

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: S.F. 235 (Betzold); H.F. 375 (Westerberg): PERA-P&F; Including Combined Blaine, Spring Lake Park, or Mounds View Civilian-Firefighter Employment Positions

DATE: April 4, 2005

Summary of S.F. 235 (Betzold); H.F. 375 (Westerberg)

S.F. 235 (Betzold); H.F. 375 (Westerberg) amends Minnesota Statutes, Section 353.64, the membership provision of the Public Employees Police and Fire Retirement Plan (PERA-P&F), by adding a subdivision that includes in PERA-P&F coverage civilian department employees of the cities of Blaine, Spring Lake Park, and Mounds View who are primarily assigned to perform firefighting, medical emergency, or hazardous material situation duties if the employee is trained as a firefighter, as a first responder, and as a hazardous materials specialist, are members of the Blaine, Spring Lake Park, and Mounds View independent non-profit firefighting corporation (BSLPMVFD), complies with BSLPMVFD rules, meets BSLPMVFD minimum training requirements, is not eligible for Social Security coverage for the municipal employment, and is certified for PERA-P&F membership by the applicable city. Any combined civilian-firefighter positions would also have a more stringent duty disability benefit qualification.

Background Information on PERA-P&F Membership

The Public Employees Police and Fire Retirement Plan (PERA-P&F) was created in 1959, replacing retirement coverage by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) for public safety employees who were not covered by a local police or paid firefighter relief association. Initially, county sheriff personnel and small town municipal police officers were PERA-P&F members, with few firefighters. At first, PERA-P&F coverage applied to any public employee in law enforcement or fire suppression, but the membership qualifications were refined as the licensing of police officers began in the 1970s. Coverage is governed by Minnesota Statutes, Section 353.64, Subdivisions 1 and 2.

Currently, PERA-P&F membership requires that the employees meet the following requirements to qualify as a police officer:

1. Police Employment. Employment must be as a police officer by a municipal police department of a county sheriff's office.
2. Primary Law Enforcement Function. Primary employment function must be to enforce the law.
3. POST Board Licensure. Peace officer must be licensed by the Peace Officers Standards and Training Board (POST Board).
4. Property and Safety Protection. Peace officer must be engaged in the hazards of protecting the property and safety of others.
5. Arrest with a Warrant. Peace officer must be empowered to arrest with a warrant.

For firefighters, the PERA-P&F membership provision requires that, to qualify as a firefighter, municipal employees must either be a full-time firefighter or a person in charge of a designated fire company and be engaged in the hazards of firefighting. For part-time employees engaged in police work or firefighting, PERA-P&F membership is available if the employing municipality, by governing body resolution, declares the part-time employee eligible and the employee meets the statutory police officer or firefighter requirements other than full-time employment. For full-time police officers or firefighters who are periodically assigned other duties, the other duties must be in the same department and the other duties must be secondary services, with the police or firefighting services being primary.

Since 1959, all newly employed county deputy sheriffs have pension coverage by PERA-P&F and since 1980, all newly employed municipal police officers and all newly employed municipal paid firefighters have pension coverage by PERA-P&F.

As a public safety employer pension plan, PERA-P&F pays larger retirement annuities, disability benefits, and survivor benefits than a general employee retirement plan and has an earlier normal

retirement age for the retirement annuity. Because of these benefit plan differences, the plan typically has a greater actuarial cost and greater member and employer contributions than a general employee retirement plan. As law enforcement officers, members of PERA-P&F are not covered by Social Security under both state and federal law for their state law enforcement employment.

The policy reason for having a more lucrative benefit program for public safety employee retirement plans is that public safety employment (police officer or firefighter service) is particularly hazardous, that it requires the maintenance of a particularly vigorous and robust workforce to meet the strenuous requirements of the employment position, and that the normally expected working career of a public safety employee will be significantly curtailed as a consequence of the hazards and strenuous requirements of that type of employment when compared to a general public employee. Public employee pension plans are intended to assist the governmental personnel system by encouraging the recruitment of qualified and motivated new employers, the retention of able and valued existing employees, and the orderly and predictable out-transitioning of employees at the expected end or normal conclusion of their working career. For public safety employees, public safety employee retirement plans provide more lucrative benefits to assist in the recruitment and retention of new and existing personnel, but most clearly emphasize the out-transitioning function.

