



TO: Members of the Legislative Commission on Pensions and Retirement

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

RE: H.F. 126 (Murphy); S.F. 7 (Betzold): Major Retirement Plans; Uniform Pension Plan Appeal Procedures

DATE: March 1, 2007

Summary of the Proposed Legislation

H.F. 126 (Murphy); S.F. 7 (Betzold) replaces Minnesota Statutes, Sections 352.031 and 354.071, the statutory appeals procedures for the Minnesota State Retirement System (MSRS) and the Teachers Retirement Association (TRA) with a uniform appeals procedure for all of the statewide retirement plans, providing statewide public pension members, former members, and beneficiaries with:

1. Right of Review. An opportunity to have plan administrative decisions reviewed by the governing body of the plan;
2. Notice of Adverse Determination. The provision of a notice of the reasons for an adverse determination and of the appeals process whenever there is a benefit denial, modification, or termination;
3. Submission of Relevant Materials. An opportunity for a plan member to submit relevant materials in connection with a review;
4. Hearing Appearance. An opportunity to appear at the board review hearing;
5. Decision on the Record. A board decision on the review request based on the record; and
6. Right of Subsequent Court of Appeals Review. An opportunity to have the board review determination appealed to the State Court of Appeals.

Background Information on Public Retirement Plan Benefit Appeals Processes

Background information on the appeals processes utilized by the statewide retirement systems in the event of adverse determinations is set forth in Attachment A.

Technical Commission Staff Amendment

Amendment H0126-4A implements some prior refinements in the proposed legislation that inadvertently were not included in the draft language that was forwarded to the Revisor of Statutes, updates the language style and usage of various provisions without making any intended substantive modifications, and eliminates a potentially conflicting existing Public Employees Retirement Association (PERA) appeals provision.

Discussion and Analysis

H.F. 126 (Murphy); S.F. 7 (Betzold) combines the prior adverse determination appeals processes governing the Minnesota State Retirement System (MSRS) and the Teachers Retirement Association (TRA) into a single joint provision and extends the uniform provision to include the Public Employees Retirement Association (PERA).

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

1. Adequacy of the Uniform Notice, Hearing, and Review Process. The policy issue is the adequacy of the current Minnesota State Retirement System (MSRS) and Teachers Retirement Association (TRA) review procedures recodified in the proposed uniform appeals procedure and proposed for extension to the Public Employees Retirement Association (PERA). MSRS and TRA have now had 16 or 17 years' experience with the review procedure and the adequacy of the process can be judged from the experience of the two retirement systems. No information on the number of appeals filed, heard, and resolved is regularly reported to the Commission, so the Commission has only anecdotal information on the adequacy of the MSRS and TRA review processes, generally through the process of drafting special legislation to resolve constituent problems or complaints forwarded by legislators. The only instances where there are criticisms of the existing review processes arise in instances where the dispute is wholly a legal issue or where the desired remedy to a dispute is beyond the legal authority of the retirement plan governing board. The Commission may wish to take testimony from the

retirement administrators and other interested parties on the number of appeals that occur annually and the ability of the appeals process to resolve those disputes.

2. Open Meeting Law and Medical Record Disclosure Concerns. The policy issue is the appropriateness of open meeting procedures when the appeal involves the actual or potential disclosure of medical records. In reviewing S.F. 7 (Betzold), Katie Engler, Department of Administration policy analyst, and Kathy Pontius, Senate Counsel, have raised a concern that the open meeting law requirement of Minnesota Statutes, Section 356A.08, Subdivision 1, when applied to appeals of disability determinations where medical records are involved, could result in the inappropriate disclosure of nonpublic data. Ms. Engler and Ms. Pontius have suggested an amendment, H0126-5A, to address the concern, mandating that the meeting must be closed when medical records under Minnesota Statutes, Section 144.335, are involved, by adding the provision to Minnesota Statutes, Section 13D.05, Subdivision 2. If the Commission wishes to address the issue, but not amend Minnesota Statutes, Chapter 13D, the open meeting law, in a pension bill, Amendment H0126-6A contains the same substance as an addition to the hearing subdivision of the appeals process specifically.
3. Potential Inconsistencies With Disability Determination Provisions. The policy issue relates to Section 1, Subdivision 11, of the proposed legislation and potential inconsistencies of those provisions with the current statutory authority of the pension plan administrators and governing boards to determine eligibility for a disability. Section 1, Subdivision 11, contains four basic provisions, which are:
 - (i) Medical Evidence Required for Non-Eligibility Determination. Upon an appeal from a determination that there is no disability, a reversal may occur only if there is medical evidence of a disability.
 - (ii) Medical Advisor Reconsideration. The governing board may resubmit a disability benefit application to its medical advisor, with or without a requirement for additional medical examinations.
 - (iii) Medical Advisor Recommendation Binding Without Contrary Medical Evidence. A plan governing board is permitted to make a disability determination contrary to the recommendation of its medical advisor only with expert medical evidence on the record to support the contrary determination.
 - (iv) Medical Advisor Recommendation No Binding Without Medical Issues. A plan governing board may make a disability determination contrary to the medical advisory recommendation on issues that do not involve medical issues.

