time requirements relating to public pension coverage or public pension benefits. The various Minnesota public pension plans have numerous deadlines for exercising coverage options, making payments in lieu of member contribution deductions, repaying refunds, or applying for benefits. Like any administrative deadline, due to unfortunate occurrences, procrastination, or neglect a deadline may be missed and the remedy of a deadline extension or waiver sought. In the Commission policy principle, the Commission has emphasized both individual and group equities, in requiring that the extension be meritorious without overriding adverse individual considerations, that any broader application to individuals with comparable equitable considerations be gauged, and that no adverse future precedent will be created.

Deadlines exist in public pension plan provisions to provide closure in applications, payments, and elections, and to avoid the same "adverse election" or "election against the fund" phenomenon that

occurs with purchases of prior service. Deadlines also function for administrative considerations and convenience, to keep paperwork moving smoothly. Grants of deadline extensions to individuals are comparatively rare, unlike purchases of prior service. Deadline extensions and waivers can allow an individual pension plan member to control circumstances, departing from generally applicable averages, and potentially increasing the actuarial accrued liability of the pension plan involved.

#### 4. Comparison of Current Disability Benefit Application Time Limits.

<b>General Employee Retirement Plans</b>		
<u>Retirement Plan</u>	<u>Eligible Applicant</u>	<u>Time Limit on Application</u>
General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General)	Covered state employee or someone acting on behalf of the employee with satisfactory proof of authority determined by the MSRS executive director. <i>[352.113, Subd. 2]</i>	Application must be filed within 18 months of the termination of state employment as long as the disability occurred while in state employment. <i>[352.113, Subd. 4, Para. (d)-(e)]</i>
General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General)	Covered public employees. <i>[353.33, Subd. 1]</i>	Application must be filed within 18 months. <i>[353.031, Subd. 3, Para. (a)]</i>
Teachers Retirement Association (TRA)	Covered teacher or another person authorized to act on behalf of the covered teacher. <i>[354.48, Subd. 2]</i>	Application must be filed within 18 months following the termination of teaching service. <i>[354.48, Subd. 2]</i>
Unclassified Employees Retirement Program (MSRS-Unclassified)	Participant. <i>[352D.065, Subd. 1]</i>	No time limitation.
First Class City Teacher Retirement Fund Associations (DTRFA/SPTRFA)	Eligible coordinated member. <i>[354A.36, Subd. 1]</i>	No time limitation.
Minneapolis Employees Retirement Fund (MERF) Division of PERA	Head of the department in which the contributing employee was employed, the contributing employee, or a person acting on behalf of the contributing employee. <i>[422A.18, Subd. 1]</i>	No time limitation.

<b>Public Safety Employee Retirement Plans</b>		
<u>Retirement Plan</u>	<u>Eligible Applicant</u>	<u>Time Limit on Application</u>
Correctional State Employees Retirement Plan (MSRS-Correctional)	Covered correctional employee. <i>[352.95, Subd. 1]</i>	No application before the day after the last day the correctional employee physically was on the job; application must be filed within 18 months of the termination of state employment as long as the disability occurred while in state employment. <i>[352.95, Subd. 3]</i>
State Patrol Retirement Plan	Member of the plan. <i>[352B.101]</i>	Application must be filed within 18 months of the termination of employment as long as the disability occurred while in employment. <i>[352B.10, Subd. 2a]</i>
Public Employees Police and Fire Plan (PERA-P&F)	Covered PERA-P&F member. <i>[353.33, Subd. 1]</i>	Application must be filed within 18 months. <i>[353.031, Subd. 3, Para. (a)]</i>
Local Government Correctional Service Retirement Plan (PERA-Correctional)	Covered local government correctional employee. <i>[353E.06, Subd. 1]</i>	Application must be filed within 18 months. <i>[353.031, Subd. 3, Para. (a)]</i>

<b>Special Retirement Plans</b>		
<u>Retirement Plan</u>	<u>Eligible Applicant</u>	<u>Time Limit on Application</u>
Military Affairs Personnel Retirement Plan (MSRS-Military Affairs)	Covered employee. <i>[352.85, Subd. 2]</i>	Application must be filed within 18 months of the termination of state employment as long as the disability occurred while in state employment. <i>[352.85, Subd. 2]</i>
Transportation Dept. Pilots Retirement Plan (MSRS-Transportation Pilots)	Covered employee. <i>[352.86, Subd. 1a]</i>	Application must be filed within 18 months of the termination of state employment as long as the disability occurred while in state employment. <i>[352.86, Subd. 6]</i>
State Fire Marshal Fire/Arson Investigator Retirement Plan (MSRS-Fire Marshal)	Eligible plan member. <i>[352.87, Subd. 4]</i>	Application must be filed within 18 months of the termination of state employment as long as the disability occurred while in state employment. <i>[352.87, Subd. 6]</i>

5. Development of Disability Benefit Application Time Limits. The 18-month restriction was created in TRA in 1981 (Laws 1981, Ch. 160, Sec. 8). Prior to 1981, TRA had no time limit.

