



**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.

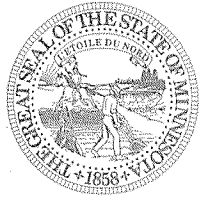
H0127-2A could be used to revise the time limit for filing for disability from the proposed 18 months following termination to length of time to be specified by the Commission.

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 disabilitant 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 disabilitant 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 disabilitant 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)

