



S.F. 279
(Sieben)

H.F. 347
(Kahn)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS-General
Relevant Provisions of Law: Special Law Provision
General Nature of Proposal: Service credit purchase, Rule of 90 eligibility.
Date of Summary: February 22, 2013

Specific Proposed Changes

- Permits Jeffrey J. Swanson to purchase 90 days of uncredited prior service credit in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and to gain the eligibility for the Rule of 90 benefit tier by the consequent resetting of his allowable service credit start date.

Policy Issues Raised by the Proposed Legislation

1. Conformity with the policy principles relating to prior service credit purchases.
2. Equitable consideration: Ineligible public employment proposed to be purchased.
3. Equitable consideration: Sufficiency of MSRS-General miscommunication to establish a basis for conferring Rule of 90 rights.
4. Equitable consideration: Extent of reasonable reliance on MSRS error.
5. Appropriateness of providing a legislative remedy when a judicial remedy exists.

Technical Amendment

S0279-1A corrects the expiration date for the service credit authority, replacing "2012" with "2013."



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *LA Martin*
RE: S.F. 279 (Sieben); H.F. 347 (Kahn); MSRS-General; Service Credit Purchase and Rule of 90 Eligibility for Certain MSRS-General Member
DATE: February 20, 2013

Summary of S.F. 279 (Sieben); H.F. 347 (Kahn)

S.F. 279 (Sieben); H.F. 347 (Kahn) authorizes Jeffrey J. Swanson, described as the presumed sole member of a described general class to purchase 90 days of allowable service credit in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) at full actuarial value and to have his MSRS-General allowable service credit start date clarified as being June 30, 1989, rather than September 27, 1989, and thereby become eligible for a future Rule of 90 early normal retirement age benefit.

Public Pension Coverage and Normal Retirement Age Eligibility Issue of Jeffrey J. Swanson

Jeffrey J. Swanson, a 48-year-old resident of Cottage Grove, Minnesota, and 23+ year employee of the State of Minnesota, has planned his financial future based on representations through June 30, 2012, of his eligibility for the Rule of 90 early normal retirement age provision of the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), but was informed on August 16, 2012, that his previously recorded MSRS-General allowable service credit start date giving rise to that eligibility was incorrect and that he missed the eligibility date by 89 days. Mr. Swanson was employed by the State of Minnesota as a temporary status general laborer on June 19, 1989, became an unlimited status state employee on December 12, 1990, and has a state employment seniority date of June 19, 1989. The MSRS-General Rule of 90 early retirement age benefit provision, akin to Public Employees Retirement Association (PERA) and Teachers Retirement Plan (TRA) provisions, requires that plan membership have begun before July 1, 1989. Mr. Swanson has provided documentation that MSRS had informed him of his Rule of 90 benefit tier eligibility as late as June 30, 2012, and indicates that he had been individually counseled at a March 2012 pre-retirement seminar that he was eligible for the MSRS-General Rule of 90 benefit package. Mr. Swanson indicates that, in remaining in state employment and in other family, personal, and financial decisions, he has relied on his MSRS-reported status as being Rule of 90 eligible.

Background Information on the Rule of 90 Early Normal Retirement Age Provision

Information on normal retirement age provisions and the Rule of 90 early normal retirement age provision is contained in **Attachment A**.

Technical Amendment

Amendment S0279-1A corrects the expiration date for the requested service credit authority, replacing "2012" with "2013."

Discussion and Analysis

S.F. 279 (Sieben); H.F. 347 (Kahn) permits Jeffrey J. Swanson of Cottage Grove, Minnesota, a Management Analyst 4 in the Department of Human Services of the State of Minnesota, to purchase 90 days of uncredited prior service credit in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and to gain the eligibility for the Rule of 90 benefit tier by the consequent resetting of his allowable service credit start date.

The proposed legislation raises several pension and related public policy issues for consideration by and discussion among members of the Legislative Commission on Pensions and Retirement, as follows:

1. Conformity with the Policy Principles Relating to Prior Service Credit Purchases. The proposed legislation raises the issue of the extent to which it conforms with the longstanding Principles of Pension Policy of the Legislative Commission on Pensions and Retirement. The applicable pension policy principle is II.C.10., which provides that:

II.C.10. Purchases of Prior Service Credit

Purchases of public pension plan credit for periods of prior service should be permitted only if it is determined by the Commission:

- that the period to be purchased is public employment or relates substantially to the public employee's career,
- that the purchase payment amount from the member or from a combination of the member and the current or former employer must equal the actuarial liability to be incurred by the pension plan for the benefit associated with the purchase, appropriately calculated, without the provision of a subsidy from the pension plan unless an error or an omission by the pension plan was responsible for the loss of service credit,
- that the purchase payment amount must include a minimum payment by the member of the equivalent member contributions, plus compound interest from the purchase period to the date of payment unless the employer committed a particularly egregious error,
- that the purchase payment is the responsibility of the member, with the current or former employer authorized to pay some or all of the portion of the payment amount in excess of the minimum member payment amount, unless the employer has some culpability in the circumstances giving rise to the purchase and then a mandatory employer contribution may be imposed, and
- that the purchase must not violate notions of equity.

The proposed service credit purchase appears to clearly conform with all of the current policy principle requirements other than the equitable considerations addressed in policy issues two, three and four, since the purchase period was public employment (although not eligible at the time or currently for public defined benefit retirement plan coverage), the purchase payment is determined under the full actuarial value payment statute, and the purchase payment is the responsibility of the plan member with an employer payment option wholly discretionary with the employing unit.

