

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: S.F. xxx (Pogemiller); H.F. xxx: MSRS-Correctional; Procedure for Department Recommendation of Additional Membership Inclusions

DATE: April 4, 2005

#### Summary of S.F. xxx (Pogemiller); H.F. xxx

S.F. xxx (Pogemiller); H.F. xxx amends Minnesota Statutes, Section 352.91, the specification of the employment positions in the Department of Corrections and the Department of Human Services included in the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), by adding a new subdivision that requires the Department of Corrections and the Department of Human Services to establish a procedure for processing requests from employees for additional inclusions in the MSRS-Correctional Plan based on the extent of inmate contact, the extent of physical hazard, and the extent of facility incident intervention responsibility.

#### Background Information on the MSRS-Correctional Plan Membership Inclusions

Appendix A contains background information on the membership inclusions in the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional).

#### Background Information on the Prior MSRS-Correctional Administrative Transfer Provision

Appendix B contains background information on the prior administrative transfer provisions of the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), Minnesota Statutes 2000, Section 352.91, Subdivision 4.

#### Discussion and Analysis

S.F. xxx (Pogemiller); H.F. xxx adds a requirement to the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) that the Department of Corrections and the Department of Human Services establish a procedure for accepting employee requests for inclusion in MSRS-Correctional membership, for evaluating those requests, and for recommending additional MSRS-Correctional membership inclusions to the Commission and the standing legislative committees in the form of proposed legislation if the employee has direct inmate or patient contact for at least 75 percent of the person's work period, is routinely engaged in the rehabilitation, treatment, custody, or supervision of inmates or patients, has a significant physical hazard in conducting employment duties, and is regularly expected to intervene in facility incidents.

The proposed legislation raises several pension and related public policy issues that the Commission may desire to consider and discuss, as follows:

1. Appropriateness of Recommendation Process Rather Than Prior Administrative Transfers. The policy issue is the formulation of a process for the recommendation of proposed legislation including additional Department of Corrections or Department of Human Services positions in coverage by the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) rather than the prior direct administrative transfer provision, repealed in 2000. The administrative transfer provision was created in 1980, when the plan membership was largely limited to the various classes of correctional officers, in response to concerns raised by the Department of Corrections about delays in the inclusion of newly created correctional security positions before inclusion legislation could be formulated and an uncovered correctional officer could be disabled or killed while on duty. The administrative transfer was little utilized until after the 1996 expansion of the MSRS-Correctional Plan, when various positions that were potential inclusion amendments that session were included in the plan by MSRS, upon the approval of the Department of Employee Relations, initiated by the Department of Corrections, but without the receipt of required comments from the Legislative Commission on Pensions and Retirement or the Legislative Advisory Commission. Department of Employee Relations Deputy Commissioner Paul Larson determined that the prior transfer procedure had not been followed in 1998 and the Commission was involved in at least three sets of transfer requests in 1999 and 2000. The prior potential abuse of the administrative transfer procedures and the difficulty of accommodating the demands of multiple transfer requests during one year with legislative schedules obviously played a role in the Commission's ultimate

recommendation that the administrative transfer be repealed in 2000. Although the Department of Corrections has explored a recreation of the administrative transfer procedure in recent years, a restoration of the administrative transfer process could lead to future potential abuses when departures occur and the process remains difficult to cleanly accommodate in the legislative calendar.

