



S.F. 546
(Betzold)

H.F. 726
(Murphy, M.)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): State Patrol Retirement Plan
Relevant Provisions of Law: Minnesota Statutes, Chapters 43A, 299A, 352, and 352B
General Nature of Proposal: Disability benefit program revisions and other modifications
Date of Summary: February 25, 2009

Specific Proposed Changes

- Includes State Patrol plan disabilitants in employer-paid continued health insurance coverage (Sec. 2)
- Reorganizes State Patrol Retirement Plan definitions (Sec. 4 and 11)
- Permits full month service credit in any month with salary receipt and member contribution deduction (Sec. 4)
- Adds disability benefit related definition of "duty disability," "less frequent duties," "normal duties," and "regular disability" (Sec. 4)
- Moves temporary Workers' Compensation leave of absence service credit provision (Sec. 6)
- Moves uniformed service credit provision out of definitions section (Sec. 7)
- Renames disability benefit as duty disability benefit (Sec. 8).
- Renames non-duty disability benefit as regular disability benefit and eliminates one-year vesting requirement (Sec. 9).
- Makes conforming changes to definition section reorganization (Sec. 1, 3, 5, and 10).

Policy Issues Raised by the Proposed Legislation

1. Impact of proposed changes on likely State Patrol Retirement Plan disability benefit utilization and actuarial cost.
2. Appropriateness of mandating employer-paid continuing health insurance for State Patrol Retirement Plan duty disabilitants.
3. Appropriateness of the Specification of full monthly service credit for any month with salary and deductions.
4. Inconsistency of service and salary crediting for temporary Workers' Compensation leaves of absence.
5. Appropriateness of incorporating job descriptions into the statutory definitions of duty disability and regular disability.
6. Appropriateness of eliminating the one-year vesting period for non-duty/regular disability coverage.
7. Lack of any proposed maximum age eligibility provision.
8. Comparability of proposed State Patrol Retirement Plan disability revisions with recent PERA-P&F revisions.

Potential Amendments

Technical and Corrective Amendments:

A09-0025 corrects internal cross-references.

S0546-1A corrects an error in specifying exclusions from MSRS-General plan coverage, clarifies that payments in lieu of contributions must be as authorized by law, clarifies salary and average salary references, clarifies references to duty and regular disability benefits, and adds an effective date.

Substantive Amendments:

S0546-2A eliminates the post-disablement employer-paid health insurance premium benefit from the bill.

S0546-3A validates service credit of current State Patrol Retirement Plan members consistent with the revised definition.

S0546-4A reinstates the one-year vesting requirement for regular disability benefits.

S0546-5A increases the vesting period requirement for regular disability benefits to three years of service credit.

S0546-6A adds an age 55 limit on eligibility for a State Patrol Retirement Plan disability benefit and provides for the recomputation of disability benefits at age 55 rather than age 65.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *LAM*
RE: S.F. 546 (Betzold); H.F. 726 (Murphy, M.): State Patrol Retirement Plan, Disability Benefit Program Revisions and Other Modifications
DATE: February 24, 2009

General Summary of S.F. 546 (Betzold); H.F. 726 (Murphy, M.)

S.F. 546 (Betzold); H.F. 726 (Murphy, M.) amends portions of Minnesota Statutes, Chapters 43A (State Personnel Management), 299A (Department of Public Safety), 352 (Minnesota State Retirement System), and 352B (State Patrol Retirement Plan), by making the following changes:

1. Includes State Patrol Retirement Plan Disabilitants in Employer-Paid Continued Health Insurance Coverage (Section 2). Duty disabilitants of the State Patrol Retirement Plan are included in the definition of peace officer or firefighter disabled in the line of duty for purposes of employer-paid health insurance coverage through age 65;
2. Reorganizes State Patrol Retirement Plan Definitions (Sections 4 and 11). The definitions of the State Patrol Retirement Plan are reorganized in alphabetical order in a new section;
3. Permits Full Month Service Credit in Any Month with Salary Receipt and Member Contribution Deduction (Section 4). The redefinition of "allowable service" includes a specification that a full month of service is credited for a month in which a member receives salary from which a member contribution is deducted;
4. Adds Disability Benefit Related Definition of "Duty Disability," "Less Frequent Duties," "Normal Duties," and "Regular Disability" (Section 4). Duty disability is defined as a physical or psychological condition expected to prevent the person for one year from performing the normal duties of the person's position arising out of the performance of property and personal safety protection duties that have inherent dangers. Regular disability is a similar occupational disability occurring outside of employment or from employment without inherent dangers.
5. Moves Temporary Workers' Compensation Leave of Absence Service Credit Provision (Section 6). The provision authorizing the crediting as allowable service periods of leaves of absence to receive temporary Workers' Compensation payments where the member pays the member and employer contributions on the difference between any actual salary and the salary receivable if not on leave, plus interest, with a deadline of one year following return from the leave, is moved from the average salary definition;
6. Moves Uniformed Service Service Credit Provision Out of Definitions Section (Section 7). The provision allowing for crediting of uniformed service absences is moved from the prior allowable service credit provision;
7. Renames Disability Benefit as Duty Disability Benefit (Section 8). The former benefit for a disability incurred in or arising out of an act of duty is renamed a duty disability benefit, based on meeting the new duty disability definition;
8. Renames Non-Duty Disability Benefit as Regular Disability Benefit and Eliminates One-Year Vesting Requirement (Section 9). The former non-duty disability benefit is renamed as a regular disability benefit, based on meeting the new regular disability definition and the prior on-year of service credit vesting requirement for the benefit is eliminated; and
9. Makes Conforming Changes to Definition Section Reorganization (Sections 1, 3, 5, and 10). Cross-references to definitions moved as part of the definitions section reorganization are corrected.

Background Information and Attachments

- A. Background information on the history of the State Patrol Retirement Plan and the current (7/1/2008) actuarial condition of the plan are set forth in Attachment A.
- B. A comparison of the disability benefit program of the Public Employees Police and Fire Retirement Plan (PERA-P&F) and of the State Patrol Retirement Plan is contained in Attachment B.

Corrective Amendment A09-0025

Amendment A09-0025 corrects incorrect cross-references to the new State Patrol Retirement Plan definitions section. The amendment was forwarded by the Minnesota State Retirement System (MSRS).

Technical Amendment S0546-1A

Amendment S0546-1A makes a number of modifications in the proposed legislation, primarily grammatical or stylistic, including:

1. Corrects Exclusions from MSRS-General. The last two expansions of the State Patrol Retirement Plan, the addition of Department of Insurance fraud prevention officers, and the addition of Department of Public Safety Gang and Drug Oversight Council statewide coordinated, were not specifically excluded from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) by failure to correct a statutory cross-reference and the cross-reference is corrected (amendment to page 4, line 16).
2. Clarifies That Payments in Lieu of Contributions Are as Authorized by Law. The allowable service and accumulated deduction provisions referencing payments other than member contribution deductions are clarified to only include payments authorized by law to avoid conveying the potential for generally permitted service credit purchases or payments (amendments to page 6, lines 13, 18, 21, and 27).
3. Clarifies Salary and Average Salary References. Some references to “average monthly salary” in the average monthly salary definition operationally mean “salary” and the reference is corrected (amendments to page 7, lines 1-2).
4. Clarifies References to Duty and Regular Disability Benefits. The head notes for the revised duty and regular disability benefit provisions reference their new names, but exist for guidance and organization purposes only, and the actual statutory language makes virtually no reference to the particular type of disability benefit. Specific duty and regular duty disability names are added (amendments to page 10, lines 29-30, and page 11, lines 6-7 and 9).
5. Adds an Effective Date. Adds a July 1, 2009, effective date, rather than utilizing the August 1, 2009, effective date, which follows general retirement bill practice (amendment to page 11, after line 28).

Discussion and Analysis

S.F. 546 (Betzold); H.F. 726 (Murphy, M.) includes State Patrol Retirement Plan disabilitants in employer-paid continuing health insurance coverage, reorganizes the plan definitions, provides for the crediting of full monthly service credit in any month with salary receipt and member contribution deduction, newly defines the terms “duty disability,” “less frequent duties,” “normal duties,” and “regular disability,” moves two leave of absence service credit provisions, renames the current primary disability coverage as a duty disability benefit, renames the non-duty disability benefit as a regular disability benefit, eliminates the one year of service credit vesting requirement for a regular disability benefit, and makes conforming changes to accommodate the revised plan definitions provision.

The proposed legislation raises numerous pension and related public policy issues that may merit Commission consideration and potential Commission discussion, including the following:

1. Impact of Proposed Changes on Likely State Patrol Retirement Plan Disability Benefit Utilization and Actuarial Cost. The policy issue is the likely impact that the proposed changes in the disability benefit program of the State Patrol Retirement Plan can be expected to have on disability benefit utilization and plan actuarial costs. State Patrol Retirement Plan has experienced almost a doubling of the number of disabilitants over the past decade and almost a doubling of the percentage of disabilitants compared to active members over the past decade, indicating a utilization problem with rates that are unaffordable if they continue over the long-term future. The following sets forth a comparison of State Patrol Retirement Plan disability benefit utilization 1999-2008 with those of the other statewide public safety and quasi-public safety retirement plans (the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), the Public Employees Police and Fire Plan (PERA-P&F), and the Local Government Correctional Service Retirement Plan (PERA-Correctional)).

