



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Lawrence A. Martin, Executive Director *JAM*  
RE: H.F. 126 (Murphy); S.F. 7 (Betzold): Major Retirement Plans; Uniform Pension Plan Appeal Procedures  
DATE: March 1, 2007

### Summary of the Proposed Legislation

H.F. 126 (Murphy); S.F. 7 (Betzold) replaces Minnesota Statutes, Sections 352.031 and 354.071, the statutory appeals procedures for the Minnesota State Retirement System (MSRS) and the Teachers Retirement Association (TRA) with a uniform appeals procedure for all of the statewide retirement plans, providing statewide public pension members, former members, and beneficiaries with:

1. Right of Review. An opportunity to have plan administrative decisions reviewed by the governing body of the plan;
2. Notice of Adverse Determination. The provision of a notice of the reasons for an adverse determination and of the appeals process whenever there is a benefit denial, modification, or termination;
3. Submission of Relevant Materials. An opportunity for a plan member to submit relevant materials in connection with a review;
4. Hearing Appearance. An opportunity to appear at the board review hearing;
5. Decision on the Record. A board decision on the review request based on the record; and
6. Right of Subsequent Court of Appeals Review. An opportunity to have the board review determination appealed to the State Court of Appeals.

### Background Information on Public Retirement Plan Benefit Appeals Processes

Background information on the appeals processes utilized by the statewide retirement systems in the event of adverse determinations is set forth in Attachment A.

### Technical Commission Staff Amendment

Amendment H0126-4A implements some prior refinements in the proposed legislation that inadvertently were not included in the draft language that was forwarded to the Revisor of Statutes, updates the language style and usage of various provisions without making any intended substantive modifications, and eliminates a potentially conflicting existing Public Employees Retirement Association (PERA) appeals provision.

### Discussion and Analysis

H.F. 126 (Murphy); S.F. 7 (Betzold) combines the prior adverse determination appeals processes governing the Minnesota State Retirement System (MSRS) and the Teachers Retirement Association (TRA) into a single joint provision and extends the uniform provision to include the Public Employees Retirement Association (PERA).

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

1. Adequacy of the Uniform Notice, Hearing, and Review Process. The policy issue is the adequacy of the current Minnesota State Retirement System (MSRS) and Teachers Retirement Association (TRA) review procedures recodified in the proposed uniform appeals procedure and proposed for extension to the Public Employees Retirement Association (PERA). MSRS and TRA have now had 16 or 17 years' experience with the review procedure and the adequacy of the process can be judged from the experience of the two retirement systems. No information on the number of appeals filed, heard, and resolved is regularly reported to the Commission, so the Commission has only anecdotal information on the adequacy of the MSRS and TRA review processes, generally through the process of drafting special legislation to resolve constituent problems or complaints forwarded by legislators. The only instances where there are criticisms of the existing review processes arise in instances where the dispute is wholly a legal issue or where the desired remedy to a dispute is beyond the legal authority of the retirement plan governing board. The Commission may wish to take testimony from the

retirement administrators and other interested parties on the number of appeals that occur annually and the ability of the appeals process to resolve those disputes.

2. Open Meeting Law and Medical Record Disclosure Concerns. The policy issue is the appropriateness of open meeting procedures when the appeal involves the actual or potential disclosure of medical records. In reviewing S.F. 7 (Betzold), Katie Engler, Department of Administration policy analyst, and Kathy Pontius, Senate Counsel, have raised a concern that the open meeting law requirement of Minnesota Statutes, Section 356A.08, Subdivision 1, when applied to appeals of disability determinations where medical records are involved, could result in the inappropriate disclosure of nonpublic data. Ms. Engler and Ms. Pontius have suggested an amendment, H0126-5A, to address the concern, mandating that the meeting must be closed when medical records under Minnesota Statutes, Section 144.335, are involved, by adding the provision to Minnesota Statutes, Section 13D.05, Subdivision 2. If the Commission wishes to address the issue, but not amend Minnesota Statutes, Chapter 13D, the open meeting law, in a pension bill, Amendment H0126-6A contains the same substance as an addition to the hearing subdivision of the appeals process specifically.
3. Potential Inconsistencies With Disability Determination Provisions. The policy issue relates to Section 1, Subdivision 11, of the proposed legislation and potential inconsistencies of those provisions with the current statutory authority of the pension plan administrators and governing boards to determine eligibility for a disability. Section 1, Subdivision 11, contains four basic provisions, which are:
  - (i) Medical Evidence Required for Non-Eligibility Determination. Upon an appeal from a determination that there is no disability, a reversal may occur only if there is medical evidence of a disability.
  - (ii) Medical Advisor Reconsideration. The governing board may resubmit a disability benefit application to its medical advisor, with or without a requirement for additional medical examinations.
  - (iii) Medical Advisor Recommendation Binding Without Contrary Medical Evidence. A plan governing board is permitted to make a disability determination contrary to the recommendation of its medical advisor only with expert medical evidence on the record to support the contrary determination.
  - (iv) Medical Advisor Recommendation No Binding Without Medical Issues. A plan governing board may make a disability determination contrary to the medical advisory recommendation on issues that do not involve medical issues.

Provision (i) is good administrative law practice and should not contradict any current disability provisions. Provision (ii) is permissive and does not appear to contradict any current disability provisions. Provisions (iii) and (iv) appear to constrain plan administrators and plan governing board determination authority, however, and may conflict with existing disability provisions. For instance, in the law governing the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), Minnesota Statutes, Section 353.33, Subdivisions 2 and 4, an applicant is required to file an application showing compliance with the statutory qualification conditions and is required to provide an expert report supporting the application that subsequently is to be verified by the medical examiner and the determination of the existence of a disability is the responsibility of the executive director. The uniform review provision appears to shift the determination judgment in practice to the medical advisor. If there is a tension between provisions (iii) and (iv) of the appeals process and the thrust of the plan disability determination procedures in the proposed legislation, those same tensions exist currently and apparently can be reconciled. Essentially the same disability determination process applies to the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and to the Teachers Retirement Association (TRA), where the existing comparable review process provision has been in force since 1989.

4. Appropriateness of an Extension of the Uniform Appeal Provision to Major Local Retirement Plans. The policy issue is the appropriateness of a potential extension of the uniform review and appeal process beyond the Public Employees Retirement Association (PERA) to the Duluth Teachers Retirement Fund Association (DTRFA), the St. Paul Teachers Retirement Fund Association (SPTRFA), the Minneapolis Employees Retirement Fund (MERF), the Minneapolis Firefighters Relief Association, and the Minneapolis Police Relief Association. If the review and appeals process makes sense for expansion to PERA, it is likely to also make sense for expansion to a truly uniform provision, with necessary adaptations, to the larger local retirement plans. Amendment H0126-7A would add the Duluth Teachers Retirement Fund Association (DTRFA), the St. Paul Teachers Retirement Fund Association (SPTRFA), the Minneapolis Employees Retirement Fund (MERF), the Minneapolis Firefighters Relief Association, and the Minneapolis Police Relief Association to coverage by the provision. The Commission should consider taking testimony from representatives of these five retirement plans about the advantages and disadvantages of a uniform review and appeal process and about how the uniform process compares with their current in-house appeals processes.

