



S.F. 749
(Betzold)

H.F. 950
(Murphy, M.)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-General
Relevant Provisions of Law: Minnesota Statutes, Chapter 353
General Nature of Proposal: Post-Retirement Option (PRO) Program for PERA-General Members
Date of Summary: March 17, 2009

Specific Proposed Change(s)

Permits employees covered by PERA-General, other than PERA staff and PERA-covered state employees, who are at least age 62 and immediately eligible to draw a PERA retirement annuity, to terminate employment and be immediately rehired in a position which is at least a 25 percent reduction from previous hours and is no more than half-time. Availability of positions under this program is at the discretion of the governing body of the employing unit. While in the program, reemployed annuitant maximum exempt earnings limitations do not apply. This program expires June 30, 2011.

Policy Issues Raised by the Proposed Legislation

1. Sufficient need for this program; may not be widely used.
2. Sufficient incentive to participate.
3. Sufficient justification for differences between PERA's proposed PRO program and the State PRO program.
4. Different treatment of PERA staff compared to PERA-covered local and county employees.
5. Further extension of in-service distributions.
6. Break-in-service inconsistencies, possible erosion of general policy.
7. Total duration issue; the maximum duration (five years) exceeds the maximum time period in which the program benefits the individual.
8. No statement regarding insurance coverage.
9. Temporary vs. permanent; expiration issue.

Potential Amendments

Technical Amendment

S0749-1A clarifies that the program applies only to PERA-General members and not to other PERA plans, and clarifies that no PRO position can be renewed after the program's expiration date.

Eligibility Requirements

S0749-2A makes the eligibility requirements in the PERA PRO program the same as in the State PRO, including the changes in State PRO eligibility contained in the Commission's omnibus bill.

S0749-3A similar to S0749-2A except also eliminates in-service distributions in PERA's PRO program.

S0749-4A, an alternative to S0749-2A and S0749-3A, requires all individuals entering the State or PERA PRO programs to have minimum 30-day break after termination and before entering the program. There must be no offer of a PRO program position prior to termination.

S0749-5A removes PERA staff from eligibility for State PRO and adds them to the PERA PRO program.

S0749-6A, an alternative to S0749-5A, removes PERA staff and all PERA state employees from eligibility for the State PRO program and adds them to the PERA PRO program.

Expiration Date

S0749-7A revises the expiration date from June 30, 2011, to a date to be determined by the Commission.

S0749-8A makes the program permanent by removing the expiration date.

Extending Beyond Social Security Retirement Age

S0749-9A prohibits extending a PERA PRO program position after the individual reaches Social Security normal retirement age.

Insurance Contributions

S0749-10A inserts insurance contribution language comparable to that found in the State PRO.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director EB

RE: S.F. 749 (Betzold); H.F. 950 (Murphy, M.): PERA-General; Authorizing Post Retirement Option Program for PERA-Covered Employees

DATE: March 16, 2009

Summary of S.F. 749 (Betzold); H.F. 950 (Murphy, M.)

S.F. 749 (Betzold); H.F. 950 (Murphy, M.) permits employees covered by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), other than PERA staff and PERA-covered state employees, who are at least age 62 and immediately eligible to draw a PERA retirement annuity, to terminate employment and be immediately rehired in a position which is at least a 25 percent reduction from previous hours and is no more than half-time. Availability of positions under this program is at the discretion of the governing body of the employing unit. While in the program, reemployed annuitant maximum exempt earnings limitations do not apply. This program expires June 30, 2011.

Background on State Post Retirement Option (PRO) Program

This bill creates a Post Retirement Option (PRO) Program for members of the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), other than PERA members who are state employees. The PERA state employees are not included in this proposed program because they are already covered by a similar State PRO Program (State PRO). State PRO covers the state employees covered by Minnesota State Retirement System (MSRS) plans, PERA's staff, and the few groups of state employees who have PERA coverage. This section describes the existing State PRO for state employees.

State PRO was created in 2005, coded as Minnesota Statutes, Section 43A.346, and is one of a few programs intended to allow state employees to transition into full retirement while meeting employer workforce needs. It was based on provisions contained in 2005 H.F. 1953 (Cornish); S.F. 1845 (Larson) and was passed as part of an Omnibus State Government Finance Bill, which also contained a voluntary hour reduction provision and a voluntary unpaid leave of absence provision. As of 2008, 70 individuals were in State PRO positions, 51 of whom were under age 62.

For purposes of State PRO, "state employee" means "a person currently occupying a civil service position in the executive or legislative branch," or the staff of MSRS or PERA, or the Office of the Legislative Auditor, or the Metropolitan Council. PERA staff and other state employees with PERA coverage were added to this provision in 2007 (Laws 2007, Chapter 134, Article 11, Section 4).

Under the State PRO Program, state employees who worked at least half-time during the prior five years, who terminate from state service and qualify for an unreduced annuity (including a "Rule of 90" annuity), can agree to accept a State PRO position with the same or different appointing authority under which the individual will reduce hours at least 25 percent or to half-time, whichever is the greater reduction. While in the program, reemployed annuitant maximum exempt earnings limitations do not apply. The appointments are for one year but can be renewed for up to five years. The appointing authority has sole discretion to determine whether positions under this program are to be offered. Any offer of a position in this program must be made in writing by the appointing authority to the employee, on a form provided by the Department of Employee Relations and MSRS or PERA (Minnesota Statutes, Section 43A.346, Subdivision 5).

As the program operated until 2008, the agreements between the individual and the state employer to enter the program had to be reached while the individual was an active employee, before termination of service and commencement of a retirement annuity. MSRS and PERA plan administrators became concerned that State PRO was not compliant with federal requirements prohibiting in-service distributions. An in-service distribution is a distribution of plan assets to a plan member prior to true termination of service or retirement. It was generally understood that a 30-day break in service, with no prior agreement to return, was necessary to meet federal qualified plan requirements. Unless the 30-day break/lack of prior reemployment agreement requirements were met, the federal government could view the situation as a sham termination resulting in an in-service distribution of retirement assets, which is prohibited under the qualified plan provision, Section 401(a) of the Internal Revenue Code. However, the federal Pension

Protection Act of 2006 amended the qualified plan provision, Section 401(a) of the Internal Revenue Code, effective for plan years after December 31, 2006, by adding the following paragraph:

A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

Thus, the federal government has created an exception to its in-service distribution prohibition if the individual is at least age 62.