Year	State Patrol		PERA-P&F		MSRS-Correctional		PERA- Correctional	
	No.	% of Actives	No.	% of Actives	No.	% of Actives	No.	% of Actives
1999	23	2.79%	412	4.35%	60	2.08%	0	0.00%
2000	22	2.65%	482	5.01%	75	2.42%	3	0.11%

Year	State Patrol		PERA-P&F		MSRS-Correctional		PERA- Correctional	
	No.	% of Actives	No.	% of Actives	No.	% of Actives	No.	% of Actives
2001	25	3.04%	543	5.51%	92	2.89%	17	0.53%
2002	29	3.58%	574	5.77%	115	3.54%	26	0.80%
2003	31	3.85%	614	6.17%	135	4.14%	37	1.17%
2004	34	4.08%	700	2.96%	154	4.63%	50	1.54%
2005	35	4.21%	686	6.70%	150	4.16%	59	1.76%
2006	41	4.82%	765	7.22%	168	4.30%	70	1.98%
2007	41	4.86%	803	7.49%	174	4.02%	87	2.44%
2008	42	5.00%	824	7.52%	184	4.07%	92	2.48%

While the portion of the plan normal cost attributable to the disability benefit coverage is not the largest normal cost portion, it is significant and growing, as the following comparison 2005-2008 for the State Patrol Retirement Plan, MSRS-Correctional, PERA-P&F, and PERA-Correctional suggests:

	State Patrol		PERA-P&F		MSRS-C		PERA-C	
	% Pay	\$	% Pay	\$	% Pay	\$	% Pay	\$
2005 Normal Cost Items								
Retirement Benefits	18.25%	\$10,063,280	16.78%	\$104,986,926	11.09%	\$16,343,222	8.29%	\$10,719,121
Disability Benefits	2.50%	1,376,491	3.42%	21,396,862	1.60%	2,361,696	1.53%	1,970,794
Survivors	1.44%	793,981	0.59%	3,694,719	0.22%	320,848	0.36%	468,394
Deferred Retirement Benefits	0.67%	371,842	1.49%	9,306,280	1.05%	1,542,522	2.13%	2,750,298
Refunds	0.17%	93,213	(refunds are 0%, \$0)		1.05%	1,543,171	0%	0
Total	23.03%	\$12,698,807	22.28%	\$139,384,787	15.01%	\$22,111,459	12.31%	\$15,908,607
2006 Normal Cost Items								
Retirement Benefits	20.46%	\$11,819,740	16.78%	\$112,097,421	13.02%	\$21,194,230	8.09%	\$11,410,132
Disability Benefits	2.34%	1,352,260	3.42%	22,845,505	3.06%	4,985,596	1.49%	2,107,194
Survivors	0.99%	571,241	0.63%	4,188,089	0.20%	326,900	0.36%	502,487
Deferred Retirement Benefits	0.50%	286,634	1.49%	9,966,693	0.68%	1,099,062	2.21%	3,114,290
Refunds	0.12%	68,591	(refunds are 0%, \$0)		0.73%	1,180,926	0%	0
Total	24.41%	\$14,098,466	22.32%	\$149,097,708	17.69%	\$28,786,714	12.15%	\$17,134,103
2007 Normal Cost Items								
Retirement Benefits	20.68%	\$12,716,574	16.79%	\$117,516,403	12.98%	\$24,314,658	8.02%	\$11,930,777
Disability Benefits	2.46%	1,512,347	3.18%	22,272,592	3.15%	5,898,691	1.48%	2,202,418
Survivors	1.00%	613,302	0.73%	5,090,494	0.20%	365,693	0.36%	529,189
Deferred Retirement Benefits	0.49%	303,802	1.49%	10,449,012	0.65%	1,226,585	2.23%	3,322,640
Refunds	0.12%	73,327	(refunds are 0%, \$0)		0.70%	1,318,662	0%	0
Total	24.75%	\$15,219,352	22.19%	\$155,328,501	17.68%	\$33,124,289	12.09%	\$17,985,024
2008 Normal Cost Items								
Retirement Benefits	21.37%	\$13,628,000	16.93%	\$126,430,000	13.18%	\$27,091,000	8.69%	\$14,249,000
Disability Benefits	2.16%	1,379,000	3.75%	28,027,000	2.91%	5,990,000	1.92%	3,145,000
Survivors	1.06%	679,000	0.89%	6,611,000	0.32%	665,000	0.39%	642,000
Deferred Retirement Benefits	0.48%	304,000	1.50%	11,205,000	0.81%	1,656,000	2.37%	3,882,000
Refunds	0.08%	51,000	(refunds are 0%, \$0)		1.02%	2,098,000	0%	0
Total	25.15%	\$16,041,000	23.07%	\$172,273,000	18.24%	\$37,500,000	13.37%	\$21,918,000

Presumably, the changes promoted by MSRS contained in this proposed legislation are intended to slow the pattern of utilization of disability benefits in the State Patrol Retirement Plan and reduce the plan's actuarial cost, but the plan administration has not indicated the expected magnitude of the actuarial impact of these changes.

2. Appropriateness of Mandating Employer-Paid Continuing Health Insurance for State Patrol Retirement Plan Duty Disabilitants (Section 2). The policy issue is the appropriateness of including State Patrol Retirement Plan members in Laws 1992, Chapter 239, Article 8, Section 6, as amended, the mandate that local governmental subdivisions pay for continuing health insurance coverage for police officers and firefighters receiving a duty disability benefit. Currently, according to Minnesota Management & Budget, the State of Minnesota provides employer-paid health insurance coverage to members of the State Patrol Retirement Plan if the member suffers a duty-related disability and qualifies for Workers' Compensation benefits, for the period of Workers' Compensation benefits receipt. The state is authorized to provide employer-paid health insurance coverage once Workers' Compensation benefits end, but does not currently do so. The extension of the mandated employer-paid health insurance coverage for duty disabilitants to the State Patrol Retirement Plan members is an expansion of a state mandate on local government with respect to members of the Public Employees Police and Fire Retirement Plan (PERA-P&F) that was enacted in 1997. The expansion will have a cost to the state departments with State Patrol Retirement Plan members, principally the Department of Public Safety and the Department of Natural Resources, but also the Department of Commerce (Insurance Fraud Prevention officers) and the Department of Corrections (Fugitive Apprehension Unit officers). The

statistics in the regular actuarial reporting do not differentiate duty disabilities from non-duty disabilities, so it is difficult to project the likely extent of the insurance premium cost. The State Patrol Retirement Plan has experienced recurring disabilities over the past ten years, averaging almost three disabilities per year, undoubtedly including duty disabilities, as follows:

Year	Number of New Disabilities	Year	Number of New Disabilities
1998-1999	2	2003-2004	3
1999-2000	1	2004-2005	2
2000-2001	3	2005-2006	6
2001-2002	4	2006-2007	1
2002-2003	2	2007-2008	2

The continued health coverage cost imposed by the provision is occurring in proposed retirement legislation and, hence, the mandate may not ever come to the attention of the budget divisions with jurisdiction over the Department of Public Safety, the Department of Natural Resources, the Department of Commerce, or the Department of Corrections. The provision, if desired by the State Patrol Troopers Association or other labor organizations representing members of the State Patrol Retirement Plan, could have been arranged for inclusion in proposed legislation outside this proposed legislation or could have been collectively bargained, but was not. Having the non-retirement employment benefit change be proposed by the Minnesota State Retirement System (MSRS) when the specific legislative proposal only tangentially relates to MSRS also is very unusual and is potentially problematic as a practice.

If the Commission does not believe that it is appropriate to include a non-retirement employment benefit change in a retirement bill, Amendment S0546-2A would remove the provision from this bill, leaving it to the interested parties to pursue in more appropriate proposed legislation.

3. Appropriateness of the Specification of Full Monthly Service Credit for Any Month with Salary and Deductions (Section 4, Subdivision 3, Paragraph (a), Clause (1)). The policy issue is the appropriateness of specifying that a State Patrol Retirement Plan member earns a full month of service credit for any month in which the member receives salary from which member contribution deductions are taken. The provision is added to what otherwise was a virtually unaltered repetition of the existing provisions of Minnesota Statutes, Section 352B.01. The provision presumably codifies what has been State Patrol Retirement Plan practice at least since the administration of the plan was transferred to the Minnesota State Retirement System (MSRS) in 1969. In the MSRS General State Employees Retirement Plan (MSRS-General), service credit has essentially always been credited on a full month basis for any whole or partial month in which salary is paid and deductions are taken. Presumably, the same practice has been followed since the 1969 transfer to MSRS of plan administration, but the State Patrol Retirement Plan statute has not cleanly reflected what likely has been the plan's actual practice. Although this new provision likely codifies recent ongoing practice and does not represent a substantive change, the provision is a new item in what is otherwise a proposed recodification without apparent substantive changes.

If the provision is a codification of ongoing practice, some consideration may be appropriate of validating the past service credit of current State Patrol Retirement Plan members that was credited under that procedure. Amendment S0546-3A provides the applicable validation of past service credit language.

4. Inconsistency of Service and Salary Crediting for Temporary Workers' Compensation Leaves of Absence (Section 4, Subdivision 3, Paragraph (b), and Subdivision 4, Paragraph (b), and Section 6). The policy issue is the unresolved inconsistency between the three provisions relating to the crediting of allowable service and salary in the event of a leave of absence for a temporary disability while receiving Workers' Compensation. Section 4, Subdivision 3, Paragraph (b), specifically includes as allowable service a temporary disability absence for a duty disability where the state is liable for Workers' Compensation benefits. Section 4, Subdivision 4, Paragraph (b), specifically excludes from average monthly salary "any reduced salary paid during the period the person is entitled to workers' compensation benefit payments for temporary disability." Section 6 specifies the payment of equivalent contributions if a member of the plan is on a leave of absence receiving temporary Workers' Compensation payments and receives no salary or reduced salary and is entitled to allowable service. If the three provisions are read together, attempting to give effect to all three, a person with a temporary duty disability receiving Workers' Compensation on a leave of absence is entitled to allowable service for the leave, must pay the member and employer contributions for the period on the difference between the actual salary and the salary that otherwise would have been earned, plus 8.5

percent compound interest, but receives no salary credit for the period. If this is not the intended result of the three provisions, the provisions will need to be reworked.

5. Appropriateness of Incorporating Job Descriptions Into the Statutory Definitions of Duty Disability and Regular Disability (Section 4, Subdivisions 7, 9, 11, and 12). The policy issue is the appropriateness of disability definitions that are based in their determinations on the disability benefit applicant's job description. The job descriptions of the applicant are used to differentiate between employment activities that are required from time to time or that are required as assigned and employment activities that are required regularly. Job descriptions are used for a variety of purposes, but until now, have not been incorporated into statutory disability definitions. It is unlikely that job descriptions are structured with this use in mind and it is likely that job descriptions are not reviewed and revised sufficiently often and promptly enough to make them an optimal tool for this use.
6. Appropriateness of Eliminating the One-Year Vesting Period for Non-Duty/Regular Disability Coverage. The policy issue is the appropriateness of the elimination of the current one-year vesting requirement for the current non-duty disability coverage, renamed regular disability coverage in the proposed legislation. The current regular disability benefit in the Public Employees Police and Fire Retirement Plan (PERA-P&F) has a one-year vesting requirement. The MSRS Correctional State Employees Retirement Plan (MSRS-Correctional) is proposing increasing its current non-duty/regular disability benefit vesting period from one year to three years (see S.F. 193 (Betzold); H.F. 727 (Murphy, M.)). This change, eliminating any minimum vesting period, is an opposite trend and is not consistent with a general recent trend of tightening disability definitions and eligibility requirements.

If the proposed vesting period elimination is a drafting error, Amendment S0546-4A reinstates the one-year vesting requirement for the renamed regular disability benefit.

If the Commission believes that reducing or eliminating disability benefit vesting requirements is inappropriate, Amendment S0546-5A would add a three-year vesting requirement to match the proposal from MSRS for the MSRS-Correctional Plan.

