



**H.F. 127**  
(Murphy, M.)

**S.F. 85**  
(Betzold)

### **Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* PERA Plans  
*Relevant Provisions of Law:* Minnesota Statutes, Sections 353.33; 353.656; 353B.08; 353E.06; proposing coding for new law; and repealing Sections 353.33, Subd. 6a, 6b, and 8, and 353.656, Subd. 5, 9, 11, and 12  
*General Nature of Proposal:* Modifying disability determination procedures  
*Date of Summary:* April 23, 2007

### **Specific Proposed Changes**

- Revises last date for filing for disability from three years after termination to 18 months.
- Revises medical report requirements to require expectations for improvement.
- Requires employer to document whether there is available work for the individual and all steps that were taken to accommodate the individual.
- Requires that duty related disability applications to tie the injury to specific duties.
- Extends length of time to appeal a disability benefit decision from 45 days to 60 days and allows Executive Director to require the individual to take part in fact-finding session and/or vocational assessment

### **Policy Issues Raised by the Proposed Legislation**

1. Whether there is sufficient need to change existing procedures.
2. Proper maximum permitted time for filing for disability following termination of service.
3. Whether to continue to permit individuals to repay refunds after a disabling event has occurred.
4. Proper scope of change. If these changes are deemed appropriate, the Commission may at a later date wish to extend these revised procedures to non-PERA plans.
5. Justification for striking vocational rehabilitation language.

### **Potential Amendments**

H0127-1A is a technical amendment.

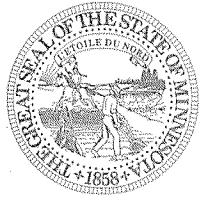
H0127-2A could be used to revise the time limit for filing for disability from the proposed 18 months following termination to length of time to be specified by the Commission.

H0127-3A would prohibit repaying refunds or taking another action to purchase service credit after a disabling event has occurred.

H0127-4A reinstates stricken vocation rehabilitation language which might have been accidentally removed.

H0127-5A revises the effective date to make the changes apply only to individuals who become disabled after the effective date.

H0127-6A, an alternative to H0127-5A, revises the effective date to apply prospectively to existing disabilitants and to those who become disabled after the effective date.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director <sup>EB</sup>

RE: H.F. 127 (Murphy, M.); S.F. 85 (Betzold): PERA Plans: Clarifying and Modifying the Procedures for Disability Benefit Eligibility Determination

DATE: April 18, 2007

General Summary of H.F. 127 (Murphy, M.); S.F. 85 (Betzold)

H.F. 127 (Murphy, M.); S.F. 85 (Betzold) makes the following changes to the disability benefit eligibility determination provisions for the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), the Public Employees Police and Fire Retirement Plan (PERA-P&F), and the PERA Local Government Correctional Employees Retirement Plan (PERA-Correctional):

1. Revises the last date for filing a disability benefit application from three years after termination to 18 months after termination;
2. Requires medical reports supporting a disability application to include expectations for improvement, and where recovery is expected, an estimate of the date on which the medical professional believes the individual will have recovered from the disabling event;
3. Requires a report from the employer that there is no available work that the individual could perform, including documentation, if requested by PERA, of all steps the employer has taken to provide continued employment for the individual and to accommodate the individual's limitations;
4. Requires that any application for duty-related disability tie the disability to specific duty-related functions or actions which are consistent with the inherent dangers of positions eligible for PERA-P&F and PERA-Correctional membership;
5. Allows appeals to the PERA Board of the Executive Director's disability determinations within 60 days after the Executive Director's determination rather than within 45 days; and allows the Executive Director to require the participant to take part in a fact-finding session conducted by an administrative law judge and/or a vocational assessment conducted by a qualified rehabilitation counselor.
6. Restricts PERA's trial work period provision to PERA-General members rather than members of all PERA plans; and,
7. Makes other changes of an administrative nature, largely striking language in existing PERA, PERA-P&F, and PERA-Correctional statutes to be moved to a new proposed section (Section 1), and repealing subdivisions no longer needed because of language in proposed Section 1.

Section by-Section Summary

Section 1. New provision, proposed coding as Section 353.031, Disability Determination Procedures. In part, this new section would collect disability application, determination, and review procedures in a single statute, replacing statements now contained in several provisions of PERA and PERA-P&F statutes, and in part it establishes new policy.

- Subdivision 1, Application, is a statement specifying that this section shall govern PERA-General, PERA-Correctional, and PERA-P&F disability applications and determinations. (1.10-1.17)
- Subdivision 2, Policy Statement, provides that, unless stated otherwise, the disability standards applicable to the plan (total and permanent for purposes PERA-General determinations, job-specific for purposes of PERA-P&F and Correctional) shall apply. (1.18-1.21)
- Subdivision 3, Procedure to Determine Eligibility. Applications must be in writing on forms provided by the Executive Director, and must be made no later than 18 months after termination of service (rather than no later than three years after termination). All medical reports must support a finding that the disability occurred while the individual was an active PERA plan member and not on leave or after termination of service occurred. The disability applicant shall provide a medical report signed by a licensed medical doctor and at least one other medical doctor, psychologist, or chiropractor, and the applicant must authorize release of all medical records. The medical report must contain an opinion regarding whether the individual is expected to improve, and if improvement is expected, the expected date on which the

individual will not longer meet the disability standard. Any claim must be supported by a report from the employer specifying actions the employer took to find available work for the individual, and accommodations made to provide continued employment. A disablitant may simultaneously file a disability and retirement application (if the individual meets age and service requirements for retirement). If the disability application is denied, retirement would commence. (1.22-3.8)

- Subdivision 4, Additional Specific Requirements Specific to PERA-P&F and PERA-Correctional, states that if the application is filed within two years of the date of the injury, the application must be supported by evidence that the applicant is unable to perform the duties of the position held by the applicant on the date of the injury or illness, accompanied by a report from the employer regarding any duties that the individual cannot perform. If the application is filed more than two years after the date of the disabling injury or illness, the reports shall focus on the individual's ability to perform the duties assigned within the most recent 90 days prior to the application. Any claim for a duty-related disability must specify whether the disabling event occurred while the individual performing an act specific to the inherent dangers of positions eligible for PERA-P&F or Correctional plan coverage. An application must be supported by a first report of injury. If an applicant continues in employment following the application for more than 45 days without being placed in an authorized leave, the application will be cancelled and the applicant can not reapply, based on that same cause, for at least one year. (3.9-4.9)
- Subdivision 5, Medical Advisor, states that PERA may contract with the Commissioner of the Department of Health to provide medical advisors to PERA. (4.10-4.15)
- Subdivision 6, Independent Medical Evaluation, requires the applicant to submit to an independent medical evaluation, paid for by PERA, if requested by the Executive Director. (4.16-4.19)
- Subdivision 7, Refusal of Medical Examination or to Provide Medical Evidence, prohibits PERA from continuing to consider the application, or the case of an existing disability benefit recipient, requires PERA to terminate the benefit. (4.20-4.26)
- Subdivision 8, Proof of Continuing Disability, authorizes PERA to require, at any reasonable time, that a disablitant submit proof of continued eligibility. (4.27-4.35)
- Subdivision 9, Application Approval or Denial, allows the individual to appeal the Executive Director's decision to the PERA Board within 60 days, rather than 45 days, and allows the Executive Director to require the participant to take part in a fact-finding session conducted by an administrative law judge and/or a vocational assessment conducted by a qualified rehabilitation counselor. (5.1-5.10)
- Subdivision 10, Restoring Forfeited Service, authorizes individuals to repay refunds to restore service credit within six months after the effective date of the disability benefit or within six months after filing, whichever is later. (5.11-5.16)

Section 2. Minnesota Statutes, Section 353.33, Subdivision 1, a PERA-General coordinated member disability authorization provision, is revised by cross-referencing Section 1, and by striking repayment of refund language moved to Section 1, Subdivision 10. (5.17-5.30)

Section 3. Minnesota Statutes, Section 353.33, Subdivision 2, a PERA-General disability benefit accrual provision, by clarifying that disability benefit can not commence while the individual continues to receive salary or payments from an employer-paid salary continuation program, and by striking language moved to Section 1. (5.31-6.22)

Section 4. Minnesota Statutes, Section 353.33, Subdivision 4, a PERA-General disability benefit eligibility provision, is revised by striking language to be moved to Section 1. (6.23-7.7)

Section 5. Minnesota Statutes, Section 353.33, Subdivision 6, a PERA-General continuing eligibility for disability benefit provision, is revised by striking language to be moved to Section 1. (7.8-7.22)

Section 6. Minnesota Statutes, Section 353.33, Subdivision 7a, a PERA disablitant trail work period provision, is revised by restricting the provision's application to PERA-General rather than having it apply to all PERA plans. (7.23-8.3)

Section 7. Minnesota Statutes, Section 353.656, Subdivision 8, a PERA-P&F disability application provision, is revised by striking language to be moved to Section 1. (8.4-9.17)

Section 8. Minnesota Statutes, Section 353B.08, Subdivision 11, a PERA local consolidated relief association disability benefit re-examination provision, is amended by revising a cross-reference to refer to the new Section 1. (9.18-9.30)

Section 9. Minnesota Statutes, Section 353E.06, Subdivision 4, a PERA-Correctional disability benefit application provision, is revised by striking language to be moved to Section 1, and by adding a clarification that disability benefits can not commence while the individual continues to receive salary or payments from an employer-paid salary continuation program. (9.31-10.18)

Section 10. Minnesota Statutes, Section 353E.06, Subdivision 8, a PERA-Correctional disability benefit continuation provision, is revised by creating a cross-reference to Section 1. (10.19-10.21)

Section 11. Repealer. Minnesota Statutes, Sections 353.33, Subdivisions 6a (medical advisor), 6b (duty is medical advisor), and 8 (refusal to submit to medical examination or to provide medical evidence); and 353.656, Subdivisions 5 (proof of disability), 9 (refusal to submit to medical examination or to provide medical evidence); 11 (independent medical examination, duties of medical advisor), and 12 (approval of disability benefits), are repealed. All these provisions are no longer necessary because the substance of these provisions appears in the new Section 1. (10.22-10.24)

Section 12. Effective Date. Sections 1 to 11 are effective July 1, 2007. (10.25-10.26)

### Background Information

H.F. 127 (Murphy, M.); S.F. 85 (Betzold) revises disability benefit application and review procedures for all PERA defined benefit plans, but the requested changes likely are motivated by efforts to address the high utilization of disability in the PERA-P&F plan, which has been a problem in that plan in recent years. This bill can be viewed as complementing H.F. 125 (Murphy, M., by request); S.F. 84 (Betzold, by request) which would take steps to reduce disability utilization and reduce the cost of the PERA-P&F disability program by, in part, creating new classifications of disabilitants; revising PERA-P&F disability benefits, in some cases reducing them, for new disabilitants; and terminating disability status at normal retirement age. The provisions of H.F. 127 (Murphy, M.); S.F. 85 (Betzold) could provide the additional information and additional medical reviews necessary for PERA to make the determinations regarding which category of benefits under H.F. 125; S.F. 84, should apply.