PERA-P&F currently has 9,948 active members, 4,381 retirees, 614 disability retirements, 1,213 survivors, and 758 deferred retirees. PERA-P&F assets slightly exceed \$4.7 billion, and accrued liabilities are slightly less than \$4.4 billion, creating a 106.65 percent funding ratio. PERA-P&F has a deficiency in current contributions, when compared to the plan's total actuarial funding requirements, of 6.55 percent of payroll, a result of recent actuarial assumption changes proposed by the PERA Board of Trustees and approved by the Legislative Commission on Pensions and Retirement and of recent investment declines.

Background Information on Independent Nonprofit Firefighting Corporations and Municipal Fire Departments

Although most Minnesota fire departments are part of municipal government, several fire departments are organized as independent nonprofit firefighting corporations. A nonprofit firefighting corporation provides fire protection and fire suppression services to one or more municipalities under contract.

Independent nonprofit firefighting corporations have been formed in a variety of circumstances. Most, but not all, independent nonprofit firefighting corporations furnish fire protection to the local community in which they are situated and also serve nearby municipalities and townships that do not have their own local departments. In some cases, the independent nonprofit firefighting corporations are subsidiary to a parent municipal fire department and membership is concurrent. In some cases, it appears that independent nonprofit firefighting corporations were formed instead of municipal fire departments either at an earlier time when township tax levy limits made it difficult for some townships to build, staff, and equip a municipal fire department and before the general availability of joint powers arrangements or in order to remove the burden of administrative duties from local officials.

In becoming eligible or in retaining eligibility for the receipt of fire state aid, independent nonprofit firefighting corporations have been treated like municipal fire departments and volunteer firefighter relief associations since at least 1961. In 1961 (Laws 1961, Chapter 360), independent nonprofit firefighting corporations organized before 1961 were authorized to receive fire state aid if they have retirement plans and if they comply with all of the statutory provisions applicable to municipal fire departments and volunteer firefighter relief associations. In 1965 (Laws 1965, Chapter 671), the 1961 legislation was amended to extend the fire state aid receipt eligibility to independent nonprofit firefighting corporations organized before May 23, 1965. In 1967 (Laws 1967, Chapter 370), the fire state aid receipt eligibility of independent nonprofit firefighting corporations was extended to corporations organized before July 1, 1967. In 1969 (Laws 1969, Chapter 1001), independent nonprofit firefighting corporations were made eligible to receive fire state aid irrespective of the date on which the corporation was organized. The 1961-1967 legislation grandparented in those independent nonprofit firefighting corporations which had been previously established, but functioned as an eligibility cut-off date to discourage the establishment of new independent nonprofit firefighting corporations. In 1969, that potential discouragement of the creation of new independent nonprofit firefighting corporations was dropped. In 1979 (Laws 1979, Chapter 201, the volunteer firefighter relief association laws were recodified and volunteer firefighter relief associations subsidiary to or attached to independent nonprofit firefighting corporations were included in the same regulations as volunteer firefighter relief association related to municipal fire departments.

The number of identified independent nonprofit firefighting corporations appears to have grown over time, although there appears to be some self-reporting confusion, as follows:

1969 (18)	1982 (44)	2002 (63)
		Alaska (Beltrami Co.)
	Albertville (Wright Co.)	
	Alden (Freeborn Co.)	
Almelund (Chisago Co.)		
	Askov (Pine Co.)	
	Beaver Bay (Lake Co.)	
	Bemidji Pioneer (Beltrami Co.)	
		Boyd (Lac Qui Parle Co.)
		Brimson (St. Louis Co.)
	Browerville (Todd Co.)	
	Callaway (Becker Co.)	Canton (Fillmore Co.)
		Clinton (St. Louis Co.)
	Ceylon (Martin Co.)	
	Clearwater (Wright Co.)	
Clifton (St. Louis Co.)		
	Columbia Heights-Vol. Div. (Anoka Co.)	
		Colvin (St. Louis Co.)
		Cotton (St. Louis Co.)
		Crane Lake (St. Louis Co.)
Crookston (Polk Co.)		Crookston (Polk Co.)
	Cuyuna (Crow Wing Co.)	
		Dakota (Winona Co.)
		Dalbo (Isanti Co.)
	Darfur (Watonwan Co.)	
	Dawson (Lac Qui Parle Co.)	
East Co. Line (Ramsey Co.)		
	East Grand Forks (Polk Co.)	
		Eastern Hubbard (Hubbard Co.)
		Elitzen (Houston Co.)
		Elbow-Tulaby Lk (Becker Co.)
		Ellsburg (St. Louis Co.)
	Embarrass Region (St. Louis Co.)	
		Federal Dam (Cass Co.)
		Finland (Lake Co.)
		Fredenberg (St. Louis Co.)
		Garrison (Crow Wing Co.)
Gladstone (Ramsey Co.)		
	Gnesen (St. Louis Co.)	Gnesen (St. Louis Co.)
	Granada (Martin Co.)	
		Grand Lake Twp (St. Louis Co.)
	Granite Falls (Yellow Medicine Co.)	
		Gunflint Trail (Cook Co.)
		Hackensack (Cass Co.)
Hamel (Hennepin Co.)	Hamel (Hennepin Co.)	Hamel (Hennepin Co.)
	Hendrum (Norman Co.)	
	Hermantown (St. Louis Co.)	Hermantown (St. Louis Co.)
		Hovland (Cook Co.)
	Industrial (St. Louis Co.)	Industrial (St. Louis Co.)
	Iona (Murray Co.)	
		Jacobson (Aitkin Co.)
	Kasota (Le Sueur Co.)	
		Keewatin (Itasca Co.)
	Kensington (Douglas Co.)	
		Kinney (St. Louis Co.)
	Lake George (Hubbard Co.)	Lake George (Hubbard Co.)
Lake Johanna (Ramsey Co.)	Lake Johanna (Ramsey Co.)	Lake Johanna (Ramsey Co.)
		Lake Kabelogama (St. Louis Co.)
		Lakeland (St. Louis Co.)
Lakewood (St. Louis Co.)		Lakewood (St. Louis Co.)
		Le Center (Le Sueur Co.)
		Lewisville (Watonwan Co.)
Little Canada (Ramsey Co.)	Little Canada (Ramsey Co.)	Little Canada (Ramsey Co.)
		Littlefork (Koochiching Co.)
		London (Freeborn Co.)
	Longville (Cass Co.)	Longville (Cass Co.)
	Loretto (Hennepin Co.)	Loretto (Hennepin Co.)
		Lower St. Croix Val (Washington Co.)
		Makinen (St. Louis Co.)
		Maple Hill (Cook Co.)
	Maplewood (Ramsey Co.)	
	McDavitt (St. Louis Co.)	McDavitt (St. Louis Co.)
		Meadowlands (St. Louis Co.)
	Miltona (Douglas Co.)	
		Moose Lake (Carleton Co.)
		Nassau (Lac Qui Parle Co.)
Northdale		
		Northland (St. Louis Co.)
Odessa Farm (Big Stone Co.)		
	Ostrander (Fillmore Co.)	
Parkside (Ramsey Co.)		
		Pennock (Kandiyohi Co.)
		Pequaywan (St. Louis Co.)
	Pike-Sandy-Britt (St. Louis Co.)	Pike-Sandy-Britt (St. Louis Co.)
Pillager (Cass Co.)	Pillager (Cass Co.)	Pillager (Cass Co.)
Rural Fire Protection Assn. (Beltrami Co.)		
	Ruthlon (Pipestone Co.)	
	Sacred Heart (Renville Co.)	
	Shakopee (Scott Co.)	
		Silica (St. Louis Co.)
		Solway Twp (St. Louis Co.)
South Bend Township (Blue Earth Co.)		

