**S.F. 2461**

(Pogemiller)

H.F. xxx**Executive Summary of Commission Staff Materials**

Affected Pension Plan(s): PERA-P&F
Relevant Provisions of Law: Minnesota Statutes, Section 353.656
General Nature of Proposal: Drops Maximum Age for Disability Benefit Eligibility
Date of Summary: February 10, 2006

Specific Proposed Changes

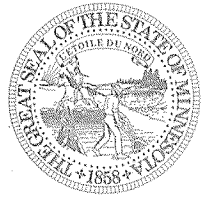
- Reduces from age 65 to age 55 the oldest age that a PERA-P&F member is eligible for a PERA-P&F disability benefit.

Policy Issues Raised by the Proposed Legislation

1. Appropriates of Reducing the Maximum Disability Benefit Eligibility Age.
2. Extent of Latitude on Maximum Disability Benefit Eligibility Ages under Federal Law.
3. Potential Opposition by Affected Public Safety Community Members.
4. Unclear Progression of Additional PERA-P&F Disability Benefit Reforms.

Potential Amendments

No Commission staff amendments



TO: Members of the Legislative Commission on Pensions and Retirement

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

RE: S.F. 2461 (Pogemiller); H.F. xxx: PERA-P&F; Reduction in the Maximum Age for Disability Benefit Eligibility

DATE: February 10, 2006

Summary of S.F. 2461 (Pogemiller); H.F. xxx

S.F. 2461 (Pogemiller); H.F. xxx amends Minnesota Statutes, Section 353.656, Subdivisions 1, 3, and 6a, portions of the disability benefit coverage of the Public Employees Police and Fire Retirement Plan (PERA-P&F), by replacing age 65 maximum disability benefit age references with cross-references to the PERA-P&F normal retirement age statutory provision, which is currently age 55.

Background Information on the PERA-P&F Retirement Plan

Background information in the creation, role, and function of the Public Employees Police and Fire Retirement Plan (PERA-P&F) is set forth in Attachment A.

Background Information on PERA-P&F Disability Problems

Background information on problems with the disability program of the Public Employees Police and Fire Retirement Plan (PERA-P&F) is set forth in Attachment B.

Discussion and Analysis

S.F. 2481 (Pogemiller); H.F. xxx reduces the upper age for eligibility for a disability benefit from Public Employees Police and Fire Retirement Plan (PERA-P&F), by reducing the maximum age from a specified age 65 to an implicit age 55.

The proposed legislation raises the following pension and related public policy issues for Commission consideration and discussion, as follows:

1. Appropriateness of Reducing the Maximum Disability Benefit Eligibility Age. The policy issue is the appropriateness of reducing the maximum age for a disabled police officer or firefighter to be eligible to receive a disability benefit rather than a retirement annuity. Although public safety employee plans developed out of casualty benefit (disability and survivor benefit) plans, in modern pension plan design, retirement annuities or service pensions are the primary benefits provided by a retirement plan and casualty benefit coverage is intended to cover the periods when a plan member is ineligible for a retirement annuity, but suffers an incapacity that requires an end to the person's working career. Under that design thinking, once a person is eligible for an age and service retirement annuity or a service pension, the need to also provide disability benefit coverage is largely eliminated, and when the person is eligible for an unreduced age and service retirement annuity or service pension, there is no need to provide disability coverage. The proposed legislation is consistent with that benefit design philosophy.
2. Extent of Latitude on Maximum Disability Benefit Eligibility Ages under Federal Law. The issue is the maximum age for eligibility for a disability benefit in a public safety employee retirement plan under federal law. The current PERA-P&F disability benefit eligibility provision was enacted in 1993 based on PERA's understanding of the applicable federal law, the Age Discrimination in Employment Act of 1967, as amended. PERA now feels that recent litigation, EEOL v. Kentucky State Retirement System, supports the ability of public safety retirement plans to limit disability benefit eligibility ages to the plan's normal retirement age. As with the 1993 age change to age 65, the Commission will be relying on the interpretation by PERA of federal law if it recommends the change. The Commission staff has not had an opportunity to review the Kentucky litigation or to gain a sense of disability benefit practices by comparable plans in other states.
3. Potential Opposition by Affected Public Safety Community Members. The policy issue is the appropriateness of the benefit eligibility change when the change is likely to be opposed by various

affected members of the public safety employee community. Eligibility changes intended to curtail actual or potential abuse can have unintended effects, so affected employee groups are legitimately concerned and vigilant. The Commission should hear from any representatives of the public safety employee community who wish to provide useful input on the proposed legislation.