MSRS moved to an 18-month limit in 2009 (Laws 2009, Ch. 169, Art. 2, Sec. 9). Previously, MSRS had a 180 day after the date of termination time limit.

PERA moved to an 18-month limit in 2007 (Laws 2007, Ch. 134, Art. 4, Sec. 8). Before then, time limits varied between PERA plans. PERA-General and PERA-Correctional permitted applications within three years following termination, while the limit in PERA-P&F was two years. PERA administrators concluded that two or three years was too long, and proposed restricting the time limit to 18 months, comparable to TRA.

6. Special Law Disability Benefit Application Deadline Extensions and Waivers. There has been prior special legislation permitting late disability benefit applications. When the Commission has recommended provisions of this type to pass, there has been some justification which the Commission found compelling to justify the deadline waiver. The provisions are as follows:
- In 1995, H.F. 688; S.F. 643 would have permitted a teacher who was employed as a welding instructor at the Detroit Lakes vocational-technical institute before terminating in 1991, to apply for Teachers Retirement Association (TRA) disability benefits, notwithstanding the 180 days following terminating deadline in TRA law. The Commission heard this disability deadline extension request but took no action.
  - In 2000 (Laws 2000, Ch. 461, Art. 19, Sec. 1), a former Minnesota Department of Economic Security employee who was disabled in 1994 was permitted to file a late disability benefit application with the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). Testimony in connection with the 2000 special legislation indicated that the state employee involved was misinformed about his disability benefit entitlement until he was employed part-time by the Minnesota Council on Disability.
  - In 2002 (Laws 2002, Ch. 392, Art. 14, Sec. 9), a former Blooming Prairie police officer who was injured while conducting traffic management at a highway accident site in 1997 was permitted to file a late disability benefit application with the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) or with the Public Employees Police and Fire Retirement Plan (PERA-P&F). Testimony in connection with the 2002 special legislation indicated that the failure of the Blooming Prairie employee to file a timely disability benefit application was due to depression and post-traumatic stress disorder resulting from the accident causing the disability.
  - In 2005 (1<sup>st</sup> Spec. Sess. Laws 2005, Ch. 1, Art. 2, Sec. 159), a former Minnesota Department of Natural Resources photo lab supervisor who terminated that employment in 1998 was permitted to apply for an MSRS-General disability benefit, notwithstanding the 180-day time limit in MSRS law. The provision did specifically require that the individual provide satisfactory proof that the individual became disabled while a state employee. This provision was never heard by the Commission, but was added to an Agriculture, Environment, and Natural Resources bill.
  - In 2007 (Laws 2007, Ch. 134, Art. 12, Sec. 6), a former school bus driver covered by PERA-General with a variety of health problems from prior railroad employment and school district employment was permitted to make a late disability benefit application. No equitable arguments for the authorization appear to have been offered in testimony, but the bus driver's public employment career was short, his disability benefit very modest, and he did qualify for a Railroad Retirement System disability benefit.
  - In 2009 (Laws 2009, Ch. 169, Art. 12, Sec. 14), a former employee of the Minnesota Veterans Home at Silver Bay, Minnesota, who suffered from various mental health problems, had a lifting restriction, and qualified for Social Security disability benefits, was authorized to make a late disability application to MSRS-General. Testimony indicated that he was unaware of the time limit until a social services agency brought it to his attention.

