



**H.F. 477**  
(Mahoney)

**S.F. 580**  
(Hawj)

**Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* PERA-General  
*Relevant Provisions of Law:* Special law provision  
*General Nature of Proposal:* Service credit purchase for unreported SPPS employment.  
*Date of Summary:* March 13, 2015

**Specific Proposed Changes**

- Assists Nancy Spack by correcting an August 1993 erroneous St. Paul Public Schools employment termination report, allowing an 11-month allowable service credit purchase with the member payment responsibility limited to the equivalent member contribution amount, plus interest, and by requiring her employer to pay the balance of the full actuarial value prior service credit purchase payment amount determined under statute.

**Policy Issues Raised by the Proposed Legislation**

1. Compliance with Commission pension policy principles other than equitable considerations and purchase payment allocation.
2. Equitable considerations in the proposed legislation.
3. Appropriate allocation of the prior service credit purchase payment amount.
4. Precedent.
5. Failure of PERA to adequately identify unreported public employees.

**Potential Amendments**

No suggested amendments by Commission staff.

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TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director *JAM*

RE: H.F. 477 (Mahoney); S.F. 580 (Hawj): PERA; Service Credit Purchase for Unreported St. Paul Public Schools Employment

DATE: March 12, 2015

Summary of H.F. 477 (Mahoney); S.F. 580 (Hawj)

H.F. 477 (Mahoney); S.F. 580 (Hawj) permits Nancy Spack, described by a series of pertinent demographic and employment characteristics rather than named to conform with a Minnesota Constitution restriction, to purchase 11 months of allowable service credit from the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) with her payment of the member contributions that she would have made in the 1993-1994 school year, plus 8.5% interest, and a mandatory payment by the St. Paul Public Schools of the balance of the full actuarial value prior service credit purchase payment required under Minnesota Statutes, Section 356.551.

Public Pension Problem of Nancy Spack

Nancy Spack, a non-teaching employee of the St. Paul Public Schools, is a member of the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), is anticipating retiring in June 2015, and has recently attended a pre-retirement conference. Apparently, during the course of that pre-retirement conference, she became aware that she has a period of St. Paul Public School employment that was not credited as allowable service credit because the St. Paul Public Schools erroneously reported that she terminated employment in August 1993, the error was not corrected and PERA-General coverage was not restored until 1998, and omitted member and employer contributions were recovered for the three-year period (July 1, 1994, through January 3, 1997) permitted under Minnesota Statutes, Section 353.27, Subdivision 12, but an 11-month period (August 1, 1993, to June 30, 1994) of St. Paul Public School employment remains without PERA-General allowable service credit. This period of uncovered public employment affects her eventual monthly annuity payments by an estimated \$89. Ms. Spack seeks authority for a prior service credit purchase that would correct the remaining adverse impact to her of her employer's reporting error.

Discussion and Analysis

H.F. 477 (Mahoney); S.F. 580 (Hawj) assists Nancy Spack by correcting an August 1993 erroneous St. Paul Public Schools employment termination report, allowing an 11-month allowable service credit purchase with the member payment responsibility limited to the equivalent member contribution amount, plus interest, and by requiring her employer to pay the balance of the full actuarial value prior service credit purchase payment amount determined under statute.

The proposed legislation raises several pension and related public policy issues for consideration by and possible discussion between members of the Commission, including the following:

1. Compliance with Commission Pension Policy Principles other than Equitable Considerations and Purchase Payment Allocation. The policy issue is extent to which the proposed legislation complies with the applicable portion of the Principles of Pension Policy established by the Legislative Commission on Pensions and Retirement other than those discussed in items #2 and #3. Principle II.C.10. relates to the purchases of prior service credit and provides:

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. (more text if needed)

The proposed legislation complies with the principle, since the period for purchase is clearly public employment, since the purchase payment amount is the full actuarial value of the additional benefit to be obtained by the purchase, and since the member is required to pay the specified portion of the prior service credit purchase payment amount.