2. Equitable Consideration: Ineligible Public Employment Proposed to be Purchased. The policy issue is the appropriateness, as a matter of equity, of the Commission recommending a purchase of a period of service credit when the underlying employment at that time was ineligible for coverage by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) when rendered in 1989 and that is ineligible for MSRS-General coverage if rendered in 2013. Mr. Swanson was initially employed as a temporary general laborer in the classified service when first hired by the State of Minnesota on June 19, 1989, and Minnesota Statutes, Section 352.01, Subdivision 2b, Clause (16), excludes temporary employees in the classified service. Although not reflected in the portion of the Principles of Pension Policy related to service credit purchases, the Commission has rejected, to the Commission staff's best recollection, most or all proposed legislation in the past if the public employment period for purchase was ineligible for plan membership, which most commonly involved the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and proposed purchases involving employment compensated at less than the minimum salary level required for PERA-General membership. Most recently, the 2012 legislation relating to the prospective and retroactive transfer of retirement coverage to PERA-General for the Seaway Port Authority of Duluth, effected by prior service credit purchases, specifically provided that the purchase of service credit for port authority employment predating July 1, 1989, did not make the affected port authority employee eligible for the Rule of 90 early normal retirement tier benefits, in part because the employment, when actually rendered, was ineligible for public retirement plan coverage.
3. Equitable Consideration: Sufficiency of MSRS-General Miscommunication to Establish a Basis for Conferring Rule of 90 Rights. The policy issue is whether or not a series of miscommunications by a retirement plan about a person's retirement coverage or retirement benefit eligibility, subsequently corrected to the person's potential detriment, can become a sufficient basis for extending, validating, or conferring retirement rights or eligibilities that the applicable general law does not. There appears to be no dispute that MSRS-General erred in initially determining that Mr. Swanson met the pre-July 1, 1989, employment and plan membership requirement to be eligible for the Rule of 90 early normal retirement benefit tier and communicated that eligibility to Mr. Swanson. There is no available explanation why MSRS failed to discover that error to Mr. Swanson until some date between June 30, 2012, and August 16, 2012, when MSRS changed Mr. Swanson's start of retirement plan membership date to September 27, 1989. Of some precedential value, in 1975, as part of the PERA administrative legislation that it requested during that Session, but not recommended by the Pension Commission, was a provision that would have allowed the retirement plan, if it misinterpreted the law and communicated that misinterpretation to a member, to subsequently honor the communication to the member. The Commission apparently rejected that 1975 requested legislation because of the potential for fraud or misuse that the provision could become.

Four Minnesota court cases interpreting retirement laws also may provide some illumination on the question of whether miscommunicated benefit eligibility information can become the basis for extending that eligibility to a plan member:

- The Minnesota Court of Appeals, in Axelsson v. MTRFA, C8-94-2153 (1995), found in favor of the plan member who was told by the retirement plan in 1974 that he could purchase allowable service credit for Peace Corps volunteer service in 1966-1968, was informed by the retirement plan in 1990 that there was no current law authority for the purchase, and was denied by the retirement plan in 1994 when he attempted to make the purchase, with the Court of Appeals arguing that the retirement plan's initial communication could be enforced by estoppel. In 1996, in Axelsson v. MTRFA, 544 N.W.2d 297 (1996), the Minnesota Supreme Court reversed the Court of Appeals, found that the retirement plan lacked authority to grant the purchase in 1974, and found that, without statutory authority, benefit eligibility cannot be created by estoppel.
- In 2003, in Archer-Kath v. TRA, A03-304 (2003), the Minnesota Court of Appeals refused to compel the retirement plan to grant service credit and salary credit for a leave granted to a school district administrator as part of employment discrimination settlement agreement with her school district for service that overlapped employment with other teaching employment and that constituted a severance payment outside the statute, because it concluded that the case was analogous to Axelsson.
- In McGuire v. PERA, A07-2066 (2008), in an appeal by a retired city administrator who attempted to resume his same position as an independent contractor within 30 days of his employment termination and retirement, the Minnesota Court of Appeals affirmed that equitable estoppel cannot cause the retirement plan to act outside the bounds of the plan's statutory authority.
- In Sell v. PERA, A10-1901 (2011), in an appeal of a retirement plan's record correction involving service credit that had been previously transferred to another retirement plan based on PERA's repeated communication to him of an erroneous service credit amount and his reliance on that mistake, the Court of Appeals ruled that equitable estoppel can only be invoked if the retirement plan had an element of fault or wrongful conduct beyond a simple mistake, which fault or wrongfulness it did not find, and can be invoked only upon reasonable reliance, which it also did not find.

If the Commission recommends the proposed special legislation but does not find some fault or wrongful conduct beyond a simple mistake by MSRS and does not find Mr. Swanson's reliance on the MSRS error reasonable (see issue 4), it would be fashioning an equitable remedy beyond what the Minnesota Court of Appeals or Minnesota Supreme Court would apparently rule if the question were to be litigated.

4. Equitable Consideration: Extent of Reasonable Reliance on MSRS Error. The policy issue is whether or not Mr. Swanson could reasonably rely on the error made by MSRS in incorrectly recording his allowable service credit start date and whether or not Mr. Swanson has demonstrated that reasonable reliance. Mr. Swanson contends that MSRS had consistently informed him of his eligibility for the Rule of 90 benefit tier over a 23+ year period prior to August 16, 2012, when it tersely informed him of the record correction, apparently in response to an earlier telephone call that Mr. Swanson made to the MSRS help desk to get a clarification of his estimated monthly benefit amount, which he reportedly felt was slightly underestimated. Mr. Swanson also indicates that he and his family have made personal and professional plans and financial decisions based on the MSRS information received, but has not provided any substantiation that he may have of that assertion. Mr. Swanson is seven years from early retirement at age 55, with a subsidized early retirement reduction if covered by the Rule of 90 benefit tier, and is ten years from early normal retirement, without reduction, if covered by the Rule of 90 benefit tier. The Commission should consider taking testimony from Mr. Swanson on the nature of his reliance on the MSRS retirement statement information previously provided and the evidence of that reliance and testimony from MSRS about the nature of its communications made to Mr. Swanson and about any cautionary advisories it also made to Mr. Swanson.
5. Appropriateness of Providing a Legislative Remedy When a Judicial Remedy Exists. The policy issue is the appropriateness of the Pension Commission and the Legislature operating as a claims tribunal in this instance when there is an unused administrative and judicial appeal process available. Minnesota Statutes, Section 356.96, provides for a procedure by which a Minnesota public defined benefit retirement plan member, beneficiary, or potential beneficiary can contest a retirement plan eligibility, benefit amount, or other pension plan right determination, appealing the determination first to the retirement plan board of trustees and ultimately to the Court of Appeals. Mr. Swanson does not appear to have exhausted that appeals process before approaching the Legislature for its substitution of a judgment for the arguably likely result of the appeals process in sustaining the MSRS record correction. The judicial appeal process would clarify the factual issues related to the complaint, saving legislative time and effort. The judicial process presumably also would provide a more expansive and rigorous application of equitable principles. The Commission would be well advised to inquire of Mr. Swanson as to the reason or reasons that he had when he declined to pursue an administrative and judicial appeal of his dispute with MSRS.