4. Unclear Progression of Additional PERA-P&F Disability Benefit Reforms. The policy issue is the lack of clarity on the future course and future timeline for additional reforms in the PERA-P&F disability program. PERA committed to forwarding additional reforms as part of its testimony in connection with the 2004 legislation, but none were forthcoming in 2005 and the 2006 Session changes may be limited to this proposed legislation. The Commission may wish to request from PERA some sense of the general course and timeline for its ongoing efforts with respect to this topic.

Attachment A

Background Information on the Public Employees Police and Fire Retirement Plan (PERA-P&F)

In 1959, to assist police officers and firefighters in local government, the Legislature established the Public Employees Police and Fire Retirement Plan (PERA-P&F). Initially, the coverage applied to any public employee in law enforcement or fire suppression but, as the licensing of police officers began in the 1970s, the membership qualifications were refined. 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 officers must be licensed by the Peace Officers Standards and Training Board (POST Board).
4. Property and Safety Protection. Peace officers must be engaged in the hazards of protecting the property and safety of others.
5. Arrest with a Warrant. Peace officers must be empowered to arrest with a warrant.

For firefighters, the PERA-P&F membership provision requires that the municipal employee 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 declares by governing body resolution that the part-time employee meets the statutory police officer or firefighter requirements, except that the individual does not perform the applicable duties full-time. 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 the primary focus of the person's employment.

Since 1959, all newly employed county deputy sheriffs have PERA-P&F pension coverage 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 reasons for having a more lucrative benefit program for public safety employee retirement plans are that:

- Public safety employment (police officer or firefighter service) is particularly hazardous;
- It requires the maintenance of a particularly vigorous and robust workforce to meet the strenuous requirements of the employment position; and
- 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 employees, 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.

Attachment B

Background Information on PERA-P&F Disability Issues

1. Problem in General. In the last few years Public Employees Retirement Association (PERA) has become increasingly concerned about significant increases in Public Employees Police and Fire Retirement Plan (PERA-P&F) disability applications, which has lead to a sizable increase in PERA-P&F disabilitants. In the broadest terms, this increased use of disability stems from the ease of qualifying for these benefits in PERA-P&F, and in public safety plans in general, and the strong financial incentive to draw benefits as a PERA-P&F disabilitant prior to age 65 rather than draw benefits as a service retiree.

It is fairly easy to qualify for disability in the PERA-P&F plan because disability is based on the ability to perform in a specific occupation, and because PERA has not had a disability benefit application and review process specifically designed for a public safety plan. In PERA-P&F and other public safety plans, an individual who can no longer perform the duties to which the individual had been assigned qualifies for disability. In contrast, the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and other general employee plans use a far more restrictive standard, which is that an individual must be unable to engage in any gainful employment to qualify for benefits.

Recent PERA-P&F experience studies show a large number of PERA-P&F disability applications, considerably higher than expected, by members approaching early retirement age for the plan (age 50) and by those approaching normal retirement age (age 55). Some of these applications are likely due to the strong financial incentive provided by law to seek disability benefits rather than retirement benefits.

2. Nature of Current Public Safety Employee Casualty Coverage. The package of disability-related benefits offered to PERA-P&F members are as follows:
 - a. PERA-P&F Disability Benefit. Due to the hazardous nature of public safety employment, public safety plans provide generous disability benefits. In PERA-P&F, a disabilitant receives the retirement benefit to which the individual would be eligible, but without any reduction due to early retirement. The PERA-P&F benefit is 3.0 percent of the high-five average salary for each year of service. Thus, a member going on disability after 30 years of service would receive 90 percent of the high-five average salary as the annual benefit, while a member with 25 years of service would receive 75 percent of the high-five average salary. For those disabilitants with minimal service, the minimum line-of-duty disability is equivalent to a 20-year service pension, while the minimum non-line-of-duty disability is equivalent to a 15-year service pension.
 - b. Automatic Survivor Coverage. PERA-P&F disability benefits include automatic surviving spouse coverage. If an individual were to retire under the PERA-P&F plan rather than become a PERA-P&F disabilitant, he or she would need to take a reduction in the retirement benefit to provide joint-and-survivor coverage, if that coverage is desired. In contrast, survivor coverage comparable to that provided under a joint-and-survivor annuity is provided automatically to the spouse of disabilitants without charge to the disabilitant.
 - c. Employer-Paid Health Care for Public Safety Plan Disabilitants and Their Families. Public safety plan duty-related disabilitants receive continued employer-paid health care. The law providing this treatment passed in 1999 (coded as Minnesota Statutes, Section 299A.465) and requires the employer to continue to pay the employer contribution portion of health care insurance costs to age 65 if the disability is duty-related.
3. The Age Discrimination Compliance Issue: When to End Disability Eligibility. In 1993, to address federal law age discrimination compliance concerns, PERA and other Minnesota pension plans recommended that the last eligible age for disability in public safety plans should be extended from age 55 to age 65. The requested law changes were adopted based on the contention by the retirement plans that the change was required by federal law. Currently, there is some debate about whether some of the age discrimination compliance revisions enacted in 1993 were actually needed in public safety plans. Because the normal retirement age for public safety retirement plans is age 55, not 65 or later as in a general employee retirement plan, there may actually have been no need to allow access by public safety plan members to disability benefits after age 55.

