

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: S.F. 1165 (Betzold); H.F. 1255 (Smith): Judges; Authorized Leave of Absence Service Credit

DATE: April 4, 2005

Summary of S.F. 1165 (Betzold); H.F. 1255 (Smith)

S.F. 1165 (Betzold); H.F. 1255 (Smith) amends Minnesota Statutes, Section 490.121, Subdivision 4, the definition of “allowable service” for the Judges Retirement Plan, by adding authority for a judge to obtain credit for a maximum of one year of authorized leave of absence time with the payment by the judge of an amount equal to the actuarial normal cost percentage of the Judges Retirement Plan applied to the judge’s salary rate in effect during the leave.

Background Information on the Uniform Judicial Retirement Plan

The Uniform Judicial Retirement Plan, Minnesota Statutes, Sections 490.121 to 490.133, was enacted in 1973. The Uniform Judicial Retirement Plan is the successor to the several prior judicial retirement plans.

In 1973, at the request of the Judicial Compensation Committee of the Minnesota State Bar Association, and in conjunction with the Committee on Retirement of the District Judges Association and the County Judges Association, the Legislature considered and enacted a uniform judicial retirement plan. The plan standardized benefits for the judges in the various levels of courts, allowed existing judges to retain their prior coverage if they so desired and extended Social Security coverage to existing judges on an individual election (referendum) basis and to newly appointed or elected judges on a mandatory basis. The uniform judicial retirement plan was apparently intended to provide better portability for individuals with varied judicial service, provide earlier vesting based on service credit only, improve deceased active member survivor benefit coverage, establish optional annuity forms for improved retired member survivor benefit flexibility, establish a pension fund for the plan with regular financing, and provide regular post-retirement adjustments.

Since 1973, there have been a number of modifications in the uniform judicial retirement plan. In 1975, in addition to the settlement of the Sylvestre lawsuit (involving old law District and Supreme Court judges post-retirement escalation) issue, a proportionate annuity based on accrued service credit at the mandatory retirement age was authorized by the Legislature. In 1978, the Legislature authorized fractional (portion of a year) service credit and authorized a refund to the survivor or estate of a deceased judge who is not eligible for survivor benefit coverage. In 1980, the retirement annuity benefit accrual rate was increased by legislation from 2.5 percent to 3.0 percent for each year of service rendered after June 30, 1980, and the member contribution rate was increased by one half of one percent of salary, with a 7.0 percent aggregate (inclusive of the Social Security employee contribution) contribution. The 1981 Legislature approved an extension of active member survivor coverage to deferred annuitants during the period of that deferral and eliminated the surviving spouse or estate death refund. In 1982, with the creation of the Court of Appeals, judicial service with that court was included in coverage by the judges’ plan. In 1983, the Legislature provided that the initial disability benefit coverage, which is a two-year continuation of salary, may not exceed the mandatory retirement age. In 1984, the reduction factor used to calculate a reduced early retirement annuity was reset from 6.67 percent per year under age 65 to 6.00 percent per year under age 65.

In 1988, the service credit requirement for vesting for a normal or early retirement was reduced from ten years to five years, an unsubsidized bounce-back joint and survivor optional retirement annuity form was authorized, the Social Security benefit offset from the Coordinated Program retirement annuity was reduced from 75 percent of the primary benefit amount to 50 percent, and the Coordinated Program member contribution rate was increased by 0.75 percent of salary. In 1989, the Combined Service Annuity portability mechanism was extended to the uniform judges retirement plan former judges who return to judicial service were authorized to repay any prior refunds of member contributions and interest.