Background Information on the Rule of 90 Early Normal Retirement Age Provision

1. Statutory Definition of Retirement. The various Minnesota defined benefit retirement plans either do not define the term, define the term to mean the period of time after a plan member becomes entitled to an accrued retirement annuity to be paid, define the term to mean the withdrawal by a plan member from active employment, define the term to mean the period of time after the cessation of active employment, or define the term as the commencement of the payment of a retirement annuity.
2. Definition of Normal Retirement
 - a. General Definition. The “normal retirement age” is the earliest age under a retirement plan at which a retirement annuity is payable without any reduction for an early retirement.
 - b. Commission Principles of Pension Policy Normal Retirement Age Policy Provision. Principle II.C.4. of the Principles of Pension Policy of the Legislative Commission on Pensions and Retirement indicates that the normal (unreduced for early retirement) retirement ages should be set based on the employability limits of average public employees and will be different for public safety employees when compared with general employees.

Specifically, the applicable principle states:

II.C.4. Appropriate Normal Retirement Ages

The normal retirement age should be set in a reasonable relationship to the employability limits of the average public employee and should differentiate between regular public employees and protective and public safety employees.

The current set of principles, last revisited by the Commission in 1996-1996, with respect to this particular principle, largely continued the earliest statement of the principle in 1980, emphasizing normal retirement ages at usual employability limits, but without any of the 1980 age specificity.

- c. General Policy Considerations Concerning Normal Retirement Ages. The historic reason for creating and maintaining pension plans, in the private sector or the public sector, was to augment an employer's personnel and compensation system by assisting in the recruitment of new qualified employees, the retention of existing qualified employees, and the systematic out-transitioning of existing employees at the conclusion of their normally expected working careers. The pension system does this by providing retirement annuities (and frequently other casualty or ancillary benefit coverage) that are deemed adequate in view of both the employer and the employees and that are deemed affordable by the employer. This traditional pension plan purpose apparently underlies the development of public pension plans in Minnesota, although it never has clearly been articulated in law.

The systematic out-transitioning of existing employees at the conclusion of their normally expected working careers is the basis for setting normal retirement ages. The Commission's Principles of Pension Policy indicate that the normal retirement age of Minnesota public pension plans should be set in accord with the employability limits of the average public employee, and indicate that the normal retirement age generally should differentiate between general public employees and set at an earlier age for protective and public safety employees.

Age 65 has generally come to be the traditional age at which many employees are expected to retire. It is, however, unclear from a policy perspective why this age has become the regularly expected retirement age for Social Security and for many public retirement plans. Age 65 does not appear to represent an empirically determined conclusion about when most employees retire that was drawn from the experience of employees before the creation of Social Security and the significant expansion of employment-based pension coverage in the 1930s. Before the 1930s, retirement for most people appears to have been a function of a physical inability to continue in employment, at whatever age that occurred. Early employee retirement plans were frequently referred to as superannuation plans and some plans substitute the term “superannuation age” for what is referred to as the “normal retirement age” in other plans. Until recent decades, the most impoverished sector of the population was older folks and the improvement of their situation was one of the goals of President Franklin Roosevelt in proposing the Social Security System in 1934. The age 65 normal retirement age is frequently ascribed to Chancellor Otto Von Bismarck of Germany, who is reported to have set age 65 as the normal retirement age for the retirement coverage provided to the Prussian army.

Since the 1960s, in both larger corporate defined benefit pension plans and public employee pension plans, the trend clearly appears to have been to institute normal retirement ages earlier than age 65. The age 62 with 30 years of service and the Rule of 90 provisions are early normal retirement age Minnesota public pension plan provisions, where a benefit unreduced for early retirement is provided at an age before the generally applicable normal retirement age. The age 62 with 30 years of service early normal retirement age provision was added to the statewide general employee retirement plans in 1973 as the first generally applicable early normal retirement age provision. The Rule of 90 early normal retirement age provision, where a person becomes eligible for an unreduced retirement benefit when the person's age and years of credited service equal or exceed the sum of 90, was enacted for the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) in 1982 (Laws 1982, Ch. 519, Sec. 2). In 1989 (Laws 1989, Ch. 319, Art. 13), the Rule of 90 provision was extended to the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the Teachers Retirement Association (TRA), and the coordinated programs of the first class city teachers retirement fund associations, applicable to only pre-July 1, 1989, hires. That restriction was also made applicable to PERA-General in 1989.