Permitting access after age 55 is creating additional costs for PERA-P&F, and possibly for other public safety plans. A PERA-P&F member at age 55 or later who retires would pay for any desired surviving spouse coverage by taking a joint-and-survivor annuity, with the necessary reduction in pay

for that coverage. The comparable member who is age 55 or older, but who takes a disability benefit rather than a retirement benefit, receives a higher net benefit than the retiree because the disabilitant has no reduction for the spousal coverage. That cost is shifted to the plan. The disabilitant, if the disability is line-of-duty, also receives health care coverage to age 65, with the employer covering the employer contributions for that coverage. The comparable retiree would have to pay for their own health care coverage, which can be very expensive.

4. Cost of Retirement Plan Disability Provisions. The normal cost of plan disability benefit provisions as presented in the plan actuarial reports. As an indication of cost during the 1990s, data for 1990 and 1995 is provided in Table 1. The last column shows the normal cost as indicated in the most recent actuarial valuation. Three general employee plans are shown (MSRS-General, PERA-General, and the Teachers Retirement Association (TRA)) and two public safety plans, the State Patrol Retirement Plan and PERA-P&F. For the general employee plans, the normal cost of disability benefits is generally less than one-half of one percent of payroll. The public safety plan disability normal cost is much higher, currently over two percent of covered payroll.

Table 1
Normal Cost of Disability Benefits
Expressed as Percentage of Covered Payroll

	1990	1995	2003	2004	2005
PERA-General	0.30%	0.49%	0.37%	0.34	0.35
MSRS-General	0.25%	0.27%	0.42%	0.45	0.43
TRA	0.47%	0.62%	0.21%	0.18	0.19
PERA-P&F	1.70%	2.12%	2.26%	3.50	3.42
State Patrol	1.84%	2.39%	2.43%	2.50	2.50

Source: Plan actuarial valuation reports

5. Recent PERA-P&F Disability Experience. In recent years, in part because of the attractive package of benefits provided to PERA-P&F disabilitants, particularly if the disability is duty-related, the number of disabilitants has been much higher than expected under the assumptions used in actuarial valuations. Thus, the normal cost of PERA-P&F disability coverage (and possibly the State Patrol Plan) as indicated in the actuarial valuations could be considerably understated. The higher-than-expected use of disability has held for all ages other than the earliest ages. Table 2, from an experience study report dated December 10, 2002, by PERA's retained actuarial firm, Mercer Human Resource Consulting, shows the PERA-P&F disabilities that occurred between 1997 and 2001 compared to the expected numbers given the assumptions used in the actuarial work. At lower ages there were fewer disabilities than expected, but from age 35 and older, there were considerably more than expected. The highest spikes are at age 45 to 49, prior to the earliest service retirement age for the plan (age 50), and particularly the age group 50 to 54, (prior to age 55, the normal retirement age for this plan) where disabilities were 283 percent of the expected amount. Attachments to this memo show similar information for each separate year or groups of years within the 1997 to 2001 period. For the 50 to 54 age group, disabilities were 178 percent of those expected in 1997-1998, 161 percent in 1998-1999, 375 percent in 1999-2000, and 391 percent of those expected in 2000-2001. The table also shows 28 disabilitants occurring at age 55 or after. Under pre-1993 law this would not occur; these individuals would be treated as retirees.