In 1991, the terminal employer funding procedure for the fund was replaced with a regular concurrent employer contribution procedure, with an employer rate of 22 percent of salary, the Coordinated Program member contribution was revised to four percent of salary, and the continuation of full salary initial judicial disability benefit was reduced from two years to one year. Prior to 1991, the employer contributions to the fund occurred only when benefits became payable--when the fund was required to transfer the full actuarial reserves to the State Board of Investment Post Retirement Fund. In 1992, the 30-day time limit on electing

an optional retirement annuity form was eliminated, the Social Security benefit offset from the Coordinated Program retirement annuity was repealed, the Coordinated Program member contribution was increased from four percent to 6.27 percent of pay, judges covered by the Basic Program were provided a second chance opportunity to elect prospective Social Security coverage, and the interest rate payable on refund repayments was increased from six percent to 8.5 percent. In 1993, it was clarified that disabled judges earn a year of service credit for the year of full salary continuation, with the applicable salary rate credited in determining a final average salary for benefit computation, and with member contributions payable on that salary amount. In 1996, with respect to judges who die without a survivor benefit consequently payable, a death refund payable to the applicable estate was authorized. In 1997, the annual benefit accrual rates were increased to 2.7 percent from 2.5 percent for pre-7/1/1980 service, and to 3.2 percent from 3.0 percent for post-6/30/1980 service while future annual post-retirement adjustments were reduced by one percent.

In 1998, the member contribution rate was increased from 6.27 percent to 8.00 percent, the employer contribution rate was reduced from 22 percent to 20.5 percent, and the salaries of judges were increased by 1.5 percent.

In 2000, the previous percentage benefit maximum was converted to a service credit maximum, retirement coverage for judges serving beyond the service credit maximum was shifted to coverage by the MSRS-Unclassified Employees Retirement Program (MSRS-Unclassified), and the maximum benefit accrual rate for judges computing retirement annuities under the Combined Service Annuity portability provision was increased from 2.5 percent per year to 3.2 percent per year.

In 2004, the early reduced benefit retirement age was down set from age 62 to age 60 and the basis for interest on refunds was modified from interest on quarterly balances to daily interest.

Background Information on Crediting Authorized Leaves of Absence

The major statewide and local general employee retirement plans do grant service credit for authorized leaves of absence, with the payment of equivalent contribution amounts, as follows:

Sabbatical Leave of Absence

MSRS-General	No provision.
PERA-General	No provision.
TRA	<p>A sabbatical leave for which the teacher was compensated at a minimum of one-third of the prior fiscal year’s compensation is creditable upon the employer’s transmittal of member contribution deductions and the employer’s payment of employer contributions, all based on the base contract salary that the teacher would have been paid if not on leave. Service credit for sabbatical leaves cannot exceed three years in any ten consecutive years.</p> <p>[354.092]</p>
DTRFA	<p>A new law coordinated plan member is eligible to receive service credit for a sabbatical leave for which the teacher was compensated at a minimum of one-third of the prior year’s compensation if the teacher pays an amount equal to the member contribution rate in effect on the teacher’s prior year’s salary. Service credit for sabbatical leaves cannot exceed three years in any ten consecutive years. Upon the member payment, the employing unit is obligated to pay the applicable employer contribution amounts. Payment must be made before June 30 of the fiscal year next following the year in which the sabbatical leave terminated and is payable without interest. If less than the full contribution amounts are paid, the service credit is prorated. For any member who is granted leave of absence for travel or for study in some institution of learning, upon a return to teaching, may pay or, if the amount exceeds \$50, may agree to pay, the amount which would have been deducted from salary, plus five percent interest per annum to the date of payment or the date of the agreement to pay the amount in two installments, plus five percent interest, with the first installment payment due within one year of the agreement, with credit granted upon payment.</p> <p>[354A.092 and Bylaws XVI]</p>
MTRFA	<p>A coordinated plan member is eligible to receive service credit for a sabbatical leave for which the teacher was compensated at a minimum of one-third of the prior year’s compensation if the teacher pays an amount equal to the member contribution rate in effect on the teacher’s prior year’s salary. Service credit for sabbatical leaves cannot exceed three years in any ten consecutive years. Upon the member payment, the employing unit is obligated to pay the applicable employer contribution amounts. Payment must be made before June 30 of the fiscal year next following the year in which the sabbatical leave terminated and is payable without interest. If less than the full contribution amounts are paid, the service credit is prorated. A Basic Program member who is granted a sabbatical leave under Minnesota Statutes, Section 125.18, may receive credit for the leave, up to three years in any ten year period, if the member pays the member and employer equivalent contributions based on the member’s salary for the year immediately preceding the leave, with payment due on June 30 of the year next following the year in which the leave ended, with interest at an unspecified rate.</p> <p>[354A.092 and Articles, Art. 20, Section 20.1, Clause (i)]</p>
SPTRFA	<p>A coordinated plan member is eligible to receive service credit for a sabbatical leave for which the teacher was compensated at a minimum of one-third of the prior year’s compensation if the teacher pays an amount equal to the</p>