A first step to address the broad PERA-P&F disability benefit utilization problem was made in Laws 2004, Chapter 267, Article 8, Sections 20 to 25. The 2004 changes were:

1. 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;
2. 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;
3. Requiring first reports of injury in all duty-related applications;
4. Requiring in all cases that the employer must provide evidence that the applicant is unable to perform applicable duties;
5. Voiding the disability application if termination from service does not occur within 45 days after approval of a disability application;
6. Clarifying that individuals may simultaneously apply for disability and retirement benefits, although both may not be received at the same time; and
7. Permitting repayment of refunds no later than six months after the effective date of the disability benefit.

### Additional Background Information

- A. PERA Disability Benefits and Disability Issues. Additional information on PERA-P&F disability issues, including the nature of current PERA-P&F disability benefits and utilization problems is provided in Attachment A.
- B. Federal Income Tax Treatment. Background information on federal income tax treatment of disability benefit coverage is provided in Attachment B.

### Discussion and Analysis

H.F. 127 (Murphy, M.); S.F. 85 (Betzold) in large part modifies PERA disability application procedures by requiring more specific information on the nature of the injury or disease, and by authorizing more extensive medical reporting, both prior to the initial disability determination and afterwards, to determine

whether the individual continues to be disabled. The employer must report actions the employer took to provide continued employment to the individual. Any PERA-P&F or PERA-Correctional disability application must indicate whether the claimed disabling event occurred or is due to performing an act specific to the inherent dangers of positions eligible for PERA-P&F or PERA-Correctional coverage.

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

1. Need for Change. The issue is whether there is sufficient need to consider this bill. PERA would contend that the changes contained in this bill are needed to clarify disability policies and procedures, to help contain PERA-P&F disability utilization and the resultant cost of disability in that plan, and to establish procedures for PERA-Correctional to avoid any possible future disability utilization problems in that plan.
2. Proper Length of Time to File for Disability Following Termination. The bill includes language setting a time limit of 18 months, rather than three years, to file a disability application following termination of service (page 2, line 1 and 2). The issue is whether this is the proper length of time. The Commission may wish to hear testimony on this matter. The drafting suggests that PERA believes the existing law provides too long a window, making it difficult to determine whether a claimed disabling condition is due to illness or injury that began before the individual terminated service.

The PERA proposal to use 18 months is consistent with current Teacher Retirement Association (TRA) disability law (Section 354.48, Subdivision 2). However, if the PERA proposal is adopted, there would continue to be considerable differences in treatment across plans. The Minnesota State Retirement System (MSRS) has a much shorter window, 180 days, which is approximately six months (Section 352.113, Subdivision 4). The 180-day window language applies to the MSRS General State Employees Retirement Plan (MSRS-General) and to the MSRS Correctional State Employees Retirement Plan (MSRS-Correctional). Although the MSRS-administered State Patrol Retirement Plan is generally comparable to PERA-P&F, nothing is stated in Chapter 352, the State Patrol Retirement Plan chapter, setting any time limit in that plan for filing a disability application.

3. Scope. The issue is the proper scope of the changes in length of time to file disability following termination. If the Commission is convinced that the proposed changes are appropriate for PERA, those changes might also be appropriate for various MSRS plans and for TRA.
4. Permitting Repayment of Refunds after Disability Occurs. Language on page 5, lines 11 to 16, permits individuals to repay refunds after a disability has occurred. This is existing law language that is being moved to a new provision. However, the Commission may wish to consider whether to eliminate that practice, given PERA's stated aim to control disability costs in its plans, particularly in PERA-P&F. When individuals take a refund, they forfeit service credit. If an individual is later rehired in a position covered by the plan, they are permitted by law to repay the refund previously taken with interest, which reestablishes the lost service credit. The specific question raised here is whether an individual who forfeited service credit by taking a refund should be permitted to repurchase that service after a disabling event has occurred. An individual in this circumstance would want to purchase the lost service credit if the purchase would enable the individual to qualify for disability benefits or to receive a higher benefit. The authority in existing law is equivalent to permitting an individual to collect on an insurance policy for a home destroyed by fire, by purchasing an insurance policy after the house has burned. The Commission may wish to hear testimony on this matter. If the Commission were to remove this authority, that action may lead to special law requests allowing repayment of refunds by PERA plan disabilitants. If the Commission seems likely to recommend such special laws for enactment, the Commission may wish to leave the existing policy in place.
5. Justification for Striking Vocational Rehabilitation Language. In an existing PERA-General disabilitant continuing eligibility for benefit provision, PERA is proposing to strike a requirement that continuation of disability benefits is contingent upon a disabilitant's participation in a vocational rehabilitation evaluation if PERA believes the individual may be able to return to gainful employment. This stricken language appears on page 7, lines 16 to 18. The issue is why that language is being stricken, since this requirement seems to be a tool to help control plan disability costs. The Commission may wish to seek additional testimony to determine if striking this vocational rehabilitation language is appropriate.
6. Application Issue. The issue is whether these changes are meant to apply to existing disabilitants or to new disabilitants only, which could be clarified by adding language to the effective date provision.

## Potential Amendments for Commission Consideration

Amendment H0127-1A is a technical amendment updating some language on page 3, line 26; revising proposed language on page 4, line 29, in a continuing disability provision, to clarify that disability benefits will continue only if the individual remains disabled; and adding some clarifying language to the trail work period provision.

Amendment H0127-2A would revise the length of time to file a disability claim following termination from 18 months, as proposed in the bill, or a length of time to be set by the Commission. If the Commission concludes that the time period should remain unchanged from existing law, the Commission can insert “three years” in place of 18 months. If the Commission were to conclude that PERA should adopt a time limit comparable to that used in MSRS General and Correctional, the Commission could insert “180 days”.

Amendment H0127-3A could be used to prohibit any repaying of a refund or any other action to purchase service credit after a disabling event has occurred.

Amendment H0127-4A reinstates the stricken vocational rehabilitation language on page 7, lines 16 to 18.

Amendment H0127-5A revises the effective date to make the changes apply only to individuals who become disabled after the effective date.

Amendment H0127-6A, an alternative to H0127-5A, revises the effective date to make the provisions apply prospectively to existing disabilitants and to those individuals who become disabled after the effective date.

## Attachment A

### Background Information on PERA-P&F Disability Benefits and Disability Issues

- a. Nature of Current Public Safety Employee Casualty Coverage. The package of disability-related benefits offered to PERA-P&F members is as follows:
  1. 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. PERA-P&F disability benefits are either “duty-related” disability benefits or “non-duty-related” disability benefits. The basic disability standard for PERA-P&F is the inability, physically or mentally, to perform the duties of a police officer, firefighter, or paramedic that is expected to last for a period of at least one year. For a duty disability, the physical or mental inability must be the direct result of an injury, sickness, or other disability incurred in or arising out of any act of duty. For a non-duty disability, the physical or mental inability results from sickness or injury while not on duty as a police officer, firefighter, or paramedic. Duty disability benefit coverage has no minimum period of service vesting requirement and non-duty disability benefit coverage has a one-year minimum period of service vesting requirement. For those disabilitants with minimal accrued service credit, 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.
  2. 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.
  3. 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.
- b. PERA-P&F Disability Benefit Utilization-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 the number of 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.

Compared to the process of qualifying for a disability benefit in a general employee retirement plan, it is fairly easy to qualify for disability benefits 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 the early retirement age for the plan (age 50) and by those approaching the plan’s 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.

- c. The Age Discrimination in Employment 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 1993 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 his or her own health care coverage, which can be very expensive.

In 2006 (Laws 2006, Chapter 271, Article 4), eligibility for a PERA-P&F disability benefit was generally limited to ages before eligibility for a normal retirement annuity.

- d. 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 benefit coverage is generally less than one-half of one percent of payroll. For the quasi-public safety/correctional employee plans, the normal cost of disability benefit coverage approaches that of public safety plan disability coverage. 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	2006
PERA-General	0.30%	0.49%	0.37%	0.34%	0.35%	0.36%
MSRS-General	0.25%	0.27%	0.42%	0.45%	0.43%	0.42%
TRA	0.47%	0.62%	0.21%	0.18%	0.19%	0.21%
PERA-P&F	1.70%	2.12%	2.26%	3.50%	3.42%	3.42%
State Patrol	1.84%	2.39%	2.43%	2.50%	2.50%	2.34%
MSRS-Correctional	0.21%	0.24%	1.25%	1.61%	1.60%	3.06%
PERA-Correctional	n/a	n/a	1.86%	1.54%	1.53%	1.49%

*Source: Plan actuarial valuation reports for identified years*

- e. 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, just prior to the earliest service retirement age for the plan (age 50), and particularly the age group 50 to 54, (just prior to age 55, the normal retirement age for this plan) where disabilities were 283 percent of the expected amount. 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. There were also 28 disabilitants occurring at age 55, the PERA-P&F normal retirement age, or after. Under pre-1993 law



and now under the 2006 law change, this would not occur because these individuals would be treated as retirees.