Table 2
PERA-P&F Plan Disabilities,
Comparison of Actual to Expected
1997-2001

Age	Actual	Expected	Actual/Expected
20-24	0	1.25	0%
25-29	1	7.65	13%
30-34	10	11.87	84%
35-39	17	14.93	114%
40-44	31	17.75	175%
45-49	48	26.20	183%
50-54	91	32.11	283%
55-59	21	14.05	149%
60-64	5	0.00	--
65+	2	0.00	--
Total	226	125.81	180%

6. 2004 Session PERA-P&F Disability Program Changes. Laws 2004, Chapter 267, Article 8, Sections 20 to 25, made several changes in the PERA-P&F disability benefit procedures, as the intended first step to address the broad disability benefit utilization problem. The changes in 2004 were:
- 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.

DATE: January 31, 2006

TO: Senator Larry Pogemiller

FROM: Mary Most Vanek

PHONE: (651) 296-8358

SUBJECT: Modification to the Police and Fire Fund Disability Eligibility Statute

State of Minnesota

PERA

Public Employees Retirement Association

Office Memorandum

The PERA Board of Trustees, at the January 12 meeting, voted to support the accompanying recommended change to the Police and Fire Fund governing statutes.

The change will limit the age at which a member of the Police and Fire Fund can apply for disability benefits. The limitation returns the governing statutes to pre-1993 law to some degree and states that a member can apply for disability benefits as long as the person has not met the requirements for full retirement under the statute – age 55. This applies to both in-line-of-duty and non-duty disability eligibility. This returns the statute to its original intent – that disability benefits are intended for those who are injured or become ill before they reach the age for unreduced retirement. This enables a transition out of the workforce without penalties due to disability before full retirement.

This proposed language is the first step to address the eligibility provisions of the PERA Police and Fire Fund disability benefits. A working group has been convened to work over the next several months to considerably rewrite the disability benefit governing statute and to then educate the membership of the Police and Fire Fund as to the need for the changes. The working group consists of the executive directors of the MPPOA and the MPFF, representatives from the League of MN Cities and me.

TwinCities.com

Posted on Sun, Feb. 22, 2004

MINNESOTA: Disability payouts rise for police, firefighters

BY ROBERT INGRASSIA
Pioneer Press

A growing number of cops and firefighters in St. Paul and throughout Minnesota are using loosely written laws to gain lucrative disability benefits, straining a taxpayer-supported pension fund and threatening local government budgets across the state.

Although some of the benefits are flowing to firefighters and officers who suffered severe injuries on the job, state and local officials point to a host of questionable cases in recent years that they say highlight the need for reform:

- Officers and firefighters in St. Paul and elsewhere who were injured playing racquetball, softball or other sports qualified for on-the-job disability benefits by contending that the activities were part of job-related fitness training.
- A St. Paul officer who injured herself lifting weights was found fit enough to continue working her desk job, but won disability benefits after a doctor stated she would be unable to chase a suspect if the need arose.
- Two St. Paul firefighter trainees received benefits for injuries they claimed they suffered during training. They are receiving 60 percent of their salary for the rest of their lives and subsidized health insurance until age 65.

St. Paul Mayor Randy Kelly sponsored one of the benefit laws in 1997 while he was a state senator. His top aide, Deputy Mayor Dennis Flaherty, championed Kelly's bill while serving as director of a statewide police group.

Now, as St. Paul and other cities are facing rising costs because of a spike in disability claims, Kelly and Flaherty are backing an effort to tighten the police and fire disability programs.

"The original intent was and still is to assist families when a loved one is killed or disabled with a career-ending injury in the line of duty," said Flaherty, former executive director of the Minnesota Peace and Police Officers Association. "We don't want to attack the benefit. We want to attack the abuse of it."

Representatives of police officers and firefighters said they agree with the need for changes. But they said officials in St. Paul and other cities are partly to blame for the rising number of disability pensions and insurance benefit claims.

Commanders and administrators sometimes pushed troublesome or aging workers into the disability programs, said Dick Leitner, president of the St. Paul Firefighters Local 21. He said St. Paul officials didn't begin raising concerns about the programs until the state slashed reimbursement payments to the city.

"The city knew they had a problem for years," Leitner said. "But it wasn't considered abuse until it went unfunded."

St. Paul police officers and firefighters are garnering a disproportionate share of the benefits.

They obtained a quarter of a state pension fund's disability payments in 2002 — while making up 10 percent of the fund's membership. Of the 149 retirees currently receiving the insurance benefit statewide, a third are from St. Paul.

Pension officials and labor representatives were at a loss to explain the spike in St. Paul, other than to suggest that the city's officers and firefighters were simply more aware of the benefits than their peers across the state.

Under state law, public safety officers qualify for higher retirement pay and heavily subsidized health insurance if they can show that an injury suffered on the job prevents them from performing the most demanding of police or fire jobs.

