



H.F. 127
(Murphy, M.)

S.F. 85
(Betzold)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA Plans
Relevant Provisions of Law: Minnesota Statutes, Sections 353.33; 353.656; 353B.08; 353E.06; proposing coding for new law; and repealing Sections 353.33, Subd. 6a, 6b, and 8, and 353.656, Subd. 5, 9, 11, and 12
General Nature of Proposal: Modifying disability determination procedures
Date of Summary: April 23, 2007

Specific Proposed Changes

- Revises last date for filing for disability from three years after termination to 18 months.
- Revises medical report requirements to require expectations for improvement.
- Requires employer to document whether there is available work for the individual and all steps that were taken to accommodate the individual.
- Requires that duty related disability applications to tie the injury to specific duties.
- Extends length of time to appeal a disability benefit decision from 45 days to 60 days and allows Executive Director to require the individual to take part in fact-finding session and/or vocational assessment

Policy Issues Raised by the Proposed Legislation

1. Whether there is sufficient need to change existing procedures.
2. Proper maximum permitted time for filing for disability following termination of service.
3. Whether to continue to permit individuals to repay refunds after a disabling event has occurred.
4. Proper scope of change. If these changes are deemed appropriate, the Commission may at a later date wish to extend these revised procedures to non-PERA plans.
5. Justification for striking vocational rehabilitation language.

Potential Amendments

H0127-1A is a technical amendment.

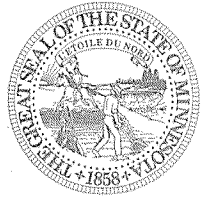
H0127-2A could be used to revise the time limit for filing for disability from the proposed 18 months following termination to length of time to be specified by the Commission.

H0127-3A would prohibit repaying refunds or taking another action to purchase service credit after a disabling event has occurred.

H0127-4A reinstates stricken vocation rehabilitation language which might have been accidentally removed.

H0127-5A revises the effective date to make the changes apply only to individuals who become disabled after the effective date.

H0127-6A, an alternative to H0127-5A, revises the effective date to apply prospectively to existing disabilitants and to those who become disabled after the effective date.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director ^{EB}

RE: H.F. 127 (Murphy, M.); S.F. 85 (Betzold): PERA Plans: Clarifying and Modifying the Procedures for Disability Benefit Eligibility Determination

DATE: April 18, 2007

General Summary of H.F. 127 (Murphy, M.); S.F. 85 (Betzold)

H.F. 127 (Murphy, M.); S.F. 85 (Betzold) makes the following changes to the disability benefit eligibility determination provisions for the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), the Public Employees Police and Fire Retirement Plan (PERA-P&F), and the PERA Local Government Correctional Employees Retirement Plan (PERA-Correctional):

1. Revises the last date for filing a disability benefit application from three years after termination to 18 months after termination;
2. Requires medical reports supporting a disability application to include expectations for improvement, and where recovery is expected, an estimate of the date on which the medical professional believes the individual will have recovered from the disabling event;
3. Requires a report from the employer that there is no available work that the individual could perform, including documentation, if requested by PERA, of all steps the employer has taken to provide continued employment for the individual and to accommodate the individual's limitations;
4. Requires that any application for duty-related disability tie the disability to specific duty-related functions or actions which are consistent with the inherent dangers of positions eligible for PERA-P&F and PERA-Correctional membership;
5. Allows appeals to the PERA Board of the Executive Director's disability determinations within 60 days after the Executive Director's determination rather than within 45 days; and allows the Executive Director to require the participant to take part in a fact-finding session conducted by an administrative law judge and/or a vocational assessment conducted by a qualified rehabilitation counselor.
6. Restricts PERA's trial work period provision to PERA-General members rather than members of all PERA plans; and,
7. Makes other changes of an administrative nature, largely striking language in existing PERA, PERA-P&F, and PERA-Correctional statutes to be moved to a new proposed section (Section 1), and repealing subdivisions no longer needed because of language in proposed Section 1.