In 2008, the Legislature decided to modify State PRO to continue requiring a clean termination only if the individual was under age 62. For those over age 62, arrangements could be made while the individual was an active employee to return to work following a termination. While this is permitted by federal code, it is nonetheless an in-service distribution, permitting payment of retirement benefits to individuals who have not truly separated from employment, and who are not retired.

Background on In-Service Distributions

Permitting in-service distributions, to the extent permitted by federal law, is a strong departure from earlier Commission policy, and from the general concept that retirement benefits are intended solely to provide income to individuals who, due to advanced age, have fully withdrawn from the workforce. The in-service distribution change may be viewed as the most recent stage in a shift which began in the 1990s, when the Commission and Legislature removed provisions which restricted or completely terminated payment of retirement benefits to individuals who, after retiring, decided to come back to employment within the same retirement system. That prior system, which required forfeiture of all or a portion of retirement benefits upon reemployment, was replaced by deferred receipt of those benefits. Any amount which under prior law would have been forfeited was instead placed in a savings account for the individual, payable with six percent interest when the individual reaches normal retirement age and again terminates employment.

In 2005, requiring a true termination of service in order to commence retirement benefit receipt began to change, when State PRO was created. That initial change seems to have been inadvertent, with neither pension plan administrators nor legislators being aware of the implications for plan qualification requirements. The language creating State PRO permitted any individual in that program to agree to reemployment in a PRO position before they terminated service. Rather than being a true termination, the termination of service served no other purpose than to establish an accrual date for the retirement annuity to commence. The concept of permitting in-service distributions was expanded further in 2008, when the Teachers Retirement Association (TRA) included in that year's administrative bill a provision permitting any teacher at least age 62 to terminate service for purposes of commencing an annuity, while immediately returning to work if rehired by the employer with no limits on hours or reemployment income. Continuing to work full time is permitted. Although that provision represents a fundamental shift from past practice and has significant policy implications, the provision was enacted with little or no discussion.

Coupled with this shift in termination policy, for some plans the Legislature also greatly increased the amount of reemployed earnings which an individual could receive without having a portion of the retirement benefit transmitted to the savings account. In 2008, the Legislature increased these exempt earnings limits in TRA and first class city teacher plans to \$46,000, instead of using the much lower limits permitted under the Social Security system. Also in 2008, State PRO was revised, for consistency with federal requirements, to limit such special termination arrangements to those at least age 62.

S.F. 749 (Betzold); H.F. 950 (Murphy, M.) is another attempt to make use of the same age-62 federal exemption. While the arrangement may be consistent with federal code, at some point the Commission may wish to devote time to considering the implications of this practice, although there may not be adequate time to devote to these issues during the 2009 Legislative Session. If the practice becomes more widespread within Minnesota public plans, there may be unforeseen cost implications. Among considerations are that individuals in PRO Program positions, and reemployed annuitants in general, do not contribute to the plan and neither does the employer. This creates a financial incentive for the employer to reemploy a retiree rather than an individual who would be covered by the plan as an active member, requiring employee and employer contributions on that individual's behalf. As reemployed retirees displace individuals who, if hired, would have become active members, the funding base of the plan erodes. The liabilities, including unfunded liabilities of the plan, must be paid off by fewer active members, driving up the contribution rates. This is at a time when the meltdown of the financial markets has added billions of dollars of unfunded liabilities to the plans.

Differences Between State PRO Program and the PERA PRO Program Proposal

The differences between the requirements of the State PRO and those proposed by PERA for a PERA PRO Program are an issue for the Commission to consider. Different procedures or plan requirements are most acceptable if they can be justified by circumstances in local government which differ from state government. If not, it may be better to have identical treatment in the two programs.

Some revisions in State PRO are included in the Commission's accumulating omnibus pension bill. In the following statement of differences, State PRO, including these proposed 2009 changes now included in the Commission's omnibus bill, is compared with the PERA's proposed PRO Program.

Significant differences between State PRO and PERA's proposed PRO Program can be quickly summarized:

- General Coverage Group. State PRO covers eligible state employees with MSRS coverage, including PERA staff and other state employees who have PERA coverage, while the PERA PRO Program will cover eligible employees with PERA-General coverage other than the PERA state employees.
- Annuity Requirement. State PRO requires that the terminating employee be immediately eligible for a normal retirement annuity without reduction or a Rule-of-90 annuity. The PERA PRO Program is less restrictive regarding annuities, requiring only that the individual be immediately eligible for any form of PERA retirement annuity, including any form of early retirement annuity.
- Age Requirement. The State PRO age requirement is normal retirement age (generally age 65) or any age with a Rule-of-90 annuity. In contrast, the PERA PRO Program requires that the individual be age 62 or older.
- Break-in-Service Requirement. State PRO requires individuals under age 62 to have a 30-day break in service before commencing the State PRO position and no offer of a State PRO position can be made before that termination of service. For those age 62 or older, State PRO has no 30-day break requirement and an offer can be made before termination of service. The PERA PRO Program has no 30-day break requirement nor any restriction on the timing of a PRO Program position offer. That is consistent with federal requirements because no one in the PRO Program can be under age 62.
- Permanent or Temporary Program. State PRO is a permanent program while PERA is proposing that its PRO Program expire on June 30, 2011.
- Insurance Contribution. State PRO specifies that the employing unit must make an insurance contribution, if not otherwise covered by another program, of up to 75 percent of the contribution the employer would have made on behalf of an employee not in this program. That amount must be contributed to a health reimbursement arrangement. Nothing is specified for the PERA PRO Program.