7. Lack of Any Proposed Maximum Age Eligibility Provision. The policy issue is the appropriateness of revising the State Patrol Retirement Plan disability benefit provisions but not imposing an upper age limitation on the eligibility for a State Patrol Retirement Plan disability benefit. In the 2007 PERA-P&F disability revisions, eligibility for a duty disability benefit or a regular disability benefit was eliminated if the person qualified for a normal retirement annuity (age 55). Although there is a strong incentive for a State Patrol Retirement Plan member to terminate active state employment at age 55 due to the collectively bargained post-retirement health insurance coverage, any State Patrol Retirement Plan member who does continue in state employment after age 55 retains full potential eligibility for a disability benefit under those revisions even though the person could draw a normal retirement annuity. It may be appropriate to seek testimony from MSRS administrators as to the rationale for not imposing any age limitation on disability benefit eligibility.

Amendment S0546-6A adds an age 55 limit on eligibility for a State Patrol Retirement Plan disability benefit and provides for the recomputation of disability benefits at age 55 rather than age 65.

8. Comparability of Proposed State Patrol Retirement Plan Disability Revisions with Recent PERA-P&F Revisions. The policy issue is the adequacy of the proposed revisions in the disability benefit program of the State Patrol Retirement Plan in comparison with the 2004-2007 revisions in the disability benefit program of PERA-P&F. In 2004, the PERA-P&F disability benefit application and service procedures were revised. The applicant must apply for benefits in writing on forms provided by the executive director. The application must include adequate proof of a disability including a written report by a licensed physician, chiropractor, or psychologist. The individual must release all medical records, both for purposes of the initial benefit application or for later benefit continuation purposes. If the application is filed within two years of the date of the injury or illness, the disability determination depends on whether the individual is capable of performing the duties of the position held on the date of the injury or illness. If the application is filed more than two years after the injury or illness, the determination is whether the individual can perform the duties assigned during the 90 days before filing the application. Applications can be filed after termination of service, but if the application is filed more than three years after the individual terminates from PERA-P&F covered employment, the individual must provide evidence that the disability is the direct result of an injury or illness contracted while the individual was a PERA-P&F covered employee. Every duty-related application must include a first report of injury, as specified under workers' compensation law. The employer must provide input regarding the individual's ability to provide services. If a disability

benefit application is approved but the individual does not terminate service or is not placed on an authorized leave within 45 days after the application is approved, the application is voided and another may not be filed within one year. Individuals may repay a refund up to six months after the effective date of the disability benefits. Benefits can accrue up to 90 days before the filing of an application, but not prior to the date of the disabling injury or illness. An individual applying for or receiving disability benefits must submit to an independent medical evaluation paid for by PERA. Any applicant who is denied initial benefits or a benefit continuation may appeal the executive director's decision to the PERA board within 45 days of receipt of a certified letter notifying the individual of denial of benefits or benefit continuation.

In 2007, the PERA-P&F disability benefit provisions for post-2007 disabilities were revised. Two revised disability categories were created, duty disability and regular disability, replacing the prior "duty" and "non-duty" categories, and the duty disability category was further divided into a total and permanent duty disability subgroup and other duty disability subgroup.

- The duty disability subcategory is a physical or psychological disability caused by performing job-related duties protecting the property and personal safety of others that present inherent dangers (rather than being any disability that occurs or is related to being on duty), and which results in the individual being unable to perform the normal duties of the position for a period of at least one year. In contrast, a total and permanent duty disability is a duty disability for which the individual qualifies under the total and permanent disability standard usually used for general employee plans. To meet a total and permanent disability standard, the individual must be unable to perform any gainful employment.
- The regular disability subcategory is any job-related disability resulting from activity that did not present inherent danger, and all disabilities resulting from any non-duty activity. Total and permanent duty disability benefits are 60 percent of the high-five salary, plus three percent of the high-five for each year of service over 20. Duty disabilities other than total and permanent duty disabilities are capped at 60 percent of the high-five salary, rather than 60 percent plus three percent of the high-five for each year of service over 20. Regular disabilities are capped at 45 percent of the high-five salary, rather than being computed like a service annuity based on actual service, with a minimum benefit of 45 percent of the high five. Duty-related disabilitants who do not meet the total and permanent disability standard and all regular disabilitants who are at least age 55 at the time of disability but have less than 20 years service in duty disability cases, or 15 years service in regular disability cases, can receive disability benefits for five years, then the disability benefit must terminate. The disability benefit, except those received by total and permanent duty disabilitants, is converted to a retirement annuity when the member reaches age 55; or for those who are 55 when the disability commenced, on the five-year anniversary of the disability; or when a member elects to convert to an early retirement annuity rather than the disability benefit. Disability benefits can be retroactive for up to 90 days if salary or salary-equivalent benefits were not received during that period. Disability benefits are not allowed if disability is due to illegal drug use and the individual has not taken part in a rehabilitation program and ceased drug use. Early retirement by any individual who becomes a PERA P&F member after June 30, 2007, or by a former member who is reinstated after that date will require a reduction of 0.2 percent for each month that the individual is under age 55, rather than one-tenth.

S.F. 546 (Betzold); H.F. 726 (Murphy, M.) is not nearly as comprehensive in its disability benefit provision revisions. None of the 2004 application and service procedure revisions are included in the proposed legislation. The proposed legislation renames the two disability benefits and attempts to limit duty disabilities to those disabilities arising out of inherently dangerous occupational duties. If both the State Patrol Retirement Plan and the PERA P&F are suffering from over-utilization of disability benefits and if recent PERA-P&F revisions have successfully addressed that over-utilization, it would appear to be reasonable to attempt to replicate as many of those revisions as are feasible or effective, but it is unclear that this was the MSRS approach as in this proposed legislation. Also, the Commission's Pension Policy Principles (Principle II.C.6.) indicates that there should be equal pension treatment in terms of the relationship between benefits and contributions among various plans. **Attachment D** is a comparison which provides some graphic sense of the differing treatment between PERA-P&F and the State Patrol Retirement Plan. A simple example of a lack of equal treatment would be disabilities related in whole or in part to illegal drug use, where a PERA-P&F member would not qualify for a disability benefit, but a State Patrol Retirement Plan member would qualify for a disability benefit.

Attachment A

Background Information on the State Patrol Retirement Plan

The State Patrol Retirement Plan was established in 1943, (Laws 1943, Chapter 637) and initially provided retirement coverage solely for state highway patrol troopers. Currently, the State Patrol Retirement Plan provides retirement coverage for four distinct groups of law enforcement officers, the State Patrol Division of the Department of Public Safety, the Bureau of Criminal Apprehension of the Department of Public Safety, the Enforcement (Game Wardens) Division of the Department of Natural Resources, and the Gambling Enforcement Division of the Department of Public Safety.

A separate retirement plan had been established for game wardens (the Game Wardens Retirement Plan) in 1955. In 1961, the State Police Retirement Plan was established for Bureau of Criminal Apprehension agents and officers and, when it was created, it absorbed the Game Wardens Retirement Plan. In 1969, the State Police Retirement Plan was in turn merged into the State Patrol Retirement Plan. In 1990, law enforcement officers in the Gambling Enforcement Division of the Department of Public Safety were added to the State Patrol Retirement Plan. With the exception of a small number of data processing personnel in the Bureau of Criminal Apprehension who were grandparented into the plan in 1987-1988, all members of the State Patrol Retirement Plan are peace officers licensed by the Peace Officers Standards and Training Board.

As a public safety pension plan, the State Patrol Retirement Plan pays larger retirement annuities, disability benefits, and survivor benefits than a general employee retirement plan and has an earlier normal retirement age for the retirement annuity. Because of these benefit plan differences, the plan has a greater actuarial cost and greater member and employer contributions than a general employee retirement plan. As law enforcement officers, members of the State Patrol Retirement Plan are not covered by Social Security under both state and federal law for their state law enforcement employment.

The retirement benefit provided for a member retiring at the plan's normal retirement age, age 55, is three percent of the high-five average salary for each year of service. A member who is age 55 or older with 30 years of service and has a high-five average salary of \$75,000 will receive an annuity of \$67,500. Members can retire as early as age 50 with only a slight reduction due to early retirement. The reduction is 1/10 of a percent for each month (1.2 percent per year) that the individual is under age 55. These early retirement annuities are subsidized. For disability determinations, the plan uses an occupational definition of disability, an inability to perform the specific job, rather than the more stringent definition used by general employee plans, which require an inability to perform any gainful employment. The disability benefit is generous. If the disability is duty-related, the benefit is computed just like a service pension except there is no reduction due to early receipt. The minimum service-related disability benefit is equivalent to a 20-year service pension. Non-duty-related disability benefits are computed the same way, except that the minimum benefit is equivalent to a 15-year pension, and the individual must have at least one year of service credit to be eligible.

The policy reason for having a more lucrative benefit program for public safety employee retirement plans is that public safety employment (police officer or firefighter service) is particularly hazardous, that it requires the maintenance of a particularly vigorous and robust workforce to meet the strenuous requirements of the employment position, and that the normally expected working career of a public safety employee will be significantly curtailed as a consequence of the hazards and strenuous requirements of that type of employment when compared to a general public employee.

Public employee pension plans are intended to assist the governmental personnel system by encouraging the recruitment of qualified and motivated new employees, the retention of able and valued existing employees, and the orderly and predictable out-transitioning of employees at the expected end or normal conclusion of their working career. For public safety employees, public safety employee retirement plans provide more lucrative benefits to assist in the recruitment and retention of new and existing personnel, but most clearly emphasize the out-transitioning function.

Actuarial Condition of the State Patrol Retirement Plan

Based on the most recent actuarial study, July 1, 2008, the State Patrol Retirement Plan had a funding ratio 86 percent. While the funding ratio was quite high, the total contributions were 10.1 percent of payroll less than the contribution level needed to pay off the remaining unfunded liabilities by the full funding date, recently reset at 2036. In 2006, the Legislature passed employee and employer contribution

rate increases of 2.0 percent for the employee and 3.0 percent for the employer, to be phased in over a few years, to address the problem.