Provision (i) is good administrative law practice and should not contradict any current disability provisions. Provision (ii) is permissive and does not appear to contradict any current disability provisions. Provisions (iii) and (iv) appear to constrain plan administrators and plan governing board determination authority, however, and may conflict with existing disability provisions. For instance, in the law governing the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), Minnesota Statutes, Section 353.33, Subdivisions 2 and 4, an applicant is required to file an application showing compliance with the statutory qualification conditions and is required to provide an expert report supporting the application that subsequently is to be verified by the medical examiner and the determination of the existence of a disability is the responsibility of the executive director. The uniform review provision appears to shift the determination judgment in practice to the medical advisor. If there is a tension between provisions (iii) and (iv) of the appeals process and the thrust of the plan disability determination procedures in the proposed legislation, those same tensions exist currently and apparently can be reconciled. Essentially the same disability determination process applies to the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and to the Teachers Retirement Association (TRA), where the existing comparable review process provision has been in force since 1989.

4. Appropriateness of an Extension of the Uniform Appeal Provision to Major Local Retirement Plans. The policy issue is the appropriateness of a potential extension of the uniform review and appeal process beyond the Public Employees Retirement Association (PERA) to the Duluth Teachers Retirement Fund Association (DTRFA), the St. Paul Teachers Retirement Fund Association (SPTRFA), the Minneapolis Employees Retirement Fund (MERF), the Minneapolis Firefighters Relief Association, and the Minneapolis Police Relief Association. If the review and appeals process makes sense for expansion to PERA, it is likely to also make sense for expansion to a truly uniform provision, with necessary adaptations, to the larger local retirement plans. Amendment H0126-7A would add the Duluth Teachers Retirement Fund Association (DTRFA), the St. Paul Teachers Retirement Fund Association (SPTRFA), the Minneapolis Employees Retirement Fund (MERF), the Minneapolis Firefighters Relief Association, and the Minneapolis Police Relief Association to coverage by the provision. The Commission should consider taking testimony from representatives of these five retirement plans about the advantages and disadvantages of a uniform review and appeal process and about how the uniform process compares with their current in-house appeals processes.

Attachment A

Background Information on Adverse Pension Benefit Determination Appeal Processes

In 1987 (Laws 1987, Chapter 284, Article 5, Section 3), as part of its administrative proposals, the Public Employees Retirement Association (PERA) first dealt with the issue of reviews and adverse benefit determinations. The provision, coded as part of board of trustee governing provisions in Minnesota Statutes, Section 353.03, Subdivision 3, required the PERA to establish procedures to assure that benefit applicants and recipients could avail themselves of a benefit eligibility or benefit amount determination review, including attendance at the review and the ability to present views. The provision specifically indicated that any review process was not a contested case under the state's Administrative Procedure Act (Minnesota Statutes, Chapter 14). The PERA provision appears to have been prompted by an increasing number of disputes over disability benefit eligibility and amounts.

Prior to 1989, except for PERA, there were no formal processes among the various Minnesota public retirement plans and systems for reviewing adverse retirement benefit determinations. While the governing boards of the various retirement plans heard appeals from aggrieved plan members before 1989, and several controversies over retirement benefits were delegated, including appeals to the State Court of Appeals and to the State Supreme Court, these reviews and appeals were done without any comprehensive formal specification of the process.

In 1989 (Laws 1989, Chapter 319, Article 7, Section 7, Subdivision 4), all Minnesota public pension plans were first required to develop a procedure for reviewing eligibility, benefit amount, or other pension plan rights determinations that were adverse to plan participants if the review procedure was not specified in law. The review process was required to include the provision of a notice of the adverse determination and an opportunity to be heard in any review proceeding. The requirement is coded as Minnesota Statutes, Section 356A.07, Subdivision 4.