2. Appropriateness of the Inclusion Recommendation Criteria. The policy issue is the appropriateness of the criteria required in the proposed membership inclusion recommendation procedure. The criteria has four parts, first, the extent of direct inmate or patient contact, with a minimum of 75 percent of a person's regular work period; second, routine duties of the rehabilitation, treatment, custody, or supervision of inmates or patients; third, the existence of a significant physical hazard in the conduct of the person's employment duties; and fourth, a minimum requirement that the employee be expected to intervene in facility incidents. The criteria reflects the Commission staff's understanding of the Commission's policy since it recommended the addition of correctional teachers and maintenance/trade personnel to plan coverage in 1974 and is consistent with the MSRS-Correctional Plan as a quasi-public safety retirement plan. The early retirement, disability, and survivorship elements of the MSRS-Correctional Plan, adapted for the existence of Social Security coverage, are modeled on the points of emphasis in public safety pension plans and are intended to match the physical hazards of public safety employment and the ramifications of requiring public safety personnel to have and maintain a particularly vigorous physical capability to engage in demanding and stressful employment occurrences.
3. Appropriateness of Legislative Procedure Mandate Rather Than Department Action. The policy issue is the appropriateness of having legislation establish a procedure for entertaining, evaluating, and processing employee requests for retirement plan coverage transfers when the affected departments, the Department of Corrections and the Department of Human Services could create the procedure internally, upon their own initiative. The proposed process is not a self-effective administrative transfer of plan coverage, but simply a process for an executive department to recommend a legislative change, which the department could institute on its own. If the intent is to publicize the new procedure broadly and to gain a legislative commitment to receive and consider the department recommendation and the proposed legislation is being forwarded at the request of the department or with department support, as appears to be the case, the proposed legislation would not be an undesired intrusion in executive branch affairs.
4. Unaddressed Problem of No Procedure for Correcting Out-of-Date Employment Position Designations. The policy issue is the absence of any procedure in the proposed legislation for correcting the employment position designations for the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) when the employment position designations become out-of-date. In two reviews during the past six years by the Commission staff comparing the MSRS-Correctional membership with the MSRS-Correctional membership statutes as part of Commission interim projects, the Commission staff has found a significant deviation between the plan membership and the plan membership inclusion statutes, many of which appear to be a failure to upgrade employment position titles in Minnesota Statutes, Section 352.91. The affected departments (Employee Relations, Corrections, and Human Services) and the plan administration, MSRS, for no disclosed reason, have resisted any process of upgrading position names when employment position names change or when employment positions are combined. A pension plan where its membership depends on the specification of employment position titles rather than any more generic manner of designation does not provide lawmakers, affected department employees, or the public with adequate information about plan coverage without any process for making corrections or without a commitment to properly manage this aspect of the plan.

## Appendix A

### Background Information on the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional)

1. Pre-1973 Correctional State Employee Retirement Coverage. Before 1973, all employees of the Department of Corrections were covered by the State Employees Retirement Association (SERA) until 1967, and then by SERA's successor, the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). MSRS-General's predecessor was established in 1929 (Laws 1929, Chapter 191).

MSRS-General has been a defined benefit plan since 1929 and has been entirely coordinated with the federal Social Security program since 1957. At that time, coordination was available on an "all or none" basis. The then SERA members, by a majority vote on a Social Security referendum, chose coordination. At the same time, and on the same basis of all or none coverage, the other two statewide funds, the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and the Teachers Retirement Association (TRA), held similar referenda, which were rejected by the existing membership of those plans. TRA coordinated with Social Security in 1959 on a "split fund" basis, with the members who did not elect Social Security coverage placed in a phasing-out Basic program. In 1965-1967, PERA coordinated on a "split fund" basis.

The SERA/MSRS-General benefit plan has changed considerably since 1929. Significant plan changes have occurred in 1967, when retirement coverage and contributions were extended to a person's full salary (up to a limit of \$4,800 before 1965 and a limit of \$7,200 before 1967), in 1969, when the predecessor to the Minnesota Post Retirement Investment Fund was created, in 1973, when the calculation of retirement benefits shifted from a career average salary to the highest five successive years average salary and the benefit accrual rates were simplified and increased, in 1989, when the "Rule of 90" benefit tier was created, in 1992, when the Minnesota Post Retirement Investment Fund adjustment mechanism was revised, and in 1997, when the benefit accrual rates were increased to achieve "uniformity" among the various general employee retirement plans.

2. 1973 Creation of the MSRS-Correctional Retirement Plan. The Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) was established in 1973 as a result of collective bargaining by the State of Minnesota with the American Federation of State, County and Municipal Employees, Council 6, and the resulting implementing legislation (Laws 1973, Chapter 653, Sections 39 to 44). The membership of the 1973 plan was limited to a small number of employees of the Department of Corrections or of the Department of Public Welfare (now Human Services), as follows:

Attendant Guard	Director of Attendant Guards
Attendant Guard Supervisor	Guard Farmer Garden
Correctional Captain	License Plant Manger
Correctional Counselor I	Prison Industry Foreman
Correctional Counselor II	Prison Industry Supervisor
Correctional Counselor III	Food Service Manager
Correctional Counselor IV	Prison Farmer Supervisor
Correctional Lieutenant	Prison Farmer Assistant Supervisor
Correctional Officer	Rehabilitation Therapist
Correctional Sergeant	

