



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director *EB*
RE: H.F. 889 (Murphy, M., by request); S.F.296 (Betzold): PERA Administrative Bill
DATE: March 1, 2007

General Summary of H.F. 889 (Murphy, M., by request); S.F.296 (Betzold)

H.F. 889 (Murphy, M., by request); S.F.296 (Betzold) contains the following provisions related to the Public Employees Retirement Association (PERA):

1. Increases death while active survivor benefits when benefits are deferred;
2. Authorizes health insurance withholding for certain public safety retirees of various plans;
3. Revises receivables allocation procedures for various plans;
4. Clarifies the included employee provision and elected official requirements to commence annuity payments;
5. Clarifies the governmental subdivision status of charter schools and mental health cooperatives;
6. Removes the requirement that the executive director be approved by the Senate;
7. Specifies that no action for recovery of contributions will commence before the initial coverage date;
8. Clarifies death while active or deferred surviving spouse provisions;
9. Temporarily offers full actuarial value service credit purchases for Comprehensive Employment Training Act (CETA) service; and
10. Repeals obsolete or redundant provisions.

Section-by-Section Summary and Analysis

Section 1 amends Minnesota Statutes, Section 353.01, Subdivision 2a, the included employee provision, by clarifying that salaries from all positions held by a person within a governmental unit will be totaled for purposes of meeting the \$425 membership salary threshold, and by moving language from another section stating that elected officials retain plan membership for the duration of the person's employment in that position or incumbency in elected office.

PERA intends the changes in Section 1 as clarification rather than policy revision. The change regarding the elected official language is part of an effort to more clearly state PERA's policy on elected official terminations. In addition to the new language in this section of the bill, related new language regarding elected official terminations appears in Section 4 (7.34 and 8.1-8.6). Reading the various statements in combination, if an elected official with PERA defined benefit plan coverage filed a termination of elected employment following a successful reelection but before the new term begins, PERA would not consider this a valid termination for purposes of commencing receipt of an annuity. PERA would recognize the termination notice as being valid for pension purposes if the official resigned from office and remains completely separated from the office for at least 30 days prior to the next election date. The individual might subsequently decide to run for reelection, but at least there is uncertainty whether the individual will be reelected to the office.

Policy issues raised by Section 1 are:

1. Potential for Complaints from Local Elected Officials. Although the revised language may be consistent with current PERA policy and PERA's interpretation of its laws, the more explicit statement proposed for law will make that policy more apparent, which may create complaints from a local elected official who previously was not aware of the policy.
2. Possible Impact on Individuals Other Than Elected Officials. The issue is whether the proposed revision might harm certain seasonal employees who were allowed to retain PERA membership in 2001 under a grandfather provision. The Commission may wish to hear brief testimony as to how PERA intends to interpret this language. In 2001, PERA coverage provisions were revised to exclude certain seasonal employees, in addition to elected officials, from commencing General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) coverage after June 30, 2002. As part of that legislative package, the now-existing law language in paragraph (b) (2.4-2.11) was added to grandfather any existing PERA members who otherwise would be excluded from membership due to that change. The question is whether the new proposed language (2.8-2.10) may impact some seasonal employees who appeared to be grandfathered in under the 2001 changes. The

existing law language retains membership until the employee terminates public employment or terminates plan membership; while under the proposed language the individual would remain covered “for the duration of the person’s employment in that position...” While that seems more restrictive, if the individual were to move to another position which qualifies for PERA coverage, that individual would remain a PERA active member due to employment in that new position. The Commission may wish to explore through testimony if there is a circumstance under which the existing law continues coverage that the new language, in conjunction with other law, would not also cover, and whether any legislative remedy in the form of an amendment should be offered.

- **Amendment H0889-1A** retains the current membership retention for employees other than elected officials language to avoid an unintended impact on seasonal employees.

Section 2 amends Minnesota Statutes, Section 353.01, Subdivision 2b, PERA’s excluded employee provision, by striking language to be moved to Section 1.

Section 3 amends Minnesota Statutes, Section 353.01, Subdivision 6, PERA’s definition of governmental subdivision by:

- 1) Including units or instrumentalities of local governments;
- 2) Clarifying that a public body is a government subdivision if it is established under state or local government authority that has a governmental purpose, is under public control, is responsible for the employment and payment of the salaries of the entity’s employees, and which receives a major portion of its revenues from taxation, fee assessment, or from other public purposes, rather than whose revenues are derived from those sources;
- 3) Including charter schools; service cooperatives exercising retirement plan participation under Section 123A.21; various joint powers boards, family service collaboratives, and children’s mental health collaboratives, if the creating entities are governmental units that otherwise qualify for retirement plan membership;
- 4) Stating that family service collaboratives or children’s mental health collaboratives are not governmental subdivisions if the board is not totally composed of representatives of governmental units;
- 5) Adding a paragraph stating that a 501(c)(3) nonprofit corporation or a nonprofit under Minnesota Statutes, Section 317A, is not a government subdivision unless the entity has obtained a written advisory opinion from the federal Department of Labor or an Internal Revenue Service (IRS) ruling declaring the entity to be an instrumentality of the state, and if its inclusion in PERA would be consistent with government plan qualification requirements in federal code; and
- 6) Adding a paragraph stating that if PERA determines that an organization is a government subdivision, it shall be subject to the PERA coverage for its eligible employees on a prospective basis.