**Table 2**

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

<u>Age</u>	<u>Actual</u>	<u>Expected</u>	<u>Actual/Expected</u>
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+	<u>2</u>	<u>0.00</u>	<u>--</u>
Total	226	125.81	180%

## Attachment B

### Background Information on Federal Income Tax Treatment of Disability Benefit Coverage

Section 61(a) of the federal Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

Section 104(a)(1) of the federal Internal Revenue Code provides that gross income does not include amounts received under workers' compensation acts as compensation for personal injuries or sickness. Specifically, Section 104(a)(1) of the federal Internal Revenue Code provides the following:

#### **Section 104. Compensation for injuries or sickness**

##### **(a) In General**

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

- (1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

Section 1.104-1(b) of the federal Income Tax Regulations states that section 104(a)(1) of the federal Internal Revenue Code excludes from gross income amounts received by an employee under a workers' compensation act or under a statute in the nature of a workers' compensation act that provides compensation to the employee for personal injury or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workers' compensation act to the survivor or survivors of a deceased employee. Section 104(a)(1) does not apply to a retirement pension or annuity to the extent it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a non-occupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workers' compensation act or acts.

Thus, if the public retirement plan has a duty- or occupational-based disability benefit and are in the nature of workers' compensation, the duty- or occupational-based disability benefits are excludable from the gross income of the recipients under section 104(a)(1) of the federal Internal Revenue Code to the extent that the benefit amount is not determined by reference to the disabilitant's age, length of service credit, or prior contributions.

The federal Internal Revenue Code, Section 104(a)(1), disability income exclusion replaced the pre-1977 "sick pay" provisions and is more restrictive than the pre-1977 law.

## 352.113, Minnesota Statutes 2006

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### 352.113 PERMANENT DISABILITY BENEFITS.

Subdivision 1. **Age and service requirements.** An employee covered by the system, who is less than normal retirement age and who becomes totally and permanently disabled after three or more years of allowable service, is entitled to a disability benefit in an amount provided in subdivision 3. If the disabled employee's state service has terminated at any time, the employee must have at least two years of allowable service after last becoming a state employee covered by the system. Refunds may be repaid under section 352.23 before the effective accrual date of the disability benefit under subdivision 2.

Subd. 2. **Application; accrual of benefits.** An employee making claim for a total and permanent disability benefit, or someone acting on behalf of the employee upon proof of authority satisfactory to the director, shall file a written application for benefits in the office of the system. The application must be in a form and manner prescribed by the executive director. The benefit shall begin to accrue the day following the start of disability or the day following the last day paid, whichever is later, but not earlier than 180 days before the date the application is filed with the director.

Subd. 3. **Computation of benefits.** The total and permanent disability benefit must be computed in the manner provided in section 352.115. The disability benefit shall be the normal annuity without reduction for each month the employee is under normal retirement age at the time of becoming disabled. A disabled employee may choose to receive the normal disability benefit or an optional annuity as provided in section 352.116, subdivision 3. This choice must be made before the start of payment of the disability benefit and is effective the date on which the disability begins to accrue as provided in subdivision 2.

Subd. 4. **Medical or psychological examinations; authorization for payment of benefit.**

(a) An applicant shall provide medical, chiropractic, or psychological evidence to support an application for total and permanent disability.

(b) The director shall have the employee examined by at least one additional licensed chiropractor, physician, or psychologist designated by the medical adviser. The chiropractors, physicians, or psychologists shall make written reports to the director concerning the employee's disability including expert opinions as to whether the employee is permanently and totally disabled within the meaning of section 352.01, subdivision 17.

(c) The director shall also obtain written certification from the employer stating whether the employment has ceased or whether the employee is on sick leave of absence because of a disability that will prevent further service to the employer and as a consequence the employee is not entitled to compensation from the employer.

(d) The medical adviser shall consider the reports of the physicians, psychologists, and chiropractors and any other evidence supplied by the employee or other interested parties. If the medical adviser finds the employee totally and permanently disabled, the adviser shall make appropriate recommendation to the director in writing together with the date from which the employee has been totally disabled. The director shall then determine if the disability occurred within 180 days of filing the application, while still in the employment of the state, and the propriety of authorizing payment of a disability benefit as provided in this section.

(e) A terminated employee may apply for a disability benefit within 180 days of termination as long as the disability occurred while in the employment of the state. The fact that an employee is placed on leave of absence without compensation because of disability does not bar that employee from receiving a disability benefit.

(f) Unless the payment of a disability benefit has terminated because the employee is no longer totally disabled, or because the employee has reached normal retirement age as provided in this section, the disability benefit must cease with the last payment received by the disabled employee or which had accrued during the lifetime of the employee unless there is a spouse surviving. In that event, the surviving spouse is entitled to the disability benefit for the calendar month in which the disabled employee died.

Subd. 5. [Repealed, 1Sp1985 c 7 s 36]

Subd. 6. **Regular medical or psychological examinations.** At least once each year during the first five years following the allowance of a disability benefit to any employee, and at least once in every three-year period thereafter, the director may require any disabled employee to undergo a medical, chiropractic, or psychological examination. The examination must be made at the place of residence of the employee, or at any place mutually agreed upon, by an expert or experts designated by the medical adviser and engaged by the director. If any examination indicates to the medical adviser that the employee is no longer permanently and totally disabled, or is engaged in or can engage in a gainful occupation, payments of the disability benefit by the fund must be discontinued. The payments must be discontinued as soon as the employee is reinstated to the payroll following sick leave, but in no case may payment be made for more than 60 days after the medical adviser finds that the employee is no longer permanently and totally disabled.

Subd. 7. **Partial reemployment.** If the disabled employee resumes a gainful occupation from which earnings are less than the employee's salary at the date of disability or the salary currently

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### 353.33 TOTAL AND PERMANENT DISABILITY BENEFITS.

Subdivision 1. **Age, service, and salary requirements.** A coordinated member who has at least three years of allowable service and becomes totally and permanently disabled before normal retirement age, and a basic member who has at least three years of allowable service and who becomes totally and permanently disabled is entitled to a disability benefit in an amount determined under subdivision 3. If the disabled person's public service has terminated at any time, at least two of the required three years of allowable service must have been rendered after last becoming an active member. A repayment of a refund must be made within six months after the effective date of disability benefits under subdivision 2 or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service and no payment made in lieu of salary deductions otherwise authorized under section 353.01, subdivision 16, may be made after the occurrence of the disability for which an application under this section is filed.

Subd. 2. **Applications; accrual of benefits.** Every claim or demand for a total and permanent disability benefit must be initiated by written application in the manner and form prescribed by the executive director showing compliance with the statutory conditions qualifying the applicant for a total and permanent disability benefit and filed with the executive director. A member or former member who became totally and permanently disabled during a period of membership shall file application for total and permanent disability benefits within three years next following termination of public service. This benefit begins to accrue the day following the commencement of disability, 90 days preceding the filing of the application, or, if annual or sick leave is paid for more than the 90-day period, from the date salary ceased, whichever is later. No member is entitled to receive a disability benefit payment when there remains to the member's credit any unused annual leave or sick leave or under any other circumstances when, during the period of disability, there has been no impairment of the person's salary. Payment must not accrue beyond the end of the month in which entitlement has terminated. If the disabled member dies prior to negotiating the check for the month in which death occurs, payment is made to the surviving spouse, or if none, to the designated beneficiary, or if none, to the estate. An applicant for total and permanent disability benefits may file a retirement annuity application under section 353.29, subdivision 4, simultaneously with an application for total and permanent disability benefits. The retirement annuity application is void upon the determination of the entitlement for disability benefits by the executive director. If disability benefits are denied, the retirement annuity application must be initiated and processed.

Subd. 3. **Computation of benefits.** This disability benefit is an amount equal to the normal annuity payable to a member who has reached normal retirement age with the same number of years of allowable service and the same average salary, as provided in section 353.01, subdivision 17a, and section 353.29, subdivision 3.

A basic member shall receive a supplementary monthly benefit of \$25 to age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later. If the disability benefits under this subdivision exceed the average salary as defined in section 353.01, subdivision 17a, the disability benefits must be reduced to an amount equal to the average salary.

Subd. 3a. [Repealed, 1999 c 222 art 2 s 20]

Subd. 3b. **Optional annuity election.** A disabled member may elect to receive the normal disability benefit or an optional annuity under section 353.30, subdivision 3. The election of an optional annuity must be made prior to the commencement of payment of the disability benefit. The optional annuity must begin to accrue on the same date as provided for the disability benefit.

- (1) If a person who is not the spouse of a member is named as beneficiary of the joint and survivor optional annuity, the person is eligible to receive the annuity only if the spouse, on the disability application form prescribed by the executive director, permanently waives the surviving spouse benefits under sections 353.31, subdivision 1, and 353.32, subdivision 1a. If the spouse of the member refuses to permanently waive the surviving spouse coverage, the selection of a person other than the spouse of the member as a joint annuitant is invalid.
- (2) If the spouse of the member permanently waives survivor coverage, the dependent children, if any, continue to be eligible for survivor benefits under section 353.31, subdivision 1, including the minimum benefit in section 353.31, subdivision 1a. The designated optional annuity beneficiary may draw the monthly benefit; however, the amount payable to the dependent child or children and joint annuitant must not exceed the 70 percent maximum family benefit under section 353.31, subdivision 1a. If the maximum is exceeded, the benefit of the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount.
- (3) If the spouse is named as the beneficiary of the joint and survivor optional annuity, the spouse may draw the monthly benefits; however, the amount payable to the dependent child or children and the joint annuitant must not exceed the 70 percent maximum family benefit under section 353.31, subdivision 1a. If the maximum is exceeded, each dependent child will receive ten percent of the member's specified average monthly salary, and the benefit to the joint annuitant

must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount. The joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

**Subd. 4. Procedure to determine eligibility.** (a) The applicant shall provide an expert report signed by a licensed physician, psychologist, or chiropractor and the applicant must authorize the release of medical and health care evidence, including all medical records and relevant information from any source, to support the application for total and permanent disability benefits.

(b) The medical adviser shall verify the medical evidence and, if necessary for disability determination, suggest the referral of the applicant to specialized medical consultants.

(c) The association shall also obtain from the employer a certification of the member's past public service, the dates of any paid sick leave and vacation beyond the last working day and whether or not any sick leave or annual leave has been allowed.

(d) If, upon consideration of the medical evidence received and the recommendations of the medical adviser, it is determined by the executive director that the applicant is totally and permanently disabled within the meaning of the law, the association shall grant the person a disability benefit.