Pre-July 1, 1973, service in a covered position was generally transferred from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), as was prior State employment as a houseparent, guard instructor, and guard farmer dairy. The identification of the State personnel for inclusion in the plan was made by the collective bargaining process and the administrations of the two affected departments. Although a separate retirement plan, MSRS-Correctional shared the State Employees Retirement Fund as its funding and investment mechanism until 1987, when a separate retirement fund was created for the MSRS-Correctional Retirement Plan. The creation of the MSRS-Correctional Retirement Plan, with an age 55 normal retirement age, coincided with the imposition of a statutory early mandatory retirement age for correctional personnel covered by MSRS-Correctional. Under Laws 1973, Chapter 653, Section 12, the previously applicable age 70 mandatory retirement age was reduced for correctional employees to age 65 as of July 1, 1974, to age 62 as of January 1, 1975, and phased down to age 55 as of July 1, 1976. The creation of the MSRS-Correctional Plan was part of an initiative to accelerate the retirement of the prior cadre of Minnesota prison guards, to upgrade the function and reliability of the

security personnel at the State's correctional facilities, reflected in the renaming of the prison guards as correctional officers, to increase the pre-employment educational attainment of correctional personnel to match their upgraded job responsibilities, and to reduce the amount of contraband that was then entering correctional facilities from correctional employees. The initial active membership of the plan on July 1, 1973, was 677.

3. 1974 Membership Expansion of the MSRS-Correctional Retirement Plan. The initial expansion for the MSRS-Correctional Retirement Plan occurred in 1974 (Laws 1974, Chapter 520). Following Interim hearings by the Legislative Retirement Study Commission (renamed in 1975 the Legislative Commission on Pensions and Retirement) at the St. Cloud Reformatory and otherwise, the Legislature authorized an expansion in the plan membership to include special teachers, trades personnel, and maintenance personnel at the Minnesota Correctional Facility-Stillwater, the Minnesota Correctional Facility-St. Cloud, and the Minnesota Correctional Facility-Shakopee. The special teachers, trades personnel, and maintenance personnel transferred to coverage by the MSRS-Correctional Retirement Plan were those certified by the then newly created Commissioner of Personnel (now Commissioner of Employee Relations) as being regularly engaged in the rehabilitation, treatment, custody, or supervision of inmates. Credit for past applicable correctional employment, including employment as a special schools counselor or a shop instructor, was transferred to the MSRS-Correctional Retirement Plan. For correctional teachers covered by TRA, a transfer of past member, employer regular, and employer additional contributions from TRA accompanied the service credit transfer. The Commission hearings leading to the 1974 expansion focused primarily on the safety hazards reportedly suffered by these State employees from inmates and the public safety-related rationale of the need to maintain a particularly vigorous workforce through emphasizing an early age normal retirement. The 1974 expansion of the plan increased its active membership by 60, to 737.
4. 1975-1978 MSRS-Correctional Retirement Plan Coverage Changes. In 1975 (Laws 1975, Chapter 230, Section 1), following complaints from correctional personnel facing imminent early retirement, the mandatory retirement age for MSRS-Correctional Plan active members was modified by making it a conditional mandatory retirement age through age 65, with annual extensions beyond the mandatory age if a medical examination supports the extension. The amendment reflected considerable disgruntlement by MSRS-Correctional Plan active members approaching the mandatory retirement age because the 1974 recession considerably reduced the second career employment prospects of the early retirees, especially when those members believed that they retained a physical capacity to continue to perform the employment position responsibilities.

Also in 1975 (Laws 1975, Chapter 368, Section 35), allowable service credit for prior State employment at a correctional facility as a farmer or a farmer manager by an MSRS-Correctional Plan active member on July 1, 1973, was transferred to the plan. Special teachers previously covered by the TRA Basic program had a TRA Basic program retirement annuity amount set as a floor benefit amount.

In 1978 (Laws 1978, Chapter 781, Section 2), institution educational administrators and institution educational supervisors at correctional facilities were included in the MSRS-Correctional Plan membership.