Two programs are at issue. One is a disability retirement benefit paid out by the pension fund. The other is a health insurance program administered by the state. They are related because applicants who qualify for the disability pension are in most cases automatically granted the insurance aid.

The increasing number of disability applications is straining the Police and Fire Fund, a statewide pension fund that covers nearly 10,000 police officers, firefighters and sheriff's deputies. The fund is one of several public pensions managed by the Public Employees Retirement Association of Minnesota.

The pension fund's managers say the higher expenses could force them to ask the state to approve higher contributions from cops and firefighters and from the cities and counties that employ them.

The fund's financial health is in jeopardy. Just a few years ago, the pension was considered "overfunded," meaning it had plenty of assets and income to pay its current and future retirees.

But because investment returns have slumped in recent years and disability payments have increased, the fund's expenses have begun outpacing income.

"The fund is stressed," said Mary Most Vanek, the public pension association's executive director. "We're going to have to increase contributions, I'd expect within the next year, to get the fund back on track and meet our future obligations."

Increasing contributions is controversial on two fronts. Cities and counties would have to pay more for each public safety worker they employ. Plus, cops and firefighters would see more money disappear from each paycheck.

Lucrative pensions strain fire, police fund

Mark Brunswick and Tony Kennedy

Star Tribune
Published 02/22/2004

Hundreds of Minnesota police officers and firefighters have used a loophole in state law to win lucrative disability pensions meant for those who get shot, fall through burning roofs or otherwise suffer career-ending injuries protecting the public.

Many had held down jobs in police and fire departments for years following their injuries, but were allowed to elect early retirement, sometimes going on to work similar jobs in the private sector, and still collect disability payments.

Officers and firefighters have cited everything from weak knees to bad backs to racquetball injuries in order to gain lifetime pensions and other costly benefits.

The trend is dramatically depleting a state pension fund and threatening to cost taxpayers millions.

Those collecting disability payments include a St. Paul City Council member, two fire department trainees who flunked out of the firefighters' academy, a state senator and his wife, and a former firefighter whose disability did not prevent his becoming a finalist to play the robust "Brawny Man" for a popular brand of paper towels.

Recently, a St. Paul officer under a felony indictment in connection with stolen property was awarded a disability pension he could collect even in prison.

St. Paul, by far, leads the way on expensive "in-the-line-of-duty" medical retirements. At least 54 St. Paul police and fire workers - some in high-ranking posts in their departments - have won lifetime disability pensions the past four years that come complete with free survivor benefits and subsidized health insurance until age 65.

The Public Employees Retirement Association (PERA), St. Paul city officials and the League of Minnesota Cities say that the pension rolls are becoming overburdened by police and firefighters exploiting a generous and flawed new retirement option created by the Legislature in 1997.

The way the law is written, PERA says, the new breed of applicants needs only a doctor to say they have a job-related malady that prevents them from doing 100 percent of a front-line job as a baton-swinging street officer or ladder-climbing firefighter.

As a result, the rush of applicants for the new, top-of-the-line retirement benefits has commonly included desk bound police and fire administrators with chronic ailments who might have otherwise waited for normal retirement at age 55. It also includes applicants with injuries suffered from such activities as working out at the gym, under the justification that part of the duty of police officers and firefighters is to stay fit.

"I believe the intent of the law is being violated, terribly," said Ron Guilfoile, director of St. Paul's risk management office.

Jeffrey Kane, 33, joined the St. Paul Police Department in 1999. He was indicted late last year on federal charges that he transported and concealed a stolen Bobcat loader. He has pleaded not guilty.

But when Kane left the police force on Feb. 9, it wasn't because federal prosecutors were trying to put him behind bars. Instead, Kane left with an in-the-line-of-duty disability pension that promises to pay him at least 60 percent of his officer's salary and city-subsidized health care until he is 65. Police Department spokesman Paul Schnell wouldn't comment on the case, but he said the disability pension was related to injuries that Kane suffered several years ago in a squad car accident. Neither Kane nor his lawyer could be reached for comment.

Schnell said Kane returned to work after his crash in a lighter-duty role as a graffiti investigator. After his indictment, Kane was assigned to the police impound lot pending an internal investigation.

A PERA spokeswoman said approving Kane's disability pension was an open-and-shut case. Even if Kane spends time in a federal prison camp, his monthly pension checks will keep coming, she said.

Statewide, the numbers of disability claims have skyrocketed in a few years under the new law. In 1998, the first full year of availability for the enhanced, duty-related pensions, PERA's police and fire plan paid out \$5.9 million to 314 disability benefit recipients. In the fiscal year ending June 30, 2003, it paid out more than four times as much to 614 recipients.

