



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: Review of MSRS-Correctional Retirement Plan Membership Provisions and Potential Inclusions and Transfers (Third Consideration)

DATE: October 30, 2003

## Introduction

As a topic for Interim consideration, the Commission chair, Representative Steve Smith, has designated a review of the membership provisions of the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) and consideration of potential proposed inclusions in and transfers to MSRS-Correctional.

The interim project is an outgrowth of proposed pension legislation that was introduced during the 2003 Legislative Session but that was not heard by the Commission, of complaints about the lack of clarity about plan membership eligibility at the newly created prison, the Minnesota Correctional Facility-Rush City, a pattern of Department of Corrections employees taking late career transfers or even demotions to gain MSRS-Correctional Retirement Plan coverage and the corollary State-paid retiree health insurance coverage, and continuing interest by the Department of Corrections to resurrect the administrative coverage transfer provision, Minnesota Statutes 1998, Section 352.91, Subdivision 4, which was repealed in 2000.

This Commission meeting is the third consideration of the topic by the Commission. The Commission staff expects that full Commission consideration on the topic will require three meetings in total.

The first issue memorandum for the Commission interim study provided general background and historical information about the MSRS-Correctional Plan, especially the MSRS-Correctional Plan membership eligibility changes. The second Commission staff issue memorandum reviewed the current actual membership of the MSRS-Correctional Plan based on information requested from MSRS and compares the actual membership with the membership inclusion and exclusion provisions of Minnesota Statutes, Section 352.91.

This Commission staff issue memorandum is the third Commission staff issue memorandum on the topic. It was intended to review the responses from the Minnesota State Retirement System, the Minnesota Department of Employee Relations (DOER), the Minnesota Department of Corrections (DOC), and the Department of Human Services (DHS) regarding inconsistencies identified by the Commission staff between the membership of the MSRS-Correctional Retirement Plan reported by MSRS and the inclusions specified in Minnesota Statutes, Section 352.91. It also will review likely or potential MSRS-Correctional Retirement Plan inclusions and transfers in anticipation of Commission consideration of the topic during the 2004 Legislative Session.

## Summary of Commission Staff Analysis of Current MSRS-Correctional Plan Membership Inclusions

On October 7, 2003, the Commission staff presented an analysis of the current MSRS-Correctional Retirement Plan statutory membership provisions and the current (July 1, 2003) MSRS-Correctional Retirement Plan membership as reported by the Minnesota State Retirement System.

Thee October 7, 2003, Commission staff analysis identified approximately five percent of the reported MSRS-Correctional Retirement Plan membership who lacked a clear statutory basis for inclusion in the plan. The problematic MSRS-Correctional Plan inclusions fell into several categories, summarized as follows:

1. No specific information provided by MSRS (8 persons involved, no information available on the occupational titles or facilities involved);

2. No inclusion authority (20 persons involved, in 10 occupational titles, at 6 DOC facilities and 2 DHS facilities);
3. Unclear or questionable authority (73 persons involved, in 17 occupational titles, at 8 DOC facilities);
4. Unreferenced positions (28 persons involved, in 7 occupational titles, at the Minnesota Sexual Psychopathic Personality Treatment Center);
5. Unintended facility (27 persons involved, in 8 occupational titles, at the DOC Central Office and the Anoka-Metro Regional Treatment Center);
6. Incorrect title reported (22 persons involved, in 3 occupational titles, at 3 DHS facilities); and
7. Unaccommodated occupational title changes (81 persons involved, in 3 occupational titles, at 9 ODC facilities).

Attachment E from the September 26, 2003, Commission staff issue memorandum, attached, provides the specific occupational title-by-occupational title detail underlying the analysis summarized above.

#### Review of Agency Responses on Identified Inconsistencies in the MSRS-Correctional Retirement Plan Membership

Shortly after the October 7, 2003, Commission meeting, as directed by the Commission, the Commission staff requested comments on the MSRS-Correctional Retirement Plan membership inclusion analysis presented in the September 26, 2003, Commission staff issue memorandum from the Minnesota State Retirement System (MSRS), the Department of Employee Relations (DOER), the Department of Corrections (DOC), and the Department of Human Services (DHS). Additionally, the Department of Corrections was requested to make recommendations about any unincluded occupational positions at the Minnesota Correctional Facility-Rush City that the department determines merit inclusion in the MSRS-Correctional Retirement Plan and the Department of Human Services was requested to make recommendations about inclusion clarification or new inclusions in the MSRS-Correctional Retirement Plan relating to occupational positions at the Minnesota Sexual Psychopathic Personality Treatment Center. The agencies were requested to provide their responses prior to the November 4, 2003, Commission meeting, with any supporting documentation. The request letters to the four agencies are attached.