5. 1980 Addition of MSRS-Correctional Plan Covered Position Administrative Certification Process. In 1980 (Laws 1980, Chapter 600, Sections 2, 3, 4, and 5), coverage by the MSRS-Correctional Plan was classified as applicable only to employees in adult correctional facilities, and post-June 1, 1980, employment as a special teacher, a tradesperson, or a maintenance person at the Minnesota Correctional Facility-Lino Lakes was included in MSRS-Correctional Plan coverage. Additionally, special authority was enacted for the Commissioner of Personnel (also renamed Employee Relations in 1980), upon the recommendation of the Commissioner of Corrections or the recommendation of the Commissioner of Public Welfare (subsequently renamed Human Services), whichever applies, the notification of and receipt of comments from the Legislative Commission on Pensions and Retirement, and the approval of the Legislative Advisory Committee, to certify additional civil service classifications in adult correctional facilities or in the Minnesota Security Hospital as covered by the MSRS-Correctional Retirement Plan. The provision was codified as Minnesota Statutes, Section 352.91, Subdivision 4. The provision was intended to allow for plan expansions between legislative sessions when there was an urgency to do so.
6. 1981-1987 MSRS-Correctional Retirement Plan Coverage Changes. In 1981 (Laws 1981, Chapter 297, Sections 3 and 4), service credit for pre-1981 State employment as a security guard by an

MSRS-Correctional Plan member was transferred to the MSRS-Correctional Plan, with the payment of an additional contribution amount.

In 1986 (Laws 1986, Chapter 458, Sections 31 and 32), service credit for correctional employment rendered between 1973 and 1980, that was excluded from MSRS-Correctional Plan coverage because the person was age 45 or older upon hiring were given the option to elect MSRS-Correctional Plan coverage with the payment of an additional contribution amount.

In 1987 (Laws 1987, Chapter 372, Article 1, Section 4), the 1980 administrative certification process for additional MSRS-Correctional Retirement Plan active members was amended to require both the Commissioner of Corrections and the Commissioner of Human Services to establish written criteria for basing a recommendation on certifying additional positions for MSRS-Correctional Retirement Plan membership to the Commissioner of Employee Relations.

7. 1980s MSRS-Correctional Plan Administrative Transfers. Before 1998, several transfers of retirement coverage to the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) were approved by the Commissioner of Employee Relations and implemented by MSRS without the receipt of Legislative Commission on Pensions and Retirement comments as required by Minnesota Statutes 1998, Section 352.91, Subdivision 4. Some or all of these past coverage changes may have been implemented without Legislative Advisory Commission approval also. Although the requested information was not gathered in a timely fashion, the Commission staff was provided with information for at least 48 recent retirement coverage transfers under Minnesota Statutes 1998, Section 352.91, Subdivision 4, without explicit Commission comment. The 48 transfers involved 19 employment classifications in six correctional facilities and two Department of Human Services facilities.
8. 1996 MSRS-Correctional Retirement Plan Coverage Expansion. In 1996 (Laws 1996, Chapter 408, Article 8, Sections 10-17), various positions providing service at a correctional facility or the state security hospital were made newly eligible for Correctional Plan coverage, providing the employee has at least 75 percent inmate or patient contact. The groups added to the MSRS-Correctional Retirement Plan coverage were in 31 job classifications, as follows:

Special Teacher in Juvenile Facilities	Dentist
Registered Nurse Senior	Electrician Supervisor
Registered Nurse	General Repair Worker
Registered Nurse-Principal	Library/Information Research Services Specialist
Licensed Practical Nurse 2	Plumber Supervisor
Baker	Psychologist 3
Chemical Dependency Counselor Supervisor	Recreation Therapist
Chief Cook	Recreation Therapist Coordinator
Cook	Recreation Program Assistant
Cook Coordinator	Recreation Therapist Senior
Corrections Behavior Therapist	Stores Clerk Senior
Corrections Behavior Therapist Specialist	Water Treatment Plant Operator
Corrections Parent Education Coordinator	Work Therapy Technician
Corrections Security Caseworker	Work Therapy Assistant
Corrections Security Caseworker Career	Work Therapy Program Coordinator
Corrections Teaching Assistant	

Incumbents in the State employment positions that were newly included in plan coverage were permitted to waive the coverage change and retain their prior coverage and incumbents were permitted to transfer any prior applicable State employment with the payment of an additional contribution amount. The MSRS-Correctional Plan member and employer contribution rates were increased to cover the cost of the coverage expansion. The transfer involved 54 special teachers, 70 nurses, and 277 other classifications of State employees. By July 1, 1996, the plan active membership had increased to 2,264.