Section by-Section Summary

Section 1. New provision, proposed coding as Section 353.031, Disability Determination Procedures. In part, this new section would collect disability application, determination, and review procedures in a single statute, replacing statements now contained in several provisions of PERA and PERA-P&F statutes, and in part it establishes new policy.

- Subdivision 1, Application, is a statement specifying that this section shall govern PERA-General, PERA-Correctional, and PERA-P&F disability applications and determinations. (1.10-1.17)
- Subdivision 2, Policy Statement, provides that, unless stated otherwise, the disability standards applicable to the plan (total and permanent for purposes PERA-General determinations, job-specific for purposes of PERA-P&F and Correctional) shall apply. (1.18-1.21)
- Subdivision 3, Procedure to Determine Eligibility. Applications must be in writing on forms provided by the Executive Director, and must be made no later than 18 months after termination of service (rather than no later than three years after termination). All medical reports must support a finding that the disability occurred while the individual was an active PERA plan member and not on leave or after termination of service occurred. The disability applicant shall provide a medical report signed by a licensed medical doctor and at least one other medical doctor, psychologist, or chiropractor, and the applicant must authorize release of all medical records. The medical report must contain an opinion regarding whether the individual is expected to improve, and if improvement is expected, the expected date on which the

individual will not longer meet the disability standard. Any claim must be supported by a report from the employer specifying actions the employer took to find available work for the individual, and accommodations made to provide continued employment. A disabilitant may simultaneously file a disability and retirement application (if the individual meets age and service requirements for retirement). If the disability application is denied, retirement would commence. (1.22-3.8)

- Subdivision 4, Additional Specific Requirements Specific to PERA-P&F and PERA-Correctional, states that if the application is filed within two years of the date of the injury, the application must be supported by evidence that the applicant is unable to perform the duties of the position held by the applicant on the date of the injury or illness, accompanied by a report from the employer regarding any duties that the individual cannot perform. If the application is filed more than two years after the date of the disabling injury or illness, the reports shall focus on the individual's ability to perform the duties assigned within the most recent 90 days prior to the application. Any claim for a duty-related disability must specify whether the disabling event occurred while the individual performing an act specific to the inherent dangers of positions eligible for PERA-P&F or Correctional plan coverage. An application must be supported by a first report of injury. If an applicant continues in employment following the application for more than 45 days without being placed in an authorized leave, the application will be cancelled and the applicant can not reapply, based on that same cause, for at least one year. (3.9-4.9)
- Subdivision 5, Medical Advisor, states that PERA may contract with the Commissioner of the Department of Health to provide medical advisors to PERA. (4.10-4.15)
- Subdivision 6, Independent Medical Evaluation, requires the applicant to submit to an independent medical evaluation, paid for by PERA, if requested by the Executive Director. (4.16-4.19)
- Subdivision 7, Refusal of Medical Examination or to Provide Medical Evidence, prohibits PERA from continuing to consider the application, or the case of an existing disability benefit recipient, requires PERA to terminate the benefit. (4.20-4.26)
- Subdivision 8, Proof of Continuing Disability, authorizes PERA to require, at any reasonable time, that a disabilitant submit proof of continued eligibility. (4.27-4.35)
- Subdivision 9, Application Approval or Denial, allows the individual to appeal the Executive Director's decision to the PERA Board within 60 days, rather than 45 days, and allows the Executive Director to require the participant to take part in a fact-finding session conducted by an administrative law judge and/or a vocational assessment conducted by a qualified rehabilitation counselor. (5.1-5.10)
- Subdivision 10, Restoring Forfeited Service, authorizes individuals to repay refunds to restore service credit within six months after the effective date of the disability benefit or within six months after filing, whichever is later. (5.11-5.16)

Section 2. Minnesota Statutes, Section 353.33, Subdivision 1, a PERA-General coordinated member disability authorization provision, is revised by cross-referencing Section 1, and by striking repayment of refund language moved to Section 1, Subdivision 10. (5.17-5.30)