Sabbatical Leave of Absence

	member contribution rate in effect on the teacher’s prior year’s salary. Service credit for sabbatical leaves cannot exceed three years in any ten consecutive years. Upon the member payment, the employing unit is obligated to pay the applicable employer contribution amounts. Payment must be made before June 30 of the fiscal year next following the year in which the sabbatical leave terminated and is payable without interest. If less than the full contribution amounts are paid, the service credit is prorated.
	[354A.092]
MERF	No provision.

Other Authorized Leaves of Absence

MSRS-General	A period of authorized leave of absence, up to one year, for which the state employee made a payment in lieu of member deductions and of employer contributions based on the salary rate in effect upon the return from the leave, plus annual compound interest at an 8.5 percent rate from the end of the leave to the date of payment if the payment is not made within one year of the end of the leave. The employer is authorized to make the employer contribution payment at its option. [352.01, Subd. 11, Clause (9)]
PERA-General	A period of authorized personal, parental, or medical leave without pay, not to exceed one year, during which or for which the member paid an amount in lieu of member deductions equal to the member, employer, and employer additional contribution rates applied to the person’s average salary during the last six months of membership prior to the leave. The payment must be made within one year of the end of the leave or within 20 days after the termination of public service. The employing unit may pay the employer and employer additional contribution amounts from its tax levy if the governing body of the employer approves the payment prior to the initial payment, includes the approval in its official records, and certifies the commitment to PERA. Payment must include annual compound interest at the rate of 8.5 percent from the termination of the leave to the date of payment. To qualify for credit for a subsequently authorized leave of absence without pay, the member must return to public service for a minimum of three months, with full service credit for each month in which the employee makes payments for at least 80 hours, and with prorated service credit for each month with payments for less than 80, hours based on the percentage relationship between the number of hours covered by the payment and 80 hours. [353.01, Subd. 16, Paragraph (a), Clause (4), and Paragraph (d)]
TRA	No specific provision.
DTRFA	For any member who is granted leave of absence for health reasons may pay or, if the amount exceeds \$50, may agree to pay, the amount which would have been deducted from salary, plus five percent interest per annum to the date of payment or the date of the agreement to pay the amount in two installments, plus five percent interest, with the first installment payment due within one year of the agreement, with credit granted upon payment. [354A.092 and Bylaws XVI]
MTRFA	A new law coordinated plan member is eligible to receive service credit for a sabbatical leave for which the teacher was compensated at a minimum of one-third of the prior year’s compensation if the teacher pays an amount equal to the member contribution rate in effect on the teacher’s prior year’s salary. Service credit for sabbatical leaves cannot exceed three years in any ten consecutive years. Upon the member payment, the employing unit is obligated to pay the applicable employer contribution amounts. Payment must be made before June 30 of the fiscal year next following the year in which the sabbatical leave terminated and is payable without interest. If less than the full contribution amounts are paid, the service credit is prorated. A Basic Program member who is granted a leave for service in an exchange teaching program, advanced study, for teaching in the Armed Forces Dependent Schools, for participation in a Ford Foundation Fellowship Grant, for a similar teacher study or self-improvement grant, for nonprofit organization educational field teaching and research if the member and employer contributions based on the salary that the member would have been paid as a Minneapolis teacher are paid by or on behalf of the member. [354A.092 and Articles, Art. 20, Section 20.1, Clauses (c) and (d)]
SPTRFA	No specific provision.
MERF	No specific provision.

