

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: S.F. 1834 (Michel); H.F. 2080 (Smith): State Patrol; Inclusion of Department of Commerce Insurance Fraud Prevention Division Officers

DATE: April 4, 2005

Summary of S.F. 1834 (Michel); H.F. 2080 (Smith)

S.F. 1834 (Michel); H.F. 2080 (Smith) amends Minnesota Statutes, Section 352B.01, Subdivision 2, the membership specification provision for the State Patrol Retirement Plan, by adding peace officers employed by the Division of Insurance Fraud Prevention of the Department of Commerce as members of the State Patrol Retirement Plan.

Background Information on Commerce Department Division of Insurance Fraud Prevention

In 2002 (Laws 2002, Chapter 331, Section 1), a Division of Insurance Fraud Prevention was established in the Department of Commerce and charged the division with initiating inquiries and conducting investigations when the division has reason to believe that insurance fraud has been or is being committed, responding to notifications or complaints of suspected insurance fraud generated by state and local police, other law enforcement authorities, governmental units, including the federal government, and any other person, reviewing notices and reports of insurance fraud submitted by authorized insurers, their employees, and agents or producers, and investigating those incidents of alleged fraud that, in its judgment, require further investigation, reporting incidents of alleged insurance fraud disclosed by its investigations to appropriate law enforcement authorities, and assembling evidence, preparing charges, and otherwise assisting any law enforcement authority having jurisdiction.

To perform these duties, the Insurance Fraud Prevention Division of the Department of Commerce was authorized to employ investigators in 2002 who were certified by the Peace Officer Standards and Training Board and those investigators were covered by the general laws applicable to law enforcement officers.

In 2004 (Laws 2004, Chapter 269, Article 1), the Insurance Fraud Division of the Department of Commerce was substantially revised. The Commerce Commissioner was empowered to appoint peace officers and to establish a law enforcement agency, continued to be named the Division of Insurance Fraud Prevention, to conduct investigations and make arrests with or without a warrant, and retained the same duties as under the 2002 law. The Division of Insurance Fraud Prevention has both primary and secondary responsibility for arrests and investigations and must coordinate its investigations with other law enforcement agencies. The Commissioner of Commerce was also empowered to employ a full-time peace officer as the chief law enforcement officer in charge of the division, which must have full-time managerial employees and which must function under all law enforcement operations and management statutes and administrative rules.

Discussion and Analysis

S.F. 1834 (Michel); H.F. 2080 (Smith) includes police officers employed by the Division of Insurance Fraud Prevention of the Department of Commerce in the State Patrol Retirement Plan, effective retroactively from January 1, 2005.

The proposed legislation raises pension and related public policy issues that may merit Commission consideration and discussion, as follows:

1. Consistency of Fraud Prevention Officer Duties with Public Safety Officer Retirement Coverage. The policy issue is the question of the nature of the duties of the insurance fraud prevention officers and the consistency of those duties with the nature of the public safety employee retirement plan coverage. Public safety retirement plan coverage is intended to reflect the potentially hazardous nature of law enforcement employment, the need for law enforcement officers to maintain a particularly physically vigorous condition, and the likelihood of retirement at an age earlier than general employees. While physical demands of public safety-type of employment are evident, the nature of the recently established Insurance Fraud Prevention officers is less clear and its match to the employment demands

and expectations underlying public safety employment and retirement coverage needs to be assessed with some care. The Commission should consider taking testimony from representatives of the Department of Commerce about the duties of the law enforcement employees already employed by the Department and about the likely function of any additional law enforcement officers remaining to be hired.

2. Budgetary Consideration of the Proposed Coverage Change. The policy issue is the ability of the Department of Commerce to bear the additional retirement contribution burden of public safety employee retirement plan coverage and its ability to handle a potential increase in the State Patrol Retirement Plan employer contribution. For most of the state agencies with State Patrol Retirement Plan coverage, the agency also receives police state aid to offset all or a portion of that employer contribution. Police state aid currently amounts to about \$7,000 per police officer per year. No proposal for inclusion in the police state aid program is included with this legislation, so the cost of the increased State Patrol Retirement Plan employer contribution will be borne by the Department of Commerce budget.
3. Appropriateness of Proposed Coverage Retroactivity. The policy issue is the appropriateness of making the coverage change retroactive to January 1, 2005. If some Insurance Fraud Prevention officers were hired on or shortly after January 1, 2005, an argument can be made for some retroactivity, but there are complications with accommodating the coverage change. Any Insurance Fraud Prevention officers employed before this date currently have Social Security coverage and coverage by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). State law can easily implement a retroactive change in the Minnesota public pension plan coverage provided to these employees, but a repayment/refund of past Social Security contributions will depend on federal law and federal officials and is not amenable to State legislation.