Officials have no clear explanation for why St. Paul has experienced a spike of more than 50 in-the-line-of-duty disability retirements in police and fire ranks since the law changed. In the same time period, only a handful of Minneapolis police and firefighters have taken the so-called "medical outs." Some believe word of the new disability provisions has spread unusually widely among St. Paul officers. Others contend an aging workforce nearing retirement age finds the benefits especially attractive.

St. Paul Mayor Randy Kelly and his deputy mayor, Dennis Flaherty, spearheaded the 1998 law change when Kelly was a state senator and Flaherty was chief lobbyist for the statewide police federation.

As the two men now question what went wrong, PERA is contemplating an across-the-board hike in the cash contributions from covered cities and individuals that fund pensions. In St. Paul, for instance, the city's cost to support police and fire pensions could jump 35 percent, from about \$6 million a year to \$8.1 million, Guilfoile said. Meanwhile, the duty-related medical retirements also have increased the city's annual health insurance obligations.

Mary Vanek, executive director of PERA, the agency that grants pensions from the \$4.7 billion Police and Fire Pension Fund, said the high number of St. Paul cases is "unbelievable" compared to other municipalities.

Retired St. Paul police officer Thomas Collins, once the department's designated security guard and driver for former Mayor Norm Coleman, now works under contract for the U.S. Marshals Service as a guard at the federal courthouse in St. Paul. Collins took a duty-related disability pension at age 46 and looked for a second job "because it wasn't a fat enough pension to sit home and do nothin'."

Collins, who receives a monthly disability payment of \$3,851, readily admits that he could have looked for a desk job in the police department following his mayoral assignment, but instead he exercised his legal rights to a duty-related disability because he had physical restrictions from a back injury suffered in a June 1995 road accident in the mayor's Crown Victoria.

Collins said he had a "very tenuous relationship" with Police Chief Bill Finney and didn't want to risk getting an undesirable new assignment. If it hadn't been for the availability of a duty-related medical pension that would also pay a portion of his health insurance, Collins said, he would have had to continue working in the department.

"I was 46 years old," Collins said. "I wouldn't have been able to leave otherwise."

System's generosity

No one has come forward with an example that breaks the law, but other cases further illustrate the system's generosity.

- Former St. Paul firefighter Doug Friberg was approved for a duty-related medical pension in May 2002 and left the department with a \$39,000-a-year pension and subsidized health care benefits. He resurfaced later that year as a contest finalist in a national promotion for "rugged, tough, dependable and strong" Brawny paper towels. In vouching for him as a worthy candidate to be Georgia-Pacific's new "Brawny Man," Friberg's neighbors in Oakdale raved about his volunteering to shovel their snow.

The 46-year-old Friberg, a former football nose guard for the University of Minnesota, said his involvement in the Brawny "publicity stunt" was all about physical appearance, not physical ability. He said he injured his back in 1993, lifting a stretcher in a narrow stairway. Because the injury was never properly treated, he said, it lingered until he could no longer perform all the duties of a firefighter and medic. The snow-shoveling testimonials were from days long ago when he was healthy, said Friberg, who said he now works in a job that doesn't require heavy lifting.

- Although neither Julie Tossey nor Kathleen O'Connor worked a single day in a St. Paul fire station, both have been collecting in-the-line-of-duty disability pensions since 2001. Their attorneys, Dan Boivin and Sandra Kensy, said the pensions are for injuries that Tossey and O'Connor suffered during six weeks of recruit training in the city's firefighter academy. The two were notified midway through the academy that they were unqualified, but they were technically employed as firefighters during the training period.

Boivin and Kensy said PERA contested Tossey's case, in which she reinjured her back during a firefighter training exercise. The original injury was from an off-the-job horseback-riding accident, but Tossey had recovered enough to pass the physical exam to qualify as a firefighter recruit, the lawyers said.

After Tossey prevailed, the lawyers said, PERA didn't contest O'Connor's claim that she suffered mental anguish and depression as a result of emotional abuse at the academy. According to state pension records, Tossey receives a monthly pension of \$2,738, while O'Connor receives \$1,626. Tossey and O'Connor are still pursuing a lawsuit against St. Paul for age and sex discrimination, claiming the training academy was rigged against them.

- State Sen. Mike McGinn and his wife, Lisa, were both with the St. Paul Police Department until they retired under disabilities. Together, they receive \$135,000 a year in disability checks.