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## Background Information on the PERA-P&F 2004 Disability Benefit Application and Determination Reforms

1. PERA-P&F Disability Benefit and Related Coverage. The package of disability-related benefits provided to members of the Public Employees Police and Fire Retirement Plan (PERA-P&F) includes the PERA-P&F duty disability or non-duty disability benefits, the PERA-P&F disability automatic survivor benefit coverage, and employer-paid health care coverage for duty public safety pension plan disability, as follows:
  - a. PERA-P&F Disability Benefit. Due to the hazardous nature of public safety employment, public safety plans provide generous disability benefits. In PERA-P&F, a disability receives the retirement benefit to which the individual would be eligible, but without any reduction due to early retirement, or a minimum benefit amount if the disability did not have long public safety service credit. A duty disability benefit is payable if the person is physically or mentally unable to perform duties as a police officer or firefighter as a direct result of an act of duty. The duty disability benefit amount is 60% of average salary plus 3% of average salary for each year in excess of 20 years of allowable service. The disability benefit is reduced to that amount which, when added to Workers' Compensation and actual earnings, does not exceed salary or 125% of pay for an employee at the same position. Payments change to a retirement annuity at age 65. A non-duty disability benefit is payable if the person is physically or mentally unable to perform duties as a police officer or firefighter with one year of allowable service. The non-duty disability benefit is 3% of the person's highest five successive years average salary per year of allowable service credit, with a minimum benefit based on 15 years of service credit for a shorter service disability. Payments change to a retirement annuity at age 65. PERA-P&F duty and non-duty disability benefits are eligible for post-retirement adjustments from the Minnesota Post Retirement Investment Fund.
  - b. Automatic Survivor Coverage. PERA-P&F disability benefits include automatic surviving spouse coverage. If an individual were to retire under the PERA-P&F plan rather than become a PERA-P&F disability, the person would need to take a reduction in the retirement benefit to provide joint and survivor coverage, if that coverage is elected. In contrast, survivor coverage comparable to that provided under a joint and survivor annuity is provided automatically to the spouse of disability without any benefit reduction on the part of the disability.
  - c. Employer-Paid Health Care for Public Safety Plan Disability and Their Families. Public safety plan duty-related disability receive continued employer-paid health care. Minnesota Statutes, Section 299A.465, enacted in 1999, requires the employer to continue to pay the employer contribution portion of health care insurance costs to age 65 if the disability is duty-related.
2. Pre-2004 PERA-P&F Disability Program Problems.
  - a. In General. In the last few years, the Public Employees Retirement Association (PERA) has become increasingly concerned about significant increases in Public Employees Police and Fire Retirement Plan (PERA-P&F) disability applications, which has led to a sizable increase in the number of PERA-P&F disability. In the broadest terms, this increased use of disability stems from the ease of qualifying for these benefits in PERA-P&F, and in public safety plans in general, and the strong financial incentive to be a PERA-P&F disability prior to age 65 rather than a service retiree.
  - b. Benefit Plan Design Elements. It is easier to qualify for disability in the PERA-P&F plan than in the PERA General Employee Retirement Plan (PERA-General) because disability is based on the ability to perform in a specific public safety occupation, and PERA has not utilized historically a disability benefit application and review process that was specifically designed for a public safety employee plan. This situation has led to the need for reforms. In PERA-P&F and other public safety plans, an individual who can no longer perform the duties to which the individual had been assigned qualifies for disability. In contrast, PERA-General and other general employee plans use a far more restrictive standard, requiring that the individual must be unable to engage in any gainful employment in order to qualify for disability benefits.

Recent PERA-P&F experience studies show a large number of PERA-P&F disability applications, considerably higher than expected, by members who were approaching early retirement age for the plan (age 50) and by those who were approaching normal retirement age (age 55). Some of these applications are likely due to the strong financial incentive provided by law to seek disability benefits rather than retirement benefits for an individual who is eligible to receive either benefit.

- c. Actuarial Cost Differential. The calculated actuarial cost of disability benefit coverage is much higher for public safety employee retirement plans than it is for general employee retirement plans. The following sets forth the calculated normal cost requirement over time for the disability benefit coverage for PERA-P&F as compared to the State Patrol Retirement Plan, the other statewide public safety employee retirement plan; the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) and the Local Government Correctional Service Retirement Plan (PERA-Correctional), the two statewide quasi public safety employee retirement plans; and the MSRS General State Employees Retirement Plan (MSRS-General), PERA-General, and the Teachers Retirement Association (TRA):

Plan	1990	1995	2000	2001	2002	2003	2004	2005
PERA-P&F	1.70%	2.12%	2.02%	2.03%	2.03%	2.26%	3.50%	3.42%
State Patrol Plan	1.84	2.39	2.39	2.41	2.43	2.43	2.50	2.50
MSRS-Correctional	0.21	0.24	1.23	1.25	1.24	1.25	1.61	1.60
PERA-Correctional	N/A	N/A	2.11	2.00	1.93	1.86	1.54	1.53
MSRS-General	0.25	0.27	0.46	0.46	0.42	0.42	0.45	0.43
PERA-General	0.30	0.49	0.49	0.49	0.37	0.37	0.34	0.35
TRA	0.47	0.62	0.10	0.10	0.21	0.21	0.18	0.19