State Patrol Plan 2008		
<u>Membership</u>		
Active Members		840
Service Retirees		660
Disabilitants		42
Survivors		194
Deferred Retirees		35
Nonvested Former Members		<u>7</u>
Total Membership		1,778
<u>Funded Status</u>		
Accrued Liability		\$693,686,000
Current Assets		<u>\$595,082,000</u>
Unfunded Accrued Liability		\$98,604,000
Funding Ratio	85.79%	
<u>Financing Requirements</u>		
Covered Payroll		\$63,771,000
Benefits Payable		\$42,804,000
Normal Cost	25.15%	\$16,041,000
Administrative Expenses	<u>0.18%</u>	<u>\$115,000</u>
Normal Cost & Expense	25.33%	\$16,156,000
Normal Cost & Expense	25.33%	\$16,156,000
Amortization	<u>9.15%</u>	<u>\$5,838,000</u>
Total Requirements	34.49%	\$21,994,000
Employee Contributions	9.80%	\$6,250,000
Employer Contributions	14.60%	\$9,310,000
Employer Add'l Cont.	0.00%	\$0
Direct State Funding	0.00%	\$0
Other Govt. Funding	0.00%	\$0
Administrative Assessment	<u>0.00%</u>	<u>\$0</u>
Total Contributions	24.40%	\$15,560,000
Total Requirements	34.49%	\$21,994,000
Total Contributions	<u>24.40%</u>	<u>\$15,560,000</u>
Deficiency (Surplus)	10.09%	\$6,434,000
Amortization Target Date	2036	
Actuary	Mercer	

353.01 DEFINITIONS.

Subd. 41. **Duty disability.** "Duty disability," physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the public employees police and fire plan, and that is the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties or the actual performance of less frequent duties, either of which are specific to protecting the property and personal safety of others and that present inherent dangers that are specific to the positions covered by the public employees police and fire plan.

Subd. 42. **Less frequent duties.** "Less frequent duties" means tasks which are designated in the applicant's job description as either required from time to time or as assigned, but which are not carried out as part of the normal routine of the applicant's job.

Subd. 43. **Line of duty death.** "Line of duty death" means a death that occurs while performing or as a direct result of performing normal or less frequent duties which are specific to protecting the property and personal safety of others and that present inherent dangers that are specific to the positions covered by the public employees police and fire plan.

Subd. 44. **Normal duties.** "Normal duties" means specific tasks which are designated in the applicant's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties which may be requested to be done by the employer from time to time.

Subd. 45. **Not line of duty death.** For purposes of survivor benefits under the public employees police and fire plan, a "not line of duty death" is any death not specified under subdivision 43.

Subd. 46. **Regular disability.** "Regular disability," physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the public employees police and fire plan, and which results from a disease or an injury that arises from any activities while not at work, or while at work and performing those normal or less frequent duties that do not present inherent dangers that are specific to the occupations covered by the public employees police and fire plan.

353.031 DISABILITY DETERMINATION PROCEDURES.

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

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

Subd. 3. **Procedure to determine eligibility; generally.** (a) Every claim for a disability benefit must be initiated in writing on an application form and in the manner prescribed by the executive director and filed with the executive director. An application for disability benefits must be made within 18 months following termination of public service as defined under section 353.01, subdivision 11a.

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

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

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

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

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

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

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

Subd. 4. **Additional requirements; eligibility for police and fire or local government correctional service plan disability benefits.** (a) 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 the illness causing the disability and the specifications of any duties that the individual can or cannot perform.

Subd. 7. **Duty disability.** "Duty disability" means a physical or psychological condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by the person as a member of the state patrol retirement fund, and that is the direct result of any injury incurred during, or a disease arising out of, the performance of normal duties or the actual performance of less frequent duties, either of which are specific to protecting the property and personal safety of others and that present inherent dangers that are specific to the positions covered by the state patrol retirement fund.

Subd. 9. **Less frequent duties.** "Less frequent duties" means tasks which are designated in the member's job description as either required from time to time or as assigned, but which are not carried out as part of the normal routine of the member's position.

Subd. 11. **Normal duties.** "Normal duties" means specific tasks which are designated in the member's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties which may be requested to be done by the employer from time to time.

Subd. 12. **Regular disability.** "Regular disability" means a physical or psychological condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the State Patrol retirement plan, and which results from a disease or an injury that arises from any activities while not at work, or while at work and performing those normal or less frequent duties that do not present inherent dangers that are specific to the occupations covered by the State Patrol retirement plan.

352B.101 APPLICATION FOR DISABILITY BENEFIT.

A member claiming a disability benefit must file a written application for benefits in the office of the system in a form and manner prescribed by the executive director. The member shall provide medical or psychological evidence to support the application. The benefit begins to accrue the day following the start of disability or the day following the last day for which the member was paid, whichever is later, but not earlier than 180 days before the date the application is filed with the executive director.

History: 1983 c 128 s 26; 1987 c 229 art 7 s 1; 1993 c 307 art 1 s 26; 1Sp2001 c 10 art 3 s 16

Subd. 4. **Proof of disability.** (a) No disability benefits may be paid unless adequate proof is furnished to the executive director of the existence of the disability.

(b) 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.

(c) Following the commencement of benefit payments, the executive director has the right, at reasonable times, to require the disabled person to submit proof of the continuance of the disability claimed.

(b) If an application for disability benefits is filed more than two years after the date of 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.

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

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

(e) 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.

Subd. 5. 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. The medical adviser 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. 6. Independent medical examination. Any individual applying for or receiving disability benefits must submit to an independent medical examination if requested by the executive director. The medical examination must be paid for by the association.

Subd. 7. 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 to authorize the release of medical evidence under subdivision 3, 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. 8. Proof of continuing disability. (a) A disability benefit payment must not be made except upon adequate proof furnished to the executive director of the association that the person remains disabled.

(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, a licensed chiropractor, or, with respect to a mental impairment, a licensed psychologist.

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

Subd. 10. Restoring forfeited service. To restore forfeited service, 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.

History: 2007 c 134 art 4 s 8

353.656 DISABILITY BENEFITS.

Subdivision 1. Duty disability; computation of benefits. (a) A member of the police and fire plan who is determined to qualify for duty disability as defined in section 353.01, subdivision 41, shall receive disability benefits during the period of such disability in an amount equal to 60 percent of the average salary as defined in section 353.01, subdivision 17a, plus an additional percentage specified under section 356.315, subdivision 6, of that average salary for each year of service in excess of 20 years.

(b) To be eligible for a benefit under paragraph (a), the member must have:

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

(2) met the requirements under that subdivision, but does not have at least 20 years of allowable service credit.

(c) If paragraph (b), clause (2), applies, the disability benefit must be paid for a period of 60 months from the disability benefit accrual date and at the end of that period is subject to provisions of subdivision 5a.

(d) 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. MS 2006 [Renumbered, subd 1b]

Subd. 1a. Total and permanent duty disability; computation of benefits. (a) A member of the police and fire plan whose disabling condition is determined to be a duty disability that is also a permanent and total disability as defined in section 353.01, subdivision 19, is entitled to receive, for life, disability benefits 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.

(b) A disability benefit payable under paragraph (a) is subject to eligibility review under section 353.33, subdivision 6, but the review may be waived if the executive director receives a written statement from the association's medical advisor that no improvement can

Subdivision 1. Injuries; payment amounts Duty disability. A member of the state patrol retirement fund who becomes disabled and who is expected to be physically or mentally unfit to perform duties for at least one year as a direct result of an injury, sickness, or other disability that incurred in or arose out of any act of duty is determined to qualify for duty disability as defined in section 352B.001, subdivision 7, is entitled to receive disability benefits while disabled. The benefits must be paid in monthly installments. The benefit is an amount equal to the member's average monthly salary multiplied by 60 percent, plus an additional percent equal to that specified in section 356.315, subdivision 6, for each year and pro rata for completed months of service in excess of 20 years, if any.

be expected in the member's disabling condition that was the basis for payment of the benefit under paragraph (a). A member receiving a disability benefit under this subdivision who is found to no longer be permanently and totally disabled as defined under section 353.01, subdivision 19, but continues to meet the definition for receipt of a duty disability under section 353.01, subdivision 41, is subject to subdivision 1 upon written notice from the association's medical advisor that the person is no longer considered permanently and totally disabled.

(c) If a member approved for disability benefits under this subdivision dies before attaining normal retirement age as defined in section 353.01, subdivision 37, paragraph (b), or within 60 months of the effective date of the disability, whichever is later, the surviving spouse is entitled to receive a survivor benefit under section 353.657, subdivision 2, paragraph (a), clause (1), if the death is the direct result of the disabling condition for which disability benefits were approved, or section 353.657, subdivision 2, paragraph (a), clause (2), if the death is not directly related to the disabling condition for which benefits were approved under this subdivision.

(d) If the election of an actuarial equivalent optional annuity is not made at the time the permanent and total disability benefit accrues, an election must be made within 90 days before the member attains normal retirement age as defined under section 353.01, subdivision 37, paragraph (b), or having collected total and permanent disability benefits for 60 months, whichever is later. If a member receiving disability benefits who has dependent children dies, subdivision 6a, paragraph (c), applies.

Subd. 1b. Optional annuity election. (a) A disabled member of the police and fire fund may elect to receive the normal disability benefit or an actuarial equivalent optional annuity. If the election of an actuarial equivalent optional annuity is made before the commencement of payment of the disability benefit, the optional annuity must begin to accrue on the same date as the disability benefit covering only the disabled member would have accrued.

(b) If an election of an optional annuity is not made before the commencement of the disability benefit, the disabled member may elect an optional annuity:

- (1) within 90 days before normal retirement age;
- (2) upon the filing of an application to convert to an early retirement annuity, if electing to convert to an early retirement annuity before the normal retirement age; or
- (3) within 90 days before the expiration of the 60-month period for which a disability benefit is paid, if the disability benefit is payable because the disabled member did not have at least 20 years of allowable service at normal retirement age.

(c) If a disabled member who has named a joint and survivor optional annuity beneficiary dies before the disability benefit ceases and is recalculated under subdivision 5a, the beneficiary eligible to receive the joint and survivor annuity may elect to have the annuity converted at the times designated in paragraph (b), clause (1), (2), or (3), whichever allows for the earliest payment of a higher joint and survivor annuity option resulting from recalculation under subdivision 5a, paragraph (e).

(d) A disabled member may name a person other than the spouse as beneficiary of a joint and survivor annuity only if the spouse of the disabled member permanently waives surviving spouse coverage on the disability application form prescribed by the executive director.

(e) If the spouse of the member permanently waives survivor coverage, the dependent child or children, if any, continue to be eligible for dependent child benefits under section 353.657, subdivision 3, and the designated optional annuity beneficiary may draw the monthly benefit.

(f) Any optional annuity under this subdivision, plus dependent child benefits, if applicable, are subject to the maximum and minimum family benefit amounts specified in section 353.657, subdivision 3a.

Subd. 2. Benefits paid under workers' compensation law. (a) 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, other than those amounts excluded under paragraph (b), 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 disabled member 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).

(b) Permanent partial disability payments provided for in section 176.101, subdivision 2a, and retraining payments provided for in section 176.102, subdivision 11, must not be offset from disability payments due under paragraph (a) if the amounts of the permanent partial or retraining payments are reported to the executive director in a manner specified by the executive director.

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. Regular disability benefit. (a) A member of the police and fire plan who qualifies for a regular disability benefit as defined in section 353.01, subdivision 46, is entitled to receive a disability benefit, after filing a valid application, in an amount equal to 45 percent of the average salary as defined in section 353.01, subdivision 17a.