As of October 30, 2003, the Commission staff has not received any responses from the four agencies and, hence, is unable to provide the Commission with an updated or corrected analysis of the current MSRS-Correctional Retirement Plan inclusions in light of the agency responses for this Commission meeting.

Since the four agencies did not provide comments and recommendations in advance of the Commission meeting to allow for its incorporation into the Commission staff materials, the Commission should consider requesting testimony from each agency at this meeting. The MSRS-Correctional Retirement Plan coverage topic also is likely to be of concern to various employee groups and other parties and the Commission should consider providing those groups and parties with time to testify on the issue.

#### Likely or Potential MSRS-Correctional Retirement Plan Inclusions or Transfers

- a. 2003 Session Proposed MSRS-Corrections Transfer or Inclusion Legislation. Proposed pension legislation was introduced during the 2003 Legislative Session that has yet to be requested to be scheduled for Commission consideration and heard by the Commission. The proposed pension legislation is:
  1. H.F. 1377 (Blaine); S.F. \_\_\_\_ ( ): MSRS-Correctional; Service Credit Purchase of Prior Stores Clerk Service
  2. H.F. 1648 (Boudreau); S.F. \_\_\_\_ ( ): MSRS-Correctional; Service Credit Transfer for Prior Corrections Program Director Service
  3. H.F. 1649 (Boudreau); S.F. \_\_\_\_ ( ): MSRS-Correctional; Service Credit Transfer for Civil Commitment Review Coordinator Service

H.F. 1377 (Blaine); S.F. \_\_\_\_ ( ) would permit a current Department of Corrections central services administrative specialist-intermediate at the Minnesota Correctional Facility-St. Cloud to purchase 4.25 years of service credit as a stores clerk in the MSRS-Correctional Retirement Plan with the

payment of a full actuarial value purchase payment. The potential purchaser is one of the current MSRS-Correctional Plan members whose occupational title is not specifically included in the membership delineation provisions of Minnesota Statutes, Section 352.91.

H.F. 1648 (Boudreau); S.F. \_\_\_\_ ( ) would permit a current Department of Corrections corrections lieutenant to transfer coverage for about 15.5 years of service credit as a corrections program director from the MSRS-General State Employees Retirement Plan (MSRS-General) to the MSRS-Correctional Retirement Plan with the payment by the person of the additional member contribution amount plus compound interest.

H.F. 1649 (Boudreau); S.F. \_\_\_\_ ( ) would permit a current Department of Corrections civil commitment review coordinator who previously was covered by the MSRS-Correctional Retirement Plan for prior Department of Corrections employment and who was promoted to a position with MSRS-General Retirement Plan coverage to become a member of the MSRS-Correctional Retirement Plan for the current employment position and to transfer about 2.5 years of past MSRS-General Retirement Plan service credit to the MSRS-Correctional Retirement Plan with the payment by the person of the additional member contribution amount plus compound interest.

For all three bills, the transfer involves a period of State Department of Corrections employment that was not previously considered eligible for MSRS-Correctional Retirement Plan coverage and was consequently covered by the MSRS-General Retirement Plan. The individual in H.F. 1377 (Blaine); S.F. \_\_\_\_ ( ) would purchase the service credit at its full actuarial value while the individuals in H.F. 1648 (Boudreau); S.F. \_\_\_\_ ( ) and H.F. 1649 (Boudreau); S.F. \_\_\_\_ ( ) would pay only the additional equivalent member contribution amounts and interest, thus gaining subsidized service credit. Equitable considerations potentially adverse to the affected individuals are also present, with the service period in H.F. 1377 (Blaine); S.F. \_\_\_\_ ( ) presumably scrutinized as part of the 1996 expansion of the MSRS-Correctional Retirement Plan and not included in that plan's coverage, with the individual in H.F. 1648 (Boudreau); S.F. \_\_\_\_ ( ) also rendering the affected service during the 1996 MSRS-Correctional Retirement Plan coverage expansion, but the occupational position was not proposed for transfer during that review, and with the individual in H.F. 1649 (Boudreau); S.F. \_\_\_\_ ( ) having taken a recent promotion, presumably with a full understanding of the person's subsequent retirement coverage, and now second-guessing the prior choice.