(e) An employee who is placed on leave of absence without compensation because of a disability is not barred from receiving a disability benefit.

**Subd. 5. Benefits paid under workers' compensation law.** Disability benefits paid shall be coordinated with any amounts received or receivable under workers' compensation law, such as temporary total, permanent total, temporary partial, permanent partial, or economic recovery compensation benefits, in either periodic or lump sum payments from the employer under applicable workers' compensation laws, after deduction of amount of attorney fees, authorized under applicable workers' compensation laws, paid by a disabilitant. If the total of the single life annuity actuarial equivalent disability benefit and the workers' compensation benefit exceeds: (1) the salary the disabled member received as of the date of the disability or (2) the salary currently payable for the same employment position or an employment position substantially similar to the one the person held as of the date of the disability, whichever is greater, the disability benefit must be reduced to that amount which, when added to the workers' compensation benefits, does not exceed the greater of the salaries described in clauses (1) and (2).

Subd. 5a.[Repealed, 1991 c 341 s 51]

Subd. 5b.[Repealed, 2004 c 267 art 8 s 41]

**Subd. 6. Continuing eligibility for benefits.** The association shall determine eligibility for continuation of disability benefits and require periodic examinations and evaluations of disabled members as frequently as deemed necessary. The association shall require the disabled member to provide an expert report signed by a licensed physician, psychologist, or chiropractor and the disabled member shall authorize the release of medical and health care evidence, including all medical and health care records and information from any source, relating to an application for continuation of disability benefits. Disability benefits are contingent upon a disabled person's participation in a vocational rehabilitation evaluation if the executive director determines that the disabled person may be able to return to a gainful occupation. If a member is found to be no longer totally and permanently disabled, payments must cease the first of the month following the expiration of a 30-day period after the member receives a certified letter notifying the member that payments will cease.

**Subd. 6a. Medical adviser.** The executive director may contract with licensed physicians or physicians on the staff of the state commissioner of health, as designated by the commissioner, to be the medical adviser of the association.

**Subd. 6b. Duties of the medical adviser.** At the request of the executive director, the medical adviser shall designate licensed physicians, psychologists, or chiropractors to examine applicants for disability benefits and review the expert reports based upon these examinations to determine whether an applicant is totally and permanently disabled as defined in section 353.01, subdivision 19, disabled as defined in section 353.656, or eligible for continuation of disability benefits under subdivision 6. The medical examiner shall also review, at the request of the executive director, all medical and health care statements on behalf of an applicant for disability benefits, and shall report in writing to the executive director the conclusions and recommendations of the examiner on those matters referred for advice.

**Subd. 7. Partial reemployment.** If, following a work or non-work-related injury or illness, a disabled person who remains totally and permanently disabled as defined in section 353.01, subdivision 19, has income from employment that is not substantial gainful activity and the rate of earnings from that employment are less than the salary rate at the date of disability or the salary rate currently paid for positions similar to the employment position held by the disabled person immediately before becoming disabled, whichever is greater, the executive director shall continue the disability benefit in an amount that, when added to the earnings and any workers' compensation benefit, does not exceed the salary rate at the date of disability or the salary currently paid for positions similar to the employment position held by the disabled person immediately before becoming disabled, whichever is higher. The disability benefit under this subdivision may not exceed the disability benefit originally allowed, plus any postretirement adjustments payable after December 31, 1988, in accordance with section 11A.18, subdivision 10.

No deductions for the retirement fund may be taken from the salary of a disabled person who is receiving a disability benefit as provided in this subdivision.

Subd. 7a. **Trial work period.** (a) If, following a work or non-work-related injury or illness, a disabled member attempts to return to work for their previous public employer or attempts to return to a similar position with another public employer, on a full-time or less than full-time basis, the Public Employees Retirement Association shall continue paying the disability benefit for a period not to exceed six months. The disability benefit must continue in an amount that, when added to the subsequent employment earnings and workers' compensation benefit, does not exceed the salary at the date of disability or the salary currently paid for similar positions, whichever is higher.

(b) No deductions for the retirement fund may be taken from the salary of a disabled person who is attempting to return to work under this provision unless the member waives further disability benefits.

(c) A member only may return to employment and continue disability benefit payments once while receiving disability benefits from a plan administered by the Public Employees Retirement Association.

Subd. 8. **Refusal of examination or medical evidence.** If a person applying for or receiving a disability benefit refuses to submit to a medical examination under subdivision 6, or fails to provide or authorize the release of medical evidence under subdivisions 4 and 6, the association shall cease the application process or discontinue the payment of a disability benefit, whichever is applicable. Upon receipt of the requested medical evidence, the association shall resume the application process or the payment of a disability benefit upon approval for the continuation, whichever is applicable.

Subd. 9. **Return to employment.** (a) Any person receiving a disability benefit under this section who is restored to employment not covered by subdivision 7 or 7a must have the disability benefit discontinued on the first day of the month following the return to employment.

(b) If the person is employed by a governmental subdivision as defined under section 353.01, subdivision 6, deductions must be taken for the retirement fund and, upon subsequent retirement, the person is entitled to a retirement annuity payable based upon all allowable service including the allowable service upon which the disability benefits were based.

(c) If the employment is not through public service covered under this chapter, the account may be placed on a deferred status and the subsequent retirement annuity must be calculated as provided in section 353.34, subdivision 3, if the person meets the length of allowable service requirement stated in that subdivision; or the person may request a refund of any remaining employee deductions. The refund must be in an amount equal to the accumulated employee deductions plus six percent interest compounded annually and must be reduced by the sum of the disability benefits paid to the member.

Subd. 10. [Repealed, 1973 c 753 s 85]

Subd. 11. **Coordinated member retirement status.** No person is entitled to receive disability benefits and a retirement annuity at the same time. The disability benefits paid to a coordinated member must terminate when the person reaches normal retirement age. If the coordinated member is still totally and permanently disabled upon attaining normal retirement age, the coordinated member is deemed to be on retirement status. If an optional annuity is elected under subdivision 3a, the coordinated member shall receive an annuity under the terms of the optional annuity previously elected, or, if an optional annuity is not elected under subdivision 3a, the coordinated member may elect to receive a normal retirement annuity under section 353.29 or an annuity equal to the disability benefit paid before the coordinated member reaches normal retirement age, whichever amount is greater, or elect to receive an optional annuity under section 353.30, subdivision 3. The annuity of a disabled coordinated member who attains normal retirement age must be computed under the law in effect upon attainment of normal retirement age. Election of an optional annuity must be made before the coordinated member attains normal retirement age. If an optional annuity is elected, the election is effective on the date on which the person attains normal retirement age and the optional annuity begins to accrue on the first day of the month next following the month in which the person attains that age.

Subd. 12. **Basic disability survivor benefits.** If a basic member who is receiving a disability benefit under subdivision 3:

(1) dies before attaining age 65 or within five years of the effective date of the disability, whichever is later, the surviving spouse is entitled to receive a survivor benefit under section 353.31, unless the surviving spouse elected to receive a refund under section 353.32, subdivision 1;

(2) is living at age 65 or five years after the effective date of the disability, whichever is later, the basic member may continue to receive a normal disability benefit, or elect a joint and survivor optional annuity under section 353.31, subdivision 1b. The election of the joint and survivor optional annuity must occur within 90 days of attaining age 65 or of reaching the five-year anniversary of the effective date of the disability benefit, whichever is later. The optional annuity takes effect on the first day of the month following the month in which the person attains age 65 or reaches the five-year anniversary of the effective date of the disability benefit, whichever is later; or

(3) if there is a dependent child or children under clause (1) or (2), the dependent child is

entitled to a dependent child benefit under section 353.31, subdivision 1b, paragraph (b).

**History:** 1957 c 935 s 13; 1959 c 650 s 21,41; 1961 c 595 s 2; 1963 c 641 s 25; 1965 c 880 s 6; 1967 c 711 s 1; Ex1967 c 37 s 2,3; 1969 c 940 s 10; 1971 c 106 s 29,30; 1973 c 753 s 53-56; 1975 c 102 s 15-17; 1975 c 359 s 23; 1976 c 329 s 23-25; 1977 c 305 s 45; 1977 c 429 s 29,30; 1978 c 471 s 6; 1978 c 796 s 35; 1979 c 216 s 14; 1981 c 68 s 21,22; 1981 c 180 s 11-13; 1981 c 224 s 88; 1983 c 73 s 7; 1983 c 85 s 1; 1984 c 564 s 26; 1986 c 444; 1987 c 284 art 5 s 9; 1987 c 372 art 9 s 14-16; 1988 c 709 art 5 s 19; 1989 c 319 art 3 s 12-16; art 13 s 37-39; 1991 c 341 s 19; 1992 c 432 art 2 s 12-15; 1993 c 307 art 4 s 19-26; 1998 c 390 art 9 s 3; 2000 c 461 art 3 s 16,17; 2004 c 267 art 8 s 15-19,41; 1Sp2005 c 8 art 1 s 12; art 10 s 51; 2006 c 212 art 3 s 34; 2006 c 271 art 3 s 25,26,42

## 353.656, Minnesota Statutes 2006

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### 353.656 DISABILITY BENEFITS.

Subdivision 1. **In line of duty; computation of benefits.** (a) A member of the police and fire plan who:

(1) has not met the requirements for a retirement annuity under section 353.651, subdivision 1, or

(2) has met the requirements for a retirement annuity under section 353.651, subdivision 1, but who does not have 20 years of credited service; 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.

Subd. 1a. **Optional annuity election.** A disabled member of the police and fire fund may elect to receive the normal disability benefit or an optional annuity as provided in section 353.30, subdivision 3. The election of an optional annuity may be made prior to commencement of payment of the disability benefit or as specified under subdivision 6a. The optional annuity shall begin to accrue on the same date as provided for the disability benefit.

(1) If the person who is not the spouse of the member is named as beneficiary of the joint and survivor optional annuity, the person is eligible to receive the annuity only if the spouse, on the disability application form prescribed by the executive director, permanently waives the surviving spouse benefits under section 353.657, subdivisions 2 and 2a. If the spouse of the member refuses to permanently waive the surviving spouse coverage, the selection of a person other than the spouse of the member as a joint annuitant is invalid.