2. Equitable Considerations in the Proposed Legislation. The policy issue is whether or not the proposed prior service credit purchase can be viewed in some way as a violation of notions of equity. The equitable maxims that equity will not suffer a wrong to occur without a remedy and that equity abhors a forfeiture clearly argue in favor of Ms. Spack. The equitable maxims that equity aids the vigilant and not those who slumber on their rights and that one who seeks equity must do equity remain to be addressed. The error by the St. Paul Public Schools that gave rise to this loss of service credit and diminished Ms. Spack's eventual retirement annuity occurred in August 1993, six years after she began employment with the St. Paul Public Schools, was discovered either by the St. Paul Public Schools, by PERA, or by Ms. Spack in 1998, and the omitted contributions problem was resolved at that time to the extent permitted by PERA law, three years of service credit. No action appears to have been undertaken by Ms. Spack, by PERA, or by the St. Paul Public Schools to address the question of the lost 11 months of allowable service credit in the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) during the interval between 1998 and 2014, a period of 16 years. The general rule is that prior service credit purchases become more expensive the closer to retirement that they occur. The Commission may wish to request that Ms. Spack explain why she did not seek to address this lost allowable service credit for such a long period of time and why that delay should not argue against the proposed legislation.
3. Allocation of the Prior Service Credit Purchase Payment Amount. The policy issue is whether the proposed legislation is appropriate in requiring Ms. Spack to pay the equivalent of the member contributions that she would have paid during the 1993-1994 school year, plus 8.5% interest from the mid-point of the period to the date of payment, and in requiring the St. Paul Public Schools to pay the balance of the full actuarial value prior service credit purchase payment amount, with the employer amount a lien against future state aid in the event that employer payment is not made in a timely fashion. Under the Commission's Pension Policy Principles, if the employer has culpability in the loss of service credit, requiring the employer payment of the prior service credit purchase payment amount remaining beyond the member minimum amount is appropriate. St. Paul Public Schools culpability has been alleged by Ms. Spack and is likely substantiated to some degree by the 1998 omitted contributions action by PERA, but the school district has not been given an opportunity to dispute culpability. If employer culpability is particularly egregious, the Commission has, in very rare occurrences, previously allocated the entirety of the service credit purchase payment amount to the employing unit, based on testimony presented. If the employer culpability is challenged by the employer or is determined to be minimal, the Commission could determine that the mandatory employer contribution to the purchase payment amount is not appropriate, leaving Ms. Spack with the entire obligation unless under Minnesota Statutes, Section 356.551, the employing unit voluntarily participates.
4. Precedent. The policy issue is whether there are precedents for the proposed legislation and whether the proposed legislation, if enacted, could constitute an adverse precedent for future service credit purchase requests. Except for the issue of the allocation of the prior service credit purchase payment, the proposed legislation is consistent with numerous prior service credit purchases and, if sufficient employer culpability is established, is also consistent with a number of past prior service credit purchases. Depending on the resolution of the purchase payment amount allocation issue and the amount and nature of the evidence demanded and provided, if the employing unit were to be held wholly responsible for the full actuarial value prior service credit purchase payment amount, there is some possibility for the proposed legislation to become an adverse future precedent.
5. Failure of PERA to Adequately Identify Unreported Public Employees. The policy issue is the failure by PERA to adequately monitor governmental subdivision exclusion reports from St. Paul Public Schools in the case of Ms. Spack, either causing or contributing to her period of public employment without retirement plan coverage. Because PERA does not include in retirement coverage very modestly paid regular political subdivision employees, there are more excluded employees from