The MSRS-Correctional Retirement Plan is a quasi-public safety retirement plan, meaning that it provides an earlier and larger retirement annuity and enhanced disability and survivorship coverage because of the hazardous nature of the covered employment and the need for a particularly physically vigorous workforce in covered employment. In determining the appropriateness of adding occupational titles to MSRS-Correctional Retirement Plan coverage, all the way back to the first significant expansion in 1974, the Commission has attempted to gauge through public testimony the extent of that hazard and the physical demands of the job. One measure of the relative hazard and physical demand has been the extent of direct inmate contact, which was set at 75 percent of a person's regular working time in the 1996 MSRS-Correctional Retirement Plan transfers. Additionally, but sometimes overlooked because they have not been reduced to statutory language, are the Commission requirements that the contact with inmates be with other than "model" or low risk inmates, that there be a requirement that the employment position be responsible for intervening in any facility incident, and that there be a past record of workers compensation claims or lost work hours due to employment-related injuries. No information of this type is currently available from the individuals involved in the proposed legislation or from the Department of Corrections. The position of the Department of Corrections on these transfers also has not been solicited or obtained, although for two of the proposed transfers, their employment positions were analyzed and rejected for transfer as part of the 1996 MSRS-Correctional Retirement Plan membership expansion.

- b. MSRS-Correctional Retirement Plan Coverage for Various Minnesota Correctional Facility-Rush City Employees. Although there is no proposed legislation that has yet been introduced on the topic, Minnesota Statutes, Section 352.91, currently does not cover some MCF-Rush City personnel who would have MSRS-Correctional Retirement Plan coverage if they were employed at a different correctional facility. Following the October 7, 2003, Commission meeting, the Commission staff asked the Department of Corrections for their assessment of the positions at MCF-Rush City that should be included in MSRS-Correctional Retirement Plan coverage. As of October 30, 2003, the Department of Corrections has not forwarded any requested recommendations regarding additional MSRS-Correctional Retirement Plan inclusions. Currently, a Groundskeeper Senior at MCF-Rush City has been included in MSRS-Correctional Retirement Plan coverage without prior statutory authority to do so. Also, towards the end of the 2003 Legislative Session, a Department of

Corrections employee from North Branch who had transferred from another correctional facility with coverage by the MSRS-Correctional Retirement Plan to MCF-Rush City and had been informed that MSRS-Correctional Retirement Plan coverage was unavailable at MCF-Rush City contacted the Commission staff to ascertain the potential for a retirement plan transfer, meaning that future demands for MSRS-Correctional Retirement Plan transfers are likely.

- c. MSRS-Correctional Retirement Plan Coverage for Various Minnesota Sexual Psychopathic Personality Treatment Center Employees. There are various Minnesota Sexual Psychopathic Personality Treatment Center employees who were identified by the Minnesota State Retirement System (MSRS) as members of the MSRS-Correctional Retirement Plan, but who lack specific authority for that coverage in Minnesota Statutes, Section 352.91. The positions involved at the Department of Human Services-Moose Lake facility are:

Psychologist 2  
Psychologist 3  
Recreation Program Assistant  
Recreation Therapist Senior  
Rehabilitation Counselor Senior  
Registered Nurse  
Social Worker Senior  
Work Therapy Assistant  
Work Therapy Program Coordinator

As of October 30, 2003, the Department of Human Services has not forwarded any requested recommendations regarding additional MSRS-Correctional Retirement Plan inclusions at the Minnesota Sexual Psychopathic Personality Treatment Center at Moose Lake.

- d. Potential MSRS-Correctional Retirement Plan Coverage Transfer Procedure. Although not introduced yet as proposed legislation, there is interest, at least informally, on the part of the Department of Corrections and the Department of Human Services to resurrect the administrative transfer provision, Minnesota Statutes 1998, Section 352.91, Subdivision 4, which was repealed upon a Commission recommendation in 2000. That provision read as follows:

Subd. 4. **Certification procedure for additional positions.** Upon the recommendation of the commissioner of corrections or the commissioner of human services, whichever is the appropriate employing authority, with the approval of the legislative advisory committee and with notification to and receipt of comments from the legislative commission on pensions and retirement, the commissioner of employee relations may certify additional positions at a state correctional facility, the Minnesota security hospital, or the Minnesota sexual psychopathic personality treatment center to the executive director of the Minnesota state retirement system as positions rendering covered correctional service. The commissioner of corrections and the commissioner of human services must establish, in writing, a set of criteria upon which to base a recommendation for certifying additional civil service classifications as rendering covered correctional service.

