**S.F. xxx****H.F. 2570**
(Paulsen)**Executive Summary of Commission Staff Materials**

Affected Pension Plan(s): TRA, First Class City Teacher Plans, IRAP
Relevant Provisions of Law: Minnesota Statutes, Chapter 356
General Nature of Proposal: Continuation of active service and plan membership while on active military duty.
Date of Summary: February 8, 2006

Specific Proposed Changes

- Adds general law provision continuing Minnesota teachers in Minnesota public pension plan coverage while the teacher is rendering active military service, with the cost of the member and employer contributions paid by the applicable employing unit.

Policy Issues Raised by the Proposed Legislation


1. Appropriateness of Legislative Mandate of Additional Employment Benefit.
2. Cost to Educational Employers of Mandated Member Contribution Payment.
3. Appropriateness of Potential Windfall for Called-Up Teachers Who Do Not Return from Active Military Service.
4. Problem of Determining Disability Benefit Eligibility for Former Teachers on Military Service Call Up.
5. Appropriateness of Including Non-Teaching Personnel in the Proposed Retirement Coverage Change.
6. Precedent.

Potential Amendments

No Commission staff amendments.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director 

RE: S.F. xxx; H.F. 2580 (Paulsen): Continued Teacher Retirement Coverage for Teachers Called to Active Military Service

DATE: February 8, 2006

Summary of S.F. xxx; H.F. 2580 (Paulsen)

S.F. xxx; H.F. 2580 (Paulsen) adds a new section to Minnesota Statutes, Chapter 356, governing public employee retirement coverage generally, which provides that Minnesota teachers who are called up in active military service will continue to be active members of the teachers retirement plan during that call-up period and have concurrent member and employer contributions paid as if the person were actively teaching, both paid for by the employing unit.

Background Information on Military Service Leave of Absence Provisions for Teachers Retirement Plans

The retirement plans covering teachers are required by federal law (the Uniformed Services Employment and Reemployment Rights Act (USERRA)) and by state law (Minnesota Statutes, Section 192.261) to allow military service veterans on leave from employment who return from military service to obtain retirement credit for the period of military service.

The provisions governing the payment of equivalent member contributions, plus interest, upon the completion of a military service leave and a return to active teaching are Minnesota Statutes, Section 354.53, for the Teachers Retirement Association (TRA) and Minnesota Statutes, Section 354A.093, for the three first class city teacher retirement funds, the Duluth Teachers Retirement Fund Association (DTRFA), the Minneapolis Teachers Retirement Fund Association (MTRFA), and the St. Paul Teachers Retirement Fund Association (SPTRFA).

Under the provisions, teachers who have a break in service to perform uniformed service for the United States, and who return to the employer upon termination of that service, may receive service credit in the pension plan by paying the employee contributions the individual would have made during the break period. Those contributions are to be based on the average salary the individual would have received during the leave or break period, or if that can not be determined, based on the annual salary rate during the 12-month period prior to the leave or break in service. The employer will pay the corresponding employer contributions and 8.5 percent interest on both the employee and employer contributions. The service credit purchase can not exceed five years unless a longer purchase period is required under United States Code. The time period to make a purchase begins when the individual returns to employment covered by the plan and has a duration of three times the length of the uniformed service period, but not to be less than one year nor to exceed five years. If the employee makes only a partial payment the service credit is prorated. A service credit purchase is not allowed if the individual separated from uniformed service under less than honorable conditions.

Background Information on the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA)

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA), passed in 1994, has the stated purpose to:

1. Encourage non-career service in the uniformed services by eliminating or minimizing the disadvantage to civilian careers and employment which can occur due to that uniformed service;
2. Provide for the prompt reemployment of individuals who provide uniformed service upon the completion of that service; and
3. Prohibit discrimination against persons because of the performance of uniformed service.

USERRA provisions apply to virtually all employers in the United States *in situations where there is an employee/employer relationship*. The Volunteer Fire Relief Association Working Group may wish to consider what Minnesota law changes, if any, that it should recommend. In a pure volunteer setting, presumably USERRA would not apply because there is no employee/employer relationship. To the extent

that some volunteer fire plans cover individuals who do have an employment situation with the fire department, it is reasonable to conclude that these plans will need to comply with USERRA. While many other volunteer fire plans may provide coverage to individuals who can be properly viewed as volunteers (and who therefore are not employees of the city or fire department), the situation will be far more consistent and fair if comparable treatment is provided in all volunteer fire plans.

For purposes of USERRA, uniformed service includes service in the Army, Navy, Marine Corps, Air Force, Coast Guard, the reserve components of any of these organizations, the Commissioned Corps of the Public Health Service, and any other category of persons so designated by the President in time of war or emergency.

With few exceptions, USERRA requires the employer of the individual who provided the uniformed service to rehire that individual at the end of that uniformed service. To be covered by this reemployment right, or any other provisions of USERRA including the pension-related provisions of the act:

1. The individual must provide notice to the employer that the person is leaving to provide uniformed service (unless providing that notice is not possible due to the emergency nature of the situation);
2. The period of uniformed service must not exceed five years;
3. The person must not be released from uniformed service under dishonorable or other punitive conditions; and
4. The person must report back to the civilian employer in a reasonable time period.