1969 (18)	1982 (44)	2002 (63)
Spring Lake Park (Anoka Co.)	Spring Lake Park (Anoka Co.)	Spring Lake Park (Anoka Co.)
	St. Hilaire (Pennington Co.)	
	Starbuck (Pope Co.)	
	Stephen (Marshall Co.)	
		Swanville (Morrison Co.)
Thompson Grove (Washington Co.)		Toivola Twp (St. Louis Co.)
		Underwood (Otter Tail Co.)
		Watson (Chippewa Co.)
		Waverly (Wright Co.)
		Wilson (Winona Co.)
Woodbury (Washington Co.)		
	Wood Lake (Yellow Medicine Co.)	

Background Information on the Minnesota Fire Service Certification Board and Firefighter I Certification

The Minnesota Fire Service Certification Board was established in 1987 to meet the needs of Minnesota’s fire service to recognize various levels of training competencies and proficiencies of the state’s firefighting community. The organization offers certification on a voluntary basis to individuals that work or live in Minnesota and engage in the occupation of firefighting.

These certification levels are available to members of career and volunteer fire departments, as well as others working in the field. Levels of certification are:

- Firefighter I
 - Firefighter II
 - Fire Instructor I
 - Fire Instructor II
 - Fire Inspector I
 - Fire Inspector II
 - Fire Officer I
 - Fire Officer II
- Airport Fire Fighter
 - Fire Apparatus Operator
 - NFPA 472 – HazMat Awareness
 - NFPA 472 – HazMat Operations
 - MFPA 472 – HazMat Technician
 - Public Fire and Life Safety Educator I
 - Public Fire and Life Safety Educator II

The members of the Minnesota Fire Service Certification Board are:

Name	Title/Region/Org.	Name	Title/Region/Org.
Daniel Brumm	Chairman, Region I	Pat Sheehan	Office of the State Fire Marshal
Greg Hayes	Vice Chairman	Dave Schliek	Region 5
James K. Heim	Secretary	Jay Bohan	Region 6
Dale Mashuga	Test Coordinator	Bernie Vrona	Region 8
Patrick Doheny	IAAI	Daniel Klein	Region 11
Jeff Schadegg	IAAI Alternate	Daryl Bartholomaus	Region 14
Woody Walters	MSFDA & FIRE/EMS Safety Center	Brian Staska	Region 15
Tom Pressler	MSFDA Alternate	Lee Cooper	At Large
Phillip Owens	FMAM	James Hansen	At Large
Jon Nisja	FMAM Alternate	Robert Leger	At Large
Doug Thies	FIAM	Paul Seleski	At Large

The Firefighter I certification is based on the National Fire Protection Association (NFPA) 1001 standard. The skill areas tested are Fire Hose, Appliances, and Fire Streams, Ladders, Carriers, Raises, Self Contained Breathing Apparatus, Search and Rescue, Forcible Entry, Ventilation, and Safety, Emergency Medical Care, Fire Prevention and Public Fire Education, Fire Control, Salvage and Overhaul, Fire Extinguishers, Ropes and Knots, Ladder and Hose Maintenance, and Fire Department Communications. The test has two parts, a 150 question multiple-choice written test and a practical exam to demonstrate proficiency in between four and six skills categories.

The National Fire Protection Association is a non-governmental fire and electrical standards setting entity that was organized by insurance and insurance underwriter concerns.

Discussion and Analysis

S.F. 235 (Betzold); H.F. 375 (Westerberg) would include in retirement coverage by the Public Employees Police and Fire Retirement Plan (PERA-P&F) employees of the city of Blaine, the city of Spring Lake Park, or the city of Mounds View who are employed outside of the police or fire departments of the city but are combination position employees with the primary assignment of engaging in emergency response

activities of firefighting, medical emergency, and hazardous materials situations if the employee meets various specific fire department-related occupational qualifications.