Discussion and Analysis

S.F. 1165 (Betzold); H.F. 1255 (Smith) permits judges who take a leave of absence to obtain a maximum of one year of service credit from the Judges Retirement Plan upon the judge making an equivalent payment based on the actuarial normal cost of the retirement plan, plus 8.5 percent interest if payment is not made within one year.

S.F. 1165 (Betzold); H.F. 1255 (Smith) raises several pension and related public policy issues that may merit Commission consideration and discussion, as follows:

1. Appropriateness of Providing Pension Coverage for Judicial Leaves of Absence. The policy issue is the appropriateness of encouraging leaves of absence by judges by providing retirement plan coverage for the leave. Although general public employee populations are provided with an opportunity to obtain retirement plan service credit for authorized leaves of absence, judicial service is different from

general public employment, judicial officers are very limited in number, a shortage of judges in Minnesota reportedly exists, and judicial retirement coverage is much more substantial. Those differences may argue for not extending leave of absence coverage to judges. Although it is difficult to obtain comprehensive information on the number of judges who are on authorized leaves of absence, press accounts indicate that at least six Minnesota judges have taken leaves of absence to serve as judges for the United Nations in the Balkans. Those judges decided to take that leave of absence without this retirement service credit change. The Commission should consider taking testimony from representatives of the judicial branch on the current practices of the judicial branch in granting leaves of absence for judges and the impact of those judicial leaves of absence on the administration of justice within the State.

2. Adequacy of the Proposed Leave Contribution Equivalent Payment Amount. The policy issue is the adequacy of the payment that is proposed to be required of a judge who took a leave of absence and seeks service credit for the leave period from the Judges Retirement Plan. The proposed legislation would require the judge to pay an amount equal to the percentage of covered pay normal cost of the Judges Retirement Plan at the time the leave occurs, applied to the judicial salary rate of the judge during the leave, without interest if paid within one year of the end of the leave and with interest at an 8.5 percent compound rate if made after one year. The amount currently would be 17.44 percent of covered salary, or \$21,176 based on the average annual salary of a Minnesota judge. The amount is different from the amount required of other plans that have leave provisions, where the member and employer contribution rates are required, which would be 28.04 percent of pay for the Judges Retirement Plan, and the amount is less than the actual funding requirement of the plan, or 29.42 percent of pay for the Judges Retirement Plan. The proposed interest rate and the lack of any payment deadline parallels the practice in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), but does not replicate the practice in the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), where interest is payable from the end of the leave in all cases and the payment must be made within one year. The PERA-General practice represents a practice more consistent with the Commission's Principles of Pension Policy, which hold that service credit purchases should be at their full actuarial value of the benefit obtained and not subsidized by the pension plan. The MSRS-General practice, allowing a leave of absence payment years or decades after the service was rendered, really is a service credit purchase that is subsidized by the retirement plan. Amendment LCPR05-142 would require the payment of equivalent member and employer contributions be made to obtain the leave service credit, would require interest on every payment, and would require all leave payments within one year of the conclusion of the leave, replicating the PERA-General leave provision.
3. Appropriateness of the Retroactive Application of the Provision. The policy issue is the appropriateness of making the leave of absence service credit provision retroactive to cover judges in active service on January 1, 2005, and to cover any leave that occurred before January 1, 2005. The provision, in its specificity, appears aimed at addressing the situation of at least one person, potentially a former judge who recently terminated active judicial service. If the person intended to receive the service credit retroactively is in fact a former judge, this raises the question of the appropriateness, since the Commission generally does not extend service credit purchases or other service credit payment provisions to former public employees. The provision also would apply to any leaves previously rendered by any person who was a judge on January 1, 2005, which could be a large number of leaves that could extend back a very long time. The State Court Administrator should be requested to provide information on the number of judges and the judicial leaves potentially involved in the retroactivity and the Court's assessment of how this retroactivity benefits the State and the administration of justice.

Technical Amendment

Amendment LCPR05-141 is intended as a technical amendment that clarifies the normal cost references used in the bill and repositions the one year and service maximum limitations in one place.