The provision was added in 1980 (Laws 1980, Chapter 600, Section 5), upon the recommendation of the Legislative Commission on Pensions and Retirement, based on a request from the Department of Corrections. The provision was intended primarily to allow for the addition of personnel in newly created occupational titles to the MSRS-Correctional Retirement Plan coverage in a timely fashion. Because the MSRS-Correctional Retirement Plan is a quasi-public safety retirement plan, with improved disability coverage to accommodate hazardous employment circumstances, a “safety valve” mechanism was needed for providing appropriate retirement coverage for qualified correctional employees who are newly employed in an occupational position that was created at a time when pursuing the applicable proposed legislative during a legislative session would be difficult or impossible. The provision was not likely intended by the Commission to substitute for processing the necessary legislation to accommodate MSRS-Correctional Retirement Plan, but numerous transfers to the MSRS-Correctional Retirement Plan have occurred without the successive updating legislation. Also, the procedures set forth in Minnesota Statutes 1998, Section 352.91, Subdivision 4, have not always been followed (i.e., a failure to obtain comments from the Legislative Commission on Pensions and Retirement and a failure to obtain the approval of the Legislative Advisory Commission). The Legislative Commission on Pensions and Retirement comment requirement was intended to insure that new MSRS-Correctional Retirement Plan members were appropriate from a policy standpoint for the quasi-public safety employee retirement coverage. The Legislative Advisory Commission approval requirement was intended to insure that the fiscal impact of the retirement coverage change was appropriate, since the MSRS-Correctional Retirement Plan employer contribution requirement is

significantly greater than the MSRS-General State Employees Retirement Plan employer contribution requirement.

While the outline of any proposed resurrection of Minnesota Statutes 1998, Section 352.91, Subdivision 4, from the Department of Corrections or the Department of Human Services is currently unclear, it is likely that a new administrative transfer proposal will attempt to minimize or eliminate legislative scrutiny of future transfers of personnel to the MSRS-Correctional Retirement Plan. In past discussion with the Commission staff about Minnesota Statutes 1998, Section 352.91, Subdivision 4, the two departments appear to have a distrust of the results of the legislative process and are concerned that some Department of Corrections or Department of Human Services employees who are undeserving of the special retirement coverage and who have failed to utilize the department inclusion guidelines process will potentially gain MSRS-Correctional Retirement Plan coverage through political connections.

The Commission staff, in meeting with Department of Corrections and Department of Human Services representatives on MSRS-Correctional Retirement Plan coverage issues, has suggested that the two departments resurrect their prior internal process for handling employee requests for MSRS-Correctional Retirement Plan inclusion and use the internal process to assemble legislative proposals for plan inclusions. The pre-2001 process required that a Department of Corrections employee request the special coverage and that the person's employment position requires that the person:

- (1) works in close physical proximity with groups of inmates;
- (2) has direct responsibility for inmates;
- (3) is required to actively/physically intervene in inmate incidents;
- (4) works with groups of inmates in situations where security staff are not present;
- (5) is responsible for controlling the behavior and/or activities of inmates; and
- (6) is engaged in treatment, rehabilitation, custody or supervision of inmates 75% of their work time.

The Department of Human Services pre-2001 internal process had similar requirements. The Department of Corrections required supervisor review and concurrence, a favorable institution Human Resources office recommendation, a favorable determination by the institution appointing authority, and a favorable determination by a "Requests for Inclusion Committee," consisting of the assistant commissioners for adult facilities and community services, the health services director, the juvenile services director, and the human resources management director and/or the person's designee.

The agency could also initiate transfers under the Minnesota Statutes 1998, Section 352.91, Subdivision 4, internal process based on a determination by the agency Human Resources Management director that the six factors indicated for employee requests have been met.

### Conclusion

If the Commission so desires, the Commission staff will draft proposed legislation for Commission consideration during the 2004 Legislative Session that will update and revise Minnesota Statutes, Section 352.91, to conform with the Commission's expressed intent regarding the topic.