Also in 1989, as part of their administrative provisions, the Minnesota State Retirement System (MSRS) (see Laws 1989, Chapter 319, Article 1, Section 3) and the Teachers Retirement Association (TRA) (see Laws 1989, Chapter 319, Article 2, Section 7) added codified appeals processes to their governing laws. The appeals processes of the two systems were essentially identical, probably reflecting the practice of the two systems sharing a common attorney from the Office of the Attorney General. The 1989 MSRS and TRA review statute specified an appeals procedure that:

- (1) provides a notice of any benefit termination or denial;
- (2) allows for a review of an administrative termination or denial upon filing a petition;
- (3) requires an answer to the petition;
- (4) provides for a hearing;
- (5) allows for the resubmission of disability benefit questions to the system medical advisor;
- (6) requires board findings following the hearing;
- (7) authorizes an appeal directly to the State Court of Appeals;
- (8) provides that the administrative appeal is not to be conducted under the procedures of the state's Administrative Procedure Act contested case provisions, but allows the governing board to certify any petition to the state's Office of Administrative Hearings for a contested case proceeding; and
- (9) permits a person not directly involved in the case to request a review of the executive director's decision if the decision affects the individual's rights.

In 1990, the MSRS and TRA appeals processes were identically amended (see Laws 1990, Chapter 570, Article 12, Sections 3, 4, and 5 (MSRS), and Sections 25, 26, and 27 (TRA)). A 30-day-before-the-hearing time period deadline was added to the denial or termination notice contents provisions and review petition provision and authority to issue a determination without a review hearing when no relevant factual items are in dispute was added. In 1991, the TRA appeals process was amended to add a reference to the higher education Individual Retirement Account Plan (IRAP) governing law. In 1994, the TRA appeals process was again amended by authorizing participation in the review hearing by a TRA assistant executive director in addition to the TRA executive director.

Although required to have an appeals process established by the governing board by Minnesota Statutes, Section 356A.07, Subdivision 4, it is unclear how many of the state's 700+ local retirement plans have formally done so and how detailed or complete these review procedures are.

1.1 moves to amend H. F. No. 126; S. F. No. 7, as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2006, section 353.03, subdivision 3, is amended to read:

1.4 Subd. 3. **Duties and powers of the board.** (a) The board shall elect a president and
1.5 vice-president. The board shall approve the staffing complement necessary to administer
1.6 the fund. The cost of administering this chapter must be paid by the fund.

1.7 (b) The board shall adopt bylaws for its own government and for the management of
1.8 the fund consistent with the laws of the state and may modify them at pleasure. It shall
1.9 adopt, alter, and enforce reasonable rules consistent with the laws of the state for the
1.10 administration and management of the fund, for the payment and collection of payments
1.11 from members, and for the payment of withdrawals and benefits. It shall pass upon and
1.12 allow or disallow all applications for membership in the fund and shall allow or disallow
1.13 claims for withdrawals, pensions, or benefits payable from the fund. It shall adopt an
1.14 appropriate mortality table based on experience of the fund as recommended by the
1.15 association actuary, with interest set at the rate specified in section 356.215, subdivision
1.16 8. It shall provide for the payment out of the fund of all necessary expenses for the
1.17 administration of the fund and of all claims for withdrawals, pensions, or benefits allowed.
1.18 The board shall approve or disapprove all recommendations and actions of the executive
1.19 director made subject to its approval or disapproval by subdivision 3a.

1.20 (c) In passing upon all applications and claims, the board may summon, swear, hear,
1.21 and examine witnesses and, in the case of claims for disability benefits, may require the
1.22 claimant to submit to a medical examination by a physician of the board's choice, at the
1.23 expense of the fund, as a condition precedent to the passing on the claim, and, in the case
1.24 of all applications and claims, may conduct investigations necessary to determine their
1.25 validity and merit. ~~The board shall establish procedures to assure that a benefit applicant
1.26 and recipient may have a review of a benefit eligibility or benefit amount determination
1.27 affecting the applicant or recipient. The review procedure may afford the benefit applicant~~

2.1 ~~or benefit recipient an opportunity to present views at any review proceeding conducted;~~
 2.2 ~~but is not a contested case under chapter 14.~~

2.3 (d) The board may continue to authorize the sale of life insurance to members under
 2.4 the insurance program in effect on January 1, 1985, but must not change that program
 2.5 without the approval of the commissioner of finance. The association shall not receive
 2.6 any financial benefit from the life insurance program beyond the amount necessary to
 2.7 reimburse the association for costs incurred in administering the program. The association
 2.8 shall not engage directly or indirectly in any other activity involving the sale or promotion
 2.9 of goods or services, or both, whether to members or nonmembers.