PERA Exempt Income Limit Provision and PERA's Proposed PRO Program

The PERA exempt income limit provision uses the same exempt salary limit as the Social Security Administration. The Social Security Administration revises the limit annually to reflect inflationary changes. Currently, the exempt income limit is \$14,160. Any PERA retiree who returns to PERA-covered employment could earn up to that amount and not have any impact on their PERA annuity. If an individual was earning \$28,320 in full-time PERA-covered employment and then entered the PRO Program working half time, that individual's half-time salary is \$14,160, which is the fully exempt maximum. For anyone with a full-time salary less than \$28,320, this program is irrelevant. Since their reemployment salary would be fully exempt, their treatment is the same whether they are in the program or not. For anyone earning more than \$28,320 and who is approaching normal retirement age and wants to reduce hours to half time, this program would have some impact, but it is not clear that the impact is beneficial. It depends on individual circumstance and preference. If an individual is not in this program and exceeds the exempt income limit, under PERA law (Minnesota Statutes, Section 353.37) PERA would make a deduction from the annuity which would otherwise be paid, currently of \$1 for every \$2 in excess of the exempt earnings limit. This amount is not forfeited. Rather, it is placed in a savings account for the individual, payable with six percent interest after reaching normal retirement age and terminating the reemployment. Thus, the only "penalty" which an individual *not* in this program would have is that a portion of the annuity is deferred and paid later with a guaranteed six percent return. If the individual does not have a high need for current income, this "penalty" may actually be viewed as a benefit, a benefit which the individual loses if they enter the program.

Discussion and Analysis

S.F. 749 (Betzold); H.F. 950 (Murphy, M.) permits PERA-covered employees, other than PERA staff and PERA-covered state employees, who are at least age 62 and immediately eligible to draw a PERA retirement annuity, to terminate employment and be immediately rehired in a position which is at least a 25 percent reduction from previous hours and is no more than half time. Availability of positions under this program is at the discretion of the governing body of the employing unit. While in the program, reemployed annuitant maximum exempt earnings limitations do not apply. This program expires June 30, 2011.

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

1. Need for Change. The policy issue is whether there is sufficient need to create this program. The Commission may wish hear testimony from employee groups and employer groups, including the League of Minnesota Cities, regarding the degree to which this program would be utilized if adopted. The plan would have minimal use if employees do not feel it is sufficiently advantageous, and if few employers are choosing to participate in the program.
2. Sufficient Incentive to Participate. The Commission may wish to consider whether the program is sufficiently attractive to have sufficient participation in this program, and to warrant further consideration. The program may not be sufficiently attractive to encourage much participation. Only those who want to work half time or less can consider the program, since the maximum an individual in this program could work is half time (or full time for half a year). For low-income individuals, those who would earn less than \$14,160 due to the reemployment, the program is not relevant. The only treatment difference offered by the program is that those in the program are not subject to reemployed annuitant exempt earnings limits, while a reemployed annuitant working for an employer in the PERA system, but not in this program, would be subject to those limits. So the program might be attractive to an individual who retired from a position in which the individual earned more than \$28,320 annually, who has a relatively high need for current income rather than deferred income, but who does not want to work more than half time. The factors are rather contradictory. If the person had a fairly high need for current income rather than deferred income, perhaps the person should not have retired.
3. Sufficient Justification for Differences Between PERA's Proposed PRO Program and the State PRO Program. The policy issue is the differences between this proposed program for local government employees with PERA coverage and State PRO. Members of the state general employee plan are typically considered comparable to those in PERA-General, and the Commission generally tries to ensure treatment is comparable. The differences between the eligibility requirements for State PRO and the proposed PERA PRO Program may lead to complaints to legislators from individuals who, for example, are excluded from PERA's PRO Program and who would have qualified if the State PRO criteria had been applied.

If there is a clear need for the eligibility requirement differences, the Commission may conclude the differences are justified and necessary. One difference is that the PERA PRO Program requires that all applicants be at least age 62, while the State PRO has no minimum age requirement. On the other hand, the PERA PRO Program is less stringent regarding the types of annuity for which the individual must be able to qualify. The PERA PRO Program requires only that the individual be immediately eligible for any form of PERA retirement annuity, while the State PRO requires that the individual must qualify for an unreduced annuity.

4. Different Treatment of PERA Staff Compared to PERA-Covered Local and County Employees. A policy issue is whether PERA staff and other PERA-covered state employees should be shifted from the State PRO to PERA's PRO Program eligibility by revising the bills to include these PERA state employees in the PERA PRO Program. That would ensure that all PERA employees would have the same program with the same eligibility requirements, avoiding any appearance of preferential treatment. Currently, a PERA staff member under age 62 can qualify for State PRO, but would be ineligible for the PERA PRO Program because of the minimum age 62 requirement in the PERA PRO Program.
5. Further Extension of In-Service Distributions. A policy issue is whether the Commission wishes to further expand the use of in-service distributions without time to fully identify or review the broader implications of that policy. If the PERA PRO Program is adopted as proposed, no individual in that program will be required to have a true termination and break in service before entering that program. The individual will begin to draw an annuity to supplement the shift to part-time employment. This is an in-service distribution. Although in-service distributions to those at least age 62 have been

officially sanctioned by the federal government, that does not necessarily imply this reflects good Minnesota pension policy.

6. Break-In-Service Inconsistencies, Possible Erosion of General Policy. A policy issue is that failing to require a true separation under this program may lead to an undermining of the PERA separation requirements applicable to all other PERA-covered employees. The basic contention would be that if a break in service is not required under this program, why is it appropriate to require one for all other PERA employees? For example, PERA members may contend that PERA law should be revised to allow them to submit a resignation and immediately return to the same position as an independent consultant or contractor, rather than as an employee. Current PERA law requires a minimum 30-day break, and a requirement that there is no prearranged agreement to return to the public employer as an employee, consultant, or independent contractor (Minnesota Statutes, Section 353.01, Subdivision 11A).
7. Total Duration Issue. The Commission may wish to revise the total duration permitted under this program to avoid any potential for harming participants. As drafted, after entering the program the position can be renewed for a total duration not to exceed five years (page 2.16 to 2.17). The only advantage of being in this program, if there is any, is that the earnings while in this program are not subject to reemployed annuitant maximum exempt income limits. However, PERA's reemployed income provision does not apply once the individual attains normal retirement age as defined in Social Security law, which for individuals born between January 2, 1943, through January 1, 1955, is age 66. Since the youngest an individual can be to enter the PERA PRO Program is age 62, even the youngest individual entering this program has no need for the program in four years, and not five as in the bill. Once individuals hit age 66, continuing in the PERA PRO Program could harm them. At that age they do not need this program in order to be exempted from the reemployed earnings provision, but if they continue in the program they are restricted to no more than half-time employment. Perhaps the Commission may wish to consider an amendment to prohibit renewing a PRO Program position after the individual reaches Social Security normal retirement age.
8. Issue of Insurance Coverage. A policy issue is the lack of any statement in the proposed PERA PRO Program regarding insurance coverage. The Commission may wish to inquire why the proposal lacks such a provision. Since nothing is stated, some employers might provide more generous coverage than is stated in State PRO, while others might provide none, and there is the possibility that an employer might treat individuals inconsistently under this program, providing generous terms to some and no insurance contributions for others.
9. Expiration Issue. A policy issue is whether the Commission supports having an expiration date, as in this bill. The State PRO is a permanent program. A reason for not removing the expiration date is that the Commission may wish to end both of these programs after further considering the implications of in-service distributions.

