



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Susan Lenczewski, Executive Director  
RE: H.F. 3606 (Erhardt); S.F. xxxx: MSRS; Individual Legislation Permitting Service Credit Transfer from MSRS-General to MSRS-Correctional  
DATE: March 28, 2016

**Summary of H.F. 3606 (Erhardt); S.F. xxxx**

H.F. 3606 (Erhardt); S.F. xxxx provides for the transfer of service credit from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) to the MSRS Correctional State Employees Retirement Plan (MSRS-Correctional) for the 3 years and 3 months period of June 1, 1986, through August 31, 1989, for Daniel Ahlness, a retiree and former security case worker in the Department of Corrections (DOC). Commission staff understands Mr. Ahlness is currently a resident of Wisconsin.

Paragraph (a) of the bill states that an “eligible person” will receive an employer payment on his behalf to MSRS and transfer of service for the period June 1, 1986, through August 31, 1989, if he makes the required payment to MSRS-Correctional.

Paragraph (b) defines an “eligible person” with specificity so that only Mr. Ahlness will be eligible.

Paragraphs (c) and (d) set forth the two conditions that must be satisfied in order for an asset transfer and service credit transfer between MSRS-General and MSRS-Correctional to occur:

- Paragraph (c): Payment by Mr. Ahlness of a lump sum amount to MSRS equal to the difference between the employee contribution that he had made to MSRS-General for the period and the employee contribution he would have had to have made for the period under MSRS-Correctional, plus interest at the rate of 8% compounded annually from June 30, 1999, until the payment is made; and
- Paragraph (d): The DOC is required to make payment to MSRS, within 30 days of the foregoing payment by Mr. Ahlness, of a lump sum amount equal to the difference between the actuarial present value of the additional monthly benefit that will result from the additional service credit less the amount paid by Mr. Ahlness.

Paragraph (e) requires, within 15 days of the DOC payment, that assets will be transferred from MSRS-General to MSRS-Correctional in an amount equal to the value of the pension benefit earned under MSRS-General, reduced by the value of payments already made to Mr. Ahlness.

Paragraph (f) provides that the pension increase is to be retroactively effective to the date of the first payment of his current pension, January 28, 2015. Commission staff understands that MSRS intends to pay the monthly increase for the period since January, 2015, in a lump sum along with the first increased payment after passage of the proposed bill.

**Background**

Mr. Ahlness served as a security case worker and was a member of MSRS-General from May 1986 to September 1989. When he became a Correctional Lieutenant in September 1989, he became covered

by MSRS-Correctional. He is currently receiving two monthly pensions: (i) from MSRS-Correctional in the amount of \$4,327 and (ii) from MSRS-General in the amount of \$190.95. If his MSRS-General service was covered by MSRS-Correctional, his pension would be paid entirely from MSRS-Correctional and would be \$288.55 higher each month than the sum of his two pensions.

*1996 law applied 75% inmate contact threshold and offered service credit purchase and transfer.* In 1996, a law was passed to expand membership in MSRS-Correctional to include security case workers who had at least 75% inmate contact. Employees who had past service as a security case worker were able to "purchase" the right to have the MSRS-General service transferred to MSRS-Correctional if the employee paid the difference between the employee contribution amount paid under MSRS-General and the amount the employee would have paid under MSRS-Correctional. To qualify for the purchase, the DOC had to certify that the employee met the 75% inmate contact threshold.

Members had until June 30, 1999, to pay the difference in employee contributions under the two plans.

For the period at issue, the employee contribution rate under MSRS-Correctional was 4.9%. Under MSRS-General, the employee contribution rate was 3.73% in 1986 through 1988, and increased to 4.34% starting in 1989.

Commission staff understands that the DOC has verified to MSRS that Mr. Ahlness met the 75% inmate contact threshold from June 1, 1986, through August 31, 1989, and should have been eligible for the service transfer and purchase. Allegedly, the Department did not provide the necessary certification for Mr. Ahlness and MSRS did not receive notice that Mr. Ahlness was eligible to purchase past service credit.