(b) To be eligible for a benefit under paragraph (a), the member must have at least one year of allowable service credit and have:

- (1) not met the requirements for a retirement annuity under section 353.651, subdivision 1, or
- (2) met the requirements under that subdivision, but does not have at least 15 years of allowable service credit.

(c) If paragraph (b), clause (2), applies, the disability benefit must be paid for a period of 60 months from the disability benefit accrual date and, at the end of that period, is subject to provisions of subdivision 5a.

(d) 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. 3a. Total and permanent regular disability; computation of benefits. (a) A member of the police and fire plan whose disabling condition is determined to be a regular disability under section 353.01, subdivision 46, that is also a permanent and total disability as defined in section 353.01, subdivision 19, is entitled to receive, for life, a disability benefit in an amount equal to 45 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 15 years.

Subd. 5. Optional annuity. A disabled member may elect, in lieu of spousal survivorship coverage under section 352B.11, subdivisions 2b and 2c, the normal disability benefit or an optional annuity as provided in section 352B.08, subdivision 3. The choice of an optional annuity must be made in writing, on a form prescribed by the executive director, and must be made before the commencement of the payment of the disability benefit, or within 90 days before reaching age 65 or before reaching the five-year anniversary of the effective date of the disability benefit, whichever is later. The optional annuity is effective on the date on which the disability benefit begins to accrue, or the month following the attainment of age 65 or following the five-year anniversary of the effective date of the disability benefit, whichever is later.

History: 1943 c 637 s 8; 1957 c 869 s 6; 1959 c 642 s 5; 1961 c 493 s 3; 1965 c 889 s 4; 1969 c 693 s 3; 1973 c 178 s 11; 1973 c 755 s 3; 1975 c 359 s 23; 1977 c 429 s 16; 1981 c 68 s 14; 1Sp1985 c 7 s 8; 1986 c 444; 1987 c 229 art 7 s 1; 1989 c 319 art 1 s 11; art 17 s 8,9; 1992 c 464 art 1 s 40; 1993 c 307 art 2 s 12-14; 1995 c 262 art 3 s 3; 1996 c 438 art 2 s 3; 1997 c 233 art 1 s 33; 1Sp2001 c 10 art 3 s 15; 2002 c 392 art 11 s 52; 2004 c 267 art 8 s 8-12; art 9 s 6

Subd. 2. Disabled while not on duty Regular disability benefit. If a member with at least one year of service becomes disabled and is expected to be physically or mentally unfit to perform the duties of the position for at least one year because of sickness or injury that occurred while not engaged in covered employment, the individual who qualifies for a regular disability benefit as defined in section 352B.001, subdivision 12, is entitled to regular disability benefits. The benefit must be computed as if the individual were 55 years old at the date of disability and the annuity was payable under section 352B.08. If a disability under this subdivision occurs after one year of service but before 15 years of service, the disability benefit must be computed as though the individual had credit for 15 years of service.

(b) A disability benefit payable under paragraph (a) is subject to eligibility review under section 353.33, subdivision 6, but the review may be waived if the executive director receives a written statement from the association's medical advisor that no improvement can be expected in the member's disabling condition that was the basis for payment of the benefit under paragraph (a). A member receiving a disability benefit under this subdivision who is found to no longer be permanently and totally disabled as defined under section 353.01, subdivision 19, but continues to meet the definition for receipt of a regular disability under section 353.01, subdivision 46, is subject to subdivision 3 upon written notice from the association's medical advisor that the person is no longer considered permanently and totally disabled.

(c) A member approved for disability benefits under this subdivision may elect to receive a normal disability benefit or an actuarial equivalent optional annuity. If the election of an actuarial equivalent optional annuity is not made at the time the total and permanent disability benefit accrues, an election must be made within 90 days before the member attains normal retirement age as defined in section 353.01, subdivision 37, paragraph (b), or having collected disability benefits for 60 months, whichever is later. No surviving spouse benefits are payable if the member dies during the period in which a normal total and permanent disability benefit is being paid. If a member receiving disability benefits who has dependent children dies, subdivision 6a, paragraph (c), applies.

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, sick leave, or any other employer-provided salary continuation plan, 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 disabilitant reemployment earnings limit, the amount of the disability benefit must be reduced as provided in this paragraph. The disabilitant 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.

(c) 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 disabilitant reemployment earnings limit. In no event may the disability benefit as adjusted under this subdivision exceed the disability benefit originally allowed.

Subd. 5. [Repealed, 2007 c 134 art 4 s 36]

Subd. 5a. Cessation of disability benefit. (a) The association shall cease the payment of any 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.

(b) A disability benefit paid to a disabled member of the police and fire plan, that was granted under laws in effect after June 30, 2007, terminates at the end of the month in which the member:

- (1) reaches normal retirement age;
- (2) if the disability benefit is payable for a 60-month period as determined under subdivisions 1 and 3, as applicable, the first of the month following the expiration of the 60-month period; or
- (3) if the disabled member so chooses, the end of the month in which the member has elected to convert to an early retirement annuity under section 353.651, subdivision 4.

(c) If the police and fire plan member continues to be disabled when the disability benefit terminates under this subdivision, the member is deemed to be retired. The individual is entitled to receive a normal retirement annuity or an early retirement annuity under section 353.651, whichever is applicable, as further specified in paragraph (d) or (e). If the individual did not previously elect an optional annuity under subdivision 1a, paragraph (a), the individual may elect an optional annuity under subdivision 1a, paragraph (b).

(d) A member of the police and fire plan who is receiving a disability benefit under this section may, upon application, elect to receive an early retirement annuity under section 353.651, subdivision 4, at any time after attaining age 50, but must convert to a retirement annuity no later than the end of the month in which the disabled member attains normal retirement age. An early retirement annuity elected under this subdivision must be calculated on the disabled member's accrued years of service and average salary as defined in section 353.01, subdivision 17a, and when elected, the member is deemed to be retired.

(e) When an individual's benefit is recalculated as a retirement annuity under this section, the annuity must be based on clause (1) or clause (2), whichever provides the greater amount:

- (1) the benefit amount at the time of reclassification, including all prior adjustments provided under section 11A.18; or
- (2) a benefit amount computed on the member's actual years of accrued allowable service credit and the law in effect at the time the disability benefit first accrued, plus any increases that would have applied since that date under section 11A.18.

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

Subd. 6a. Disability survivor benefits for pre-July 1, 2007, disabilitants. (a) If a member who is receiving a disability benefit that was granted under the laws in effect before July 1, 2007, dies before attaining normal retirement age as defined under section 353.01, subdivision 37, paragraph (b), 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, paragraph (a), clause (2); or 2a, unless the surviving spouse elected to receive a refund under section 353.32, subdivision 1. The joint and survivor optional annuity under subdivision 2a is based on the minimum disability benefit under subdivision 1 or 3, or the deceased member's allowable service, whichever is greater.

(b) If the disability benefit was granted under the laws in effect before July 1, 2007, and the disabilitant 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 disabled 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 before attaining normal retirement age as defined under section 353.01, subdivision 37, paragraph (b), or within 90 days before 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.

(c) If any disabled member dies while receiving a benefit and has a dependent child or children, 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. The application procedures to determine eligibility for police and fire plan disability benefits are defined under section 353.031.

Subd. 9. [Repealed, 2007 c 134 art 4 s 36]

Subd. 3. Annual and sick leave; work at lower pay. No member is entitled to receive a disability benefit payment when the member has unused annual leave or sick leave, or under any other circumstances when, during the period of disability, there has been no impairment of salary. If the disabilitant resumes gainful employment, the disability benefit must be continued in an amount which, when added to current earnings, does not exceed the salary rate received by the person at the date of disability, which must be adjusted over time by the percentage increase in United States average wages used by the Social Security Administration in calculating average indexed monthly earnings for the old age, survivors, and disability insurance programs for the same period.

352B.105 TERMINATION OF DISABILITY BENEFITS.

Disability benefits payable under section 352B.10 must terminate on the transfer date, which is the end of the month in which the disabilitant becomes 65 years old or the five-year anniversary of the effective date of the disability benefit, whichever is later. If the disabilitant is still disabled on the transfer date, the disabilitant must be deemed to be a retired member and, if the disabilitant had chosen an optional annuity under section 352B.10, subdivision 5, must receive an annuity under the terms of the optional annuity previously chosen. If the disabilitant had not chosen an optional annuity under section 352B.10, subdivision 5, the disabilitant may then choose to receive either a normal retirement annuity computed under section 352B.08, subdivision 2, or an optional annuity as provided in section 352B.08, subdivision 3. An optional annuity must be chosen within 90 days of attaining the transfer date. If an optional annuity is chosen, the optional annuity accrues on the first of the month next following the transfer date.

History: 1969 c 693 s 4; 1973 c 178 s 12; 1981 c 68 s 15; 1983 c 128 s 27; 1987 c 229 art 7 s 1; 1992 c 464 art 1 s 41; 1993 c 307 art 2 s 15; 1995 c 141 art 3 s 5; 2004 c 267 art 8 s 13

Subd. 10. **Accrual of benefits.** (a) Except for a total and permanent disability under subdivision 1a, a disability benefit begins to accrue when the applicant is no longer receiving any form of compensation, whether salary or paid leave 90 days preceding the filing of an application; or, if annual or sick leave, or any other employer-paid salary continuation plan is paid for more than the 90-day period, from the date on which the payment of salary ceased, whichever is later. Except for a total and permanent disability under subdivision 1a, no member is entitled to receive a disability benefit payment when there remains to the member's credit any unused annual leave, sick leave, or any other employer-paid salary continuation benefit, or under any other circumstances when, during the period of disability, there has been no impairment of the person's salary.

(b) Payment of the disability benefit must not continue beyond the end of the month in which entitlement has terminated. If the disabilitant 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. [Repealed, 2007 c 134 art 4 s 36]

Subd. 12. [Repealed, 2007 c 134 art 4 s 36]

Subd. 13. **Chemical dependency limitations to disability benefit eligibility.** (a) No benefits are payable for any disability resulting in whole or in part from the member's current use of illegal drugs. This exclusion does not apply to a member who:

(1) has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and is no longer engaging in such use; or

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use.

(b) "Illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under United States Code, title 21, section 801. "Illegal use of drugs" does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by United States Code, title 21, or other provisions of law.