Potential Amendments for Commission Consideration

1. Amendment S0749-1A is a technical amendment clarifying that this program applies only to PERA-General members and not to members of other PERA plans, and clarifying procedures once the provision expires for existing PRO Program positions, by indicating that no PRO Program position can be renewed after the program's expiration date.
2. Amendment S0749-2A makes the eligibility requirements in the PERA PRO Program the same as in State PRO, including the changes in State PRO eligibility contained in the Commission's omnibus pension bill.
3. Amendment S0749-3A is similar to S0749-2A except that S0749-3A also eliminates in-service distributions in PERA's PRO Program. Under the amendment, all individuals entering the program must have a minimum 30-day break after termination and prior to entering the program, and there must be no offer of a PRO Program position prior to termination.
4. Amendment S0749-4A is an alternative to S0749-2A and S0749-3A. S0749-4A does not revise eligibility requirements in either plan other than requiring all individuals entering State PRO or the PERA PRO Program to have a minimum 30-day break after termination and prior to entering the program. There must be no offer of a PRO Program position prior to termination.
5. Amendment S0749-5A removes PERA staff from eligibility for State PRO and adds them to the PERA PRO Program.

6. Amendment S0749-6A is an alternative to S0749-5A and removes PERA staff and all PERA state employees from eligibility for State PRO and adds them to PERA's PRO Program.
7. Amendment S0749-7A revises the expiration date from June 30, 2011, to a date to be determined by the Commission.
8. Amendment S0749-8A makes the program permanent by removing the expiration date.
9. Amendment S0749-9A prohibits extending a PERA PRO Program position after the individual reaches Social Security normal retirement age.
10. Amendment S0749-10A inserts insurance contribution language comparable to that found in State PRO.

353.37 REEMPLOYMENT OF ANNUITANT.

Subdivision 1. Salary maximums. The annuity of a person otherwise eligible for an annuity under this chapter must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service as a nonelective employee of a governmental subdivision in a position covered by this chapter or returns to work as an employee of a labor organization that represents public employees who are association members under this chapter and salary for the reemployment service exceeds the annual maximum earnings allowable for that age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any calendar year. If the person has not yet reached the minimum age for the receipt of Social Security benefits, the maximum salary for the person is equal to the annual maximum earnings allowable for the minimum age for the receipt of Social Security benefits.

Subd. 1a. [Repealed, 1981 c 180 s 18]

Subd. 1b. Retirement age. For purposes of this section, "retirement age" means retirement age as defined in United States Code, title 42, section 416(l).

Subd. 2. MS 1971 [Repealed, 1973 c 753 s 85]

Subd. 2. Suspension of annuity. The association shall suspend the annuity on the first of the month after the month in which the salary of the reemployed annuitant exceeds the maximums set in subdivision 1, based only on those months in which the annuitant is actually employed in nonelective public service in a position covered under this chapter or employment with a labor organization that represents public employees who are association members under this chapter. An annuitant who is elected to public office after retirement may hold office and receive an annuity otherwise payable from the association.

Subd. 3. MS 1971 [Repealed, 1973 c 753 s 85]

Subd. 3. Reduction of annuity. The association shall reduce the amount of the annuity of a person who has not reached the retirement age by one-half of the amount in excess of the applicable reemployment income maximum under subdivision 1.

There is no reduction upon reemployment, regardless of income, for a person who has reached the retirement age.

Subd. 3a. Disposition of suspension or reduction amount. The balance of the annual retirement annuity after suspension or the amount of the retirement annuity reduction must be handled or disposed of as provided in section 356.47.

Subd. 4. Resumption of annuity. The association shall resume paying a full annuity to the reemployed annuitant at the start of each calendar year until the salary exceeds the maximums under subdivision 1, or on the first of the month following termination of employment which resulted in the suspension of the annuity. The executive director may adopt policies regarding the suspension and reduction of annuities under this section.

Subd. 5. Effect on annuity. Except as provided under this section, public service performed by an annuitant subsequent to retirement under this chapter does not increase or decrease the amount of an annuity. The annuitant shall not make any further contributions to the association's defined benefit plan by reason of this subsequent public service.

History: 1957 c 935 s 17; 1959 c 650 s 26,58; Ex1961 c 87 s 1; 1963 c 641 s 31; 1963 c 853 s 1,2; 1967 c 711 s 2; 1971 c 412 s 2; 1973 c 753 s 63; 1975 c 102 s 18; 1977 c 429 s 32; 1980 c 342 s 7; 1981 c 224 s 91; 1988 c 709 art 5 s 21; 1992 c 440 s 1; 1993 c 307 art 4 s 30; 1994 c 528 art 2 s 9-11; 2000 c 461 art 2 s 5; 2002 c 392 art 11 s 52; 2004 c 267 art 7 s 2,3

43A.346 POSTRETIREMENT OPTION.

Subdivision 1. Definition. For purposes of this section, "terminated state employee" means a person who occupied a civil service position in the executive or legislative branch of state government, the Minnesota State Retirement System, the Public Employees Retirement Association, the Office of the Legislative Auditor, or a person who was employed by the Metropolitan Council.