*Retirement and appeal.* When Mr. Ahlness retired on January 27, 2015, he asked if he could convert his MSRS-General service to Correctional Plan service. The Executive Director of MSRS informed him that he could not have the service transferred, because the service purchase was required to have been made prior to June 30, 1999. Mr. Ahlness has appealed the MSRS Executive Director's decision to deny his request. Since there was no dispute that he should have had an opportunity to transfer the past service, the decision to deny his request was based solely on the fact that the June 30, 1999, statutory deadline for payment of the employee contribution had expired.

The next stage in the appeals process is to the MSRS board of directors for a hearing and determination. The appeal hearing has been postponed to give MSRS time to seek a legislative remedy to resolve the issue.

*Dollar amounts to be paid by Mr. Ahlness and the DOC.* The actuarial present value of increasing Mr. Ahlness' monthly benefit by \$288.55 is \$43,701. The value of the difference in employee contributions between MSRS-General and MSRS-Correctional for the period at issue plus interest to date is approximately \$11,100; this is the amount that Mr. Ahlness would be required to pay. The difference between the actuarial present value and the employee contributions plus interest to date is approximately \$32,601; this is the portion that the DOC would be required to pay. (The foregoing amounts are approximations because there will be additional interest to the effective date of this legislation, if it is enacted.)

## **Policy Considerations**

H.F. 3606 (Erhardt); S.F. xxxx raises the following constitutional, pension, and public policy issues:

1. The Minnesota Constitution Favors General Legislation over Special Legislation. Article XII of the Minnesota Constitution states:

"The legislature shall pass no local or special law...granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever...."

Article XII also states: "In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2." (Section 2 describes an exception to the special legislation prohibition for laws applicable to a local government unit or group of units and then only with the consent of the local unit or group of units. This exception does not apply to these circumstances.) The constitutional prohibition against special legislation might apply to the proposed legislation, making it vulnerable to a constitutional challenge.

Commission staff understands the DOC has indicated that this legislation may set a precedent that will encourage other similarly situated former DOC employees to claim the requisite 75% inmate contact and request a service credit transfer and DOC contribution. If this is precedent-setting legislation, this is precisely the type of legislation that should be applied more generally to include other similarly situated members. The Commission could decide not to approve the proposed bill and wait to consider general legislation that would provide service credit transfers to other employees with similar past employment history at the DOC. Given time to review member records and work with the DOC, MSRS could come back to the Commission next session with general legislation that would permit service transfers using eligibility criteria that would include Mr. Ahlness, along with any other members who had service with sufficient inmate contact but did not receive the certification.

2. The MSRS Appeal Process Should Be Completed Before Resort to the Legislature. It is not clear whether and to what extent error was committed by the DOC with regard to the inmate contact certification process in 1996 through June 30, 1999, because the facts have not yet been developed through the appeal process provided at Minn. Stat. § 356.96. Commission staff understands Mr. Ahlness has appealed the executive director's denial to the MSRS board of directors, but board review, which could include bringing in the assistance of an administrative law judge in a fact-finding hearing, has not yet occurred.

The Commission is being asked to approve legislation arising from alleged errors that occurred nearly 20 years ago. Before imposing the employer contribution requirement on the DOC, it would be helpful to have the benefit of a complete factual record before approving legislation that is based on allegations of error. If the appeal process is permitted to run its course, additional facts may be brought to light and an appropriate remedy determined in a forum that is not the legislature.

It may be the case that there are simply no longer reliable records to verify Mr. Ahlness' claim. That is legitimately a reason that the administrative law judge and MSRS' governing board might rule against him. At some point, it is no longer possible to reconstruct the facts and is the reason for statutes of limitation in the judicial context. The same concerns arise in this case where over 25 years have passed since Mr. Ahlness worked as a security case worker.

3. The Constituent's Residency. Commission staff understands that Mr. Ahlness is a Wisconsin resident. Minnesota taxpayers fund the DOC, which in turn will fund the employer's share of the cost of the service transfer, thereby allowing Mr. Ahlness to receive a larger pension benefit. In addition, Wisconsin residents typically do not pay Minnesota income tax on pension benefits they receive from a Minnesota-based pension plan. Thus, it is possible that the legislation will increase the cost of state government in favor of an individual who no longer pays Minnesota taxes.