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; 2007 c 134 art 4 s 15-25; 2008 c 349 art 5 s 23; art 12 s 1

- 1.1 moves to amend ... F. No. as follows:
- 1.2 Page 1, line 18, delete "352B.001" and insert "352B.011"
- 1.3 Page 4, line 16, delete "352B.001" and insert "352B.011"
- 1.4 Page 9, line 4, delete "352B.001" and insert "352B.011"
- 1.5 Page 10, line 28, delete "352B.001" and insert "352B.011"
- 1.6 Page 11, lines 5 and 13, delete "352B.001" and insert "352B.011"

- 1.1 moves to amend S.F. No. 546; H.F. No. 726, as follows:
- 1.2 Page 4, line 16, strike "(6)" and insert "(8)"
- 1.3 Page 6, line 12, delete "deductions," and insert "deductions" and delete "account,"
- 1.4 and insert "account as permitted by law"
- 1.5 Page 6, line 16, delete "plan" and insert "fund"
- 1.6 Page 6, lines 18, 21, and 21, after "fund" insert "under law"
- 1.7 Page 6, line 27, after "or" insert "until the date of a"
- 1.8 Page 7, line 1, after "(b)" insert "The salary used for the calculation of"
- 1.9 Page 7, line 2, after the period insert "The salary used for the calculation of"
- 1.10 Page 7, line 9, delete "finance" and insert "management and budget"
- 1.11 Page 9, line 5, after "CREDIT" insert "FOR CERTAIN DISABILITY LEAVES
- 1.12 OF ABSENCE"
- 1.13 Page 9, line 8, after "absence" insert "under section 352B.011, subdivision 3,
- 1.14 paragraph (b),"
- 1.15 Page 9, line 9, after the second "salary" insert "that" and after the second "if" insert "
- 1.16 the member was"
- 1.17 Page 9, line 15, after the first "the" insert "member's"
- 1.18 Page 9, line 20, delete "service" and insert "services"
- 1.19 Page 9, line 25, after the first "the" insert "member"
- 1.20 Page 10, line 20, delete "subdivision" and insert "section"
- 1.21 Page 10, line 24, delete "of the state"
- 1.22 Page 10, line 25, delete "patrol retirement fund"
- 1.23 Page 10, line 28, after "receive" insert "a duty"
- 1.24 Page 10, line 29, strike "benefits" and insert "benefit" and strike "in" and strike "
- 1.25 installments"
- 1.26 Page 10, line 30, before "benefit" insert "duty disability"
- 1.27 Page 11, line 1, strike "If"
- 1.28 Page 11, line 6, before "regular" insert "a" and strike "benefits" and insert "benefit"
- 1.29 and after the first "The" insert "regular disability"
- 1.30 Page 11, line 7, after "and" insert "as if" and after "a" insert "regular"
- 1.31 Page 11, line 9, before "disability" insert "regular"
- 1.32 Page 11, line 12, before "Each" insert "(a)"
- 1.33 Page 11, line 15, after "member." insert:
- 1.34 "(b)"
- 1.35 Page 11, line 20, after "separation." insert:
- 1.36 "(c)"

- 2.1 Page 11, line 22, after "child." insert:
- 2.2 "(d)"
- 2.3 Page 11, line 23, after "child." insert:
- 2.4 "(e)"
- 2.5 Page 11, after line 28, insert:
- 2.6 "Sec. 12. EFFECTIVE DATE.
- 2.7 Sections 1 to 11 are effective July 1, 2009."

1.1 moves to amend S.F. No. 546; H.F. No. 726, as follows:

1.2 Page 1, delete section 2

1.1 moves to amend S.F. No. 546; H.F. No. 726, as follows:

1.2 Page 11, after line 28, insert:

1.3 "Sec. 12. **EFFECTIVE DATE; RETROACTIVITY.**

1.4 (a) Except as provided in paragraph (b), sections 1 to 11 are effective July 1, 2009.

1.5 (b) Section 4, subdivision 3, paragraph (a), clause (1), is effective retroactively from
1.6 July 1, 1969, and allowable service on the records of the State Patrol retirement plan credit
1.7 consistent with that provision is validated."

- 1.1 moves to amend S.F. No. 546; H.F. No. 726, as follows:
- 1.2 Page 11, line 1, strike "If" and reinstate "with"
- 1.3 Page 11, line 2, reinstate "~~at least one year of service~~"

1.1 moves to amend S.F. No. 546; H.F. No. 726, as follows:

1.2 Page 11, line 1, strike "If" and reinstate "with"

1.3 Page 11, line 2, reinstate "~~at least~~" and after "year" insert "three years" and reinstate "
1.4 of service"

1.1 moves to amend S.F. No. 546; H.F. No. 726, as follows:

1.2 Page 10, line 28, after before "is" insert "and who has not met the requirements for a
1.3 retirement annuity under section 352B.08, subdivision 1, or has met the requirements for
1.4 a retirement annuity under section 352B.08, subdivision 1, but has less than 20 years of
1.5 service,"

1.6 Page 11, line 5, before "is" insert "and who has not met the requirements for a
1.7 retirement annuity under section 352B.08, subdivision 1, or has met the requirements for
1.8 a retirement annuity under section 352B.08, subdivision 1, but has less than 15 years of
1.9 service,"

1.10 Page 11, after line 10, insert:

1.11 "Sec. 10. Minnesota Statutes 2008, section 352B.105, is amended to read:

1.12 **352B.105 TERMINATION OF DISABILITY BENEFITS.**

1.13 Disability benefits payable under section 352B.10 must terminate on the transfer
1.14 date, which is the end of the month in which the disabilitant becomes ~~65~~ 55 years old or
1.15 the five-year anniversary of the effective date of the disability benefit, whichever is later.
1.16 If the disabilitant is still disabled on the transfer date, the disabilitant must be deemed to
1.17 be a retired member and, if the disabilitant had chosen an optional annuity under section
1.18 352B.10, subdivision 5, must receive an annuity under the terms of the optional annuity
1.19 previously chosen. If the disabilitant had not chosen an optional annuity under section
1.20 352B.10, subdivision 5, the disabilitant may then choose to receive either a normal
1.21 retirement annuity computed under section 352B.08, subdivision 2, or an optional annuity
1.22 as provided in section 352B.08, subdivision 3. An optional annuity must be chosen within
1.23 90 days of attaining the transfer date. If an optional annuity is chosen, the optional annuity
1.24 accrues on the first of the month next following the transfer date."

1.25 Renumber the sections in sequence and correct the internal references

1.26 Amend the title accordingly

Senator Betzold introduced-

S.F. No. 546: Referred to the Committee on State and Local Government Operations and Oversight.

1.1 A bill for an act
 1.2 relating to retirement; defining terms; amending disability benefits provisions;
 1.3 making technical changes; amending Minnesota Statutes 2008, sections 43A.34,
 1.4 subdivision 4; 299A.465, subdivision 1; 352.01, subdivision 2b; 352B.02,
 1.5 subdivision 1; 352B.10, subdivisions 1, 2; 352B.11, subdivision 2; proposing
 1.6 coding for new law in Minnesota Statutes, chapter 352B; repealing Minnesota
 1.7 Statutes 2008, section 352B.01, subdivisions 1, 2, 3, 3b, 4, 6, 7, 9, 10, 11.

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

1.9 Section 1. Minnesota Statutes 2008, section 43A.34, subdivision 4, is amended to read:

1.10 Subd. 4. **Officers exempted.** Notwithstanding any provision to the contrary, (a)
 1.11 conservation officers and crime bureau officers who were first employed on or after July
 1.12 1, 1973, and who are members of the State Patrol retirement fund by reason of their
 1.13 employment, and members of the Minnesota State Patrol Division and Alcohol and
 1.14 Gambling Enforcement Division of the Department of Public Safety who are members
 1.15 of the State Patrol Retirement Association by reason of their employment, shall not
 1.16 continue employment after attaining the age of 60 years, except for a fractional portion
 1.17 of one year that will enable the employee to complete the employee's next full year of
 1.18 allowable service as defined pursuant to section ~~352B.01~~ 352B.001, subdivision 3; and (b)
 1.19 conservation officers and crime bureau officers who were first employed and are members
 1.20 of the State Patrol retirement fund by reason of their employment before July 1, 1973,
 1.21 shall not continue employment after attaining the age of 70 years.

1.22 Sec. 2. Minnesota Statutes 2008, section 299A.465, subdivision 1, is amended to read:

1.23 Subdivision 1. **Officer or firefighter disabled in line of duty.** (a) This subdivision
 1.24 applies to any peace officer or firefighter:

2.1 (1) who the Public Employees Retirement Association or the Minnesota State
 2.2 Retirement System determines is eligible to receive a duty disability benefit pursuant to
 2.3 section 353.656 or 352B.10, subdivision 1, respectively; or

2.4 (2) who (i) does not qualify to receive disability benefits by operation of the
 2.5 eligibility requirements set forth in section 353.656, subdivision 1, paragraph (b), (ii)
 2.6 retires pursuant to section 353.651, subdivision 4, or (iii) is a member of a local police or
 2.7 salaried firefighters relief association and qualifies for a duty disability benefit under the
 2.8 terms of plans of the relief associations, and the peace officer or firefighter described in
 2.9 item (i), (ii), or (iii) has discontinued public service as a peace officer or firefighter as a
 2.10 result of a disabling injury and has been determined, by the Public Employees Retirement
 2.11 Association, to have otherwise met the duty disability criteria set forth in section 353.01,
 2.12 subdivision 41.

2.13 (b) A determination made on behalf of a peace officer or firefighter described in
 2.14 paragraph (a), clause (2), must be at the request of the peace officer or firefighter made for
 2.15 the purposes of this section. Determinations made in accordance with paragraph (a) are
 2.16 binding on the peace officer or firefighter, employer, and state. The determination must be
 2.17 made by the executive director of the Public Employees Retirement Association and is
 2.18 not subject to section 356.96, subdivision 2. Upon making a determination, the executive
 2.19 director shall provide written notice to the peace officer or firefighter and the employer.
 2.20 This notice must include:

2.21 (1) a written statement of the reasons for the determination;

2.22 (2) a notice that the person may petition for a review of the determination by
 2.23 requesting that a contested case be initiated before the Office of Administrative Hearings,
 2.24 the cost of which must be borne by the peace officer or firefighter and the employer; and

2.25 (3) a statement that any person who does not petition for a review within 60 days
 2.26 is precluded from contesting issues determined by the executive director in any other
 2.27 administrative review or court procedure.

2.28 If, prior to the contested case hearing, additional information is provided to support the
 2.29 claim for duty disability as defined in section 353.01, subdivision 41, the executive
 2.30 director may reverse the determination without the requested hearing. If a hearing is held
 2.31 before the Office of Administrative Hearings, the determination rendered by the judge
 2.32 conducting the fact-finding hearing is a final decision and order under section 14.62,
 2.33 subdivision 2a, and is binding on the executive director, the peace officer or firefighter,
 2.34 employer, and state. Review of a final determination made by the Office of Administrative
 2.35 Hearings under this section may only be obtained by writ of certiorari to the Minnesota
 2.36 Court of Appeals under sections 14.63 to 14.68. Only the peace officer or firefighter,

3.1 employer, and state have standing to participate in a judicial review of the decision of the
 3.2 Office of Administrative Hearings.