PERA-General coverage than for any other Minnesota public pension plan. A portion of PERA's law, Minnesota Statutes, Section 353.27, Subdivision 10, requires employing units covered by PERA to provide annually an exclusion report listing all employees potentially eligible for PERA-General coverage who were not reported as PERA members. This report is required annually and is required to include all employees in potentially PERA-General eligible positions. As needed, PERA is empowered to conduct field audits to review the payroll records of a governmental subdivision. Of the various general employee retirement plans, PERA has produced the greatest number of prior service credit purchase special legislation requests over the years. Since PERA can administratively collect equivalent deduction and contribution payments for unreported public employees as omitted contributions and grant service credit for unreported PERA-General eligible employment within three years of discovery, the Legislature only sees the potential tip of an unreported employee problem in PERA-General. PERA has acknowledged that it has not caught reporting errors in connection with past prior service credit purchase special legislation, but it is not clear that PERA has taken effective steps to correct the situation. If PERA is questioned as to its enforcement of its membership provisions and does not present convincing evidence that it is effectively enforcing its membership reporting requirements, the Commission may desire to take that into account in determining the portion of the total purchase payment by Ms. Spack. If PERA did not properly review any St. Paul Public Schools payroll abstracts or exclusion reports under Minnesota Statutes, Section 353.27, Subdivision 10, or failed to collect the required employer reporting, an argument could be made that PERA should bear some financial responsibility for the employee portion of the service credit purchase payment for Ms. Spack. If PERA was determined by the Commission to have failed to fulfill its duty to monitor exclusion reports and enforce plan coverage requirements and if the penalty imposed on PERA for that apparent failure was the payment of interest on the unpaid member contribution amount, that amount would reduce the purchase obligation borne by Ms. Spack.

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**Larry Martin**

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**From:** Shana Jones (PERA) <shana.jones@mnpera.org>  
**Sent:** Wednesday, February 11, 2015 4:01 PM  
**To:** Larry Martin; Rachel Thurlow  
**Subject:** Special Legislation HF477/SF580  
**Attachments:** Nancy Spack LOE.DOC

Larry and Rachel-

Though it was not requested, I would like to provide information on the individual (Nancy Spack) referenced in HF477/SF580.

Saint Paul Schools provided PERA with evidence that Ms. Spack should have been a PERA member during the time in question. A letter from the district is attached (though do note that the salary information provided towards the end appears to be an error). PERA would not oppose Ms. Spack's ability to make the purchase provided for in the bill.

The cost to Ms. Spack would be approximately \$4,600 based on assuming her missed contributions plus interest matched the \$18,000 per year figure provided by the district in the letter. The district would be responsible for the remaining balance of the approximate \$22,000 total actuarial cost (estimated as of March 2015). Ms. Spack's benefit would increase approximately \$90 as a result of making the purchase.

Please let me know if I can provide any more information on Ms. Spack's account.

Sincerely,



*Shana Jones*

*Policy and Organizational Planning Director*  
Public Employees Retirement Association  
60 Empire Drive, Suite 200 | Saint Paul, Minnesota 55103  
Phone: 651.355.0051 | Fax 651.297.2547  
Email: [shana.jones@mnpera.org](mailto:shana.jones@mnpera.org)  
Website: [www.mnpera.org](http://www.mnpera.org)

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**Public Employees Retirement Association of Minnesota**

October 22, 2014

RE: Nancy Spack – Years of Service verification

To whom it may concern:

This letter will service as written verification of employment from August 1993 up to June 30, 1994

A brief history of this situation is as follows: In seeking retirement information Ms .Spack contacted PERA and according to information obtained discovered the following:

- Termination of employment was reported to PERA in August of 1993.
- Documentation that back in 1997 St. Paul Public Schools had made an omissions error.
- Per Mr. Scott McLeod, St. Paul Schools was billed in March 1998 for omitted deductions for the period of 07/01/1994 through 01/03/1997. Since legislation only allows three calendar years from which the error was discovered it appears that the time frame in question August 1993 up to June 1994 would not have been subject to collection of deducted omissions.

The reported termination and missed contributions affect Ms Spack pension by approximately \$89 per month. To assist Ms. Spack with obtaining service credit for this lost time we have been asked to provide verification of employment for the missing 10 month time frame.