Policy issues raised by Section 3 are:

1. Proper Date to Commence Coverage. Under proposed new language in paragraph (f), if PERA determines that an employing unit, which previously had not participated in the plan, meets the definition of a governmental subdivision under PERA law, coverage for the applicable employees is “on a prospective basis upon receipt of a written notice of eligibility from the association.” PERA will not commence action to recover any omitted employee or employer contributions for any period prior to the initial plan coverage date of the governmental subdivision (13.1-13.3). This treatment is appropriate if the employing unit met the definition of a governmental subdivision on the day that PERA made the determination. It raises questions if the employing unit met the definition of a governmental subdivision months or even years before the PERA review and determination letter. As drafted, PERA will neither require nor permit any past contributions or service credit purchases to cover this past service.
2. Equitable Treatment of Employees. The issue is whether the proposed treatment is fair to the employees if these employees were providing public-like service prior to the date of PERA’s determination letter. Not allowing contributions or service credit purchases for periods when the individual was providing service that was equivalent to public employment or quasi-public employment seems inconsistent with general policy.
3. Likely Requests for Service Credit Purchases. This proposed treatment may lead to future special legislative requests to purchase this uncovered public or quasi-public service. However, any remedy, if the Commission deems it appropriate, may need to consider whether the individuals had some form of pension coverage during the period in question in order to avoid creating double coverage.

Potential Amendments. If the Commission concludes that coverage should be retroactive if PERA determines that an entity met the definition of a governmental subdivision before the date of PERA's determination letter, the Commission may wish to consider an amendment requiring contributions from the date that PERA concludes that an organization became a governmental subdivision. The plan's omitted deduction provision (which permits contributions to be required up to three years retroactively and places most of the payment obligation on the employer) could be used, at least in part, to address this situation. Several amendments for Commission consideration are:

- **Amendment H0889-2A** states that if the entity met the definition of a governmental subdivision prior to PERA's determination letter, PERA's omitted contribution provision would apply from the date that the organization first met the definition of a governmental subdivision. If the period exceeds three years, the individual could purchase that portion of the total period at full actuarial value. These procedures do not apply if the employment was covered by any public or private defined benefit or defined contribution plan, other than a volunteer fire plan.
- **Amendment H0889-3A** is comparable to H0889-2A, except that the procedures do not apply if the employment was covered by any Minnesota defined benefit plan, other than a volunteer fire plan.
- **Amendment H0889-4A** is also comparable to H0889-2A, except that rather than the individual purchasing service credit for any period in excess of three years, the employer would be required to make that purchase on behalf of the employee.
- **Amendment H0889-5A** is comparable to H0889-3A, except that the procedures do not apply if the employment was covered by any Minnesota defined benefit plan, other than a volunteer fire plan.
- **Amendment H0889-6A** is substantively different than the prior amendments. This amendment would simply delete all new language specifying treatment when an entity receives notice from PERA indicating that the organization is a governmental subdivision under PERA law and its members must be covered by PERA. By not including this language, the issue of whether coverage should be retroactive, if the entity met the definition of government subdivision prior to PERA's determination letter, is left unspecified. This would allow the Commission to further review the matter, and to decide on a policy next year rather than this year.

Section 4 amends Minnesota Statutes, Section 353.01, Subdivision 28, PERA's definition of retirement, by removing language that prohibited individuals from receiving a coordinated plan annuity if the individuals were PERA-General Basic Plan members or PERA Police and Fire Plan members who, after brief termination, commence PERA-General coordinated employment but provide less than six months of coordinated service prior to again terminating; by permitting a PERA defined benefit plan retirement annuity to commence although an individual becomes an elected official within 30 days of separation from employment covered by one of PERA's defined benefit plans; and by permitting elected officials who were covered by PERA-General for that elected official employment to commence drawing an annuity if the individual resigns from office before filing for reelection and by remaining completely and continuously separated from that office for at least 30 days prior to the election date. The revisions to clarify elected official policy were discussed under Section 1, above.

PERA has indicated that it seeks the deletion of the provision relating to PERA-General Basic Plan members or Public Employees Police and Fire Plan (PERA-P&F) members who become coordinated members due to revisions in Social Security government pension offset law. An explanation of the government pension offset provision and an explanation of the motivation behind the provision, downloaded from the Social Security website, is attached. That provision considerably reduces the Social Security surviving spouse benefit that would be paid to a surviving spouse if that surviving spouse had coverage by a basic rather than coordinated retirement program. In the past, these Social Security offsets or reductions would not apply if the surviving spouse was covered by a coordinated retirement program, rather than a basic program, on the last day of employment. A change in Social Security law a few years ago made it much harder to avoid that offset. For those who terminate employment on or after July 1, 2004, they must have been covered by a coordinated program for at least five years, rather than one day, prior to termination.

Given the change in Social Security law from the one-day to five-year requirement, PERA contends that individuals seeking to shift from a basic plan to a coordinated plan for a brief period prior to actual retirement is no longer a factor, and that the applicable language can be stricken. The Commission may wish to hear testimony from PERA to determine the appropriateness of the proposed deletion.

- **Amendment H0889-7A** reinstates the "basic member shift to coordinated plan" language.

