



**S.F. xxx; LCPR05-383**  
(Pogemiller)

**H.F. xxx**

**Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* PERA-General  
*Relevant Provisions of Law:* Special Law Provision  
*General Nature of Proposal:* Service Coverage Transfer  
*Date of Summary:* January 26, 2006

**Specific Proposed Changes**

- Authorizes Randy Kelly to transfer coverage for service as Mayor of St. Paul from the PERA Defined Contribution Plan to the PERA-General Employees Retirement Plan.

**Policy Issues Raised by the Proposed Legislation**

1. Appropriateness of reversing a knowledgeable benefit coverage election.
2. Equitable considerations related to the coverage election issue.
3. Combined service annuity impact and the potential insufficiency of the required payment amount.
4. Appropriateness of transfer in light of the legislative policy favoring elected official defined contribution plan coverage.
5. Appropriate portion of the additional payment amount to be borne by the city of St. Paul.
6. Appropriateness of a local approval requirement.
7. Precedent.

**Potential Amendments**

- LCPR05-384 requires incorporation of Combined Service Annuity impact in service credit purchase payment amount. (Substantive)
- LCPR05-385 reduces permissible city portion of payment amount to reflect PERA-General employer contribution portion. (Substantive)
- LCPR05-386 adds local approval requirement. (Substantive)



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director *JAM*

RE: S.F. xxx (Pogemiller); H.F. xxx: PERA; Coverage Transfer Election from PERA-Defined Contribution Plan to PERA-General for St. Paul Mayor Service (Document LCPR05-383)

DATE: January 26, 2006

#### Summary of Document LCPR05-383

Document LCPR05-383 permits Randy Kelly, identified as the intended lone member of a class of local government employees based on demographic factors which, in combination, are unique to him rather than named, in conformance with the Minnesota Constitution, Article XII, Section 1, to elect coverage for the four-year period 2002-2006 by the Coordinated Program of the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) rather than the PERA-Defined Contribution Retirement Plan upon the transfer of his PERA-Defined Contribution Plan assets and the payment of an additional amount to the extent that the transferred PERA-Defined Contribution Plan assets are less than the required reserves for the PERA-General retirement annuity payable upon initial retirement eligibility, potentially split between Mr. Kelly and the City of St. Paul, with St. Paul's share discretionary and capped at 57 percent of the total payment amount. The special legislation would be effective immediately and would expire on January 1, 2007.

#### Public Pension Problem of Randy Kelly

Randy Kelly, a former state legislator and the recent mayor of St. Paul, elected retirement coverage by the Defined Contribution Retirement Plan of the Public Employees Retirement Association (PERA-Defined Contribution) in 2002, upon becoming St. Paul mayor, although he was eligible instead for coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General). Mr. Kelly is no longer in public employment, is eligible to retire with a reduced early retirement annuity, now understands that this 2002 coverage election did not provide him the most beneficial possible retirement coverage, and seeks to reverse his prior retirement coverage election and to obtain PERA-General Coordinated Program coverage for the period 2002-2006.

During Mr. Kelly's coverage by the PERA-Defined Contribution Plan, he made a five percent contribution to the plan and the City of St. Paul made a five percent contribution to the plan. If Mr. Kelly had been covered by the PERA-General Coordinated Program, the member contribution would have been 5.10 percent of covered pay for the period January 1, 2002, to January 1, 2006, and 5.50 percent of covered pay for the period after December 31, 2005, and the employer contribution would have been 5.53 percent of covered pay for the period January 1, 2002, to January 1, 2006, and 6.00 percent of covered pay for the period after December 31, 2005.

#### Discussion and Analysis

Document LCPR05-383 authorizes a transfer of retirement coverage by Randy Kelly from the Defined Contribution Retirement Plan of the Public Employees Retirement Association (PERA-Defined Contribution) to the Coordinated Program of the PERA General Employees Retirement Plan (PERA-General) for his four years of service as mayor of the City of St. Paul, with a transfer of his PERA-Defined Contribution Retirement Plan account and the payment of any balance between his account value and the actuarial required reserves for the PERA-General retirement annuity that he would be eligible for by virtue of the transfer, with authorization for the City of St. Paul to pay at its discretion up to 57 percent of that payment amount.