2.10 (e) The board shall establish procedures governing reimbursement of expenses to
 2.11 board members. These procedures shall define the types of activities and expenses that
 2.12 qualify for reimbursement, shall provide that all out-of-state travel must be authorized
 2.13 by the board, and shall provide for independent verification of claims for expense
 2.14 reimbursement. The procedures must comply with applicable rules and policies of the
 2.15 Department of Finance, the Department of Administration, and the Department of
 2.16 Employee Relations.

2.17 (f) The board may purchase fiduciary liability insurance and official bonds for the
 2.18 officers and members of the board of trustees and employees of the association and may
 2.19 purchase property insurance or may establish a self-insurance risk reserve including, but
 2.20 not limited to, data processing insurance and "extra-expense" coverage.

2.21 Sec. 2. **[356.95] PENSION PLAN APPEAL PROCEDURES.**

2.22 Subdivision 1. Definitions. (a) Unless the language or context clearly indicates that
 2.23 a different meaning is intended, for the purpose of this section, the terms in paragraphs
 2.24 (b) to (e) have the meanings given them.

2.25 (b) "Chief administrative officer" means the executive director of a covered pension
 2.26 plan or the executive director's designee or representative.

2.27 (c) "Covered pension plan" means a plan enumerated in section 356.20, subdivision
 2.28 2, clauses (1) to (4), (10), and (12) to (14), but does not mean the deferred compensation
 2.29 plan administered under sections 352.96 and 352.97 or to the postretirement health care
 2.30 savings plan administered under section 352.98.

2.31 (d) "Governing board" means the Board of Trustees of the Public Employees
 2.32 Retirement Association, the Board of Trustees of the Teachers Retirement Association, or
 2.33 the Board of Directors of the Minnesota State Retirement System.

2.34 (e) "Person" includes an active, retired, deferred, or nonvested inactive participant in
 2.35 a covered pension plan or a beneficiary of a participant, or an individual who has applied

3.1 to be a participant or who is or may be a survivor of a participant, or a state agency or
3.2 other governmental unit that employs active participants in a covered pension plan.

3.3 Subd. 2. **Right to review.** A determination made by the administration of a covered
3.4 pension plan regarding a person's eligibility, benefits, or other rights under the plan with
3.5 which the person does not agree is subject to review under this section.

3.6 Subd. 3. **Notice of determination.** If the applicable chief administrative officer
3.7 denies an application or a written request, modifies a benefit, or terminates a benefit of
3.8 a person claiming a right or potential rights under a covered pension plan, the chief
3.9 administrative officer shall notify that person through a written notice containing:

3.10 (1) a statement of the reasons for the determination;

3.11 (2) a notice that the person may petition the governing board of the covered pension
3.12 plan for a review of the determination and that a person's petition for review must be filed
3.13 in the administrative office of the covered pension plan within 60 days of the receipt
3.14 of the written notice of the determination;

3.15 (3) a statement indicating that a failure to petition for review within 60 days
3.16 precludes the person from contesting in any other administrative review or court procedure
3.17 the issues determined by the chief administrative officer;

3.18 (4) a statement indicating that all relevant materials, documents, affidavits, and other
3.19 records that the person wishes to be reviewed in support of the petition must be filed with
3.20 and received in the administrative office of the covered pension plan at least 30 days
3.21 before the date of the hearing under subdivision 10; and

3.22 (5) a copy of this section.

3.23 Subd. 4. **Termination of benefits.** (a) If a covered pension plan decides to
3.24 terminate a benefit that is being paid to a person, before terminating the benefit, the chief
3.25 administrative officer must, in addition to the other procedures prescribed in this section,
3.26 provide the individual with written notice of the pending benefit termination by certified
3.27 mail. The notice must explain the reason for the pending benefit termination. The person
3.28 must be given an opportunity to explain, in writing, in person, by telephone, or by e-mail,
3.29 the reasons that the benefit should not be terminated.

3.30 (b) If the chief administrative officer is unable to contact the person and determines
3.31 that a failure to terminate the benefit will result in unauthorized payment by a covered
3.32 pension plan, the chief administrative officer may terminate the benefit immediately upon
3.33 mailing a written notice containing the information required by subdivision 3 to the
3.34 address to which the most recent benefit payment was sent and, if that address is that of a
3.35 financial institution, to the last known address of the person.