(2) If the spouse of the member permanently waives survivor coverage, the dependent child or children, if any, continue to be eligible for survivor benefits, including the minimum benefit under section 353.657, subdivision 3. The designated optional annuity beneficiary may draw the monthly benefit; however, the amount payable to the dependent child or children and joint annuitant must not exceed the 70 percent maximum family benefit under section 353.657, subdivision 3. If the maximum is exceeded, the benefit of the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount.

(3) If the spouse is named as the beneficiary of the joint and survivor optional annuity, the spouse may draw the monthly benefit; however, the amount payable to the dependent child or children and the joint annuitant must not exceed the 70 percent maximum family benefit under section 353.657, subdivision 3. If the maximum is exceeded, each dependent child will receive ten percent of the member's specified average monthly salary, and the benefit to the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount. The joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

Subd. 2. **Benefits paid under workers' compensation law.** If a member, as described in subdivision 1, is injured under circumstances which entitle the member to receive benefits under the workers' compensation law, the member shall receive the same benefits as provided in subdivision 1, with disability benefits paid reimbursed and future benefits reduced by all periodic or lump sum amounts paid to the member under the workers' compensation law, after deduction of amount of attorney fees, authorized under applicable workers' compensation laws, paid by a disabilitant if the total of the single life annuity actuarial equivalent disability benefit and the workers' compensation benefit exceeds: (1) the salary the disabled member received as of the date of the disability or (2) the salary currently payable for the same employment position or an employment position substantially similar to the one the person held as of the date of the disability, whichever is greater. The disability benefit must be reduced to that amount which, when added to the workers' compensation benefits, does not exceed the greater of the salaries described in clauses (1) and (2).

Subd. 2a. **Reduction restored; overpayment.** A disabled member who is eligible to receive a disability benefit under subdivision 2 as of June 30, 1987, and whose disability benefit amount had been reduced prior to July 1, 1987, as a result of the receipt of workers' compensation benefits, must have the disability benefit payment amount restored, as of July 1, 1987, calculated in accordance with subdivision 2. However, a disabled member is not entitled to receive retroactive



repayment of any disability benefit amounts lost before July 1, 1987, as a result of the reduction required before that date because of the receipt of workers' compensation benefits.

Any disability benefit overpayments made before July 1, 1987, and occurring because of the failure to reduce the disability benefit payment to the extent required because of the receipt of workers' compensation benefits, may be collected by the association through the reduction of disability benefit or annuity payment made on or after July 1, 1987, until the overpayment is fully recovered.

**Subd. 3. Nonduty disability benefit.** (a) Any member of the police and fire plan who:

(1) has not met the requirements for a retirement annuity under section 353.651, subdivision 1, or

(2) has met the requirements for a retirement annuity under section 353.651, subdivision 1, but who does not have 15 years of credited service; 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.

**Subd. 4. Limitation on disability benefit payments.** (a) No member is entitled to receive a disability benefit payment when there remains to the member's credit unused annual leave or sick leave or under any other circumstances when, during the period of disability, there has been no impairment of the person's salary as a police officer, a firefighter, or a paramedic as defined in section 353.64, subdivision 10, whichever applies.

(b) If a disabled member resumes a gainful occupation with earnings that, when added to the normal disability benefit, and workers' compensation benefit if applicable, exceed the disability benefit's reemployment earnings limit, the amount of the disability benefit must be reduced as provided in this paragraph. The disability benefit's reemployment earnings limit is the greater of:

(1) the salary earned at the date of disability; or

(2) 125 percent of the base salary currently paid by the employing governmental subdivision for similar positions.

The disability benefit must be reduced by one dollar for each three dollars by which the total amount of the current disability benefit, any workers' compensation benefits if applicable, and actual earnings exceed the greater disability benefit's reemployment earnings limit. In no event may the disability benefit as adjusted under this subdivision exceed the disability benefit originally allowed.

**Subd. 5. Proof of disability.** (a) A disability benefit payment must not be made except upon adequate proof furnished to the executive director of the association of the existence of a disability.

(b) During the time when disability benefits are being paid, the executive director of the association has the right, at reasonable times, to require the disabled member to submit proof of the continuance of the disability claimed.

(c) Adequate proof of a disability must include a written expert report by a licensed physician, by a licensed chiropractor, or with respect to a mental impairment, by a licensed psychologist.

(d) A person applying for or receiving a disability benefit shall provide or authorize release of medical evidence, including all medical records and information from any source, relating to an application for disability benefits or the continuation of those benefits.

**Subd. 5a. Cessation of disability benefit.** The association shall cease the payment of an in-line-of-duty or nonduty disability benefit the first of the month following the reinstatement of a member to full time or less than full-time service in a position covered by the police and fire fund.

**Subd. 6.** [Repealed, 1993 c 307 art 4 s 54]

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

(1) dies before attaining the age 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;

(2) is living at the age 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 required for

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

(3) has a dependent child or children under clause (1) or (2), the association shall grant a dependent child benefit under section 353.657, subdivision 3.

Subd. 7. [Repealed, 1992 c 432 art 2 s 51]

**Subd. 8. Application procedure to determine eligibility for police and fire plan disability benefits.** (a) An application for disability benefits must be made in writing on a form or forms prescribed by the executive director.

(b) If an application for disability benefits is filed within two years of the date of the injury or the onset of the illness that gave rise to the disability application, the application must be supported by evidence that the applicant is unable to perform the duties of the position held by the applicant on the date of the injury or the onset of the illness causing the disability. The employer must provide evidence indicating whether the applicant is able or unable to perform the duties of the position held on the date of the injury or onset of illness causing the disability and the specifications of any duties that the individual can or cannot perform.

(c) If an application for disability benefits is filed more than two years after the date of the injury or the onset of an illness causing the disability, the application must be supported by evidence that the applicant is unable to perform the most recent duties that are expected to be performed by the applicant during the 90 days before the filing of the application. The employer must provide evidence of the duties that are expected to be performed by the applicant during the 90 days before the filing of the application, whether the applicant can or cannot perform those duties overall, and the specifications of any duties that the applicant can or cannot perform.

(d) Unless otherwise permitted by law, no application for disability benefits can be filed by a former member of the police and fire plan more than three years after the former member has terminated from Public Employees Retirement Association police and fire plan covered employment. If an application is filed within three years after the termination of public employment, the former member must provide evidence that the disability is the direct result of an injury or the contracting of an illness that occurred while the person was still actively employed and participating in the police and fire plan.

(e) Any application for duty-related disability must be supported by a first report of injury as defined in section 176.231.

(f) If a member who has applied for and been approved for disability benefits before the termination of service does not terminate service or is not placed on an authorized leave of absence as certified by the governmental subdivision within 45 days following the date on which the application is approved, the application shall be canceled. If an approved application for disability benefits has been canceled, a subsequent application for disability benefits may not be filed on the basis of the same medical condition for a minimum of one year from the date on which the previous application was canceled.

(g) An applicant may file a retirement application under section 353.29, subdivision 4, at the same time as the disability application is filed. If the disability application is approved, the retirement application is canceled. If the disability application is denied, the retirement application must be initiated and processed upon the request of the applicant. A police and fire fund member may not receive a disability benefit and a retirement annuity from the police and fire fund at the same time.

(h) A repayment of a refund must be made within six months after the effective date of disability benefits or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service or payment made in lieu of salary deductions otherwise authorized under section 353.01 may be made after the occurrence of the disability for which an application is filed under this section.

**Subd. 9. Refusal of examination or medical evidence.** If a person applying for or receiving a disability benefit refuses to submit to a medical examination under subdivision 11, or fails to provide or to authorize the release of medical evidence under subdivisions 5 and 7, the association shall cease the application process or shall discontinue the payment of a disability benefit, whichever is applicable. Upon the receipt of the requested medical evidence, the association shall resume the application process or the payment of a disability benefit upon approval for the continuation, whichever is applicable.

**Subd. 10. Accrual of benefits.** (a) A disability benefit begins to accrue the day following the commencement of disability, 90 days preceding the filing of an application, or, if annual or sick leave is paid for more than the 90-day period, from the date on which the payment of salary ceased, whichever is later.

(b) Payment of the disability benefit must not continue beyond the end of the month in which entitlement has terminated. If the disability benefit recipient dies prior to negotiating the check for the month in which death occurs, payment must be made to the surviving spouse or, if none, to the designated beneficiary or, if none, to the estate.

**Subd. 11. Independent medical examination; duties of the medical advisor.** Any individual receiving disability benefits or any applicant, if requested by the executive director,

must submit to an independent medical examination. The medical examination must be paid for by the association. The medical advisor shall review all medical reports submitted to the association, including the findings of an independent medical examination requested under this section, and shall advise the executive director.

Subd. 12. **Approval of disability benefits.** Review of disability benefit applications and review of existing disability cases must be made by the executive director based upon all relevant evidence, including advice from the medical advisor and the evidence provided by the member and employer. A member whose application for disability benefits or whose continuation of disability benefits is denied may appeal the executive director's decision to the board of trustees within 45 days of the receipt of a certified letter notifying the member of the decision to deny the application or the benefit continuation.

**History:** 1971 c 297 s 3; 1973 c 753 s 72-74; 1975 c 102 s 20,21; 1975 c 359 s 23; 1976 c 329 s 28; 1977 c 429 s 63; 1978 c 796 s 38; 1979 c 216 s 19; 1981 c 68 s 23,24; 1981 c 180 s 16; 1981 c 224 s 96; 1983 c 85 s 2; 1Sp1985 c 7 s 15; 1986 c 444; 1987 c 284 art 5 s 14,15; 1987 c 372 art 1 s 7; art 9 s 20,21; 1989 c 319 art 3 s 22; art 17 s 14,15; 1990 c 570 art 11 s 9,10; 1991 c 341 s 23; 1992 c 432 art 2 s 19; 1993 c 307 art 4 s 34-39; 1993 c 352 s 5; 1994 c 463 s 1; 1997 c 233 art 1 s 42; 2000 c 461 art 3 s 23,24; 2002 c 392 art 11 s 52; 2004 c 267 art 8 s 20-25; 1Sp2005 c 8 art 1 s 14; 2006 c 212 art 3 s 35; 2006 c 271 art 3 s 29; art 4 s 1-3

## 354.48, Minnesota Statutes 2006

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### 354.48 PERMANENT DISABILITY BENEFITS.