Subd. 2. Eligibility. (a) This section applies to a terminated state employee who:

(1) for at least the five years immediately preceding separation under clause (2), was regularly scheduled to work 1,044 or more hours per year in a position covered by a pension plan administered by the Minnesota State Retirement System or the Public Employees Retirement Association;

(2) terminated state or Metropolitan Council employment;

(3) at the time of termination under clause (2), met the age and service requirements necessary to receive an unreduced retirement annuity from the plan and satisfied requirements for the commencement of the retirement annuity or, for a terminated employee under the unclassified employees retirement plan, met the age and service requirements necessary to receive an unreduced retirement annuity from the plan and satisfied requirements for the commencement of the retirement annuity or elected a lump-sum payment; and

(4) agrees to accept a postretirement option position with the same or a different appointing authority, working a reduced schedule that is both (i) a reduction of at least 25 percent from the employee's number of previously regularly scheduled work hours; and (ii) 1,044 hours or less in state or Metropolitan Council service.

(b) For purposes of this section, an unreduced retirement annuity includes a retirement annuity computed under a provision of law which permits retirement, without application of an earlier retirement reduction factor, whenever age plus years of allowable service total at least 90.

(c) For purposes of this section, as it applies to staff of the Public Employees Retirement Association who are at least age 62, the length of separation requirement and termination of service requirement prohibiting return to work agreements under section 353.01, subdivisions 11a and 28, are not applicable.

Subd. 3. Unclassified service. Notwithstanding any law to the contrary, state postretirement option positions shall be in the unclassified service but shall not be covered by the Minnesota State Retirement System unclassified employees plan.

Subd. 4. Annuity reduction not applicable. Notwithstanding any law to the contrary, the provisions of section 352.115, subdivision 10, or 353.37 governing annuities of reemployed annuitants, shall not apply for the duration of a terminated state employee's employment in a postretirement option position.

Subd. 5. Appointing authority discretion. The appointing authority has sole discretion to determine if and the extent to which a postretirement option position under this section is available to a terminated state employee. Any offer of such a position must be made in writing to the person by the appointing authority on a form prescribed by the Department of Finance and the Minnesota State Retirement System or the Public Employees Retirement Association. If the person is under age 62, an offer of a postretirement option position and any related verbal offer or agreement must not be made until at least 30 days after the person terminated employment. The appointing authority may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

Subd. 6. Duration. Postretirement option employment shall be for an initial period not to exceed one year. During that period, the appointing authority may not modify the conditions specified in the written offer without the person's consent, except as required by law or by the collective bargaining agreement or compensation plan applicable to the person. At the end of the initial period, the appointing authority has sole discretion to determine if the offer of a postretirement option position will be renewed, renewed with modifications, or terminated. If the person is under age 62, an offer of renewal and any related verbal offer or agreement must not be made until at least 30 days after termination of the person's previous postretirement option employment. Postretirement option employment may be renewed for periods of up to one year, not to exceed a total duration of five years. No person shall be employed in one or a combination of postretirement option positions under this section for a total of more than five years.

Subd. 7. Copy to fund. The appointing authority shall provide the Minnesota State Retirement System or the Public Employees Retirement Association with a copy of the offer, the terminated state employee's acceptance of the terms, and any subsequent renewal agreement.

Subd. 8. No service credit. Notwithstanding any law to the contrary, a person may not earn service credit in the Minnesota State Retirement System or the Public Employees Retirement Association for employment covered under this section, and employer contributions and payroll deductions for the retirement fund must not be made based on earnings of a person working under this section. No change shall be made to a monthly annuity or retirement allowance based on employment under this section.

Subd. 9. Insurance contribution. Notwithstanding any law to the contrary, the appointing authority must make an employer insurance contribution for a person who is employed in a postretirement option position under this section and who is not receiving any other state-paid or Metropolitan Council-paid employer insurance contribution. The amount of the contribution must be equal to the percent time worked in the postretirement option position (hours scheduled to be worked annually divided by 2,088) times 1.5 times the full employer contribution for employee-only health and dental coverage. The appointing authority must contribute that amount to a health reimbursement arrangement.

Subd. 10. Subsequent employment. If a person has been in a postretirement option position and accepts any other position in state or Metropolitan Council-paid service, in the subsequent state or Metropolitan Council-paid employment the person may not earn service credit in the Minnesota State Retirement System or Public Employees Retirement Association, no employer contributions or payroll deductions for the retirement fund shall be made, and the provisions of section 352.115, subdivision 10, or section 353.37, shall apply.

History: 2005 c 156 art 3 s 2; 2007 c 134 art 11 s 4,5; 2007 c 148 art 2 s 45; 2008 c 204 s 42; 2008 c 349 art 3 s 1-6

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 1, line 8, after "member" insert "of the Public Employees Retirement
1.3 Association general plan"

1.4 Page 3, line 2, delete "sunsets" and insert "expires on" and after the period insert "
1.5 Individuals must not be appointed to a postretirement option position after that date and
1.6 no renewals of a postretirement option position can be made after that date."

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 1, line 13, delete "was at least age 62 and"

1.3 Page 1, line 14, delete "a" and insert "an unreduced"

1.4 Page 2, delete lines 1 to 3 and insert:

1.5 "(b) For purposes of this section, an unreduced retirement annuity includes a
1.6 retirement annuity computed under a provision of law which permits retirement, without
1.7 application of an early retirement reduction factor, whenever age plus years of allowable
1.8 service total at least 90."

1.9 Page 2, line 12, after the period insert "If the person is under age 62, any offer,
1.10 whether verbal, written, or in any electronic means, of a position under this section must
1.11 not be made until at least 30 days after termination of service."

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 1, line 13, delete "was at least age 62 and"

1.3 Page 1, line 14, delete "a" and insert "an unreduced"

1.4 Page 2, delete lines 1 to 3 and insert:

1.5 "(b) For purposes of this section, an unreduced retirement annuity includes a
1.6 retirement annuity computed under a provision of law which permits retirement, without
1.7 application of an early retirement reduction factor, whenever age plus years of allowable
1.8 service total at least 90."