S.F. 235 (Betzold); H.F. 375 (Westerberg) raises several pension and related public policy issues for Commission consideration and discussion, as follows:

1. Appropriateness of Including Combination Firefighter-Civilian Employees in Public Safety Employee Pension Coverage. The policy issue is the appropriateness of including employees of civilian departments of a city who also are required to perform on-call firefighter duties in public safety employee retirement plan coverage. Currently, to be included in coverage by the Public Employees Police and Fire Retirement Plan (PERA-P&F), local government employees must be employees of either a police department or of a fire department. Although the individuals proposed for PERA-P&F coverage would be employees of a civilian or non-public safety department, the employees are required to be primarily assigned to engage in emergency response activities, meet the hiring and employment requirements of the Blaine-Spring Lake Park-Mounds View Fire Department, and meet minimum training requirements as a firefighter, a first responder, and a hazardous materials specialist. The legislation is being sought by the Blaine-Spring Lake Park-Mounds View Fire Department in an attempt to meet part of its recruitment needs. It is unclear whether or not this combination civilian-firefighter position will improve the provision of firefighting services in southern Anoka County. The inclusion of positions that are not dedicated public safety positions for persons employed in a public safety department in public safety pension coverage does represent something of a “watering-down” of eligibility for that special coverage. Public safety pension coverage functions like any pension coverage to recruit qualified new employees, to retain productive existing employees, and to produce a predictable and systematic out-transitioning of employees reaching the conclusion of their normal working lifetime and is adapted for the special hazards and physical demands of public safety employment. The proponents of the proposed legislation are likely to argue that recruitment needs are the primary rationale for the bill. If the affected employees are not regularly subjected to the physical hazards and demands that characterize public safety employment, the proposed inclusion of these combination civilian-firefighter positions in PERA-P&F coverage represents the provision of excessive benefit coverage than may be appropriate and the imposition of a higher cost to taxpayers than is necessary.
2. Appropriateness In Light of the Availability of Volunteer Firefighter Relief Association Coverage. The policy issue is the appropriateness of including Blaine, Spring Lake Park, or Mounds View combination civilian-firefighter employees in retirement coverage by the Public Employees Police and Fire Retirement Plan (PERA-P&F) when the option of volunteer firefighters with the Spring Lake Park Volunteer Firefighter Relief Association retirement coverage is available. The recruiting problem of the Blaine-Spring Lake Park-Mounds View Fire Department appears to be in gaining a sufficient number of daytime firefighters for the suburban communities the department services. Although the Blaine, Spring Lake Park, or Mounds View resident pool of potential volunteer firefighters during the daytime hours is reduced by those persons who commute and work outside of the three localities, the creation of a day shift for Blaine-Spring Lake Park-Mounds View Fire Department volunteer firefighters drawn from workers in the area who work a day shift and the provision of those volunteer firefighters with Spring Lake Park Volunteer Firefighter Relief Association retirement coverage could produce the necessary recruits.
3. Appropriateness of the Minimum Requirements for Combination Civilian-Firefighter Employment. The policy issue is the appropriateness of the ten specific requirements that a person needs to meet in order to gain the proposed special retirement coverage. The requirements are:
 - (1) Blaine, Spring Lake Park, or Mounds View City Employment – be an employee of the city of Blaine, or the city of Spring Lake Park, or the city of Mounds View;
 - (2) Primary Firefighter Assignment – have the primary employment assignment of engaging in emergency response activities for firefighting, medical emergencies, or hazardous materials situations;
 - (3) Blaine-Spring Lake Park-Mounds View Fire Department Membership – be retained by the Blaine-Spring Lake Park-Mounds View independent nonprofit firefighting corporation;
 - (4) Blaine-Spring Lake Park-Mounds View Fire Department Rules Compliance – comply with all rules, regulations and requirements of the Blaine-Spring Lake Park-Mounds View independent nonprofit firefighting corporation;
 - (5) 60 Hours Annual Ongoing Continuing Firefighting Education – maintains a minimum of 60 hours of ongoing continuing firefighting education annually;

- (6) Firefighter I Minimum Certification – have the certification of Firefighter I or higher by the Minnesota Fire Certification Board;
- (7) Hazardous Materials Specialist Certification – have the certification as a hazardous materials specialist from an accredited institution;
- (8) First Responder Certification – have the certification as a first responder by the National Registration Board;
- (9) Firefighter or Emergency Responder Primary Employment Assignment – be employed primarily by the employing city as a firefighter or emergency responder; and
- (10) No Future Social Security Coverage – be determined to be ineligible for future Social Security coverage because of firefighter employment.