Sources: Table 11 of Actuarial Valuation Reports for 1880, 1005, 2000, 2001, 2002, 2003  
Exhibit V of Actuarial Valuation Reports for 2004 and 2005

The calculated normal cost of disability benefit coverage for PERA-P&F has doubled over the last 16 years and is now the highest normal cost element for any statewide retirement plan compared. In addition to being the highest percentage of covered payroll in absolute terms, the PERA-P&F normal cost for the disability benefit component of its benefit plan is also the highest in proportion to the total normal cost of the plan for 2005, as follows:

Plan	Disability Normal Cost	Total Normal Cost	Relationship Component to Whole
PERA-P&F	3.42%	22.28%	15/96
State Patrol	2.50	23.03	1/9
MSRS-Correctional	1.60	15.01	1/9
PERA-Correctional	1.53	12.31	1/8
MSRS-General	0.43	8.79	1/20
PERA-General	0.35	7.79	1/25
TRA	0.19	8.02	1/42

Source: 2005 Actuarial Valuations

- d. PERA-P&F Disability Experience. In recent years, in part because of the attractive package of benefits provided to PERA-P&F disabilitants, particularly if the disability is duty-related, the number of disabilitants has been much higher than expected under the prior actuarial assumptions used in actuarial valuations. Thus, the normal cost of PERA-P&F disability coverage (and possibly the State Patrol Plan) as indicated in the actuarial valuations could be considerably understated. The higher-than-expected use of disability has held for all ages other than the earliest ages. The table below, from an experience study report dated December 10, 2002, by PERA's retained actuarial firm, Mercer Human Resource Consulting, shows the PERA-P&F disabilities that occurred between 1997 and 2001 compared to the expected numbers given the assumptions used in the actuarial work. At lower ages there were fewer disabilities than expected, but from age 35 and older, there were considerably more than expected. The highest spikes are at age 45 to 49, prior to the earliest service retirement age for the plan (age 50), and particularly the age group 50 to 54, (prior to age 55, the normal retirement age for this plan) where disabilities were 283% of the expected amount. Attachments to this memo show similar information for each separate year or groups of years within the 1997 to 2001 period. For the 50 to 54 age group, disabilities were 178% of those expected in 1997-1998, 161% in 1998-1999, 375% in 1999-2000, and 391% of those expected in 2000-2001. The table also shows 28 disabilitants occur since at age 55 or after. Under the pre-1993 law this would not occur; these individuals would be treated as retirees.

PERA-P&F Plan Disabilities, Comparison of Actual to Expected 1997-2001				PERA-P&F Plan Disabilities, Comparison of Actual to Expected 1997-2001			
Age	Actual	Expected	Actual/Expected	Age	Actual	Expected	Actual/Expected
20-24	0	1.25	0%	50-54	91	32.11	283%
25-29	1	7.65	13%	55-59	21	14.05	149%
30-34	10	11.87	84%	60-64	5	0.00	--
35-39	17	14.93	114%	65+	2	0.00	--
40-44	31	17.75	175%	Total	226	125.81	180%
45-49	48	26.20	183%				

3. 2004 PERA-P&F Disability Benefit Application and Determination Process Reforms. In 2004 (Laws 2004, Ch. 267, Art. 8, Sec. 20-25), the Legislative Commission on Pensions and Retirement recommended and the Legislature enacted several disability benefit application and review procedures for PERA-P&F.

The 2004 reforms included the following PERA-P&F disability benefit applications, determination, and review procedure reforms:

- a. Benefit Application on PERA Form. The applicant must apply for benefits in writing on forms provided by the executive director (Minn. Stat. Sec. 353.656, Subd. 8, Para. (a)).
  - b. Written Expert Report Required. The application must include adequate proof of a disability including a written report by a licensed physician, chiropractor, or psychologist (Minn. Stat. Sec. 353.656, Subd. 5, Para. (c)).
  - c. Medical Release Required for Benefit Continuation. The individual must release all medical records, both for purposes of the initial benefit application or for later benefit continuation purposes (Minn. Stat. Sec. 353.656, Subd. 5, Para. (d)).
  - d. Two-Year Application Filing Deadline. If the application is filed within two years of the date of the injury or illness, the disability determination depends on whether the individual is capable of performing the duties of the position held on the date of the injury or illness. If the application is filed more than two years after the injury or illness, the determination is whether the individual can perform the duties assigned during the 90 days before filing the application (Minn. Stat. Sec. 353.656, Subd. 8, Para. (b)).
  - e. Revised Standard After Two-Year Deadline. Applications can be filed after termination of service, but if the application is filed more than two years after the individual terminates from PERA-P&F covered employment, the individual must provide evidence that the disability is the direct result of an injury or illness contracted while the individual was a PERA-P&F covered employee (Minn. Stat. Sec. 353.656, Subd. 8, Para. (c)).
  - f. Absolute Three-Year Application Deadline. PERA-P&F disability benefit applications are not permitted three years after the applicant terminated PERA-P&F-covered employment (Minn. Stat. Sec. 353.656, Subd. 8, Para. (d)).
  - g. First Report of Duty-Related Injury Required. Every duty-related application must include a first report of injury, as specified under workers' compensation law (Minn. Stat. Sec. 353.656, Subd. 8, Para. (e)).
  - h. Required Employer Input. The employer must provide input regarding the individual's ability to provide services (Minn. Stat. Sec. 353.656, Subd. 8, Para. (b)).
  - i. Voidable Application Without Employment Termination. If a disability benefit application is approved but the individual does not terminate service or is not placed on an authorized leave within 45 days after the application is approved, the application is voided and another may not be filed within one year (Minn. Stat. Sec. 353.656, Subd. 8, Para. (f)).
  - j. Simultaneous Retirement and Disability Applications Permitted. A disability benefit application is also permitted to file simultaneous disability benefit and retirement benefit applications, with the retirement application processed if the disability benefit application is denied (Minn. Stat. Sec. 353.656, Subd. 8, Para. (g)).
  - k. Repayment Time Limit. Individuals may repay a refund up to six months after the effective date of the disability benefits (Minn. Stat. Sec. 353.656, Subd. 8, Para. (h)).
  - l. Maximum Benefit Accrual Retroactivity. Benefits can accrue up to 90 days before the filing of an application, but not prior to the date of the disabling injury or illness (Minn. Stat. Sec. 353.656, Subd. 10).
  - m. Independent Medical Examination Required. An individual applying for or receiving disability benefits must submit to an independent medical evaluation paid for by PERA (Minn. Stat. Sec. 353.656, Subd. 11).
4. Appeal Time Limit. Any applicant who is denied initial benefits or a benefit continuation may appeal the executive director's decision to the PERA board within 45 days of receipt of a certified letter notifying the individual of denial of benefits or benefit continuation (Minn. Stat. Sec. 353.656, Subd. 12).

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**Background Information on  
PERA-P&F Disabilitants and the  
Benefits Provided to Those Disabled after June 30, 2007**

Revised Provisions Following Enactment of Laws 2007, Chapter 134, Article 2. The package of benefits provided to members of the Public Employees Police and Fire Retirement Plan (PERA-P&F) who became disabled after June 30, 2007, was revised as follows:

- New disability categories were created, to replace the existing use of “duty” and “non-duty” to defined categories of disabilitants. As revised, a duty disability is a disability (physical or psychological) related to performing job-related duties that present inherent dangers, rather than being any disability that occurs or is related to being on duty. Regular disability, which replaces non-duty disability in existing statutes, is any job-related disability resulting from activity that did not present inherent danger, and also all disabilities resulting from any non-duty activity.
- Duty disabilities were capped at 60% of the high-five salary, rather than 60% plus 3% of the high-five for each year of service over 20. Regular disabilities were capped at 45% of the high-five salary, rather than being computed like a service annuity based on actual service, with a minimum benefit of 45% of the high-five salary.
- Disabilitants (duty-related and regular) who are at least 55 at the time of disability but have less than 20 years service in duty disability cases, or 15 years service in regular disability cases, can receive disability benefits for five years, then the disability benefit must terminate.
- For all PERA-P&F disabilitants, disability benefits were converted to a retirement annuity when the member reaches age 55; or for those who are 55 when the disability commenced, on the five-year anniversary of the disability; or when a member elects to convert to an early retirement annuity rather than the disability benefit.
- Disability benefits can be retroactive for up to 90 days if salary or salary-equivalent benefits were not received during that period.
- Disability benefits are not allowed if disability is due to illegal drug use and the individual has not taken part in a rehab program and ceased drug use.
- Three years of service, rather than one year of service, will be required to qualify for surviving spouse annuities if the member’s death was not a line-of-duty death. (A “line-of-duty death” is a new term defined as a death that occurs while performing duties specific to protecting the property and personal safety of others and that present inherent dangers specific to the positions covered by the PERA-P&F. A “not-line-of-duty death” is any death that is not a line-of-duty death.)
- Surviving spouse benefits in death-while-active situations were increased from 50% to 60% of final salary in line-of-duty death situations, and the family maximums related to line-of-duty deaths were revised accordingly.
- Early retirement (by any individual who becomes a PERA-P&F member after June 30, 2007, or by a former member who is reinstated after that date) will require a reduction of .2% for each month that the individual is under age 55, rather than one-tenth.