1.9 Page 2, line 12, after the period insert "Any offer, whether verbal, written, or in
1.10 any electronic means, of a position under this section must not be made until at least 30
1.11 days after termination of service."

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 1, after line 5, insert:

1.3 "Section 1. Minnesota Statutes 2008, section 43A.346, subdivision 2, is amended to
1.4 read:

1.5 Subd. 2. **Eligibility.** (a) This section applies to a terminated state employee who:

1.6 (1) for at least the five years immediately preceding separation under clause (2),
1.7 was regularly scheduled to work 1,044 or more hours per year in a position covered by
1.8 a pension plan administered by the Minnesota State Retirement System or the Public
1.9 Employees Retirement Association;

1.10 (2) terminated state or Metropolitan Council employment;

1.11 (3) at the time of termination under clause (2), met the age and service requirements
1.12 necessary to receive an unreduced retirement annuity from the plan and satisfied
1.13 requirements for the commencement of the retirement annuity or, for a terminated
1.14 employee under the unclassified employees retirement plan, met the age and service
1.15 requirements necessary to receive an unreduced retirement annuity from the plan and
1.16 satisfied requirements for the commencement of the retirement annuity or elected a
1.17 lump-sum payment; and

1.18 (4) agrees to accept a postretirement option position with the same or a different
1.19 appointing authority, working a reduced schedule that is both (i) a reduction of at least 25
1.20 percent from the employee's number of previously regularly scheduled work hours; and
1.21 (ii) 1,044 hours or less in state or Metropolitan Council service.

1.22 (b) For purposes of this section, an unreduced retirement annuity includes a
1.23 retirement annuity computed under a provision of law which permits retirement, without
1.24 application of an earlier retirement reduction factor, whenever age plus years of allowable
1.25 service total at least 90.

1.26 ~~(c) For purposes of this section, as it applies to staff of the Public Employees
1.27 Retirement Association who are at least age 62, the length of separation requirement and
1.28 termination of service requirement prohibiting return to work agreements under section
1.29 353.01, subdivisions 11a and 28, are not applicable.~~

1.30 **EFFECTIVE DATE.** This section is effective the day after final enactment.

1.31 Sec. 2. Minnesota Statutes 2008, section 43A.346, subdivision 5, is amended to read:

1.32 Subd. 5. **Appointing authority discretion.** The appointing authority has sole
1.33 discretion to determine if and the extent to which a postretirement option position under
1.34 this section is available to a terminated state employee. Any offer of such a position
1.35 must be made in writing to the person by the appointing authority on a form prescribed

2.1 by the Department of Finance and the Minnesota State Retirement System or the
 2.2 Public Employees Retirement Association. ~~If the person is under age 62,~~ An offer of a
 2.3 postretirement option position and any related verbal offer or agreement must not be made
 2.4 until at least 30 days after the person terminated employment. The appointing authority
 2.5 may not require a person to waive any rights under a collective bargaining agreement or
 2.6 unrepresented employee compensation plan as a condition of participation.

2.7 EFFECTIVE DATE. This section is effective the day after final enactment.

2.8 Sec. 3. Minnesota Statutes 2008, section 43A.346, subdivision 6, is amended to read:

2.9 Subd. 6. **Duration.** Postretirement option employment shall be for an initial period
 2.10 not to exceed one year. During that period, the appointing authority may not modify the
 2.11 conditions specified in the written offer without the person's consent, except as required
 2.12 by law or by the collective bargaining agreement or compensation plan applicable to the
 2.13 person. At the end of the initial period, the appointing authority has sole discretion to
 2.14 determine if the offer of a postretirement option position will be renewed, renewed with
 2.15 modifications, or terminated. ~~If the person is under age 62, an offer of renewal and any~~
 2.16 ~~related verbal offer or agreement must not be made until at least 30 days after termination~~
 2.17 ~~of the person's previous postretirement option employment.~~ Postretirement option
 2.18 employment may be renewed for periods of up to one year, not to exceed a total duration
 2.19 of five years. No person shall be employed in one or a combination of postretirement
 2.20 option positions under this section for a total of more than five years.

2.21 EFFECTIVE DATE. This section is effective the day after final enactment."

2.22 Page 2, delete lines 1 to 3

2.23 Page 2, line 12, after the period insert "Any offer, whether verbal, written, or in
 2.24 any electronic means, of a position under this section must not be made until at least 30
 2.25 days after termination of service."

2.26 Renumber the sections in sequence and correct the internal references

2.27 Amend the title accordingly

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 1, after line 5, insert:

1.3 "Section 1. Minnesota Statutes 2008, section 43A.346, subdivision 1, is amended to
1.4 read:

1.5 Subdivision 1. **Definition.** For purposes of this section, "terminated state employee"
1.6 means a person who occupied a civil service position in the executive or legislative branch
1.7 of state government, the Minnesota State Retirement System, ~~the Public Employees~~
1.8 ~~Retirement Association~~, the Office of the Legislative Auditor, or a person who was
1.9 employed by the Metropolitan Council.

1.10 **EFFECTIVE DATE.** This section is effective the day after final enactment.

1.11 Sec. 2. Minnesota Statutes 2008, section 43A.346, subdivision 2, is amended to read:

1.12 Subd. 2. **Eligibility.** (a) This section applies to a terminated state employee who:

1.13 (1) for at least the five years immediately preceding separation under clause (2),
1.14 was regularly scheduled to work 1,044 or more hours per year in a position covered by
1.15 a pension plan administered by the Minnesota State Retirement System or the Public
1.16 Employees Retirement Association;

1.17 (2) terminated state or Metropolitan Council employment;

1.18 (3) at the time of termination under clause (2), met the age and service requirements
1.19 necessary to receive an unreduced retirement annuity from the plan and satisfied
1.20 requirements for the commencement of the retirement annuity or, for a terminated
1.21 employee under the unclassified employees retirement plan, met the age and service
1.22 requirements necessary to receive an unreduced retirement annuity from the plan and
1.23 satisfied requirements for the commencement of the retirement annuity or elected a
1.24 lump-sum payment; and

1.25 (4) agrees to accept a postretirement option position with the same or a different
1.26 appointing authority, working a reduced schedule that is both (i) a reduction of at least 25
1.27 percent from the employee's number of previously regularly scheduled work hours; and
1.28 (ii) 1,044 hours or less in state or Metropolitan Council service.