Because of the number of requirements and because of the specificity of the requirements, there may be difficulties in actually gaining a sufficient number of potential recruits of the Blaine-Spring Lake Park-Mounds View Fire Department. Since the fire department covers three municipalities and fire department calls can occur anywhere in the service area, if most of the employee's fire department duties and activities take the person outside of the employing municipality, that municipality may not be willing to continue the experiment in the future. The requirements effectively require double employment, since the person must meet any municipal employment requirements as well as Blaine-Spring Lake Park-Mounds View Fire Department standards, and any inappropriate discretion allowed in the hiring procedures of either could subject both "employers" to subsequent litigation. Requiring certification in three specialties (firefighter, first responder, and hazardous materials specialist), each requiring a significant and somewhat costly training regimen, may dissuade individuals, especially if these actually are preconditions to the employment rather than actually being continuing or ultimate conditions. The specification of the Minnesota Fire Certification Board certification only, and not allowing a comparable firefighter certification, also may be problematic. Amendment LCPR05-105 would broaden this certification requirement to include comparable entities providing the same certification. The first responder National Registration Board certification lacks clarity, since a web search by the Commission staff produced no links to an organization with that certification, and the requirement also may be too specific and too limited. Amendment LCPR05-106 would replace the specific certification organization with a broader reference simply to an accredited institution. The second requirement, the primary firefighter assignment requirement, and the ninth requirement, the firefighter or emergency responder primary employment assignment requirement, appear to be either duplicative and unnecessary or potentially inconsistent. Amendment LCPR05-107 eliminates the potential duplicative or contradictory seventh requirement.

4. No Clear Disallowance of Spring Lake Park Volunteer Firefighter Relief Association Coverage. The policy issue is the appropriateness of potentially allowing a combined civilian position-firefighter employee of Blaine, Spring Lake Park, or Mounds View who renders essentially volunteer service with the Blaine-Spring Lake Park-Mounds View Fire Department with retirement coverage by the Public Employees Police and Fire Retirement Plan (PERA-P&F) to also have retirement coverage by the Spring Lake Park Volunteer Firefighter Relief Association. Because the combination employee is not technically an employee of the Blaine-Spring Lake Park-Mounds View Fire Department, the combination could "volunteer" firefighting services for purposes of coverage by the Spring Lake Park Volunteer Firefighter Relief Association under the federal Fair Labor Standards Act, resulting in a pension coverage situation akin to the arrangements by Edina firefighters and Coon Rapids firefighters. This double coverage for the same employment or for essentially the same employment is generally considered a retirement abuse. Amendment LCPR05-108 would prohibit the combination employee from concurrent retirement coverage by the Spring Lake Park Volunteer Firefighter Relief Association.
5. Appropriateness of New Restrictions on Duty Disability Coverage for Combination Employees. The policy issue is the appropriateness of the restrictions on duty disability coverage under the Public Employees Police and Fire Retirement Plan (PERA-P&F) proposed for these Blaine, Spring Lake Park, or Mounds View combination civilian-firefighter employees. A duty disability benefit for a combination civilian-firefighter employee of Blaine, Spring Lake Park, or Mounds View would be payable only if the person becomes unable to perform firefighter duties from an injury, illness or other disability while engaged in an emergency call for assistance response, or engaged in firefighting training, or while engaged in fire suppression or rescue activities at the scene of a fire or a rescue. Although the proposed restrictions are intended to narrow the eligibility for a PERA-P&F duty disability benefit, the proposed provisions are not unambiguous. For instance, if the combination civilian position-firefighter employee is startled by a fire call pager while working at a city computer station or while investigating a municipal water or sewer line, then falls, and suffers a permanent loss

of motion in a leg or arm joint, a question arises whether or not that injury occur while responding to an emergency call for assistance.