Document LCPR05-383 raises several pension and related public policy issues for Commission consideration and discussion, as follows:

1. Appropriateness of Reversing a Knowledgeable Benefit Coverage Election. The policy issue is the appropriateness of special legislation reversing a retirement coverage election made by an individual who should have been knowledgeable. PERA indicates that Randy Kelly enrolled in the Defined Contribution Plan using a stock PERA form that is supplied to all participating employers, dated the

form on January 15, 2002, signed the form personally, did not contact PERA for any benefit advice, and sent the form to PERA, which received it on January 25, 2002. In retrospect, now that his future career as mayor has been altered, the Defined Contribution Plan choice does not seem to be the optimal choice, but it is not clear that the January 15, 2002, decision that Randy Kelly made was not indicative of his intent at the time. Many decisions relating to retirement plans, such as optional annuity form elections, are open to potential second-guessing with the passage of time, but the Commission rarely permits a reopening of these time-sensitive decisions. The Commission may wish to take testimony about the circumstances of the January 25, 2002, retirement coverage election.

2. Equitable Considerations Related to the Coverage Election Issue. This policy issue is closely related to the first policy issue. The policy issue is the appropriateness of overturning a retirement coverage choice based on equitable considerations and how the various equitable considerations balance in this instance. If the Commission is to permit a change in a prior benefit coverage election, it probably would be because equitable considerations, in balance, support the change. The sole favorable equitable consideration currently available from press accounts is that Randy Kelly, as a newly elected mayor entering into his initial term in office, operated in a blur and allegedly signed the election form without much thought or consideration. Mr. Kelly may have further equitable considerations to offer or may wish to elaborate on this equitable consideration and should be provided an opportunity to testify. The contrary equitable considerations also relate to the circumstances of the election. Randy Kelly was not an unseasoned neophyte office holder who lacked familiarity with government, but was in middle age, was a veteran politician, had sponsored pension legislation as a legislator, and was a legislator and presumably voted when the PERA-General law was amended to require PERA-Defined Contribution Plan coverage for local elected officials. Mr. Kelly had access to information from St. Paul city human relations staff and from PERA before he made the retirement coverage decision, but reportedly did not avail himself of any PERA counseling. The Commission will need to weigh whether assertions of unfamiliarity, of a lack of attention, of a significant workload, and of whatever other considerations that Mr. Kelly may forward are greater than the factors that would argue that Mr. Kelly was capable of making and did make a considered judgment on the issue in 2002.
3. Combined Service Annuity Impact and the Potential Insufficiency of the Required Payment Amount. The policy issue is whether or not the required payment amount for the coverage transfer to offset the full actuarial cost of the change in fact covers the cost of the total retirement benefit impact from the transfer under the Combined Service Annuity. Randy Kelly has 27 years of service credit in the Legislators Retirement Plan, which translates to 77.5 percent of an average salary of approximately \$37,000, payable without reduction at age 62 and reduced at age 60 (or earlier with an additional actuarial reduction under Minnesota Statutes, Section 3A.02, Subdivision 1b) without the Combined Service Annuity. Under the Combined Service Annuity, which would be available to Mr. Kelly with PERA-General coverage for his St. Paul service, but not available with PERA-Defined Contribution Plan coverage for his St. Paul service, he would be eligible for a Legislators Retirement Plan retirement annuity equal to 72.5 percent of a five-year average salary of his last year's legislative salary and of his four years of salary as a mayor, also reduced for an early receipt if taken before age 62, plus a PERA-General retirement annuity under the "Rule of 90" provision. PERA has calculated a full actuarial value payment amount based on the four years of potential PERA-General service and salary credit transfer only, without apparently also calculating the impact of the Combined Service Annuity which allows the use of Mr. Kelly's mayor's salary in calculating a highest five-year average salary. The transfer authority requested in the draft proposed legislation is indistinguishable from a prior service credit purchase and Minnesota Statutes, Section 356.30, Subdivision 2a, requires the Combined Service Annuity impact required reserves amount to be paid as part of the purchase. **Amendment LCPR05-384** requires a transfer payment amount including the Combined Service Annuity impact. Without the additional payment, the State General Fund would be liable for the additional cost caused by the requested transfer, although that circumstance replicates the situation Mr. Kelly would have had if he elected the PERA-General coverage in 2002.
4. Appropriateness of Transfer in Light of the Legislative Policy Favoring Elected Official Defined Contribution Plan Coverage. The policy issue is the appropriateness of this proposed transfer from defined contribution plan coverage to defined benefit plan coverage for an elected official when the Legislature has been mandating defined contribution plan coverage for most elected officials. In 1997 (Laws 1997, Chapter 233, Article 2), the Legislators Retirement Plan and the Elected State Officers Retirement Plan were closed to new entrants, with future legislators, future constitutional officers, and elected existing legislators and constitutional officers covered by the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified). During the 1997-1998 interim, the Commission reassessed the coverage change for legislators and constitutional

officers and declined to recommend a modification in the 1997 law. In 2001 (First Special Session Laws 2001, Chapter 10, Article 11), future elected local government officials other than county sheriffs were excluded from the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) in favor of the PERA-Defined Contribution Retirement Plan. Thus, with the exception of judges and county sheriffs, all recently elected officials in the State have defined contribution plan coverage. The proposed change, substituting defined benefit plan coverage for previously elected defined contribution plan coverage, runs contrary to the policy decisions of the Legislature in 1997 and 2001 to provide defined contribution plan retirement coverage to most local elected officials.