1.29 (b) For purposes of this section, an unreduced retirement annuity includes a
1.30 retirement annuity computed under a provision of law which permits retirement, without
1.31 application of an earlier retirement reduction factor, whenever age plus years of allowable
1.32 service total at least 90.

1.33 (c) ~~For purposes of This section, as it applies~~ does not apply to staff of the Public
1.34 Employees Retirement Association ~~who are at least age 62, the length of separation~~

2.1 ~~requirement and termination of service requirement prohibiting return to work agreements~~
2.2 ~~under section 353.01, subdivisions 11a and 28, are not applicable.~~

2.3 EFFECTIVE DATE. This section is effective the day after final enactment."

2.4 Renumber the sections in sequence and correct the internal references

2.5 Amend the title accordingly

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 1, after line 5, insert:

1.3 "Section 1. Minnesota Statutes 2008, section 43A.346, subdivision 1, is amended to
1.4 read:

1.5 Subdivision 1. **Definition.** For purposes of this section, "terminated state employee"
1.6 means a person who occupied a civil service position in the executive or legislative branch
1.7 of state government, the Minnesota State Retirement System, ~~the Public Employees~~
1.8 ~~Retirement Association~~, the Office of the Legislative Auditor, or a person who was
1.9 employed by the Metropolitan Council.

1.10 **EFFECTIVE DATE.** This section is effective the day following final enactment.

1.11 Sec. 2. Minnesota Statutes 2008, section 43A.346, subdivision 2, is amended to read:

1.12 Subd. 2. **Eligibility.** (a) This section applies to a terminated state employee who:

1.13 (1) for at least the five years immediately preceding separation under clause (2),
1.14 was regularly scheduled to work 1,044 or more hours per year in a position covered by
1.15 a pension plan administered by the Minnesota State Retirement System ~~or the Public~~
1.16 ~~Employees Retirement Association~~;

1.17 (2) terminated state or Metropolitan Council employment;

1.18 (3) at the time of termination under clause (2), met the age and service requirements
1.19 necessary to receive an unreduced retirement annuity from the plan and satisfied
1.20 requirements for the commencement of the retirement annuity or, for a terminated
1.21 employee under the unclassified employees retirement plan, met the age and service
1.22 requirements necessary to receive an unreduced retirement annuity from the plan and
1.23 satisfied requirements for the commencement of the retirement annuity or elected a
1.24 lump-sum payment; and

1.25 (4) agrees to accept a postretirement option position with the same or a different
1.26 appointing authority, working a reduced schedule that is both (i) a reduction of at least 25
1.27 percent from the employee's number of previously regularly scheduled work hours; and
1.28 (ii) 1,044 hours or less in state or Metropolitan Council service.

1.29 (b) For purposes of this section, an unreduced retirement annuity includes a
1.30 retirement annuity computed under a provision of law which permits retirement, without
1.31 application of an earlier retirement reduction factor, whenever age plus years of allowable
1.32 service total at least 90.

1.33 ~~(c) For purposes of this section, as it applies to staff of the Public Employees~~
1.34 ~~Retirement Association who are at least age 62, the length of separation requirement and~~

2.1 ~~termination of service requirement prohibiting return to work agreements under section~~
 2.2 ~~353.01, subdivisions 11a and 28, are not applicable.~~

2.3 EFFECTIVE DATE. This section is effective the day following final enactment.

2.4 Sec. 3. Minnesota Statutes 2008, section 43A.346, subdivision 4, is amended to read:

2.5 Subd. 4. **Annuity reduction not applicable.** Notwithstanding any law to the
 2.6 contrary, the provisions of section 352.115, subdivision 10, ~~or 353.37~~ governing annuities
 2.7 of reemployed annuitants, shall not apply for the duration of a terminated state employee's
 2.8 employment in a postretirement option position.

2.9 EFFECTIVE DATE. This section is effective the day following final enactment.

2.10 Sec. 4. Minnesota Statutes 2008, section 43A.346, subdivision 5, is amended to read:

2.11 Subd. 5. **Appointing authority discretion.** The appointing authority has sole
 2.12 discretion to determine if and the extent to which a postretirement option position under
 2.13 this section is available to a terminated state employee. Any offer of such a position
 2.14 must be made in writing to the person by the appointing authority on a form prescribed
 2.15 by the Department of Finance and the Minnesota State Retirement System ~~or the~~
 2.16 ~~Public Employees Retirement Association.~~ If the person is under age 62, an offer of a
 2.17 postretirement option position and any related verbal offer or agreement must not be made
 2.18 until at least 30 days after the person terminated employment. The appointing authority
 2.19 may not require a person to waive any rights under a collective bargaining agreement or
 2.20 unrepresented employee compensation plan as a condition of participation.

2.21 EFFECTIVE DATE. This section is effective the day following final enactment.

2.22 Sec. 5. Minnesota Statutes 2008, section 43A.346, subdivision 7, is amended to read:

2.23 Subd. 7. **Copy to fund.** The appointing authority shall provide the Minnesota
 2.24 State Retirement System ~~or the Public Employees Retirement Association~~ with a copy of
 2.25 the offer, the terminated state employee's acceptance of the terms, and any subsequent
 2.26 renewal agreement.

2.27 EFFECTIVE DATE. This section is effective the day following final enactment.

2.28 Sec. 6. Minnesota Statutes 2008, section 43A.346, subdivision 8, is amended to read:

2.29 Subd. 8. **No service credit.** Notwithstanding any law to the contrary, a person may
 2.30 not earn service credit in the Minnesota State Retirement System ~~or the Public Employees~~
 2.31 ~~Retirement Association~~ for employment covered under this section, and employer
 2.32 contributions and payroll deductions for the retirement fund must not be made based on

3.1 earnings of a person working under this section. No change shall be made to a monthly
3.2 annuity or retirement allowance based on employment under this section.