3.3 (c) The officer's or firefighter's employer shall continue to provide health coverage
 3.4 for:

3.5 (1) the officer or firefighter; and

3.6 (2) the officer's or firefighter's dependents if the officer or firefighter was receiving
 3.7 dependent coverage at the time of the injury under the employer's group health plan.

3.8 (d) The employer is responsible for the continued payment of the employer's
 3.9 contribution for coverage of the officer or firefighter and, if applicable, the officer's
 3.10 or firefighter's dependents. Coverage must continue for the officer or firefighter and, if
 3.11 applicable, the officer's or firefighter's dependents until the officer or firefighter reaches or,
 3.12 if deceased, would have reached the age of 65. However, coverage for dependents does
 3.13 not have to be continued after the person is no longer a dependent.

3.14 Sec. 3. Minnesota Statutes 2008, section 352.01, subdivision 2b, is amended to read:

3.15 Subd. 2b. **Excluded employees.** "State employee" does not include:

3.16 (1) students employed by the University of Minnesota, or the state colleges and
 3.17 universities, unless approved for coverage by the Board of Regents of the University of
 3.18 Minnesota or the Board of Trustees of the Minnesota State Colleges and Universities,
 3.19 whichever is applicable;

3.20 (2) employees who are eligible for membership in the state Teachers Retirement
 3.21 Association, except employees of the Department of Education who have chosen or may
 3.22 choose to be covered by the general state employees retirement plan of the Minnesota
 3.23 State Retirement System instead of the Teachers Retirement Association;

3.24 (3) employees of the University of Minnesota who are excluded from coverage by
 3.25 action of the Board of Regents;

3.26 (4) officers and enlisted personnel in the National Guard and the naval militia who
 3.27 are assigned to permanent peacetime duty and who under federal law are or are required to
 3.28 be members of a federal retirement system;

3.29 (5) election officers;

3.30 (6) persons who are engaged in public work for the state but who are employed
 3.31 by contractors when the performance of the contract is authorized by the legislature or
 3.32 other competent authority;

3.33 (7) officers and employees of the senate, or of the house of representatives, or of a
 3.34 legislative committee or commission who are temporarily employed;

4.1 (8) receivers, jurors, notaries public, and court employees who are not in the judicial
 4.2 branch as defined in section 43A.02, subdivision 25, except referees and adjusters
 4.3 employed by the Department of Labor and Industry;

4.4 (9) patient and inmate help in state charitable, penal, and correctional institutions
 4.5 including the Minnesota Veterans Home;

4.6 (10) persons who are employed for professional services where the service is
 4.7 incidental to their regular professional duties and whose compensation is paid on a per
 4.8 diem basis;

4.9 (11) employees of the Sibley House Association;

4.10 (12) the members of any state board or commission who serve the state intermittently
 4.11 and are paid on a per diem basis; the secretary, secretary-treasurer, and treasurer of those
 4.12 boards if their compensation is \$5,000 or less per year, or, if they are legally prohibited
 4.13 from serving more than three years; and the board of managers of the State Agricultural
 4.14 Society and its treasurer unless the treasurer is also its full-time secretary;

4.15 (13) state troopers and persons who are described in section ~~352B.01, subdivision 2~~
 4.16 352B.001, subdivision 10, clauses (2) to (6);

4.17 (14) temporary employees of the Minnesota State Fair who are employed on or
 4.18 after July 1 for a period not to extend beyond October 15 of that year; and persons who
 4.19 are employed at any time by the state fair administration for special events held on the
 4.20 fairgrounds;

4.21 (15) emergency employees who are in the classified service; except that if an
 4.22 emergency employee, within the same pay period, becomes a provisional or probationary
 4.23 employee on other than a temporary basis, the employee shall be considered a "state
 4.24 employee" retroactively to the beginning of the pay period;

4.25 (16) temporary employees in the classified service, and temporary employees in the
 4.26 unclassified service who are appointed for a definite period of not more than six months
 4.27 and who are employed less than six months in any one-year period;

4.28 (17) interns hired for six months or less and trainee employees, except those listed in
 4.29 subdivision 2a, clause (8);

4.30 (18) persons whose compensation is paid on a fee basis or as an independent
 4.31 contractor;

4.32 (19) state employees who are employed by the Board of Trustees of the Minnesota
 4.33 State Colleges and Universities in unclassified positions enumerated in section 43A.08,
 4.34 subdivision 1, clause (9);

4.35 (20) state employees who in any year have credit for 12 months service as teachers
 4.36 in the public schools of the state and as teachers are members of the Teachers Retirement

5.1 Association or a retirement system in St. Paul, Minneapolis, or Duluth, except for
5.2 incidental employment as a state employee that is not covered by one of the teacher
5.3 retirement associations or systems;

5.4 (21) employees of the adjutant general who are employed on an unlimited
5.5 intermittent or temporary basis in the classified or unclassified service for the support of
5.6 Army and Air National Guard training facilities;

5.7 (22) chaplains and nuns who are excluded from coverage under the federal Old
5.8 Age, Survivors, Disability, and Health Insurance Program for the performance of service
5.9 as specified in United States Code, title 42, section 410(a)(8)(A), as amended, if no
5.10 irrevocable election of coverage has been made under section 3121(r) of the Internal
5.11 Revenue Code of 1986, as amended through December 31, 1992;

5.12 (23) examination monitors who are employed by departments, agencies,
5.13 commissions, and boards to conduct examinations required by law;

5.14 (24) persons who are appointed to serve as members of fact-finding commissions or
5.15 adjustment panels, arbitrators, or labor referees under chapter 179;

5.16 (25) temporary employees who are employed for limited periods under any state or
5.17 federal program for training or rehabilitation, including persons who are employed for
5.18 limited periods from areas of economic distress, but not including skilled and supervisory
5.19 personnel and persons having civil service status covered by the system;

5.20 (26) full-time students who are employed by the Minnesota Historical Society
5.21 intermittently during part of the year and full-time during the summer months;

5.22 (27) temporary employees who are appointed for not more than six months, of
5.23 the Metropolitan Council and of any of its statutory boards, if the board members are
5.24 appointed by the Metropolitan Council;

5.25 (28) persons who are employed in positions designated by the Department of
5.26 Finance as student workers;

5.27 (29) members of trades who are employed by the successor to the Metropolitan
5.28 Waste Control Commission, who have trade union pension plan coverage under a
5.29 collective bargaining agreement, and who are first employed after June 1, 1977;

5.30 (30) off-duty peace officers while employed by the Metropolitan Council;

5.31 (31) persons who are employed as full-time police officers by the Metropolitan
5.32 Council and as police officers are members of the public employees police and fire fund;

5.33 (32) persons who are employed as full-time firefighters by the Department of Military
5.34 Affairs and as firefighters are members of the public employees police and fire fund;

5.35 (33) foreign citizens with a work permit of less than three years, or an H-1b/JV visa
5.36 valid for less than three years of employment, unless notice of extension is supplied which

6.1 allows them to work for three or more years as of the date the extension is granted, in
 6.2 which case they are eligible for coverage from the date extended; and

6.3 (34) persons who are employed by the Board of Trustees of the Minnesota State
 6.4 Colleges and Universities and who elected to remain members of the Public Employees
 6.5 Retirement Association or the Minneapolis Employees Retirement Fund, whichever
 6.6 applies, under Minnesota Statutes 1994, section 136C.75.

6.7 Sec. 4. [352B.011] DEFINITIONS.

6.8 Subdivision 1. Scope. For the purposes of this chapter, the terms defined in this
 6.9 section have the meanings given them.

6.10 Subd. 2. Accumulated deductions. "Accumulated deductions" means the total
 6.11 sums deducted from the salary of a member and the total amount of assessments paid
 6.12 by a member in place of deductions, and credited to the member's individual account,
 6.13 without interest.

6.14 Subd. 3. Allowable service. (a) "Allowable service" means:

6.15 (1) service in a month during which a member is paid a salary from which a member
 6.16 contribution is deducted, deposited, and credited in the State Patrol retirement plan;

6.17 (2) for members defined in subdivision 10, clause (1), service in any month for
 6.18 which payments have been made to the State Patrol retirement fund; and

6.19 (3) for members defined in subdivision 10, clauses (2) and (3), service for which
 6.20 payments have been made to the State Patrol retirement fund, service for which payments
 6.21 were made to the State Police officers retirement fund after June 30, 1961, and all prior
 6.22 service which was credited to a member for service on or before June 30, 1961.

6.23 (b) Allowable service also includes any period of absence from duty by a member
 6.24 who, by reason of injury incurred in the performance of duty, is temporarily disabled and
 6.25 for which disability the state is liable under the workers' compensation law, until the
 6.26 date authorized by the executive director for commencement of payment of a disability
 6.27 benefit or return to employment.

6.28 Subd. 4. Average monthly salary. (a) Subject to the limitations of section 356.611,
 6.29 "average monthly salary" means the average of the highest monthly salaries for five
 6.30 years of service as a member upon which contributions were deducted from pay under
 6.31 section 352B.02, or upon which appropriate contributions or payments were made to
 6.32 the fund to receive allowable service and salary credit as specified under the applicable
 6.33 law. Average monthly salary must be based upon all allowable service if this service is
 6.34 less than five years.

7.1 (b) "Average monthly salary" means the salary of the member as defined in section
 7.2 352.01, subdivision 13. "Average monthly salary" does not include any lump-sum annual
 7.3 leave payments and overtime payments made at the time of separation from state service,
 7.4 any amounts of severance pay, or any reduced salary paid during the period the person is
 7.5 entitled to workers' compensation benefit payments for temporary disability.

7.6 Subd. 5. **Department head.** "Department head" means the head of any department,
 7.7 institution, or branch of the state service that directly pays salaries from state funds
 7.8 to a member who prepares, approves, and submits salary abstracts of employees to the
 7.9 commissioner of finance.

7.10 Subd. 6. **Dependent child.** "Dependent child" means a natural or adopted unmarried
 7.11 child of a deceased member under the age of 18 years, including any child of the member
 7.12 conceived during the lifetime of the member and born after the death of the member.

7.13 Subd. 7. **Duty disability.** "Duty disability" means a physical or psychological
 7.14 condition that is expected to prevent a member, for a period of not less than 12 months,
 7.15 from performing the normal duties of the position held by the person as a member of the
 7.16 state patrol retirement fund, and that is the direct result of any injury incurred during, or a
 7.17 disease arising out of, the performance of normal duties or the actual performance of less
 7.18 frequent duties, either of which are specific to protecting the property and personal safety
 7.19 of others and that present inherent dangers that are specific to the positions covered by
 7.20 the state patrol retirement fund.