5. Appropriate Portion of the Additional Payment Amount to be Borne by the City of St. Paul. The policy issue is the appropriate portion of the payment required in addition to the account transfer to be borne by the City of St. Paul as part of the proposed retirement coverage transfer. PERA has estimated that the required reserves for the PERA-General retirement annuity payable to Randy Kelly on June 30, 2006, will exceed his PERA-Defined Contribution Plan account value by about \$6,600. Press accounts and materials supplied by former St. Paul Deputy Mayor Dennis J. Flaherty, indicate that the St. Paul City Council was requested to pay \$7,900 plus interest towards this required payment total, while Mr. Kelly would pay \$6,000 plus interest. The policy basis for the assumption of any obligation by the City of St. Paul toward Mr. Kelly's retirement coverage transfer proposal is unclear. The election of retirement coverage was made by Mr. Kelly independently, apparently without any provision of advice or counseling by city staff. Press accounts indicate that the city obligation during his service as mayor, if Mr. Kelly had elected PERA-General coverage in 2002, would have been \$3,600, but Mr. Kelly is requesting a city payment of \$7,900 plus interest. If the city was determined to have been remiss in properly counseling Mr. Kelly, there would be some basis for a city payment, but absent that, the payment appears to be more in the nature of a gift. With a larger city payment than the amount payable at the time, the requested payment amount takes on additional characteristics of a gift. The proposed legislation sets a maximum on a voluntary St. Paul contribution towards the required additional payment amount of 57 percent of the total, which reflects the differential in press accounts and the Flaherty materials (i.e.,  $\$7,900 \div \$13,900 = 0.5683$ ). The differential in PERA-General Coordinated Program contribution rates during the period 2002-2006 was a member contribution rate of 4.75 percent of covered salary and an employer contribution rate of 5.18 percent of covered salary. Reflecting that differential would produce an employer maximum of 52 percent (i.e.,  $5.18 \div 9.93 = 0.5216$ ). If the Commission would prefer to reflect the current PERA-General contribution rate differential, **Amendment LCPR05-385** would replace the proposed 57 percent limit with a 52 percent limit.
6. Appropriateness of a Local Approval Requirement. The policy issue is whether a local approval requirement is appropriate. Article XII of the Minnesota Constitution regulates local and special legislation and, in Section 2 of that article, provides that legislation that applies to a single local governmental unit is a special law and is effective only upon local approval. This legislation does not obligate St. Paul to do anything, but authorizes the city to pay a portion of a pension obligation, and hence is not likely to be special legislation absolutely requiring local approval to become effective. If the Legislature wishes to avoid any contention that it is local legislation requiring local approval and potential future litigation that could find otherwise, a local approval section could be added. **Amendment LCPR05-386** would add a local approval requirement.
7. Precedent. The policy issue is whether or not there are precedents in past legislation for this proposed legislation and whether or not this proposed legislation, if recommended by the Commission and enacted by the Legislature, could constitute a binding precedent for similar future legislative requests. In the past, a service credit purchase has been enacted for elected officials who failed to elect General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) retirement coverage, including St. Paul (see First Special Session Laws 2001, Chapter 10, Article 17, Section 9, relating to former St. Paul Council member and former Transportation Department Commissioner Len Levine), and that special legislation covers situations essentially identical to this proposal and could be considered to be a precedent. The 2001 St. Paul special legislation, however, was premised on either misinformation by the city, a clerical error by another city employee, or an error by PERA, and no comparable third party error or culpability has been alleged in this case. This proposed special legislation, if enacted, would likely be cited by any other local governmental elected official who does not have PERA-General coverage for that elected service but would benefit from the coverage. The distinguishing feature could be the fact that Randy Kelly was grandparented in for PERA-General coverage eligibility, which grandparenting ended on June 30, 2002, and any elected officials taking office after that date would not have had that PERA-General option.