Besides the disability payments and his Senate salary, Mike McGinn, who had a heart attack in 1991 and retired in 2000 with a nonduty related disability, also works part time as a law enforcement consultant. McGinn said the stresses are more manageable in his political career than they were in police work.

"In politics, there are winners and losers, but no one is losing their life," he said.

Lisa McGinn retired last year at 50 with an in-the-line-of duty disability from injuries she received in several auto accidents. She has not found full-time employment. She said the injuries from the duty-related car crashes resulted in chronic pain that limited her ability to do police work. As a watch commander in her final year on the force, she said she was unable to qualify at the firing range because the recoil from a shotgun might injure her neck.

"There's no place I would rather be than still be working at the St. Paul Police Department," she said.

Trend spreads

While the trend started in St. Paul, it is spreading throughout the state.

"Others have figured it out. The word is out," PERA's Vanek said. "You can't ignore the actuaries. Contributions to the fund need to be increased or benefits decreased."

The potential for an increase in contributions to the pension fund has caught the eye of current police and fire members, whose own individual contributions to the retirement plan could go up \$250 to \$400 a year or more to make up for the reimbursements to the disabled retirees.

Bill Gillespie, executive director of the Minnesota Police and Peace Officers Association, said many of those filing for in-the-line-of duty disabilities are using injuries that are not the kind for which the new benefit was intended. Active members, he says, are registering complaints.

"Their objection is primarily one of a sense of justice, what's right and fair," he said.

PERA officials say they are hamstrung by the law and they are pushing a bill at the Legislature that would restrict the availability of duty-related medical pensions. Other benefit plans for non-police and fire personnel often require a "total and permanent" disability that means the inability to perform any gainful activity for the same level of benefits.

Former St. Paul police commander Debbie Montgomery was elected to the St. Paul City Council last fall. She retired from the police department in 2003 with a \$63,000 a year in-the-line-of-duty medical pension that the city contested. According to state workers' compensation records, Montgomery's doctor said she developed injuries to both of her knees from years of getting in and out of squad cars, kneeling at the firing range and falling down on her kneecaps while a street officer.

Montgomery's injuries didn't prevent her from working her administrative job as a commander, but she said she deserved an in-the-line-of-duty disability pension because she could no longer do everything a uniformed officer might be called upon to do.

"Your job title says that you have to be able to perform all the duties of a police officer," she said. "It doesn't say 'commander.' It says 'police officer.'"

As long as they do not go back to working as licensed police officers or firefighters, those with in-the-line-of-duty disabilities are free to find other work, even in security-related fields.

Former St. Paul police officer David Mars is co-owner of Twin City Lawmen, Inc., an Oakdale private security firm. His back was injured in a squad car accident in the

late 1970s, he said. He missed months of work, but returned as a patrolman in the rough Frogtown area for many years, even though he was still troubled by a degenerating disc problem.

Mars said he was "fed up with the administration" of the police force at age 50 and also worried more about his back. But instead of taking normal early retirement, he received a richer, duty-related medical retirement that pays him a higher monthly pension and a subsidy on his health insurance.

"I'd be stupid if I didn't take it," said Mars, who adds that his role at Twin City Lawmen is primarily administrative.

Change in state law

Mayor Kelly and Deputy Mayor Flaherty pushed hard for the change in state law that opened up the flood of disability claims. They said at the time and continue to maintain that the intent of the legislation was to protect officers and firefighters facing increasing dangers.

Initially, the state was to reimburse cities for the additional costs, but those funds have been severely restricted under budget cuts.

Flaherty said it was never his intention for the new benefit to be used in this way. He testified before a House committee in 1997: "I don't want you to think that we're talking about a large number of people. Fortunately, it's a very finite group."

Others remember Flaherty's role differently. Dave Johnson was a state senator at the time of the law change. He is now the attorney for the union that represents St. Paul firefighters.

Johnson said that Flaherty could have acted in 1997 to narrow the availability of the new benefit he was proposing as a police lobbyist by using a "hot pursuit" standard instead of the broader "in the line of duty" language.

There is plenty of blame to go around. The police association's Gillespie and other police groups blame PERA for failing to enforce the law. So does St. Paul's Flaherty. PERA points to the courts, which have upheld the broad interpretation of the law.

PERA has no investigators in the field to determine if someone claiming a disability is still unable to work. It relies instead on reports sent in by the claimants themselves. Now it wants greater accountability from those making claims.

The Minnesota Department of Health has a retired doctor working a few days a week with part-time help to review disability claims. Of the 368 disability determinations the Department of Health has conducted with benefit effective dates after 1999, it has denied only one application.