7.21 Subd. 8 **Fund.** "Fund" means the State Patrol retirement fund.

7.22 Subd. 9. **Less frequent duties.** "Less frequent duties" means tasks which are
 7.23 designated in the member's job description as either required from time to time or as
 7.24 assigned, but which are not carried out as part of the normal routine of the member's
 7.25 position.

7.26 Subd. 10. **Member.** "Member" means:

7.27 (1) a State Patrol member currently employed under section 299D.03 by the state,
 7.28 who is a peace officer under section 626.84, and whose salary or compensation is paid
 7.29 out of state funds;

7.30 (2) a conservation officer employed under section 97A.201, currently employed by
 7.31 the state, whose salary or compensation is paid out of state funds;

7.32 (3) a crime bureau officer who was employed by the crime bureau and was a member
 7.33 of the Highway Patrolmen's retirement fund on July 1, 1978, whether or not that person
 7.34 has the power of arrest by warrant after that date, or who is employed as police personnel,
 7.35 with powers of arrest by warrant under section 299C.04, and who is currently employed
 7.36 by the state, and whose salary or compensation is paid out of state funds;

8.1 (4) a person who is employed by the state in the Department of Public Safety in a
8.2 data processing management position with salary or compensation paid from state funds,
8.3 who was a crime bureau officer covered by the State Patrol retirement plan on August
8.4 15, 1987, and who was initially hired in the data processing management position within
8.5 the department during September 1987, or January 1988, with membership continuing
8.6 for the duration of the person's employment in that position, whether or not the person
8.7 has the power of arrest by warrant after August 15, 1987;

8.8 (5) a public safety employee who is a peace officer under section 626.84, subdivision
8.9 1, paragraph (c), and who is employed by the Division of Alcohol and Gambling
8.10 Enforcement under section 299L.01;

8.11 (6) a Fugitive Apprehension Unit officer after October 31, 2000, who is employed
8.12 by the Office of Special Investigations of the Department of Corrections and who is a
8.13 peace officer under section 626.84;

8.14 (7) an employee of the Department of Commerce defined as a peace officer in section
8.15 626.84, subdivision 1, paragraph (c), who is employed by the Division of Insurance Fraud
8.16 Prevention under section 45.0135 after January 1, 2005, and who has not attained the
8.17 mandatory retirement age specified in section 43A.34, subdivision 4; and

8.18 (8) an employee of the Department of Public Safety, who is a licensed peace officer
8.19 under section 626.84, subdivision 1, paragraph (c), and is employed as the statewide
8.20 coordinator of the Gang and Drug Oversight Council.

8.21 Subd. 11. **Normal duties.** "Normal duties" means specific tasks which are
8.22 designated in the member's job description and which the applicant performs on a
8.23 day-to-day basis, but do not include less frequent duties which may be requested to be
8.24 done by the employer from time to time.

8.25 Subd. 12. **Regular disability.** "Regular disability" means a physical or
8.26 psychological condition that is expected to prevent a member, for a period of not less than
8.27 12 months, from performing the normal duties of the position held by a person who is a
8.28 member of the State Patrol retirement plan, and which results from a disease or an injury
8.29 that arises from any activities while not at work, or while at work and performing those
8.30 normal or less frequent duties that do not present inherent dangers that are specific to the
8.31 occupations covered by the State Patrol retirement plan.

8.32 Subd. 13. **Surviving spouse.** "Surviving spouse" means a member's or former
8.33 member's legally married spouse who resided with the member or former member at the
8.34 time of death and was married to the member or former member, for a period of at least
8.35 one year, during or before the time of membership.

9.1 Sec. 5, Minnesota Statutes 2008, section 352B.02, subdivision 1, is amended to read:

9.2 Subdivision 1. **Fund created; membership.** A State Patrol retirement fund is
 9.3 established. Its membership consists of all persons defined in section ~~352B.01, subdivision~~
 9.4 ~~352B.001, subdivision 10.~~

9.5 Sec. 6. **[352B.085] SERVICE CREDIT.**

9.6 A member on leave of absence receiving temporary workers' compensation
 9.7 payments and a reduced salary or no salary from the employer who is entitled to allowable
 9.8 service credit for the period of absence may make payment to the fund for the difference
 9.9 between salary received, if any, and the salary the member would normally receive if not
 9.10 on leave of absence during the period. The member shall pay an amount equal to the
 9.11 member and employer contribution rate under section 352B.02, subdivisions 1b and 1c,
 9.12 on the differential salary amount for the period of the leave of absence. The employing
 9.13 department, at its option, may pay the employer amount on behalf of the member. Payment
 9.14 made under this subdivision must include interest at the rate of 8.5 percent per year, and
 9.15 must be completed within one year of the return from the leave of absence.

9.16 Sec. 7. **[352B.086] SERVICE CREDIT FOR UNIFORMED SERVICE.**

9.17 (a) A member who is absent from employment by reason of service in the uniformed
 9.18 services, as defined in United States Code, title 38, section 4303(13), and who returns to
 9.19 state employment in a position covered by the plan upon discharge from service in the
 9.20 uniformed service within the time frame required in United States Code, title 38, section
 9.21 4312(e), may obtain service credit for the period of the uniformed service, provided that
 9.22 the member did not separate from uniformed service with a dishonorable or bad conduct
 9.23 discharge or under other than honorable conditions.

9.24 (b) The member may obtain credit by paying into the fund an equivalent member
 9.25 contribution based on the contribution rate or rates in effect at the time that the uniformed
 9.26 service was performed multiplied by the full and fractional years being purchased and
 9.27 applied to the annual salary rate. The annual salary rate is the average annual salary
 9.28 during the purchase period that the member would have received if the member had
 9.29 continued to provide employment services to the state rather than to provide uniformed
 9.30 service, or if the determination of that rate is not reasonably certain, the annual salary rate
 9.31 is the member's average salary rate during the 12-month period of covered employment
 9.32 rendered immediately preceding the purchase period.

9.33 (c) The equivalent employer contribution and, if applicable, the equivalent employer
 9.34 additional contribution, must be paid by the employing unit, using the employer and

10.1 employer additional contribution rate or rates in effect at the time that the uniformed
 10.2 service was performed, applied to the same annual salary rate or rates used to compute the
 10.3 equivalent member contribution.

10.4 (d) If the member equivalent contributions provided for in this subdivision are not
 10.5 paid in full, the member's allowable service credit must be prorated by multiplying the
 10.6 full and fractional number of years of uniformed service eligible for purchase by the
 10.7 ratio obtained by dividing the total member contributions received by the total member
 10.8 contributions otherwise required under this subdivision.

10.9 (e) To receive allowable service credit under this subdivision, the contributions
 10.10 specified in this section must be transmitted to the fund during the period which begins
 10.11 with the date on which the individual returns to state employment covered by the plan and
 10.12 which has a duration of three times the length of the uniformed service period, but not
 10.13 to exceed five years. If the determined payment period is calculated to be less than one
 10.14 year, the contributions required under this subdivision to receive service credit may be
 10.15 within one year from the discharge date.

10.16 (f) The amount of allowable service credit obtainable under this section may not
 10.17 exceed five years, unless a longer purchase period is required under United States Code,
 10.18 title 38, section 4312.

10.19 (g) The employing unit shall pay interest on all equivalent member and employer
 10.20 contribution amounts payable under this subdivision. Interest must be computed at a rate
 10.21 of 8.5 percent compounded annually from the end of each fiscal year of the leave or break
 10.22 in service to the end of the month in which payment is received.

10.23 Sec. 8. Minnesota Statutes 2008, section 352B.10, subdivision 1, is amended to read:

10.24 Subdivision 1. ~~Injuries; payment amounts~~ **Duty disability.** A member of the state
 10.25 patrol retirement fund ~~who becomes disabled and who is expected to be physically or~~
 10.26 ~~mentally unfit to perform duties for at least one year as a direct result of an injury, sickness,~~
 10.27 ~~or other disability that incurred in or arose out of any act of duty~~ is determined to qualify
 10.28 for duty disability as defined in section 352B.001, subdivision 7, is entitled to receive
 10.29 disability benefits while disabled. The benefits must be paid in monthly installments. The
 10.30 benefit is an amount equal to the member's average monthly salary multiplied by 60
 10.31 percent, plus an additional percent equal to that specified in section 356.315, subdivision
 10.32 6, for each year and pro rata for completed months of service in excess of 20 years, if any.

10.33 Sec. 9. Minnesota Statutes 2008, section 352B.10, subdivision 2, is amended to read:

11.1 Subd. 2. ~~Disabled while not on duty~~ **Regular disability benefit.** If a member with
 11.2 ~~at least one year of service becomes disabled and is expected to be physically or mentally~~
 11.3 ~~unfit to perform the duties of the position for at least one year because of sickness or injury~~
 11.4 ~~that occurred while not engaged in covered employment, the individual~~ who qualifies for
 11.5 a regular disability benefit as defined in section 352B.001, subdivision 12, is entitled to
 11.6 regular disability benefits. The benefit must be computed as if the individual were 55
 11.7 years old at the date of disability and the annuity was payable under section 352B.08. If a
 11.8 disability under this subdivision occurs after one year of service but before 15 years of
 11.9 service, the disability benefit must be computed as though the individual had credit for
 11.10 15 years of service.

11.11 Sec. 10. Minnesota Statutes 2008, section 352B.11, subdivision 2, is amended to read:

11.12 Subd. 2. **Death; payment to dependent children; family maximums.** Each
 11.13 dependent child, as defined in section ~~352B.01, subdivision 10~~ 352B.001, subdivision 6, is
 11.14 entitled to receive a monthly annuity equal to ten percent of the average monthly salary
 11.15 of the deceased member. A dependent child over 18 and under 23 years of age also may
 11.16 receive the monthly benefit provided in this section if the child is continuously attending
 11.17 an accredited school as a full-time student during the normal school year as determined by
 11.18 the director. If the child does not continuously attend school, but separates from full-time
 11.19 attendance during any part of a school year, the annuity must cease at the end of the month
 11.20 of separation. In addition, a payment of \$20 per month must be prorated equally to the
 11.21 surviving dependent children when the former member is survived by more than one
 11.22 dependent child. Payments for the benefit of any dependent child must be made to the
 11.23 surviving spouse, or if there is none, to the legal guardian of the child. The monthly benefit
 11.24 for any one family, including a surviving spouse benefit, if applicable, must not be less than
 11.25 50 percent nor exceed 70 percent of the average monthly salary of the deceased member.

11.26 Sec. 11. **REPEALER.**

11.27 Minnesota Statutes 2008, section 352B.01, subdivisions 1, 2, 3, 3b, 4, 6, 7, 9, 10,
 11.28 and 11, are repealed.