9. 1997 MSRS-Correctional Retirement Plan Coverage Changes. In 1997 (Laws 1997, Chapter 239, Article 9, Sections 40 and 41; Laws 1997, Chapter 241, Article 11), certain individuals at the Minnesota sexual psychopathic personality treatment center and individuals in certain employment classifications at the Minnesota correctional facility at Red Wing (auto mechanic lead, electrician, electrician master of record, groundskeeper intermediate, or plumber master) were added to an uncoded 1996 coverage election law authorizing a prospective coverage by the MSRS-Correctional Plan rather than continued MSRS-General coverage, with the deadline for making an election set at December 31, 1997. The individuals who transferred prospective coverage to MSRS-Correctional

were authorized to elect to transfer prior state service if that service would have been eligible for current MSRS-Correctional coverage, with a deadline of December 31, 1997.

10. Post-1996 Administrative Transfers to the MSRS-Correctional Plan. Under the 1980 administrative transfer provision, Minnesota Statutes 1998, Section 352.91, Subdivision 4, the Commission considered requests for the transfer of State employees to the MSRS-Correctional Retirement Plan on three instances – June 1998, June 1999, and December 1999. The June 1998 transfer request involved seven employees in five employment positions in four correctional facilities. The June 1999 transfer request involved a ratification of prior transfers of 51 employees in 20 employment positions in six correctional facilities and two Department of Human Services facilities and a transfer request that involved 39 employees in 10 employment positions and that involved 13 employment positions without incumbents in eight Department of Corrections facilities and two Department of Human Services facilities. The December 1999 transfer request involved 40 employees in 11 employment positions and one employment position without incumbents in eight Department of Corrections facilities and two Department of Human Services facilities. Except for the prospective transfers contained in the June 1999 transfer request, the Legislative Advisory Committee approved the transfers.
11. 1999 MSRS-Correctional Retirement Plan Coverage Changes. In 1999 (Laws 1999, Chapter 222, Article 13), nine positions in the Minnesota Extended Treatment Options Program (METO), located at the Cambridge Regional Treatment Center and operated by the Department of Human Services, were included in MSRS-Correctional Retirement Plan coverage if the positions are certified by the Commissioner of Human Services as having at least 75 percent direct patient contact. The Minnesota Extended Treatment Options Program is a statewide program for adults who have developmental disabilities and who exhibit severe behaviors that present a risk to public safety. The nine job classifications added to MSRS-Correctional Retirement Plan coverage were as follows:

- Behavior Analyst
- Human Services Support Specialist
- Mental Retardation Residential Program Lead
- Psychologist 2
- Recreation Therapist Senior
- Registered Nurse
- Skills Development Specialist
- Social Worker Senior

Individuals who gained prospective MSRS-Correctional Plan coverage were allowed to elect to transfer past METO service to MSRS-Correctional, back to July 1, 1997, providing that the service was in one of the specified positions and the 75 percent inmate contact requirement was met. To transfer past service coverage, the employee was required to pay the difference between the employee contribution paid to MSRS-General and the employee contribution that would have been paid to MSRS-Correctional, if coverage by that plan had been provided during that time period, plus six percent interest. If payment was made by the member, MSRS was required to transfer from MSRS-General to MSRS-Correctional the funded portion of the benefit that accrued during that period. The transfer involved 115 State employees, including 90 Human Services Support Specialists. The 1999 METO transfer also involved the transfer of several part-time employees to MSRS-Correctional Retirement Plan coverage, which was perhaps the first large-scale introduction of part-time employees into Minnesota public safety retirement plan coverage.

12. 2000 MSRS-Correctional Retirement Plan Coverage Changes. In 2000 (Laws 2000, Chapter 461, Article 6, Sections 1 to 4 and 6), several positions in the Department of Corrections and the Department of Human Services were included in the MSRS-Correctional Retirement Plan if the applicable Commissioner certified that at least 75 percent of the employee's working time was spent in direct inmate or patient contact. The applicable positions were as follows:
  - (a) registered nurse practitioner at a correctional facility or at the Minnesota Security Hospital;
  - (b) behavior analyst 2, licensed practical nurse 1, office and administrative specialist senior, psychologist 2, social worker specialist, behavior analyst 3, and social worker senior at the Minnesota Security Hospital or the Minnesota Sexual Psychopathic Personality Treatment Center;
  - (c) corrections discipline unit supervisor at Minnesota correctional facilities at Lino Lakes, Oak Park Heights, and St. Cloud;