In the opposite direction, based on considerations of lengthening expected life spans and of the related cost of providing benefits for ever-lengthening retirement periods, as part of 1986 Congressional amendments, Social Security has instituted a later full benefit retirement age, as follows:

Social Security	
Year of Birth	Normal Retirement Age
Before 1938	Age 65
1938	Age 65, 2 months
1939	Age 65, 4 months
1940	Age 65, 6 months
1941	Age 65, 8 months
1942	Age 65, 10 months
1943-1954	Age 66
1955	Age 66, 2 months
1956	Age 66, 4 months
1957	Age 66, 6 months
1958	Age 66, 8 months
1959	Age 66, 10 months
1960 and later	Age 67

Minnesota public pension plans currently reflect some uniformity in normal retirement ages. The following compares the normal retirement ages applicable to the various Minnesota public pension plans:

d. Summary of the Current Minnesota Defined Benefit Retirement Plan Normal Retirement Age Provisions

MSRS-General	PERA-General	TRA	First Class City Teachers Coordinated Plans
"Normal retirement age" means age 65 for a person who first became a covered employee or member of a public pension fund listed in section 356.30, subdivision 3, before July 1, 1989, and the higher of age 65 or the "retirement age" defined in 42 USC Section 416(l), as amended, but not greater than age 66 for a person who first became a covered employee or member of a public pension fund listed in section 356.30, subdivision 3, after June 30, 1989. [352.01, Subd. 25]	"Normal retirement age" means age 65 for a person who first became a covered employee or member of a public pension fund listed in section 356.30, subdivision 3, before July 1, 1989, and the higher of age 65 or the "retirement age" defined in 42 USC Section 416(l), as amended, but not greater than age 66 for a person who first became a covered employee or member of a public pension fund listed in section 356.30, subdivision 3, after June 30, 1989. [353.01, Subd.37]	"Normal retirement age" means age 65 for a person who first became a covered employee or member of a public pension fund listed in section 356.30, subdivision 3, before July 1, 1989, and the higher of age 65 or the "retirement age" defined in 42 USC Section 416(l), as amended, but not greater than age 66 for a person who first became a covered employee or member of a public pension fund listed in section 356.30, subdivision 3, after June 30, 1989. [354.05, Subd. 38]	"Normal retirement age" means age 65 for a person who first became a covered employee or member of a public pension fund listed in section 356.30, subdivision 3, before July 1, 1989, and the higher of age 65 or the "retirement age" defined in 42 USC Section 416(l), as amended, but not greater than age 66 for a person who first became a covered employee or member of a public pension fund listed in section 356.30, subdivision 3, after June 30, 1989. [354A.011, Subd. 15a]
MSRS-Correctional	State Patrol	PERA-Correctional	PERA-P&F
"Normal retirement age" means age 55. [352.93, Subd. 1]	"Normal retirement age" means age 55. [352B.08, Subd. 2a]	"Normal retirement age" means age 55. [35E3.04, Subd. 1, 4]	"Normal retirement age" means age 55. [353.651, Subd. 1, 3]
Legislators Plan	Judges Plan		
"Normal retirement age" means age 62. [3A.01, Subd. 8]	"Normal retirement age" means the date on which a judge attains the age of 65. [490.121, Subd. 21f]		

The 1986 resetting of the Social Security full retirement benefit receipt age appears to have been motivated largely by financial concerns and by a need to reduce future benefit outlays in order to delay the date of a benefit default than by any clearly delineated empirical evidence that American workers were actually continuing working to later ages. Indeed, the literature on the topic suggests that the last 20 years have seen continuing reductions in the retirement age of many workers compared to prior generations of workers. The life expectancy of American workers, however, has been increasing throughout the 20th century, meaning that workers could delay the start of their retirement period compared to prior generations without causing any actual reduction in the duration of benefit receipt compared to earlier generations. Although the potential employability limits of general employees appear to be lengthening, it is not clear that the same phenomenon is true to some extent for public safety employees.

3. Rule of 90 Early Normal Retirement Provisions. Historically, it has been Commission policy to set an age 65 normal retirement age for general (nonpublic-safety) employees and an age 55 normal retirement age for public safety employees. While age 65 or age 55 normal retirement ages remain a common requirement, different normal retirement ages have been established over time. For the oldest programs of the first class city plans and local police and salaried firefighter relief associations, younger normal retirement ages have long existed before 1989, as follows:

Plan	Age or Ages
Duluth Teachers Retirement Fund Association (DTRFA) Old Law Program	Age 60
Minneapolis Teachers Retirement Fund Association (MTRFA) Basic Program	Age 60 or any age w/30 years of service
St. Paul Teachers Retirement Fund Association (SPTRFA) Basic Program	Age 60 with 25 years of service
Minneapolis Employees Retirement Fund (MERF)	Age 60 or any age w/30 years of service
Most local police or salaried firefighter relief associations	Age 50

In 1973, the Commission and the Legislature initially recognized long service as a qualification for an earlier normal retirement age for the statewide general employee pension plans, with the enactment of the age 62 with 30 years of service normal retirement age provision.

In 1982, after several sessions of considering proposed legislation to create earlier normal retirement ages, the Legislature enacted the Rule of 90 for the Public Employees Retirement Association (PERA), in lieu of the PERA age 62 with 30 years of service provision. The Rule of 90 provision allows a person to retire with an unreduced retirement annuity when the person's combined age and service total at least 90.

In 1989 (Laws 1989, Ch. 319, Art. 13), the Legislature extended this Rule of 90 early normal retirement provision to the Minnesota State Retirement System (MSRS), TRA, and the three first class city teacher plans as part of a major benefit improvement. That benefit increase was added as a House of Representatives floor amendment to proposed legislation relating to teachers' salaries in Independent School District No. 709 (Duluth), without a favorable recommendation by the Legislative Commission on Pensions and Retirement. The Rule of 90 provision is part of the Tier I benefit package, which consists of an earlier retirement age, a lower benefit accrual rate for the initial ten years of service (1.0% rather than 1.5% for Tier II Coordinated Programs, and 2.0% rather than 2.5% for Tier II Basic Programs), and a subsidized early retirement reduction amount.

During the 1989 Session, several Senate members of the Legislative Commission on Pensions and Retirement supported a general benefit accrual rate increase at age 65 while several House of Representatives members of the Commission supported the Rule of 90 early normal retirement age provision. The 1989 benefit increase legislation, an amendment derived from 1989 Session S.F. 1329 (Pogemiller); H.F. 1302 (Simoneau), ultimately was enacted.

Specifically, the 1989 benefit increases related to the Rule of 90 benefit tier and the level benefit tier are as follows:

- a. Level Benefit Tier. All plan members are eligible to receive a retirement annuity using a level benefit accrual formula rate of 1.5% credit for all years of service, rather than the current 1% of each of the first ten years of service, followed by 1.5% thereafter. If the individual retires before the normal retirement age, the benefit is actuarially reduced. The normal retirement age for new employees will be automatically changed to correspond to the Social Security retirement age, as that age changes over time. The normal retirement age is age 65.