“Reasonable time period” depends upon the length of uniformed service provided. If service is less than 31 days, the individual can be required to return to employment within eight hours of returning home. If the length of service is between 31 and 180 days, the employee must apply for reemployment no later than 14 days after completion of uniformed service. If the length of uniformed service is 180 days or longer, the individual must return to employment no later than 90 days after completion of uniformed service.

Regarding pension rights, USERRA states (USC Section 4318) that “a person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person’s period or periods of service in the uniformed services.” In a plan that requires employee contributions (which is not relevant in Minnesota volunteer fire plans since no employee contribution is made to these plans) the individual must make the same contributions that the individual would have made if the individual had continued to work for the employer during the uniformed service period.

Discussion and Analysis

S.F. xxx; H.F. 2580 (Paulsen) provides that teachers who are called up to active military service by the appropriate federal or state official would retain active teacher retirement plan membership status, with the member contributions during the period paid by the employer payroll period to payroll period as if the teacher continued in active teaching service.

The proposed legislation raises several pension and related public policy issues for potential consideration and discussion by the Legislative Commission on Pensions and Retirement, as follows:

1. Appropriateness of Legislative Mandate of Additional Employment Benefit. The policy issue is the appropriateness of the Legislature in mandating that school districts, the Minnesota State Colleges and Universities System (MnSCU), and other education-related employers continue to make employer contributions to public retirement plans for teachers who are called up to active federal or state military service as if the person was still employed by the employer and to additionally pay the member contribution on the teacher’s behalf. While retirement coverage is generally mandated for state and public employees, it is unusual for public pension plan membership and coverage to be mandated for persons who are not currently active public employees and it is unusual for the mandate to extend to paying the member contributions for persons who have gone on a leave from public employment.
2. Cost to Educational Employers of Mandated Member Contribution Payment. The policy issue is the extent of the cost to school districts and other educational employers for teachers who have been called to active military service. The proposed legislation is a state mandate that is not accompanied by any additional state funding, which has been a source of employing unit complaints in the past. For large school districts and other employers, with large budgets, the presumed small number of teachers

subject to a military call up at any time should not cause a significant economic problem. However, for small school districts and employing units, the mandatory employer payment of member contributions for teachers called into military service could be problematic.

3. Appropriateness of Potential Windfall for Called-Up Teachers Who Do Not Return from Active Military Service. The policy issue is the appropriateness of providing a potential or actual windfall of a period of additional retirement coverage to teachers who are called up to active military service but who do not return to teaching from that active military service. The current interim or on-leave military service credit provision, where equivalent back member contributions are payable with interest after the leave is over, is triggered when the teacher returns from the military service to Minnesota teaching employment. If the teacher who left for military service does not return to teaching from the military service period, perhaps because the teacher decided to pursue a military career or because the teacher decided to use the training gained in the military to change careers, no teacher retirement plan service credit would be obtainable under the current law. Under the proposed legislation, teacher retirement plan coverage would be concurrent with the military service and would remain creditable service for the former teacher even if the person never returned to Minnesota teaching service, thereby providing the former teacher with a windfall compared to current practice.
4. Problem of Determining Disability Benefit Eligibility for Former Teachers on Military Service Call Up. The policy issue is the problem of the manner in which teacher retirement plans will handle disability benefit coverage for former teachers who are called up into active military service. The proposed legislation would give former teachers on an active military service call up the status of an active employee and full disability benefit coverage. The standard for receipt of a disability benefit from the Teachers Retirement Association (TRA), the Duluth Teachers Retirement Fund Association (DTRFA), the Minneapolis Teachers Retirement Fund Association (MTRFA), and the St. Paul Teachers Retirement Fund Association (SPTRFA) is the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to be of a long continued and indefinite duration. For a former teacher who is injured or wounded during active military service, especially in a foreign locale, the determination of the disability and the processing of a disability application will present difficulties. Covering individuals during leave periods, especially periods of potentially hazardous active military service, likely will increase the number of teacher retirement plan disabilitants, which plans currently have the lowest disability benefit utilization, and that experience will eventually translate into a strengthening of the teacher retirement plan disability assumptions and an increase in the actuarial cost of the teacher retirement plans.
5. Appropriateness of Including Non-Teaching Personnel in the Proposed Retirement Coverage Change. The policy issue relates to the vagaries of the definition of “teacher” for teacher retirement plans and is the appropriateness of providing to non-teachers or quasi-teachers a benefit of a program intended to reward teachers. In the Teachers Retirement Association (TRA), in addition to conventional teaching personnel, the definition of “teacher” includes employees of the retirement plan, even if they never were teachers before coming to TRA employment (see Minnesota Statutes, Section 354.05, Subdivision 2, Paragraph (a), Clause (2)), teacher union employees (see Minnesota Statutes, Section 354.41, Subdivision 4), and employees of the State Department of Education who selected TRA coverage rather than General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) coverage (see Minnesota Statutes, Section 352.01, Subdivision 2b, Clause (2)). For the first class city teachers retirement fund associations, the retirement plan employees are included in plan coverage (see Minnesota Statutes, Section 354A.011, Subdivision 27, Paragraph (a), Clause (2)) and so are some teacher union employees (see Minnesota Statutes, Section 354A.051). If the special concurrent teacher retirement plan coverage benefit during an active military service call up intended to apply to teachers only, then the leakage in the teacher retirement plan definitions of “teacher” will potentially extend that special benefit coverage to unintended personnel.
6. Precedent. The policy issue is the existence of any current similar retirement plan treatment that could constitute a precedent for the proposed change and is the potential for the proposed change, if enacted, to be viewed as a binding precedent for an extension of the change to other public employee groups. There is no direct precedent for treating former public employees as current pension plan members while the person is on an active military service call up. There is precedent for the retention of pension plan coverage (i.e. continuation of active plan membership) for public employees who are “lent” to other public employers or participants in employees interchange programs (see Minnesota Statutes, Sections 15.51 to 15.57). Under these interchange arrangements, for instance, a St. Paul police officer serving as a deputy commissioner in the Department of Public Safety and a Minneapolis police officer serving as the head of the Criminal Apprehension Unit in the Department of Corrections