**CITY OF SAINT PAUL**

*Randy C. Kelly, Mayor*

390 City Hall

15 West Kellogg Boulevard

Saint Paul, MN 55102

Telephone: 651-266-8510

Facsimile: 651-266-8513

December 27, 2005

The Honorable Lawrence J. Pogemiller  
75 Rev. Dr. Martin Luther King Boulevard, Room 235  
Saint Paul, Minnesota 55155

Dear Senator Pogemiller,

As a follow up to our recent phone conversation, enclosed you will find a City Council Resolution unanimously adopted on December 14, 2005 indicating their support of a legislative remedy that allows Mayor Randy Kelly to transfer his pension contribution from a defined contribution plan to a defined benefit plan allowing him to coordinate his contributions to MSRS and PERA.

Nancy Haas, of our staff, spoke with Representative Steve Smith's assistant regarding this problem and he has indicated his support; therefore, I am sending this resolution to him as well.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Dennis J. Flaherty  
Deputy Mayor

c: Representative Steve Smith  
Wendy Underwood, City of Saint Paul Legislative Liaison

Enclosure

Council File # 05-1139  
Green Sheet # 3028988

**RESOLUTION  
CITY OF SAINT PAUL, MINNESOTA**

Presented by \_\_\_\_\_

1 **WHEREAS**, the City of Saint Paul has approved the following items as a part of its 2006 Legislative  
2 Agenda;

3  
4 **NOW, THEREFORE, BE IT RESOLVED** that the City of Saint Paul lists its 2006 Legislative Agenda  
5 as follows:

6  
7 **Policy Items**

- 8 • Establish reasonable policy on eminent domain
- 9 • Full funding of Local Government Aid
- 10 • Dedicated transit and transportation funding
- 11 • Support current moratorium on limited market value phase-out
- 12 • Remove punitive damages cap
- 13 • Fake ID statute change to enhance penalties
- 14 • Close currency exchange business loopholes
- 15 • Municipal tow lot changes
- 16 • Placement and monitoring of registered sex offenders
- 17 • Car racing penalty increase
- 18 • Loud car stereo consequences

19  
20 **Support Items**

- 21 • Central Corridor
- 22 • Union Depot – Ramsey County Request
- 23 • Support for Highland Park Ford Motor Plant
- 24 • Support for Rock-Tenn Company
- 25 • Red Rock and Rush Line Corridors
- 26 • Motor Vehicle Sales Tax (MVST) constitutional amendment
- 27 • Oppose levy limits and other restrictions on local government financing authority
- 28 • Statewide smoking ordinance
- 29 • Minnesota Department of Health interconnector capital project
- 30 • Public education funding
- 31 • Re-establish youth after school enrichment programs for K-12
- 32 • Pensions reform
- 33 • Support legislation that would allow Mayor Randy Kelly to transfer his contribution from a defined  
34 contribution plan to a defined benefit plan, in order to allow him to coordinate his contributions to  
35 the MN State Retirement System and the Public Employee Retirement Associations.

05-1139

- 36 • Funding to the Department of Employment and Economic Development for Redevelopment
- 37 and Bioscience Grants
- 38 • Minnesota Housing Finance Agency Supportive Housing Initiatives
- 39 • Minnesota Gang Strike Force
- 40 • Technical changes to Local Government Aid formula
- 41 • State Builders Code recognized as strict liability
- 42 • Clean Water Legacy Act
- 43 • Metro Parks capital projects
- 44 • Minnesota Library Association capital project
- 45 • Metro State capital project
- 46 • Saint Paul College capital project
- 47 • 25 mile-per-hour speed limit on urban residential streets
- 48 • Enact historic preservation tax credit
- 49 • Support for Robert Street/Highway 52 transit study
- 50 • League of Minnesota Cities legislative agenda
- 51 • Association of Metropolitan Municipalities legislative agenda
- 52 • Ramsey County legislative agenda

	Yeas	Nays	Absent
Benanav	✓		
Bostrom	✓		
Harris	✓		
Helgen	✓		
Lantry	✓		
Montgomery	✓		
Thune	✓		
	7	0	0

Requested by Department of: Mayor's Office

By: Nauczjhaas

Form Approved by City Attorney

By: [Signature]

Adopted by Council: Date December 14, 2015

Adoption Certified by Council Secretary

By: [Signature]

Form Approved by Mayor for Submission to Council

By: Nauczjhaas

Approved by Mayor: Date 12/22/15

By: [Signature]

## **Mayor Kelly Pension Change**

When Mayor Kelly enrolled in PERA at the beginning of his term in 2002, he signed a form designating enrollment in the PERA Defined Contribution Plan for Elected Officials. It was his intention to enroll in the Coordinated Plan, thereby allowing him to combine his elected official service as Mayor to his service in the Minnesota Legislature. Consequently, a legislative change is needed to allow Mayor Kelly to switch his PERA retirement plan coverage from the Defined Contribution Plan retroactively to the Coordinated Plan. The total value of the Defined Contribution Plan would then be rolled into the Coordinated Plan, and the difference in employee and employer contributions plus interest would have to be paid into the plan. The Saint Paul City Council approved a legislative agenda that supports a legislative change to accomplish this, to which the City of Saint Paul would contribute \$7,966.78, and Mayor Kelly would contribute \$5,972.89.