- b. Rule of 90 Benefit Tier. Plan members first hired before July 1, 1989, if their age plus years of service total the sum of 90, are eligible to receive a benefit accrual formula rate of 1% for each of the first ten years of service, followed by 1.5% per year thereafter, with no early retirement reduction. If the member does not meet the Rule of 90 eligibility requirement, with a benefit accrual rate of 1% for each of the first ten years and 1.5% thereafter, the early retirement reduction rate is 3% per year.

The 1989 benefit accrual rates, including the Rule of 90 Benefit Tier, were increased in 1997 (Laws 1997, Ch. 233, Art. 1).

The argument made by the proponents for the Rule of 90 benefit tier was that the benefit program would be restricted to then current plan members (pre-July 1, 1989, hires) and that the Legislature reserved the right to eliminate the provision if its utilization exceeded 45% of eligible retirees. The Rule of 90 reporting requirement and elimination provision was repealed in 1993 (see Laws 1993, Ch. 280) at the request of the various major general employee retirement plan administrators when the TRA utilization approached the triggering level.

The 1989 Rule of 90 extension, with its restriction to pre-July 1, 1989, hires, reflects a compromise based on policy and cost considerations. Although the accrual rate for the first ten years of service is less than under a level benefit computation, the waiver of any early retirement benefit reductions that would otherwise be required tends to more than outweigh the lesser accrual rate used of the first ten years of service, creating a subsidized benefit. This subsidy of those who have sufficient age and years of service to qualify for and use the Rule of 90 adds to the plan cost, to be paid by many who will never have sufficient service to qualify for this benefit. Restricting the Rule of 90 to only those who started in covered employment before July 1, 1989, made the cost manageable under the 1989 bill. However, it has created a difference between the benefit provisions available to the pre-July 1, 1989, hires and those who came afterwards, leading to frequent requests by the more recent hires to have the Rule of 90 extended to them. So far, the Legislature has resisted those requests, for a number of reasons. One reason is that it is not viewed as an issue needing prompt attention. Individuals who started employment after 1989 either are sufficiently young that retirement is not a serious concern, or their service is rather short, leaving them far from qualifying for a Rule of 90 benefit if one were to be offered. The second consideration is cost. It would be necessary to increase the contributions to all these plans to cover the added liabilities that would be created by extending the Rule of 90. The third consideration is policy conflicts created by these early retirement provisions. An effort to extend early retirement provisions to post-1989 hires is in conflict with changes in federal retirement policy. The Social Security system has been increasing the age at which individuals can qualify for full Social Security benefits, and without those Social Security benefit checks and related Medicare coverage, most individuals who might wish to retire early from a Minnesota public plan cannot afford to do so, because of the high cost of health care. Also, given the increases in expected lifespan that has occurred and that will continue to occur, one can argue that average retirement age may need to be increased rather than decreased, to control plan cost. Fourth, given current and future labor markets, there is a need to encourage the post-World War II baby boom generation to stay in the labor force, rather than encouraging their withdrawal. The next generation is too small to fill all the positions that will become vacant. To some extent Rule of 90 provisions encourage withdrawal from the labor force. Finally, Rule of 90 provisions are inconsistent with the concepts upon which our defined benefit plans were based. These plans were intended to attract sufficient capable workers, to act as a retention tool to keep them in government employment, and to out-transition them at the end of their productive years, providing sufficient income in retirement, along with Social Security benefits and private savings, to allow the retiree to retain a reasonable standard of living. Many who retire under the Rule of 90 are not ready to leave the labor force, and thus the benefits are not used to provide retirement income. Retirement benefits paid to those who simply transition to other employment add to plan cost and may not be serving a useful public purpose.

The benefit accrual rates enacted in 1989 were increased again in 1997 (Laws 1997, Ch. 233, Art. 1). Following the enactment of the 1997 revisions, a benefit computed under the level benefit tier would use an accrual rate of 1.7% per year of service, rather than 1.5%. Benefits computed under the Rule of 90 benefit tier now use an accrual rate of 1.2% per year for each of the first ten years, and 1.7% for each year thereafter. As part of the 2006 merger of the Minneapolis Teachers Retirement Fund Association (MTRFA) into TRA, the Legislature again increased accrual rates, but only for TRA and only for prospective service.

In addition to the Rule of 90, there are other benefits generally found in these general employee plans which apply only to the pre-July 1, 1989, hires. These include an age 65 normal retirement age, rather than age 66. The lower age 65 normal retirement age will lessen the amount of a reduction due to early retirement compared to use of age 66, and will allow individuals to retire with full benefits a year earlier. Another is a 30-year provision, which allows individuals with 30 years of service credit to retire prior to normal retirement age with a reduction applied only to age 62 rather than age 65, creating a larger benefit. A third provision applicable only to the pre-July 1, 1989, hire group is an early retirement benefit computed using the Rule of 90 tiers described above with a 3% per year reduction due to early retirement.

4. 1989 Benefit Increase Legislation.

- a. Summary of the 1989 Benefit Increase Legislation. In 1989 (Laws 1989, Ch. 319, Art. 13), the Legislature enacted a controversial omnibus retirement bill that included a major benefit increase.