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## Comparison of the PERA-P&F Disability Benefit Plan after 1996 and before 1997

Duty Disability Benefit	PERA-P&F Current (Post-1997) Benefits	PERA-P&F Pre-1997 Benefits
Age/service requirement	Physically or mentally unable to perform normal duties as a police officer or fire fighter as a direct result of an act of duty specific to protecting property and personal safety of others. Members age 55 or older with 20 or more years of Allowable Service are not eligible to apply for duty disability benefits.	Physically or mentally unable to perform duties as a police officer or fire fighter as a direct result of an act of duty. Members age 55 or older with 20 or more years of Allowable Service are not eligible to apply for disability benefits.
Amount	60.00%, plus an additional 3.00% for each year of service in excess of 20 years, of Average Salary paid until Normal Retirement Age, or for 60 months, whichever is later. The retirement benefit is then recalculated but is never lower than the disability benefit.  If a member became disabled prior to July 1, 1997 but did not commence their benefit before July 1, 1997, the benefit is calculated under the laws in effect before July 1, 1997, and an actuarial increase shall be made for the change in post-retirement interest rates from 5.00% to 6.00%.	60.00% of Average salary plus 3.00% of Average Salary for each year in excess of 20 years of Allowable Service. The disability benefit is reduced to that amount, which when added to Workers' Compensation and actual earnings, does not exceed salary or 125.00% of pay for an employee at same position. Payments change to retirement annuity at age 65.  If a member became disabled prior to July 1, 1997 but did not commence their benefit before July 1, 1997, the benefit payable is calculated under the laws in effect before July 1, 1997, and an actuarial increase shall be made for the change in post-retirement interest rates from 5.00% to 6.00%.
Regular Disability Benefit	PERA-P&F Current (Post-1997) Benefits	PERA-P&F Pre-1997 Benefits
Age/service requirement	Physically or mentally unable to perform normal duties as a police officer or fire fighter with one year of Allowable Service. Members age 55 or older with 15 or more years of Allowable Service are not eligible to apply for regular disability benefits.	Physically or mentally unable to perform duties as a police officer or fire fighter with one year of Allowable Service. Members age 55 or older with 15 or more years of Allowable Service are not eligible to apply for disability benefits.
Amount	45.00% of Average Salary, paid until Normal Retirement Age, or for 60 months, whichever is later. The retirement benefit is then recalculated but is never lower than the disability benefit. Benefits for total and permanent regular disability are calculated as 3.00% of Average Salary for each year of Allowable Service, with a minimum of 45.00% of Average Salary.  If a member became disabled prior to July 1, 1997 but did not commence their benefit before July 1, 1997, the benefit payable is calculated under the laws in effect before July 1, 1997, and an actuarial increase shall be made for the change in post-retirement interest rates from 5.00% to 6.00%.	Normal Retirement Benefit based on allowable Service (minimum of 15 years) and average salary at disability without reduction for commencement before age 55. Payments change to retirement annuity at age 65.  If a member became disabled prior to July 1, 1997 but did not commence their benefit before July 1, 1997, the benefit payable is calculated under the laws in effect before July 1, 1997, and an actuarial increase shall be made for the change in post-retirement interest rates from 5.00% to 6.00%.
Benefit increases	Same as for retirement.	