Subdivision 1. **Age, service and salary requirements.** A member who is totally and permanently disabled and has at least three years of credited allowable service at the time that the total and permanent disability begins is entitled to a disability benefit based on this allowable service in an amount provided in subdivision 3. If the disabled member's teaching service has terminated at any time, at least two of the required three years of allowable service must have been rendered after last becoming a member. Any member whose average salary is less than \$75 per month is not entitled to disability benefits.

Subd. 2. **Applications; accrual.** (a) A person described in subdivision 1, or another person authorized to act on behalf of the person, may make written application on a form prescribed by the executive director for a total and permanent disability benefit only within the 18-month period following the termination of teaching service.

(b) The benefit accrues from the day following the commencement of the disability or the day following the last day for which salary is paid, whichever is later, but does not begin to accrue more than six months before the date on which the written application is filed with the executive director. If salary is being received for either annual or sick leave during the disability period, the disability benefit accrues from the day following the last day for which this salary is paid.

Subd. 3. **Computation of benefits.** (1) The amount of the disability benefit granted to members covered under section 354.44, subdivision 2, clauses (1) and (2), is an amount equal to double the annuity which could be purchased by the member's accumulated deductions plus interest on the amount computed as though the teacher were at normal retirement age at the time the benefit begins to accrue and in accordance with the law in effect when the disability application is received. Any member who applies for a disability benefit after June 30, 1974, and who failed to make an election pursuant to Minnesota Statutes 1971, section 354.145, shall have the disability benefit computed under this clause or clause (2), whichever is larger.

The benefit granted shall be determined by the following:

- (a) the amount of the accumulated deductions;
- (b) interest actually earned on these accumulated deductions to the date the benefit begins to accrue;
- (c) interest for the years from the date the benefit begins to accrue to the date the member attains normal retirement age at the rate of three percent;
- (d) annuity purchase rates based on an appropriate annuity table of mortality established by the board as provided in section 354.07, subdivision 1, and using the applicable postretirement interest rate assumption specified in section 356.215, subdivision 8.

In addition, a supplementary monthly benefit of \$25 to age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later, must be paid to basic members.

(2) The disability benefit granted to members covered under section 354.44, subdivision 6, shall be computed in the same manner as the annuity provided in section 354.44, subdivision 6. The disability benefit shall be the formula annuity without the reduction for each month the member is under normal retirement age when the benefit begins to accrue.

(3) For the purposes of computing a retirement annuity when the member becomes eligible, the amounts paid for disability benefits shall not be deducted from the individual member's accumulated deductions. If the disability benefits provided in this subdivision exceed the monthly average salary of the disabled member, the disability benefits shall be reduced to an amount equal to the disabled member's average salary.

Subd. 3a. **Optional annuity election.** A disabled member may elect to receive the normal disability benefit or an optional annuity as provided in section 354.45, subdivision 1. The election of an optional annuity shall be made prior to commencement of payment of the disability benefit and shall be effective and shall begin to accrue on the same date the disability benefit begins to accrue.

Subd. 4. **Determination by the executive director.** (a) The executive director shall have the member examined by at least two licensed physicians, licensed chiropractors, or licensed psychologists selected by the medical adviser.

(b) These physicians, chiropractors, or psychologists with respect to a mental impairment, shall make written reports to the executive director concerning the member's disability, including expert opinions as to whether or not the member is permanently and totally disabled within the meaning of section 354.05, subdivision 14.

(c) The executive director shall also obtain written certification from the last employer stating whether or not the member was separated from service because of a disability which would reasonably prevent further service to the employer and as a consequence the member is not entitled to compensation from the employer.

(d) If, upon the consideration of the reports of the physicians, chiropractors, or psychologists and any other evidence presented by the member or by others interested therein, the executive director finds that the member is totally and permanently disabled, the executive director shall grant the member a disability benefit.

1.1 ..... moves to amend H.F. No. 127; S.F. No. 85, as follows:

1.2 Page 3, line 26, delete "pursuant to" and insert "under"

1.3 Page 4, line 29, delete "of the existence of a disability" and insert "that the person  
1.4 remains disabled"

1.5 Page 7, line 24, after "(a)" insert:

1.6 "This subdivision applies only to the Public Employees Retirement Association general  
1.7 plan.

1.8 (b)"

1.9 Page 7, line 32, strike "(b)" and insert "(c)"

1.10 Page 8, line 1, strike "(c)" and insert "(d)"

1.1 ..... moves to amend H.F. No. 127; S.F. No. 85, as follows:

1.2 Page 2, line 1, delete "18 months" and insert "....."

1.1 ..... moves to amend H.F. No. 127; S.F. No. 85, as follows:

1.2 Page 5, delete subdivision 10 and insert:

1.3 "Subd. 10. **Prohibiting service credit purchases.** Notwithstanding any law to the  
1.4 contrary, repaying a refund, purchasing prior service, or making payment in lieu of salary  
1.5 deductions otherwise authorized under section 353.01 is prohibited after the occurrence of  
1.6 the disability for which an application is filed under this section."

- 1.1 ..... moves to amend H.F. No. 127; S.F. No. 85, as follows:
- 1.2 Page 7, line 16, reinstate everything after "~~benefits:~~"
- 1.3 Page 7, reinstate line 17
- 1.4 Page 7, line 18, reinstate the stricken language



1.1 ..... moves to amend H.F. No. 127; S.F. No. 85, as follows:

1.2 Page 10, line 26, after "2007" insert "and apply to persons who become disabled on  
1.3 or after the effective date"

1.1 ..... moves to amend H.F. No. 127; S.F. No. 85, as follows:

1.2 Page 10, line 26, after "2007" insert "and apply to prospectively to existing

1.3 disabilitants and to those who become disabled on or after the effective date"

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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE No. 127

January 16, 2007

Authored by Murphy, M.

The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

1.1 A bill for an act  
1.2 relating to retirement; modifying procedures for determining eligibility for  
1.3 disability benefits; amending Minnesota Statutes 2006, sections 353.33,  
1.4 subdivisions 1, 2, 4, 6, 7a; 353.656, subdivision 8; 353B.08, subdivision 11;  
1.5 353E.06, subdivisions 4, 8; proposing coding for new law in Minnesota Statutes,  
1.6 chapter 353; repealing Minnesota Statutes 2006, sections 353.33, subdivisions  
1.7 6a, 6b, 8; 353.656, subdivisions 5, 9, 11, 12.

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

1.9 Section 1. 353.031] DISABILITY DETERMINATION PROCEDURES.

1.10 Subdivision 1. Application. This section shall apply to all disability determinations  
1.11 for the public employees general fund, the public employees police and fire fund, and  
1.12 the local government correctional service retirement plan and any other disability  
1.13 determination subject to approval by the board, except as otherwise specified in section  
1.14 353.33, 353.656, or 353E.05. These requirements and the requirements of section 353.03,  
1.15 subdivision 3, are in addition to the specific requirements of each plan and govern in the  
1.16 event there is any conflict between these sections and the procedures specific to any of  
1.17 those plans under section 353.33, 353.656, or 353E.06.

1.18 Subd. 2. Plan document policy statement. Disability determinations for the public  
1.19 employees general fund shall be made subject to section 353.01, subdivision 19; and for  
1.20 the police and fire plan and the local government correctional service retirement plan shall  
1.21 be made consistent with the legislative policy and intent set forth in section 353.63.

1.22 Subd. 3. Procedure to determine eligibility; generally. (a) Every claim for a  
1.23 disability benefit must be initiated in writing on an application form and in the manner  
1.24 prescribed by the executive director and filed with the executive director. An application

2.1 for disability benefits must be made within 18 months next following termination of public  
2.2 service as defined under section 353.01, subdivision 11a.

2.3 (b) All medical reports must support a finding that disability arose before the  
2.4 employee was placed on any paid or unpaid leave of absence or terminated public service,  
2.5 as defined under section 353.01, subdivision 11a.

2.6 (c) An applicant for disability shall provide a detailed report signed by a licensed  
2.7 medical doctor and at least one additional report signed by a medical doctor, psychologist,  
2.8 or chiropractor. The applicant must authorize the release of all medical and health care  
2.9 evidence, including all medical records and relevant information from any source, to  
2.10 support the application for initial, or the continuing payment of, disability benefits.

2.11 (d) All reports must contain an opinion regarding the claimant's prognosis, the  
2.12 duration of the disability, and the expectations for improvement. Any report that does not  
2.13 contain and support a finding that the disability will last for at least one year may not be  
2.14 relied upon to support eligibility for benefits.

2.15 (e) Where the medical evidence supports the expectation that at some point in time  
2.16 the claimant will no longer be disabled, any decision granting disability may provide  
2.17 for a termination date upon which disability can be expected to no longer exist. In the  
2.18 event a termination date is made part of the decision granting benefits, prior to the  
2.19 actual termination of benefits, the claimant shall have the opportunity to show that the  
2.20 disabling condition for which benefits were initially granted continues. In the event the  
2.21 benefits terminate in accordance with the original decision, the claimant may petition for a  
2.22 review by the board of trustees under section 353.03, subdivision 3, or may reapply for  
2.23 disability in accordance with these procedures and section 353.33, 353.656, or 353E.06,  
2.24 as applicable.

2.25 (f) Any claim to disability must be supported by a report from the employer  
2.26 indicating that there is no available work that the employee can perform in the employee's  
2.27 disabled condition and that all reasonable accommodations have been considered. Upon  
2.28 request of the executive director, an employer shall provide evidence of the steps the  
2.29 employer has taken to attempt to provide reasonable accommodations and continued  
2.30 employment to the claimant. The employer shall also provide a certification of the  
2.31 member's past public service; the dates of any paid sick leave, vacation, or any other  
2.32 employer-paid salary continuation plan beyond the last working day; and whether or not  
2.33 any sick or annual leave has been allowed.

2.34 (g) An employee who is placed on leave of absence without compensation because  
2.35 of a disability is not barred from receiving a disability benefit.