- (d) dental assistant registered, at Minnesota correctional facilities at Faribault, Lino Lakes, Moose Lake, Oak Park Heights, and Red Wing;
- (e) dental hygienist, at the Minnesota correctional facility at Shakopee;
- (f) psychologist 2, at the correctional facility at Faribault, Lino Lakes, Moose Lake, Oak Park Heights, Red Wing, St. Cloud, Shakopee, and Stillwater;
- (g) the sentencing-to-service crew chief leader involved with the inmate community work crew program at Faribault and Lino Lakes; and
- (h) director and assistant group supervisor of the former Phoenix/Pomiga treatment/behavioral change program at the Minnesota Correctional facility at St. Cloud.

Individuals who newly gained MSRS-Correctional Retirement Plan coverage were permitted to have comparable past service, if continuous and if performed after June 20, 1975, transferred to MSRS-Correctional. To transfer the past service credit, the individuals were required to have paid in a lump sum by June 30, 2002, the difference for the applicable period between the MSRS-Correctional employee contribution and the employee contributions paid to MSRS-General, plus six percent interest. Upon payment, assets equal to the individual's present value of benefits in MSRS-General were required to be transferred to MSRS-Correctional. The Department of Corrections and the Department of Human Services must cover the expense of computing the proper transfer amounts. The transferred positions were the various Department of Corrections and Department of Human Services employees who were recommended for administrative transfer during 1999, who were formally reviewed by the Legislative Commission on Pensions and Retirement in December 1999, but who were not subsequently approved by the Legislative Advisory Commission.

Additionally, Minnesota Statutes 1998, Section 352.94, Subdivision 4, which previously provided an administrative process for adding additional positions to the MSRS-Correctional Retirement Plan based on recommendations from the Commissioner of Human Services or Corrections, a review by the Legislative Commission on Pensions and Retirement, and approval by the Legislative Advisory Committee, was repealed.

13. 2004 MSRS-Correctional Retirement Plan Coverage Changes. In 2004 (Laws 2004, Chapter 267, Article 1, Section 1), three additional positions in the Department of Corrections were included in the MSRS-Correctional Retirement Plan if the Commissioner of Corrections certified that at least 75 percent of the employee's working time was spent in direct inmate or patient contact. The positions were:

- (a) corrections discipline unit supervisor at the Minnesota Correctional Facility-Rush City;
- (b) dental hygienist at the Minnesota Correctional Facility-Rush City; and
- (c) psychologist 2 at the Minnesota Correctional Facility-Rush City.

No transfer to the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) of any past service credit related to past employment in the affected position and covered by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) was permitted in the 2004 legislation, which resulted from a House Governmental Operations and Veterans Affairs Policy Committee amendment to the 2004 Omnibus Retirement Bill.

14. Attraction of MSRS-Correctional Plan Membership and Transfer Demands. The attraction of the MSRS-Correctional Plan for groups seeking this coverage is that the plan pays higher benefits than a general employee plan and has an earlier normal retirement age. Because of the better benefits and earlier retirement age, the plan is more costly than a regular employee plan. The plan offers a hybrid of general employee plan and public safety plan features. MSRS-Correctional Plan members are coordinated members, unlike Public Employees Retirement Association Police and Fire Plan (PERA-P&F) members. Like a public safety plan, members can retire without a reduction for early retirement at age 55 or with a reduction at age 50. This annuity is computed using a 2.4 percent yearly service benefit accrual factor. Duty-related disability benefits are generous, typical of a public safety plan. The duty-related disability receives 50 percent of high five average salary, plus 2.4 percent of high five average salary for each year in excess of 20 years of allowable service. Also like a public safety plan, the MSRS-Correctional Plan uses an occupational definition of disability rather than the total impairment disability definition used by the MSRS-General Plan.

The premise for coverage by the MSRS-Correctional Plan is that certain employment positions in correctional or analogous security hospital or psychopathic personality treatment center service are

sufficiently hazardous and there is sufficient need for a particularly vigorous workforce in these specific positions to warrant a separate plan with larger retirement benefits payable at an earlier normal retirement age.