6. Current Lack of a Clear Definition of a Firefighter for PERA-P&F Coverage. The policy issue incidental to the proposed legislation is the lack of a clear operational definition of a firefighter currently in Minnesota Statutes, Section 353.64 comparable to the definition of a police officer. Minnesota Statutes, Section 353.64, Subdivision 1, Clause (2), does not require that a potential PERA-P&F member as a firefighter be certified or licensed in that position, be assigned to a municipal fire department or independent nonprofit firefighting corporation, or be required to have as a primary job assignment in fire suppression, emergency medical response, or hazardous materials response. Because PERA-P&F was primarily engaged in providing pension coverage to police officers and was historically very limited in its application to full-time firefighters, the requirements for PERA-P&F coverage for firefighters is vague, poorly developed, and has potential problems. Amendment LCPR05-109 suggests language to bolster the current PERA-P&F firefighter definition.
7. Need for Stricter PERA-P&F Duty and Non-Duty Disability Benefit Eligibility Requirements. The policy issue, related to the subject matter of the proposed legislation, is the need for additional revisions in the eligibility requirements for PERA-P&F duty and non-duty disability benefit coverage. In February 2004, PERA and news articles in the Minneapolis Star Tribune and the St. Paul Pioneer Press indicated that numerous Minnesota police officers and firefighters were using a loophole in state law to receive lucrative disability benefits, sometimes two years after the injury occurred and while engaging in subsequent public employment. The February 2004 concerns were only partially addressed in H.F. xxx; S.F. 1616 (Betzold), which was folded into the 2004 Omnibus Retirement Bill, which made the following changes in PERA-P&F disability procedures:
 - a. Requiring evidence that the applicant is unable to perform duties of the position held at the time of the disability if the application is filed within two years of the onset of the disabling injury or illness;
 - b. Requiring evidence that the applicant is unable to perform duties assigned within 90 days of the application date if the application is filed more than two years after of the onset of the disabling injury or illness;
 - c. Requiring first reports of injury in all duty-related applications;
 - d. Requiring in all cases that the employer must provide evidence that the applicant is unable to perform applicable duties;
 - e. Voiding the disability application if termination from service does not occur within 45 days after approval of a disability application;
 - f. Clarifying that individuals may simultaneously apply for disability and retirement benefits, although both may not be received at the same time; and
 - g. Permitting repayment of refunds no later than six months after the effective date of the disability benefit.

In testimony in 2004, PERA indicated that it had worked on the issue with interested parties and would continue to discuss additional disability benefit revisions and reforms with its constituency, but no additional revisions or reforms have been forthcoming in 2005. To potentially resolve some of the identified problems with the PERA-P&F disability benefit program, Amendment LCPR05-110 makes the following potential changes as a contribution to Commission consideration of potential PERA-P&F disability reforms based on the February 2004 identification of PERA-P&F disability program problems:

- i. Creates Hazardous Duty Disability Benefit. The current duty disability benefit is transformed into a hazardous duty disability benefit, without any minimum vesting requirement and with a minimum benefit amount (Sections 1, 4, and 6).
- ii. Creates Non-Hazardous Duty Disability Benefit. A non-hazardous duty disability benefit is created, without any minimum vesting requirement, but with a smaller minimum benefit amount than the duty disability benefit (Sections 2 and 8).
- iii. Requires Disability Determination Based on Person's Actual Police or Fire Duties. The determination of a hazardous duty disability, a non-hazardous duty disability, or a non-duty disability must be based on the actual duties of the person's police officer or firefighter position, so a detective's disability will be potentially based on different position requirements than a beat patrol officer (Sections 1, 2, and 3).

- iv. Reemployed Disabilitant Earnings Limitation Clarified. An earnings limitation on reemployed disabilitants is clarified to apply to any public sector, nonprofit sector, or private sector employment (Section 9).
- v. Termination on Account of Disability Required for Disability Benefit Receipt. As a condition to the receipt of a disability benefit, an application is required to have terminated active public safety employment on account of the disability (Section 10).
- vi. No Post-Termination Disability Benefit Application. No application for a PERA-P&F disability benefit may be filed after the person terminates active employment (Section 12).
- vii. No Post-Disability Refund Repayment. No refund repayment is permitted from a PERA-P&F disability benefit applicant after the date of the disability (Section 12).

Technical Amendment

Amendment LCPR05-104 clarifies the language of the proposed legislation without intentionally altering its substance and repositions the proposed disability eligibility restrictions in the PERA-P&F disability benefit section rather than in the membership section as proposed.