3.1 (h) An applicant for disability benefits may file a retirement annuity application  
3.2 under section 353.29, subdivision 4, simultaneously with an application for disability  
3.3 benefits. If the application for disability benefits is approved, the retirement annuity  
3.4 application is cancelled. If disability benefits are denied, the retirement annuity application  
3.5 must be processed upon the request of the applicant. No member of the public employees  
3.6 general plan, the public employees police and fire plan, or the local government  
3.7 correctional service retirement plan may receive a disability benefit and a retirement  
3.8 annuity simultaneously from the same plan.

3.9 **Subd. 4. Additional requirements to determine eligibility for police and fire or**  
3.10 **local government correctional service plan disability benefits.** (a) If an application for  
3.11 disability benefits is filed within two years of the date of the injury or the onset of the illness  
3.12 that gave rise to the disability application, the application must be supported by evidence  
3.13 that the applicant is unable to perform the duties of the position held by the applicant on  
3.14 the date of the injury or the onset of the illness causing the disability. The employer must  
3.15 provide evidence indicating whether the applicant is able or unable to perform the duties  
3.16 of the position held on the date of the injury or onset of the illness causing the disability  
3.17 and the specifications of any duties that the individual can or cannot perform.

3.18 (b) If an application for disability benefits is filed more than two years after the date  
3.19 of injury or the onset of an illness causing the disability, the application must be supported  
3.20 by evidence that the applicant is unable to perform the most recent duties that are expected  
3.21 to be performed by the applicant during the 90 days before the filing of the application.  
3.22 The employer must provide evidence of the duties that are expected to be performed by  
3.23 the applicant during the 90 days before the filing of the application, whether the applicant  
3.24 can or cannot perform those duties overall, and the specifications of any duties that the  
3.25 applicant can or cannot perform.

3.26 (c) Any report supporting a claim to disability benefits pursuant to section 353.656  
3.27 or 353E.06 shall specifically relate the disability to its cause; and for any claim to duty  
3.28 disability from an injury or illness arising out of an act of duty, the report shall relate  
3.29 the cause of disability to specific tasks or functions required to be performed by the  
3.30 employee in fulfilling the employee's duty-related acts which must be specific to the  
3.31 inherent dangers of the positions eligible for membership in the police and fire fund and  
3.32 the local government correctional service retirement plan. Any report that does not relate  
3.33 the cause of disability to specific acts or functions performed by the employee may not be  
3.34 relied upon as evidence to support eligibility for benefits and may be disregarded in the  
3.35 executive director's decision-making process.

4.1 (d) Any application for duty disability must be supported by a first report of injury as  
4.2 defined in section 176.231.

4.3 (e) If a member who has applied for and been approved for disability benefits before  
4.4 the termination of service does not terminate service or is not placed on an authorized  
4.5 leave of absence as certified by the governmental subdivision within 45 days following  
4.6 the date on which the application is approved, the application shall be canceled. If an  
4.7 approved application for disability benefits has been canceled, a subsequent application  
4.8 for disability benefits may not be filed on the basis of the same medical condition for a  
4.9 minimum of one year from the date on which the previous application was canceled.

4.10 Subd. 5. **Medical adviser.** The executive director may contract with licensed  
4.11 physicians or physicians on the staff of the state commissioner of health, as designated  
4.12 by the commissioner, to be the medical adviser of the association. The medical adviser  
4.13 shall review all medical reports submitted to the association, including the findings of  
4.14 an independent medical examination requested under this section, and shall advise the  
4.15 executive director.

4.16 Subd. 6. **Independent medical examination.** Any individual applying for  
4.17 or receiving disability benefits must submit to an independent medical examination  
4.18 if requested by the executive director. The medical examination must be paid for by  
4.19 the association.

4.20 Subd. 7. **Refusal of examination or medical evidence.** If a person applying  
4.21 for or receiving a disability benefit refuses to submit to a medical examination under  
4.22 subdivision 6, or fails to provide or to authorize the release of medical evidence under  
4.23 subdivision 3, the association shall cease the application process or shall discontinue the  
4.24 payment of a disability benefit, whichever is applicable. Upon the receipt of the requested  
4.25 medical evidence, the association shall resume the application process or the payment of a  
4.26 disability benefit upon approval for the continuation, whichever is applicable.

4.27 Subd. 8. **Proof of continuing disability.** (a) A disability benefit payment must not  
4.28 be made except upon adequate proof furnished to the executive director of the association  
4.29 of the existence of a disability.

4.30 (b) During the time when disability benefits are being paid, the executive director  
4.31 of the association has the right, at reasonable times, to require the disabled member to  
4.32 submit proof of the continuance of the disability claimed.

4.33 (c) Adequate proof of a disability must include a written expert report by a licensed  
4.34 physician, a licensed chiropractor, or, with respect to a mental impairment, a licensed  
4.35 psychologist.

5.1 Subd. 9. Application approval or denial; decision of executive director. Any  
 5.2 decision of the executive director is final, except that a member whose application for  
 5.3 disability benefits or whose continuation of disability benefits is denied may appeal the  
 5.4 executive director's decision to the board of trustees within 60 days of receipt of a certified  
 5.5 letter notifying the member of the decision to deny the application or continuation of  
 5.6 benefits. In developing the record for review by the board when a decision is appealed,  
 5.7 the executive director may direct that the applicant participate in a fact-finding session  
 5.8 conducted by an administrative law judge assigned by the Office of Administrative  
 5.9 Hearings, and, as applicable, a vocational assessment conducted by the qualified  
 5.10 rehabilitation counselor on contract with the Public Employees Retirement Association.

5.11 Subd. 10. Restoring forfeited service. To restore forfeited service, a repayment of  
 5.12 a refund must be made within six months after the effective date of disability benefits or  
 5.13 within six months after the date of the filing of the disability application, whichever is  
 5.14 later. No purchase of prior service or payment made in lieu of salary deductions otherwise  
 5.15 authorized under section 353.01 may be made after the occurrence of the disability for  
 5.16 which an application is filed under this section.

5.17 Sec. 2. Minnesota Statutes 2006, section 353.33, subdivision 1, is amended to read:

5.18 Subdivision 1. **Age, service, and salary requirements.** A coordinated member  
 5.19 who has at least three years of allowable service and becomes totally and permanently  
 5.20 disabled before normal retirement age, and a basic member who has at least three years of  
 5.21 allowable service and who becomes totally and permanently disabled, upon application as  
 5.22 defined under section 353.031, is entitled to a disability benefit in an amount determined  
 5.23 under subdivision 3. If the disabled person's public service has terminated at any time,  
 5.24 at least two of the required three years of allowable service must have been rendered  
 5.25 after last becoming an active member. ~~A repayment of a refund must be made within six~~  
 5.26 ~~months after the effective date of disability benefits under subdivision 2 or within six~~  
 5.27 ~~months after the date of the filing of the disability application, whichever is later. No~~  
 5.28 ~~purchase of prior service and no payment made in lieu of salary deductions otherwise~~  
 5.29 ~~authorized under section 353.01, subdivision 16, may be made after the occurrence of the~~  
 5.30 ~~disability for which an application under this section is filed.~~

5.31 Sec. 3. Minnesota Statutes 2006, section 353.33, subdivision 2, is amended to read:

5.32 Subd. 2. **Applications; Accrual of benefits.** ~~Every claim or demand for a total~~  
 5.33 ~~and permanent disability benefit must be initiated by written application in the manner~~  
 5.34 ~~and form prescribed by the executive director showing compliance with the statutory~~

6.1 ~~conditions qualifying the applicant for a total and permanent disability benefit and filed~~  
 6.2 ~~with the executive director. A member or former member who became totally and~~  
 6.3 ~~permanently disabled during a period of membership shall file application for total and~~  
 6.4 ~~permanent disability benefits within three years next following termination of public~~  
 6.5 ~~service. (a) This benefit begins to accrue the day following the commencement of~~  
 6.6 ~~disability; when the applicant is no longer receiving any form of compensation, whether~~  
 6.7 ~~salary or paid leave; 90 days preceding the filing of the application, or, if annual or sick~~  
 6.8 ~~leave or any other employer-paid salary continuation plan is paid for more than the 90-day~~  
 6.9 ~~period, from the date salary ceased, whichever is later. No member is entitled to receive a~~  
 6.10 ~~disability benefit payment when there remains to the member's credit any unused annual~~  
 6.11 ~~leave or, sick leave, or any other employer-paid salary continuation plan, or under any~~  
 6.12 ~~other circumstances when, during the period of disability, there has been no impairment of~~  
 6.13 ~~the person's salary.~~

6.14 (b) Payment must not accrue beyond the end of the month in which entitlement has  
 6.15 terminated. If the disabilitant dies prior to negotiating the check for the month in which  
 6.16 death occurs, payment is made to the surviving spouse, or if none, to the designated  
 6.17 beneficiary, or if none, to the estate. ~~An applicant for total and permanent disability~~  
 6.18 ~~benefits may file a retirement annuity application under section 353.29, subdivision 4,~~  
 6.19 ~~simultaneously with an application for total and permanent disability benefits. The~~  
 6.20 ~~retirement annuity application is void upon the determination of the entitlement for~~  
 6.21 ~~disability benefits by the executive director. If disability benefits are denied, the retirement~~  
 6.22 ~~annuity application must be initiated and processed.~~

6.23 Sec. 4. Minnesota Statutes 2006, section 353.33, subdivision 4, is amended to read:

6.24 Subd. 4. **Procedure to determine eligibility.** (a) ~~The applicant shall provide~~  
 6.25 ~~an expert report signed by a licensed physician, psychologist, or chiropractor and the~~  
 6.26 ~~applicant must authorize the release of medical and health care evidence, including all~~  
 6.27 ~~medical records and relevant information from any source, to support the application~~  
 6.28 ~~for total and permanent disability benefits. Eligibility for disability benefits will be~~  
 6.29 ~~determined following the procedures defined in section 353.031.~~

6.30 (b) ~~The medical adviser shall verify the medical evidence and, if necessary for~~  
 6.31 ~~disability determination, suggest the referral of the applicant to specialized medical~~  
 6.32 ~~consultants.~~

6.33 (c) ~~The association shall also obtain from the employer a certification of the~~  
 6.34 ~~member's past public service, the dates of any paid sick leave and vacation beyond the last~~  
 6.35 ~~working day and whether or not any sick leave or annual leave has been allowed.~~



7.1 ~~(d)~~ (b) If, after following the procedures for determining eligibility for benefits  
7.2 under section 353.031, and upon consideration of the medical evidence received and  
7.3 the recommendations of the medical adviser, it is determined by the executive director  
7.4 that the applicant is totally and permanently disabled within the meaning of the law, the  
7.5 association shall grant the person a disability benefit.