The 1989 benefit increase legislation included the following:

- i. Reduction in Vesting Requirement. The vesting period was reduced from five years to three years. Normal retirement, early retirement, disability, portability, and survivor benefit provisions were changed to three-year service eligibility rather than five-year.
- ii. Increased Interest on Refunds. Interest on refunds of member contributions taken when an individual leaves employment was increased to 6% from 5%.
- iii. Increase in Deferred Annuity Augmentation. Under prior law, individuals who have vested and then leave employment prior to retirement can have a deferred annuity, leaving their contributions in the retirement plan and eventually receiving an annuity at retirement age. Deferred annuities augmented at 3% per year during the deferral period. Under the 1999 law, deferred annuities augmentation increases to 5% on January 1 of the year after the member reaches age 55.
- iv. Automatic Bounce-Back, Joint and Survivor Annuity. The 1999 law provided a subsidized, automatic bounce-back annuity for individuals selecting a joint and survivor annuity. If the designated beneficiary of a joint and survivor annuity dies before the annuitant, the former employee's annuity automatically bounces back to the single life annuity level.
- v. New Level Benefit Formula, Post-1989 Employees. Post-June 30, 1989, employees will receive a level formula of 1.5% credit for all years of service, rather than the current 1% for each of the first ten years of service, followed by 1.5% thereafter. If the individual retires before the normal retirement age, the benefit is actuarially reduced. The normal retirement age for new employees will be automatically changed to correspond to the Social Security retirement age, as that age changes over time. The normal retirement age for existing employees remains at age 65.
- vi. Current Benefit Formula with 3% Early Retirement Reduction. The benefit accrual rate was set at 1% for each of the first ten years, plus 1.5% for each year thereafter, with a 3% annual reduction for early retirement, or
- vii. Level Benefit Formula with Actuarial Reduction. The benefit accrual rate was set at 1.5% for all years of service, with an actuarial reduction for early retirement, or
- viii. Rule of 90 with Current Benefit Formula Rates. If age plus years of service equal at least 90, the benefit accrual was set at 1% for each of the first ten years of service, followed by 1.5% per year thereafter, with no early retirement reduction. Use of the Rule of 90 must be reviewed periodically. If use exceeds 45% of the members eligible to retire under that provision, the provision is voided.
- ix. Contribution Rate Increases. The employee contribution rate for members was increased.
- x. Interest Assumption Increases. The pre-retirement interest rate assumption was increased to 8.5% for the following retirement plans: the Legislators Retirement, MSRS-General, MSRS-Military Affairs, MSRS-Transportation Department Pilots, MSRS-Correctional, MSRS-State Troopers, the Elective State Officers Plan, PERA, PERA-P&F, PERA-Correctional, TRA, and the Judges Retirement Plan. For the Minneapolis, St. Paul, and Duluth teacher funds, the pre- and post-retirement interest assumption was increased to 8.5%.
- xi. Amortization Date Extended. For the retirement plans listed in point x, the amortization target period was extended to the year 2020.

2. Legislative Process in Enacting the 1989 Benefit Increase Legislation. The 1989 benefit increase legislation was reviewed as a proposal by the Legislative Commission on Pensions and Retirement, but was not recommended by the Commission because of personal disagreements on the Commission that limited its function. The 1989 legislation built on Commission hearings on benefit adequacy, pension funding, and pension administration issues that occurred during the 1988-1989 Interim. The 1987-1988 and 1989-1990 membership of the Legislative Commission on Pensions and Retirement was as follows:

1987-1988	
Senate	House
Donald M. Moe (St. Paul)	Karen Clark (Minneapolis)
Lawrence J. Pogemiller (Minneapolis)	Bob A. Johnson (Bemidji)
Earl W. Renneke (LeSueur)	Gerald Knickerbocker (Hopkins)
Gene Waldorf (St. Paul)	Leo J. Reding (Austin)
Darrel Wegscheid (Apple Valley)	Wayne Simoneau, Chair (Fridley)

1989-1990	
Senate	House
Donald M. Moe, Chair (St. Paul)	Bob A. Johnson (Bemidji)
Steven Morse (Dakota)	Gerald Knickerbocker (Hopkins)
Lawrence J. Pogemiller (Minneapolis)	Rich O'Connor (St. Paul)
Earl W. Renneke (LeSueur)	Leo J. Reding (Austin)
Gene Waldorf (St. Paul)	Wayne Simoneau (Fridley)

The 1989 benefit increase legislation took a somewhat tortured path to enactment. Benefit increase proposals were introduced as S.F. 1329 (Pogemiller); H.F. 1302 (Simoneau) and were heard by the Commission, but the bill was laid over without further action on April 12, 1989. Eventually, S.F. 783 (Solon) became the vehicle bill. S.F. 783 (Solon), a bill introduced to authorize a fifth year incentive plan for teachers in the Duluth public schools, passed the Senate on May 1, 1989, on a 67-0 vote. On the House floor, S.F. 783 (Solon), a non-pension bill, was amended with a “delete-everything” amendment that included the various retirement benefit increase proposals that were assembled by the Pension Subcommittee, chaired by Representative Bob A. Johnson, and by the House Governmental Operations Committee, chaired by Representative Wayne Simoneau, and was returned to the Senate on May 19, 1989, four days before the adjournment deadline for the 1989 Legislative Session. Although the Duluth teacher salary provision was not retained by the House in S.F. 783 (Solon), Senator Sam Solon moved that the Senate concur in the House amendments on May 19, 1989. Senator Lawrence J. Pogemiller made a substitute motion for the Solon concurrence motion that the Senate not concur in the House amendment and that a conference committee be named. The Senate approved the Pogemiller motion to not concur on a vote of 34-33. Current, past, and future Commission members voted as follows:

For Pogemiller Motion	Against Pogemiller Motion
Langseth	Johnson, D.E.
Moe, D.M.	Larson
Morse	Metzen
Pogemiller	
Renneke	
Spear	
Stumpf	
Waldorf	

Subsequently, five Senators were appointed as a conference committee, Senators Solon, Moe, D.M., Moe, R.D., Pogemiller and Renneke. The House failed to appoint conferees and on May 22, 1989, the final day of the legislative session, Senator Gen Olson moved to recall S.F. 783 (Solon) from the House and the Olson motion was approved on a 35-28 vote, with current, past, and future Commission members voting as follows:

For Olson Motion	Against Olson Motion	
Johnson, D.E.	Langseth	Spear
Larson	Moe, D.M.	Stumpf
Metzen	Morse	Waldorf
Renneke	Pogemiller	