Retirement Benefit	PERA-P&F Current (Post-1997) Benefits	PERA-P&F Pre-1997 Benefits
Age/service requirement	Upon cessation of disability benefits.	Age 55.
Amount	Any optional annuity continues. Otherwise, the larger of the disability benefit paid before age 55 or the normal retirement benefit available at age 55, or an actuarially equivalent optional annuity.	Any optional annuity continues. Otherwise, the larger of the disability benefit paid before age 55 or the normal retirement benefit available at age 55, or an actuarially equivalent optional annuity.
Form of payment	Life annuity with return on death of any balance of contributions over aggregate monthly payments. Actuarially equivalent options are: 25%, 50%, 75% or 100% Joint and Survivor with bounce back feature. The Joint and Survivor options are determined on an actuarially equivalent basis, but with no actuarial reduction for the bounce back feature.	Life annuity with return on death of any balance of contributions over aggregate monthly payments. Actuarially equivalent options are: 25%, 50%, 75% or 100% Joint and Survivor with bounce back feature without additional reduction.
Benefit increases	<p>Benefit recipients receive a future annual 1.0% post-retirement benefit increase on January 1, 2011 and January 1, 2012, and an increase matching the rate of inflation, up to 1.5%, each year thereafter. The annual adjustment will match inflation, up to 2.5%, any time the fund exceeds 90% funding (on a Market Value of Assets basis).</p> <p>A benefit recipient who has been receiving a benefit for at least 18 full months as of December 31 will receive a full increase. Members receiving benefits for at least six full months but less than 18 full months will receive a pro rata increase.</p> <p>Members retired under laws in effect before July 1, 1973, receive an additional lump sum payment each year. In 1989, this lump sum payment is the greater of \$25 times each full year of Allowable Service or the difference between \$400 times each full year of Allowable Service and the sum of benefits paid from any Minnesota public pension plan plus cash payments from the Social Security Administration for the preceding fiscal year July 1, 1988 through June 30, 1989. In each following year, the lump sum payment will increase by the same percentage increase that is applied to regular annuities paid from the fund. Effective January 1, 2002, annual lump sum payment is divided by 12 and paid as a monthly life annuity in the annuity form elected.</p>	<p>Benefits may be increased each January 1 depending on the investment performance of the Minnesota Post Retirement Investment Fund (MPRIF).</p> <p>A benefit recipient who has been receiving a benefit for at least 12 full months as of June 30 will receive a full increase. Benefit recipients receiving benefits for at least one full month but less than 12 full months will receive a partial increase.</p> <p>Members retired under laws in effect before July 1, 1973 receive an additional lump sum payment each year. In 1989, this lump sum payment is the greater of \$25 times each full year of Allowable Service or the difference between \$400 times each full year of Allowable Service and the sum of benefits paid from any Minnesota public pension plan plus cash payments from the Social Security Administration for the preceding fiscal year July 1, 1988 through June 30, 1989. In each following year, the lump sum payment will increase by the same percentage increase that is applied to regular annuities paid from MPRIF. Effective January 1, 2002, annual lump sum payment is divided by 12 and paid as a monthly life annuity in the annuity form elected.</p>

File

**Paul Marquart**  
State Representative

District 9B  
Becker, Clay, Traverse and Wilkin  
Counties



# Minnesota House of Representatives

DATE: June 22, 2012

TO: Lawrence Martin, Executive Director  
Ed Burek, Deputy Director  
Legislative Commission on Pensions and Retirement

FROM: Representative Paul Marquart (296-6829)

RE: Dave Shaw, Disability Pension

I was recently contacted by my constituent, Mr. Dave Shaw, regarding his concerns about the fact that he is not able to request a disability pension. I would like to provide you with a brief history of the situation.

Mr. Shaw was employed as a Deputy in the Wadena County Sheriff's office and participating in the PERA Police and Fire plan. In March 2006, he was involved in a shooting. He was not physically injured.

He started suffering from mental health related issues in the years following the incident, and resigned in October 2010. He didn't seek medical help until the last six months.

Mr. Shaw now believes he is disabled as a result of the 2006 incident (depression/PTSD). However, according to the PERA rules for a disability pension, he does not qualify because he didn't apply within 18 months of the date of his resignation. As I understand it, if he had applied within 18 months, they would review his health status to determine his eligibility for a disability pension.

I would appreciate your assistance with drafting legislation that would allow Mr. Shaw a new window of time to request a disability pension. If you need additional information from Mr. Shaw, please don't hesitate to contact him at (218) 251-0700. His address is 12965 Ideal Drive, Lake Park, MN 56554.

If you have any additional questions, please feel free to contact me or Marye Knudson (297-8168) in DFL Constituent Services, who has been researching this issue for me.