In lieu of electronic or paper documents to support earnings for the time period in question we have reviewed the employee file and find documents to support continuous employment with Saint Paul Public Schools since 1987.

We estimate the annual salary for the 1993 – 1994 calendar year to be:

Month: \$884.75

Annual: \$18,137.37 (10 mo work year)

Please contact me with any question\ns you may have regarding this.

Regards,

Jayne N. Meza  
Human Resources  
651.767.8245

This Document can be made available in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 477

02/02/2015 Authored by Mahoney, Nelson and Johnson, S.,  
The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy

1.1 A bill for an act  
1.2 relating to retirement; general employees retirement plan of the Public  
1.3 Employees Retirement Association; permitting a service credit purchase for  
1.4 certain St. Paul public school employees.

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

1.6 Section 1. PUBLIC EMPLOYEES RETIREMENT ASSOCIATION - GENERAL;  
1.7 ST. PAUL PUBLIC SCHOOL EMPLOYEES WITH ERRONEOUSLY REPORTED  
1.8 EMPLOYMENT TERMINATIONS.

1.9 (a) An eligible person described in paragraph (b) is entitled to purchase allowable  
1.10 service credit from the general employees retirement plan of the Public Employees  
1.11 Retirement Association (PERA) for the period specified in paragraph (c) upon making the  
1.12 prior service credit purchase payment indicated in paragraph (d).

1.13 (b) An eligible person is a person who:

1.14 (1) was born on June 18, 1952;

1.15 (2) was initially employed by Independent School District No. 625, St. Paul, in  
1.16 1987, in a nonteaching employment position;

1.17 (3) was initially covered by the general employees retirement plan of PERA;

1.18 (4) was erroneously reported to PERA by Independent School District No. 625, St.  
1.19 Paul, as having terminated employment in August 1993;

1.20 (5) did not have member contributions deducted for the general employees  
1.21 retirement plan of PERA for the period of August 1, 1993, through January 3, 1997; and

1.22 (6) had the error discovered in 1998 and received PERA general plan allowable  
1.23 service credit for the period of July 1, 1994, through January 3, 1997.

2.1 (c) The period authorized for a purchase of prior allowable service credit is August  
2.2 1, 1993, through June 30, 1994.

2.3 (d) To purchase the prior allowable service credit in paragraph (c), the eligible  
2.4 person shall make the member contributions that would have been deducted from the  
2.5 person's salary if the eligible person had been included in PERA general plan retirement  
2.6 coverage during the period of August 1, 1993, through June 30, 1994, plus compound  
2.7 interest at the rate of 8.5 percent per annum for complete years and 0.71 percent monthly  
2.8 for months or parts of months January 15, 1994, to the date that payment is made.

2.9 (e) If an eligible person makes the payment specified under paragraph (d),  
2.10 Independent School District No. 625, St. Paul, shall pay the balance of the full actuarial  
2.11 value prior service credit payment amount provided for in Minnesota Statutes, section  
2.12 356.551, within 60 days of the date on which the executive director of PERA certifies that  
2.13 the eligible person's payment was received by PERA. If Independent School District No.  
2.14 625, St. Paul, does not make the payment required by this paragraph in a timely manner,  
2.15 the executive director of PERA shall certify (1) that payment was not timely; (2) the  
2.16 amount of the unpaid employer obligation under this paragraph; and (3) interest at a  
2.17 monthly rate of 0.71 percent from the date on which the eligible person made the payment  
2.18 under paragraph (d) until the first day of the first month next following the certification to  
2.19 the commissioner of education, who shall withhold that amount from any state aid payable  
2.20 to Independent School District No. 625, St. Paul.

2.21 (f) Upon receipt of the payment under paragraph (d), PERA shall grant allowable  
2.22 service credit under Minnesota Statutes, section 353.01, subdivision 16, to the eligible  
2.23 person.

2.24 (g) This section expires on December 31, 2016.

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