The House returned S.F. 783 (Solon) to the Senate later on May 22, 1989, and Senator Gen Olson then moved that the Senate reconsider the vote on the Pogemiller non-concurrence motion of May 19, 1989. The Olson reconsideration motion prevailed on a voice vote, whereupon Senator Sam Solon moved that the Senate concur in the House amendments. Senator Richard Cohen moved to table the Solon motion, but the Cohen motion failed on a 23-37 vote, with current, past, and future Commission members voting as follows:

For Cohen Motion	Against Cohen Motion
Langseth	Johnson, D.E.
Moe, D.M.	Larson
Morse	Metzen
Renneke	Stumpf
Spear	

The Senate then approved the Solon concurrence motion on a 37-28 vote, with past, current, and future Commission members voting as follows:

For Solon Motion	Against Solon Motion
Johnson, D.E.	Langseth
Larson	Moe, D.M.
Metzen	Pogemiller
Morse	Renneke
	Spear
	Stumpf
	Waldorf

On final passage on S.F. 783 (Solon), the Senate approved the bill and sent it to the Governor on a 40-26 vote, with the following votes:

Those who voted in the affirmative were:

Anderson	Decker	Knutson	McQuaid	Purfeerst
Beckman	Dicklich	Kroening	Mehrkens	Ramstad
Belanger	Frank	Laidig	Metzen	Samuelson
Benson	Frederick	Lantry	Morse	Schmitz
Bernhagen	Frederickson, D.F.	Larson	Novak	Solon
Bertram	Johnson, D.E.	Lessard	Olson	Storm
Brataas	Johnson, D. J.	Marty	Pariseau	Taylor
Chmielewski	Knaak	McGowan	Piper	Vickerman

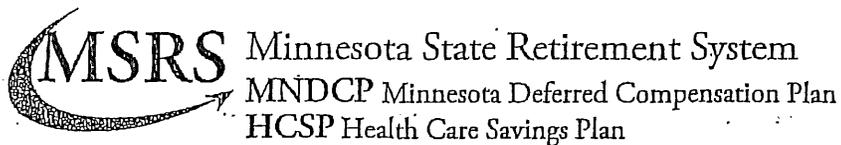
Those who voted in the negative were:

Adkins	Davis	Langseth	Peterson, D.C.	Stumpf
Berg	DeCramer	Luther	Peterson, R.W.	Waldorf
Berglin	Diessner	Merriam	Pogemiller	
Brandel	Freeman	Moe, D.M.	Reichgott	
Cohen	Gustafson	Moe, R.D.	Renneke	
Dahl	Hughes	Pehler	Spear	

Jeffrey Swanson Rule of 90 Eligibility

- For over 23 plus years, Mr. Jeffrey J. Swanson received his annual statement from MSRS informing him of his retirement options, and on every statement they indicated he was eligible for the Rule of 90 option. See attached statement example.
- His State of Minnesota seniority roster indicated that his classified start date was 6/19/89.....at the time. In 1989, he called MSRS(I don't have the gentleman's name) and asked if his temporary status with DOT/DHS impacted his MSRS eligibility date and was told it did not. He was informed that he made the deadline for Rule of 90.
- Last March Mr. Swanson's wife and he attended a pre-retirement class at MSRS. While attending the class, he met with a representative from MSRS(Suzanne Jensen). Ms. Jensen went through all of his options and provided a printout showing he was eligible for Rule of 90, confirming the data he was given for his entire career at the State of Minnesota.
- In July, he called the MSRS helpdesk to get clarification on his monthly benefit because he felt the monthly benefit amount and Ms. Jensen's data may be off by a few dollars. Ms. Jensen agree to look into the matter further.
- Mr. Swanson received a letter from MSRS dated 8/16/2012 from a Karen Schultz stating that his eligibility start date was incorrect, and he was not eligible for rule of 90
- Mr. Swanson was devastated by the news! His family and he have made personal/professional plans and financial decisions based upon the information that he received for the last 23 + years.
- Mr. Swanson's own diligence into planning his financial future was the only thing preventing him from receiving incorrect retirement information into the foreseeable future.
- Pensions are not collectively bargained. They are legislated. The only mechanism Mr. Swanson and all state employees have to rely on accurate pension information is the Retirement Systems that we have grown to trust with our futures.

-
- Mr. Swanson's date of birth is 7/17/1964.
 - MSRS states in their 8/16/2012 letter states that Mr. Swanson's eligibility start date was 9/27/1989.
 - The State of Minnesota seniority roster shows Mr. Swanson's state seniority date as 6/19/1989.
 - Mr. Swanson is willing to pay the employee and employer portion of the retirement to buy back his pension credit from 9/27/1989 to 6/30/1989 of approximately \$14,000.



Your Foundation for Retirement

August 16, 2012

ID#:

JEFFREY J SWANSON
8496 JENSEN AVE S
COTTAGE GROVE MN 55016-4965

Dear Mr. Swanson:

In reviewing your account, Minnesota State Retirement System (MSRS) finds that your eligibility start date was incorrect. Your start date should have been September 27, 1989.

To be eligible for Rule of 90 you would have had to be eligible prior to July 1, 1989, therefore the annual statements in the past have been incorrect.

I have updated your record with the correct start date; the annual statements in the future will no longer give a Rule of 90 estimate. Enclosed are estimates at ages 55, 62 & 66.

MSRS apologizes for any inconvenience that this may have caused.

If you have any questions please call me at the number below.

Sincerely,

A handwritten signature in black ink that reads "Karen Schultz". The signature is written in a cursive style with a long horizontal stroke at the end.