both retained retirement coverage in the Public Employees Police and Fire Plan (PERA-P&F) during their state employment. The extension of the practice from Minnesota political subdivision employment/state employment transfer to teachers on a federal or state active military service call up would have similarities to an employment interchange within Minnesota public employment, but also has significant differences and is not likely to constitute a binding precedent for policymakers. If the proposed program were enacted, it would clearly be viewed by non-teacher public employees who are potentially available to be called up into active military service as a binding precedent. Presumably, the key element arguing for a benefit extension is more likely to be the unpredictable nature of an active military service call up and the contribution the person makes in active military service rather than the person's status before call up as a teacher. Other Minnesota public employees are in the Minnesota National Guard, the Reserves, or the ready reserve and could be called up into active military service, especially public safety employees, who appear anecdotally to have pre-public-employment military service. The 2005 Legislature, in First Special Session Laws 2005, Chapter 1, Article 4, Section 97, has already implemented a portion of the extension by covering members of PERA-P&F in full in the line of duty survivor benefit coverage for active military service in response to the situation of the late David Day, a St. Louis Park police officer called up to active military service in Iraq.

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FOURTH
SESSION**

HOUSE FILE No. 2570

January 19, 2006

Authored by Paulsen

Unofficially referred to the Committee on Governmental Operations and Veterans Affairs

1.1 A bill for an act
1.2 relating to retirement; teacher retirement plans; providing for the crediting of
1.3 service by teachers while on active military service; proposing coding for new
1.4 law in Minnesota Statutes, chapter 356.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [356.27] CONCURRENT RETIREMENT COVERAGE FOR
1.7 TEACHERS RENDERING ACTIVE MILITARY SERVICE.

1.8 Subdivision 1. Definitions. (a) Unless the context clearly indicates otherwise, each
1.9 term defined in this subdivision has the meaning ascribed to it for purposes of this section.

1.10 (b) "Active military service" means service in one of the armed forces of the United
1.11 States of America as a member of the National Guard, a military reserve unit, or the ready
1.12 reserve, whether on a call-up by appropriate federal authority or a call-up by appropriate
1.13 state authority.

1.14 (c) "Active military status" means the condition of rendering active military service.

1.15 (d) "Covered retirement plan" means a retirement plan enumerated in subdivision 3.

1.16 (e) "Teacher" means a person who meets the definition in or is governed by
1.17 the provisions in section 354.05, subdivision 2; 354A.011, subdivision 27; 354B.20,
1.18 subdivision 4; or 354C.11, subdivision 2.

1.19 Subd. 2. Concurrent retirement. (a) For a teacher who is on leave to render active
1.20 military service, the employing unit shall pay the employee and employer contributions
1.21 during each pay period during which the teacher is on active military status, based on
1.22 the salary level of the teacher in effect on the day before the teacher went on active
1.23 military status. The contributions under this section must be made at the same time, in the

2.1 same manner, and subject to the same penalties as contributions by or on behalf of other
2.2 teachers covered by the employing unit.

2.3 (b) A teacher for whom contributions are paid or are payable under paragraph (a)
2.4 is entitled to receive allowable service credit in the applicable covered retirement plan
2.5 for the active military service rendered and has the status of an active member of the
2.6 retirement plan.

2.7 Subd. 3. **Covered retirement plans.** This section applies to the following
2.8 retirement plans:

2.9 (1) the Teachers Retirement Association, established under chapter 354;

2.10 (2) the Duluth Teachers Retirement Fund Association, established under chapter
2.11 354A;

2.12 (3) the Minneapolis Teachers Retirement Fund Association, established under
2.13 chapter 354A;

2.14 (4) the St. Paul Teachers Retirement Fund Association, established under chapter
2.15 354A;

2.16 (5) the individual retirement account plan, established under chapter 354B; and

2.17 (6) the higher education supplemental retirement plan, established under chapter
2.18 354C.

2.19 Sec. 2. **EFFECTIVE DATE.**

2.20 Section 1 is effective July 1, 2006.