7.6 ~~(e) An employee who is placed on leave of absence without compensation because~~  
7.7 ~~of a disability is not barred from receiving a disability benefit.~~

7.8 Sec. 5. Minnesota Statutes 2006, section 353.33, subdivision 6, is amended to read:

7.9 Subd. 6. **Continuing eligibility for benefits.** ~~The association shall determine~~  
7.10 ~~eligibility for continuation of disability benefits and require periodic examinations and~~  
7.11 ~~evaluations of disabled members as frequently as deemed necessary. The association shall~~  
7.12 ~~require the disabled member to provide an expert report signed by a licensed physician,~~  
7.13 ~~psychologist, or chiropractor and the disabled member shall authorize the release of~~  
7.14 ~~medical and health care evidence, including all medical and health care records and~~  
7.15 ~~information from any source, relating to an application for continuation of disability~~  
7.16 ~~benefits. Disability benefits are contingent upon a disabled person's participation in a~~  
7.17 ~~vocational rehabilitation evaluation if the executive director determines that the disabled~~  
7.18 ~~person may be able to return to a gainful occupation. If, after a review by the executive~~  
7.19 director under section 353.031, subdivision 8, a member is found to be no longer totally  
7.20 and permanently disabled, payments must cease the first of the month following the  
7.21 expiration of a 30-day period after the member receives a certified letter notifying the  
7.22 member that payments will cease.

7.23 Sec. 6. Minnesota Statutes 2006, section 353.33, subdivision 7a, is amended to read:

7.24 Subd. 7a. **Trial work period.** (a) If, following a work or non-work-related injury or  
7.25 illness, a disabled member attempts to return to work for their previous public employer  
7.26 or attempts to return to a similar position with another public employer, on a full-time  
7.27 or less than full-time basis, the Public Employees Retirement Association shall continue  
7.28 paying the disability benefit for a period not to exceed six months. The disability benefit  
7.29 must continue in an amount that, when added to the subsequent employment earnings and  
7.30 workers' compensation benefit, does not exceed the salary at the date of disability or the  
7.31 salary currently paid for similar positions, whichever is higher.

7.32 (b) No deductions for the general employees retirement fund plan may be taken from  
7.33 the salary of a disabled person who is attempting to return to work under this provision  
7.34 unless the member waives further disability benefits.

8.1 (c) A member only may return to employment and continue disability benefit  
8.2 payments once while receiving disability benefits from a the general employees retirement  
8.3 plan administered by the Public Employees Retirement Association.

8.4 Sec. 7. Minnesota Statutes 2006, section 353.656, subdivision 8, is amended to read:

8.5 Subd. 8. **Application procedure to determine eligibility for police and fire plan**  
8.6 **disability benefits.** ~~(a) An application for disability benefits must be made in writing on a~~  
8.7 ~~form or forms prescribed by the executive director.~~

8.8 ~~(b) If an application for disability benefits is filed within two years of the date of the~~  
8.9 ~~injury or the onset of the illness that gave rise to the disability application, the application~~  
8.10 ~~must be supported by evidence that the applicant is unable to perform the duties of the~~  
8.11 ~~position held by the applicant on the date of the injury or the onset of the illness causing~~  
8.12 ~~the disability. The employer must provide evidence indicating whether the applicant is~~  
8.13 ~~able or unable to perform the duties of the position held on the date of the injury or onset~~  
8.14 ~~of illness causing the disability and the specifications of any duties that the individual can~~  
8.15 ~~or cannot perform.~~

8.16 ~~(c) If an application for disability benefits is filed more than two years after the date~~  
8.17 ~~of the injury or the onset of an illness causing the disability, the application must be~~  
8.18 ~~supported by evidence that the applicant is unable to perform the most recent duties that~~  
8.19 ~~are expected to be performed by the applicant during the 90 days before the filing of the~~  
8.20 ~~application. The employer must provide evidence of the duties that are expected to be~~  
8.21 ~~performed by the applicant during the 90 days before the filing of the application, whether~~  
8.22 ~~the applicant can or cannot perform those duties overall, and the specifications of any~~  
8.23 ~~duties that the applicant can or cannot perform.~~

8.24 ~~(d) Unless otherwise permitted by law, no application for disability benefits can be~~  
8.25 ~~filed by a former member of the police and fire plan more than three years after the former~~  
8.26 ~~member has terminated from Public Employees Retirement Association police and fire~~  
8.27 ~~plan covered employment. If an application is filed within three years after the termination~~  
8.28 ~~of public employment, the former member must provide evidence that the disability is the~~  
8.29 ~~direct result of an injury or the contracting of an illness that occurred while the person was~~  
8.30 ~~still actively employed and participating in the police and fire plan.~~

8.31 ~~(e) Any application for duty-related disability must be supported by a first report of~~  
8.32 ~~injury as defined in section 176.231.~~

8.33 ~~(f) If a member who has applied for and been approved for disability benefits before~~  
8.34 ~~the termination of service does not terminate service or is not placed on an authorized~~  
8.35 ~~leave of absence as certified by the governmental subdivision within 45 days following~~

9.1 ~~the date on which the application is approved, the application shall be canceled. If an~~  
 9.2 ~~approved application for disability benefits has been canceled, a subsequent application~~  
 9.3 ~~for disability benefits may not be filed on the basis of the same medical condition for a~~  
 9.4 ~~minimum of one year from the date on which the previous application was canceled.~~

9.5 ~~(g) An applicant may file a retirement application under section 353.29, subdivision~~  
 9.6 ~~4, at the same time as the disability application is filed. If the disability application is~~  
 9.7 ~~approved, the retirement application is canceled. If the disability application is denied, the~~  
 9.8 ~~retirement application must be initiated and processed upon the request of the applicant. A~~  
 9.9 ~~police and fire fund member may not receive a disability benefit and a retirement annuity~~  
 9.10 ~~from the police and fire fund at the same time.~~

9.11 ~~(h) A repayment of a refund must be made within six months after the effective date~~  
 9.12 ~~of disability benefits or within six months after the date of the filing of the disability~~  
 9.13 ~~application, whichever is later. No purchase of prior service or payment made in lieu~~  
 9.14 ~~of salary deductions otherwise authorized under section 353.01 may be made after the~~  
 9.15 ~~occurrence of the disability for which an application is filed under this section.~~

9.16 ~~The application procedures to determine eligibility for police and fire plan disability~~  
 9.17 ~~benefits are defined under section 353.031.~~

9.18 Sec. 8. Minnesota Statutes 2006, section 353B.08, subdivision 11, is amended to read:

9.19 Subd. 11. **Subsequent medical reexaminations.** Periodically, upon the  
 9.20 recommendation of the medical adviser appointed as provided in section 353.33,  
 9.21 ~~subdivision 6a~~ 353.031, based on the medical nature of the initial qualifying disability and  
 9.22 its potential for improvement or recovery, the executive director of the Public Employees  
 9.23 Retirement Association shall have a former member of a consolidating relief association  
 9.24 who is receiving a disability benefit reexamined and reevaluated for continued entitlement  
 9.25 to a disability benefit. If, upon the recommendation of the medical adviser, the executive  
 9.26 director determines that the person is no longer entitled to receive a disability benefit, the  
 9.27 disability benefit shall be discontinued effective as of the first day of the second month  
 9.28 following that determination and the person shall be considered for reemployment as  
 9.29 a police officer or a firefighter, whichever applies, by the municipality in which the  
 9.30 consolidating relief association was located.

9.31 Sec. 9. Minnesota Statutes 2006, section 353E.06, subdivision 4, is amended to read:

9.32 Subd. 4. **Disability benefit application; accrual of benefits.** ~~A claim or demand~~  
 9.33 ~~for a disability benefit must be initiated by written application in the manner and form~~  
 9.34 ~~prescribed by the executive director, filed in the office of the association, showing~~

10.1 ~~compliance with the statutory conditions qualifying the applicant for a disability benefit.~~  
10.2 ~~A member or former member who became disabled during a period of membership may~~  
10.3 ~~file an application for disability benefits within three years following termination of local~~  
10.4 ~~government correctional service, but not after that time has elapsed. (a) Procedures for~~  
10.5 ~~the application process and determining eligibility for disability benefits are defined in~~  
10.6 ~~section 353.031.~~

10.7 ~~(b) The disability benefit begins to accrue the day following the commencement of~~  
10.8 ~~disability, when the applicant is no longer receiving any form of compensation, whether~~  
10.9 ~~salary or paid leave; 90 days preceding the filing of the application, or, if annual or sick~~  
10.10 ~~leave, or any other employer-paid salary continuation plan is paid for more than the~~  
10.11 ~~90-day period, from the date salary ceased, whichever is latest. No member is entitled~~  
10.12 ~~to receive a disability benefit payment when there remains to the member's credit any~~  
10.13 ~~unused annual leave, sick leave, or any other employer-paid salary continuation benefits or~~  
10.14 ~~under any other circumstances when, during the period of disability, there has been no~~  
10.15 ~~impairment of the person's salary.~~

10.16 ~~(c) No payment may accrue beyond the end of the month in which entitlement has~~  
10.17 ~~terminated. If the disabilitant dies before negotiating the check for the month in which~~  
10.18 ~~death occurs, payment must be made to the optional annuitant or beneficiary.~~

10.19 Sec. 10. Minnesota Statutes 2006, section 353E.06, subdivision 8, is amended to read:

10.20 Subd. 8. **Continuing benefit eligibility.** Continuing eligibility for a disability  
10.21 benefit is subject to section ~~353.33, subdivision 6~~ 353.031, subdivision 8.

10.22 Sec. 11. **REPEALER.**

10.23 Minnesota Statutes 2006, sections 353.33, subdivisions 6a, 6b, and 8; and 353.656,  
10.24 subdivisions 5, 9, 11, and 12, are repealed.

10.25 Sec. 12. **EFFECTIVE DATE.**

10.26 Sections 1 to 11 are effective July 1, 2007.