Mark Brunswick is at mbrunswick@startribune.com and Tony Kennedy is at tonyk@startribune.com.

© Copyright 2004 Star Tribune. All rights reserved.

A bill for an act
relating to retirement; amending disability benefits eligibility requirements in
the Public Employees Retirement Association police and fire fund; amending
Minnesota Statutes 2004, section 353.656, subdivisions 3, 6a; Minnesota Statutes
2005 Supplement, section 353.656, subdivision 1.

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

Section 1. Minnesota Statutes 2005 Supplement, section 353.656, subdivision 1,
is amended to read:

Subdivision 1. **In line of duty; computation of benefits.** (a) A member of the police
and fire plan who has not met the requirements for a retirement annuity under section
353.651, subdivision 1, and who becomes disabled and physically unfit to perform duties
as a police officer, firefighter, or paramedic as defined under section 353.64, subdivision
10, as a direct result of an injury, sickness, or other disability incurred in or arising out of
any act of duty, which has or is expected to render the member physically or mentally
unable to perform the duties as a police officer, firefighter, or paramedic as defined under
section 353.64, subdivision 10, for a period of at least one year, shall receive disability
benefits during the period of such disability.

(b) The benefits must be in an amount equal to 60 percent of the "average salary" as
defined in section 353.01, subdivision 17a, plus an additional percent specified in section
356.315, subdivision 6, of that average salary for each year of service in excess of 20
years. If the disability under this subdivision occurs before the member has at least five
years of allowable service credit in the police and fire plan, the disability benefit must be
computed on the "average salary" from which deductions were made for contribution to
the police and fire fund.

Sec. 2. Minnesota Statutes 2004, section 353.656, subdivision 3, is amended to read:

Subd. 3. **Nonduty disability benefit.** (a) Any member of the police and fire plan who has not met the requirements for a retirement annuity under section 353.651, subdivision 1, and who becomes disabled after not less than one year of allowable service because of sickness or injury occurring while not on duty as a police officer, firefighter, or paramedic as defined under section 353.64, subdivision 10, and by reason of that sickness or injury the member has been or is expected to be unable to perform the duties as a police officer, firefighter, or paramedic as defined under section 353.64, subdivision 10, for a period of at least one year, is entitled to receive a disability benefit.

(b) The benefit must be paid in the same manner as if the benefit were paid under section 353.651. If a disability under this subdivision occurs after one but in less than 15 years of allowable service, the disability benefit must be the same as though the member had at least 15 years service. For a member who is employed as a full-time firefighter by the Department of Military Affairs of the state of Minnesota, allowable service as a full-time state Military Affairs Department firefighter credited by the Minnesota State Retirement System may be used in meeting the minimum allowable service requirement of this subdivision.

Sec. 3. Minnesota Statutes 2004, section 353.656, subdivision 6a, is amended to read:

Subd. 6a. **Disability survivor benefits.** If a member who is receiving a disability benefit under subdivision 1 or 3:

(a) dies before attaining the age-65 required for receipt of a retirement annuity under section 353.651, subdivision 1, or within five years of the effective date of the disability, whichever is later, the surviving spouse shall receive a survivor benefit under section 353.657, subdivision 2 or 2a, unless the surviving spouse elected to receive a refund under section 353.32, subdivision 1. The joint and survivor optional annuity under subdivision 2a is based on the minimum disability benefit under subdivision 1 or 3, or the deceased member's allowable service, whichever is greater.

(b) is living at the age-65 required for receipt of a retirement annuity under section 353.651, subdivision 1, or five years after the effective date of the disability, whichever is later, the member may continue to receive a normal disability benefit, or the member may elect a joint and survivor optional annuity under section 353.30. The optional annuity is based on the minimum disability benefit under subdivision 1 or 3, or the member's allowable service, whichever is greater. The election of this joint and survivor annuity must occur within 90 days of the age-65 required for receipt of a retirement annuity under section 353.651, subdivision 1, or the five-year anniversary of the effective date of the

3.1 disability benefit, whichever is later. The optional annuity takes effect the first of the
 3.2 month following the month in which the person attains the age-65 required for receipt
 3.3 of a retirement annuity under section 353.651, subdivision 1, or reaches the five-year
 3.4 anniversary of the effective date of the disability benefit, whichever is later.

3.5 (c) if there is a dependent child or children under paragraph (a) or (b), the association
 3.6 shall grant a dependent child benefit under section 353.657, subdivision 3.