3.3 EFFECTIVE DATE. This section is effective the day following final enactment.

3.4 Sec. 7. Minnesota Statutes 2008, section 43A.346, subdivision 10, is amended to read:

3.5 Subd. 10. **Subsequent employment.** If a person has been in a postretirement option
3.6 position and accepts any other position in state or Metropolitan Council-paid service, in
3.7 the subsequent state or Metropolitan Council-paid employment the person may not earn
3.8 service credit in the Minnesota State Retirement System ~~or Public Employees Retirement~~
3.9 ~~Association~~, no employer contributions or payroll deductions for the retirement fund
3.10 shall be made, and the provisions of section 352.115, subdivision 10, or section 353.37,
3.11 shall apply.

3.12 EFFECTIVE DATE. This section is effective the day following final enactment."

3.13 Renumber the sections in sequence and correct the internal references

3.14 Amend the title accordingly

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 2, after line 36, insert:

1.3 "Subd. 8. **Expiration.** This section expires June 30, No new appointment to a
1.4 postretirement option position can be made after that date, nor any renewal of a position."

1.5 Page 3, line 1, after "enactment" insert a period

1.6 Page 3, delete line 2

- 1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:
- 1.2 Page 3, line 1, after "enactment" insert a period
- 1.3 Page 3, delete line 2

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 2, delete lines 17 to 19 and insert "renewed annually, but may not be renewed
1.3 after the individual attains retirement age as defined in United States Code, title 42,
1.4 section 416(l)."

1.1 moves to amend S.F. No. 749; H.F. No. 950, as follows:

1.2 Page 2, after line 36, insert:

1.3 "Subd. 8. **Insurance contribution.** Notwithstanding any law to the contrary, the
1.4 appointing authority must make an employer insurance contribution for a person who is
1.5 employed in a postretirement option position under this section and who is not receiving
1.6 any other employer-paid health insurance contribution. The amount of the contribution
1.7 must be equal to the percent time worked in the postretirement option position (hours
1.8 scheduled to be worked annually divided by 2,088) times 1.5 times the full employer
1.9 contribution for employee-only health and dental coverage. The appointing authority must
1.10 contribute that amount to a health reimbursement arrangement."

Senator Betzold introduced-

S.F. No. 749: Referred to the Committee on State and Local Government Operations and Oversight.

1.1 A bill for an act
 1.2 relating to retirement; authorizing the Public Employees Retirement Association
 1.3 to offer a postretirement option for members of the public employees retirement
 1.4 general plan; proposing coding for new law in Minnesota Statutes, chapter 353.

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

1.6 Section 1. [353.371] POSTRETIREMENT OPTION.

1.7 Subdivision 1. Eligibility. (a) This section applies to a terminated basic or
 1.8 coordinated member who:

1.9 (1) for at least the five years immediately preceding separation under clause (2), was
 1.10 regularly scheduled to work 1,044 or more hours per year in a position covered by the
 1.11 pension plan administered by the Public Employees Retirement Association;

1.12 (2) terminated public employment as defined under section 353.01, subdivision 11a;

1.13 (3) at the time of termination under clause (2), was at least age 62 and met the age
 1.14 and service requirements necessary to receive a retirement annuity from the plan and
 1.15 satisfied requirements for the commencement of the retirement annuity;

1.16 (4) agrees to accept a postretirement option position with the same or a different
 1.17 governmental subdivision, working a reduced schedule that is both:

1.18 (i) a reduction of at least 25 percent from the employee's number of previously
 1.19 regularly scheduled work hours; and

1.20 (ii) 1,044 hours or less in public; and

1.21 (5) is not eligible for participation in the state employee postretirement option
 1.22 program under section 43A.346.

2.1 (b) For purposes of this section, the length of separation requirement and termination
2.2 of service requirement prohibiting return to work agreements under section 353.01,
2.3 subdivisions 11a and 28, are not applicable.

2.4 Subd. 2. **Annuity reduction not applicable.** Notwithstanding any law to the
2.5 contrary, the provisions of section 353.37 governing annuities of reemployed annuitants
2.6 shall not apply for the duration of a terminated member's employment in a postretirement
2.7 option position.

2.8 Subd. 3. **Governing body discretion.** The governing body of the governmental
2.9 subdivision has sole discretion to determine if and the extent to which a postretirement
2.10 option position under this section is available to a terminated member. Any offer of such
2.11 a position must be made in writing to the person by the governing body's designee in a
2.12 manner prescribed by the executive director.

2.13 Subd. 4. **Duration.** Postretirement option employment shall be for an initial period
2.14 not to exceed one year. At the end of the initial period, the governing body has sole
2.15 discretion to determine if the offer of a postretirement option position will be renewed,
2.16 renewed with modifications, or terminated. Postretirement option employment may be
2.17 renewed for periods of up to one year, not to exceed a total duration of five years. A
2.18 person may not be employed in one postretirement option position or a combination of
2.19 postretirement option positions under this section for a total of more than five years.

2.20 Subd. 5. **Copy to fund.** The appointing authority shall provide the Public
2.21 Employees Retirement Association with documentation, as prescribed by the executive
2.22 director, of the terms of any agreement entered into with a member who accepts continuing
2.23 employment with the appointing authority under the terms of this section, and any
2.24 subsequent renewal agreement.

2.25 Subd. 6. **No service credit.** Notwithstanding any law to the contrary, a person may
2.26 not earn service credit in the Public Employees Retirement Association for employment
2.27 covered under this section, and employer contributions and payroll deductions for
2.28 the retirement fund must not be made based on earnings of a person working under an
2.29 agreement covered by this section. No change shall be made to a monthly annuity or
2.30 retirement allowance based on employment under this section.

2.31 Subd. 7. **Subsequent employment.** If a person has been in a postretirement option
2.32 position and accepts any other position in public service beyond the period of time for
2.33 which the person participated in the postretirement option provided under this section, the
2.34 person may not earn service credit in the Public Employees Retirement Association, no
2.35 employer contributions or payroll deductions for the retirement fund shall be made, and
2.36 the provisions of section 353.37 shall apply.

3.1 EFFECTIVE DATE. This section is effective the day following final enactment
3.2 and sunsets June 30, 2011.