**LCPR** JUN 26 2012



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# Wadena County deputy wounds man

## Rural Sebeka man shot in leg after pointing firearm, report says

**Posted:** Tuesday, March 14, 2006

MATT ERICKSON

Staff Writer

A Wadena County sheriff's deputy shot a 62-year-old rural Sebeka man in the leg Saturday morning after the man pointed a firearm at the deputy.

In a news release, Wadena County Sheriff Mike Carr said about 9:45 a.m. Deputy David Shaw attempted to stop Gary Franklin Alban near his rural Sebeka home. Alban was wanted on a warrant for three driving-related offenses, including driving after license revocation, careless driving and seat belt use violation.

Alban wouldn't stop for Shaw, Carr said, and a brief vehicle pursuit ended in the driveway of Alban's rural Sebeka home, where Shaw used his squad car to push Alban's vehicle into the ditch.

Alban went into his house, Carr said, and exited with a firearm. Alban advanced on Shaw and pointed the firearm at the deputy. After repeated warnings to Alban to put the firearm down, Shaw shot Alban in the leg.

Alban was treated at a local hospital and is being held in the Wadena County jail. Formal charges are pending from the Wadena County attorney, Chief Deputy Steve Young said Monday.

Shaw, who wasn't injured in the incident, was placed on administrative leave while the shooting is investigated, Young said. Young said Shaw handled the situation correctly.

Shaw is a part-time Wadena County sheriff's deputy and is also a part-time officer for the Battle Lake and Wadena police departments.

Young said his department has dealt with Alban in the past, but declined to comment further.

The Minnesota Bureau of Criminal Apprehension is investigating the shooting.

Assisting at the scene of the shooting were the State Patrol, the Sebeka Police Department, the BCA and Tri-County Ambulance.

[http://brainerddispatch.com/stories/031406/new\\_20060314026.shtml](http://brainerddispatch.com/stories/031406/new_20060314026.shtml)

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1.1 ..... moves to amend S.F. No. ....; H.F. No. 1352, as follows:

1.2 Page 2, line 12, delete "2014" and insert "2015"

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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-EIGHTH SESSION

**H. F. No. 1352**

03/07/2013 Authored by Marquart

The bill was read for the first time and referred to the Committee on Government Operations

1.1 A bill for an act  
1.2 relating to retirement; public employees police and fire retirement plan;  
1.3 modifying the disability benefit application deadline for certain former Wadena  
1.4 County sheriff's deputies.

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

1.6 Section 1. **PERA-POLICE AND FIRE; DISABILITY BENEFIT APPLICATION**  
1.7 **DEADLINE EXTENSION FOR CERTAIN WADENA COUNTY SHERIFF'S**  
1.8 **DEPUTIES.**

1.9 (a) Notwithstanding any provision of Minnesota Statutes, section 353.031 or  
1.10 353.656 to the contrary, an eligible person described in paragraph (b) is authorized to file  
1.11 an application for a disability benefit from the public employees police and fire retirement  
1.12 plan retroactively from the date of a shooting event in which the person was involved  
1.13 on March 11, 2006.

1.14 (b) An eligible person is a person who:

1.15 (1) was born on August 11, 1971;

1.16 (2) was initially employed as a deputy sheriff by Wadena County on March 9, 2006;

1.17 (3) was, by virtue of law enforcement employment, a member of the public  
1.18 employees police and fire retirement plan;

1.19 (4) was involved in the nonfatal shooting incident of a gun-wielding suspect near  
1.20 Sebelia, Minnesota, on March 11, 2006, without being physically injured;

1.21 (5) resigned from the Wadena County sheriff's department in October 2010 after  
1.22 being treated for mental health issues for the prior six months; and

2.1 (6) failed to apply for a mental health-related disability benefit by the November 11,  
2.2 2007, deadline for applying for a disability benefit from the public employees police and  
2.3 fire retirement plan based on the March 11, 2006, shooting incident.

2.4 (c) If the eligible person files a disability benefit application under paragraph (a)  
2.5 on or before the expiration date specified in paragraph (d), and if the eligible person is  
2.6 determined by the Public Employees Retirement Association as being disabled while in  
2.7 the line of duty as a result of the March 11, 2006, shooting incident, the eligible person  
2.8 is entitled to receive a duty disability benefit from the public employees police and fire  
2.9 retirement plan under Minnesota Statutes, section 353.656, subdivision 1 or 1a, including  
2.10 retroactive benefit payments from April 1, 2006.

2.11 (d) The authority for the eligible person to file a disability benefit application under  
2.12 paragraph (a) expires on July 1, 2014.

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