Karen Schultz
Manager, Retirement Services
800-657-5757 ext 5815

enclosures

State of Minnesota

Seniority Roster

PAGE: 68

RUN DATE: 7/10/2012

RUN TIME: 11:19:17AM

H55MP BUSINESS UNIT/AGCY: Human Svcs-MAPE
 214 BARGAINING UNIT: MN Assoc of Professional Empl
 HCO SENIORITY UNIT: MAPE DHS Central Office

NAME	CLASS SENIORITY DATE	SEN LOT#	STATE SENIORITY DATE	BARG UNIT SENIORITY DATE	EMPLOYEE STATUS	APPOINTMENT STATUS	HOURS WORKED	CLASS/UNCL	WORK CITY	REC#
PREVIOUS JOB INFORMATION:										
JOB ENTRY DATE AND TITLE	JOB OPTION		BU	APPT STATUS	CLASS/UNCL	COMMENT				
Management Analyst 4										
	03/04/2011	0	08/11/2004	08/11/2004	Leave of Absence	Unlimited	Full-Time	Classified	St Paul	0
03/04/11 Management Analyst 4	Project Management		214	Unlimited	Classified					
04/01/09 Management Analyst 4			214	Limited	Unclassified					
08/10/07 Mental Health Prog Consultant			214	Unlimited	Classified					
08/11/04 Mental Health Prog Consultant			214	Limited	Unclassified					
Management Analyst 4										
	04/27/2011	0	03/29/2006	03/06/2006	Active	Unlimited	Full-Time	Classified	St Paul	0
04/27/11 Management Analyst 4	Project Management		214	Unlimited	Classified					
12/31/08 Proj Consultant Sr			214	Limited	Unclassified					
09/06/06 State Prog Admin			214	Limited	Unclassified					
03/29/06 Office & Admin Specialist			206	Limited	Unclassified					
Swanson, Jeffrey J										
	11/07/2011	0	06/19/1989	11/07/2011	Active	Unlimited	Full-Time	Classified	St Paul	1
07/08/09 Management Analyst 4	Business Processing Redesign		214	Unlimited	Classified	ADJ DT: PREVIOUS TIME IN CLASS				
01/20/09 State Prog Admin Manager			220	Unlimited	Classified					
02/14/06 State Prog Admin Director			216	Unlimited	Classified					
11/13/00 State Prog Admin Supv Prin			216	Unlimited	Classified					
03/04/98 Management Analyst 3			214	Unlimited	Classified					
05/02/96 Info Tech Spec 2			214	Unlimited	Classified					
05/02/95 Buyer 1			214	Unlimited	Classified					
06/29/93 Office & Admin Spec Int			206	Unlimited	Classified					
12/12/90 Laborer General			203	Unlimited	Classified					
08/30/89 Laborer General			203	Seasonal	Classified					
06/19/89 Laborer General			203	Temporary	Classified					
Management Analyst 4										
	11/09/2011	0	11/09/2011	11/09/2011	Active	Limited	Part-Time	Unclassified	St Paul	0
11/09/11 Management Analyst 4			214	Limited	Unclassified					
Management Analyst 4										
	12/05/2011	0	08/10/1977	08/10/1977	Active	Unlimited	Full-Time	Classified	St Paul	1
12/05/11 Management Analyst 4	Project Management		214	Unlimited	Classified					
05/01/96 Information Technology Spec 4			214	Unlimited	Classified					
06/04/80 Management Analyst 3			214	Unlimited	Classified					
10/10/79 Management Analyst 2			214	Unlimited	Classified					
03/14/79 Personal Property Inv Evalu			214	Unlimited	Classified					
08/10/77 Management Analyst 1			214	Temporary	Unclassified					

1.1 moves to amend S.F. No. 279; H.F. No. 347, as follows:

1.2 Page 2, line 15, delete "2012" and insert "2013"

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 279

(SENATE AUTHORS: SIEBEN, Hayden, Goodwin, Pappas and Saxhaug)

DATE	D-PG	OFFICIAL STATUS
02/06/2013	160	Introduction and first reading Referred to State and Local Government

A bill for an act

relating to retirement; general state employees retirement plan of the Minnesota State Retirement System; clarifying "Rule of 90" eligibility for certain state employees.

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

Section 1. MSRS-GENERAL RETIREMENT ELIGIBILITY CLARIFICATION; SERVICE CREDIT PURCHASE IN CERTAIN INSTANCES.

(a) An eligible person described in paragraph (b) is entitled to purchase prior uncredited service credit under paragraph (c) and, if the service credit purchase is made, to have the effective start date for active retirement plan membership of June 30, 1989, and to retire under Minnesota Statutes, section 352.116, subdivision 1.

(b) An eligible person is a person who:

(1) was born on July 17, 1964;

(2) was initially employed by the state of Minnesota as a temporary status laborer general on June 19, 1989;

(3) became a seasonal status laborer general on August 30, 1989;

(4) became an unlimited status laborer general on December 12, 1990;

(5) has received annual statements from the Minnesota State Retirement System indicating eligibility for a retirement benefit under Minnesota Statutes, section 352.116, subdivision 1, paragraph (b), as of September 1, 2012, including the June 30, 2012, annual statement;

(6) attended a Minnesota State Retirement System preretirement class in March 2012 and was individually informed by a Minnesota State Retirement System employee of

2.1 the person's retirement eligibility under Minnesota Statutes, section 352.116, subdivision
2.2 1, paragraph (b); and

2.3 (7) received a letter from the Minnesota State Retirement System on August 16,
2.4 2012, revising the start date for general state employees retirement plan allowable
2.5 service credit from June 19, 1989, to September 27, 1989, and indicating consequent
2.6 inapplicability of Minnesota Statutes, section 352.116, subdivision 1.

2.7 (c) An eligible person may purchase allowable service credit in the general state
2.8 employees retirement plan of the Minnesota State Retirement System for the period June
2.9 30, 1989, to September 26, 1989, under Minnesota Statutes, section 356.551.

2.10 (d) An eligible person who purchased allowable service credit under paragraph
2.11 (c) has a June 30, 1989, start date for allowable service credited by the general state
2.12 employees retirement plan of the Minnesota State Retirement System and is eligible for a
2.13 retirement annuity under Minnesota Statutes, section 352.116, subdivision 1.

2.14 (e) Authority to purchase prior uncredited allowable service credit under this section
2.15 expires on August 1, 2012.

2.16 **EFFECTIVE DATE.** This section is effective July 1, 2013.