1.1 ..... moves to amend S.F. ...; H.F. ..., Document LCPR05-383, as  
1.2 follows:

1.3 Page 2, line 14, after "enactment" insert "plus the amount representing the present  
1.4 value of the amount by which the retirement annuity from the legislators retirement plan  
1.5 was increased or the retirement age eligibility was modified under Minnesota Statutes,  
1.6 section 356.30, from the additional service and salary credit under Minnesota Statutes,  
1.7 chapter 353"

- 1.1 ..... moves to amend S.F. ...; H.F. ..., Document LCPR05-383, as
- 1.2 follows:
- 1.3 Page 2, line 15, delete "57" and insert "52"

1.1 ..... moves to amend S.F. ...; H.F. ..., Document LCPR05-383, as  
1.2 follows:

1.3 Page 2, line 22, delete "final enactment" and insert "the date on which the city  
1.4 council of the city of St. Paul and its chief clerical officer timely complete their compliance  
1.5 with Minnesota Statutes, section 645.021, subdivisions 2 and 3"

A bill for an act  
relating to retirement; general employees retirement plan of the Public  
Employees Retirement Association; permitting a transfer of retirement coverage  
from the defined contribution retirement plan to the general employees retirement  
plan in certain instances.

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

Section 1. **PERA-GENERAL; AUTHORIZING TRANSFER OF COVERAGE  
FROM DEFINED CONTRIBUTION PLAN IN CERTAIN INSTANCES.**

(a) An eligible person described in paragraph (b) may elect under paragraph (c) to  
transfer past retirement coverage from the defined contribution retirement plan of the  
public employees retirement association to the general employees retirement plan of the  
Public Employees Retirement Association by authorizing the transfer of assets specified in  
paragraph (d) and making the additional payment, if any, specified in paragraph (e).

(b) An eligible person is a former public employee or official who:

(1) was born on August 2, 1950;

(2) served in the Minnesota house of representatives from 1975 to 1991;

(3) served in the Minnesota senate from 1991 to 2002;

(4) became the mayor of a Minnesota home rule city in January 2002; and

(5) elected retirement coverage by the defined contribution retirement plan of the  
Public Employees Retirement Association on January 15, 2002.

(c) The election of the retirement coverage transfer must be made in writing within  
180 days of the date of enactment of this act. The election must authorize the asset  
transfer specified in paragraph (d) and must be accompanied with any payment amount  
required under paragraph (e). Upon the transfer and payment, the electing eligible person  
is entitled to allowable service and salary credit under Minnesota Statutes, section 353.01,

2.1 subdivisions 10 and 16, for the service and salary related to the defined contribution  
2.2 retirement plan coverage period.

2.3 (d) The transfer amount is the total member and employer contributions and any  
2.4 investment performance to the credit of the eligible person in the defined contribution  
2.5 retirement plan of the Public Employees Retirement Association.

2.6 (e) The additional payment amount is the amount by which the transfer amount  
2.7 under paragraph (d) is less than the amount that would be required to be transferred to the  
2.8 Minnesota post retirement investment fund for the coordinated program of the general  
2.9 employees retirement plan of the Public Employees Retirement Association retirement  
2.10 annuity payable to the eligible person on the first day of the month next following the  
2.11 date of enactment or on the first day of the month next following the day on which the  
2.12 eligible person is first eligible to receive a retirement annuity from the general employees  
2.13 retirement plan of the Public Employees Retirement Association if that date is later than  
2.14 the date of enactment. The former employer of the eligible employee may pay a portion of  
2.15 the additional payment amount, but not to exceed 57 percent of the total amount, at the  
2.16 discretion of the former employer.

2.17 (f) The executive director of the Public Employees Retirement Association may  
2.18 request any relevant documentation to verify a person's status as an eligible person under  
2.19 this section and may audit city records to verify conformity with Minnesota Statutes,  
2.20 section 353.01, subdivisions 10 and 16.

2.21 **Sec. 2. EFFECTIVE DATE.**

2.22 (a) Section 1 is effective on the day following final enactment.

2.23 (b) Section 1 expires on July 1, 2007.