About 85 percent of MSRS-Correctional Plan members are employees of the Department of Corrections and about 15 percent of MSRS-Correctional Plan members are employees of the Department of Human Services. The correctional facilities with the largest numbers of MSRS-Correctional Plan members are MCF-Stillwater, MCF-Lino Lakes, MCF-St. Cloud, and MCF-Faribault. The plan currently has 3,249 members in approximately 100 employment classifications. Correctional officers comprise the largest single occupational group covered by the plan.



## Appendix B

### Summary of Minnesota Statutes 2000, Section 352.91, Subdivision 4

1. Summary of Provision. Minnesota Statutes 2000, Section 352.91, Subdivision 4, allows the Commissioner of Employee Relations to certify additional positions at a correctional facility, the security hospital, or the sexual psychopathic personality treatment center for inclusion in the membership of the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional). Before the Commissioner of Employee Relations is permitted to make that certification to MSRS, the following statutory preconditions must be met:
  - a. Appointing Authority Recommendation. The retirement coverage change must be recommended by the Commissioner of Corrections or by the Commissioner of Human Services, whichever applies, based on a written set of criteria to be developed by each commissioner for that purpose.
  - b. Pension Commission Notification and Comments. The Legislative Commission on Pensions and Retirement must be notified of the potential coverage change and the Commissioner of Employee Relations must receive the comments of the Commission about the proposed change.
  - c. Legislative Advisory Commission Approval. The Legislative Advisory Commission must approve the coverage change.
2. Prior Utilization. Although Minnesota Statutes, Section 352.91, Subdivision 4, has been law for 19 years, this is only the third time that the Commission staff can identify that the Commission has been requested to review transfers of State employees to the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) under that provision. The first identified review occurred in June, 1998, when the Legislative Commission on Pensions and Retirement reviewed a proposed transfer of seven Department of Corrections employees from the MSRS-General State Employees Retirement Plan (MSRS-General) and recommended that the Legislative Advisory Commission approve the transfer when it deliberated on the question. The Legislative Advisory Commission subsequently approved the transfers. The second identified review occurred in June, 1999, when the Legislative Commission on Pensions and Retirement reviewed a retroactive transfer of 51 State employees (32 from the Department of Human Services and 19 from the Department of Corrections) and a prospective transfer of 42 State employees (12 from the Department of Human Services and 27 from the Department of Corrections). The Legislative Advisory Commission subsequently approved the retroactive transfer, but declined to approve the prospective transfer. The House members on the Legislative Advisory Commission raised concerns about the transfer criteria used in formulating the proposed transfers and requested additional review of the topic by the Legislative Commission on Pensions and Retirement.

Until the Legislative Advisory Commission declined to approve a transfer request from the Department of Employee Relations in May, 1998, because there had been no review and comment by the Legislative Commission on Pensions and Retirement, there had been a number of MSRS-Correctional Plan transfers without full compliance with Minnesota Statutes, Section 352.91, Subdivision 4. The Minnesota State Retirement System (MSRS) has indicated in written correspondence that the plan administration did not verify compliance with Minnesota Statutes, Section 352.91, Subdivision 4, before completing the transfers recommended by the Department of Employee Relations.

As part of the initial June, 1998, review by the Commission of the Department of Employee Relations request, the Commission decided to review each Department of Employee Relations request for transfers to the MSRS-Correctional Plan itself, without use of a preliminary subcommittee review, to provide its comments to the Commission of Employee Relations and to the Legislative Advisory Commission, following an identification by the Commission staff of any issues arising out of the request, after receiving any relevant public testimony. The Commission comments would be assembled based on a majority vote of Commission members with a quorum in attendance.

3. Rationale for Provision. Minnesota Statutes, Section 352.91, Subdivision 4, enacted in 1980, in the understanding of the Commission staff, was intended to provide a vehicle or mechanism for the Department of Corrections and the Department of Human Services to include additional personnel in the MSRS-Correctional Plan on an emergency basis when the Legislature is not in session, such as when a new employment classification is created or some administrative reorganization occurs that would cause retirement coverage deficiencies for personnel who are appropriate for inclusion in the MSRS-Correctional Plan. The transfer provision intends to ensure that both the policy and fiscal concerns of the Legislature are adequately addressed. Minnesota Statutes, Section 352.91, Subdivision 4, provides for a policy review of and comment on a proposed transfer by the Legislative Commission on Pensions and Retirement and for the ultimate approval of a proposed transfer by the Legislative Advisory Commission.