Section 3. Minnesota Statutes, Section 353.33, Subdivision 2, a PERA-General disability benefit accrual provision, by clarifying that disability benefit can not commence while the individual continues to receive salary or payments from an employer-paid salary continuation program, and by striking language moved to Section 1. (5.31-6.22)

Section 4. Minnesota Statutes, Section 353.33, Subdivision 4, a PERA-General disability benefit eligibility provision, is revised by striking language to be moved to Section 1. (6.23-7.7)

Section 5. Minnesota Statutes, Section 353.33, Subdivision 6, a PERA-General continuing eligibility for disability benefit provision, is revised by striking language to be moved to Section 1. (7.8-7.22)

Section 6. Minnesota Statutes, Section 353.33, Subdivision 7a, a PERA disabilitant trail work period provision, is revised by restricting the provision's application to PERA-General rather than having it apply to all PERA plans. (7.23-8.3)

Section 7. Minnesota Statutes, Section 353.656, Subdivision 8, a PERA-P&F disability application provision, is revised by striking language to be moved to Section 1. (8.4-9.17)

Section 8. Minnesota Statutes, Section 353B.08, Subdivision 11, a PERA local consolidated relief association disability benefit re-examination provision, is amended by revising a cross-reference to refer to the new Section 1. (9.18-9.30)

Section 9. Minnesota Statutes, Section 353E.06, Subdivision 4, a PERA-Correctional disability benefit application provision, is revised by striking language to be moved to Section 1, and by adding a clarification that disability benefits can not commence while the individual continues to receive salary or payments from an employer-paid salary continuation program. (9.31-10.18)

Section 10. Minnesota Statutes, Section 353E.06, Subdivision 8, a PERA-Correctional disability benefit continuation provision, is revised by creating a cross-reference to Section 1. (10.19-10.21)

Section 11. Repealer. Minnesota Statutes, Sections 353.33, Subdivisions 6a (medical advisor), 6b (duty is medical advisor), and 8 (refusal to submit to medical examination or to provide medical evidence); and 353.656, Subdivisions 5 (proof of disability), 9 (refusal to submit to medical examination or to provide medical evidence); 11 (independent medical examination, duties of medical advisor), and 12 (approval of disability benefits), are repealed. All these provisions are no longer necessary because the substance of these provisions appears in the new Section 1. (10.22-10.24)

Section 12. Effective Date. Sections 1 to 11 are effective July 1, 2007. (10.25-10.26)

Background Information

H.F. 127 (Murphy, M.); S.F. 85 (Betzold) revises disability benefit application and review procedures for all PERA defined benefit plans, but the requested changes likely are motivated by efforts to address the high utilization of disability in the PERA-P&F plan, which has been a problem in that plan in recent years. This bill can be viewed as complementing H.F. 125 (Murphy, M., by request); S.F. 84 (Betzold, by request) which would take steps to reduce disability utilization and reduce the cost of the PERA-P&F disability program by, in part, creating new classifications of disabilitants; revising PERA-P&F disability benefits, in some cases reducing them, for new disabilitants; and terminating disability status at normal retirement age. The provisions of H.F. 127 (Murphy, M.); S.F. 85 (Betzold) could provide the additional information and additional medical reviews necessary for PERA to make the determinations regarding which category of benefits under H.F. 125; S.F. 84, should apply.

A first step to address the broad PERA-P&F disability benefit utilization problem was made in Laws 2004, Chapter 267, Article 8, Sections 20 to 25. The 2004 changes were:

1. Requiring evidence that the applicant is unable to perform duties of the position held at the time of the disability if the application is filed within two years of the onset of the disabling injury or illness;
2. Requiring evidence that the applicant is unable to perform duties assigned within 90 days of the application date if the application is filed more than two years after of the onset of the disabling injury or illness;
3. Requiring first reports of injury in all duty-related applications;
4. Requiring in all cases that the employer must provide evidence that the applicant is unable to perform applicable duties;
5. Voiding the disability application if termination from service does not occur within 45 days after approval of a disability application;
6. Clarifying that individuals may simultaneously apply for disability and retirement benefits, although both may not be received at the same time; and
7. Permitting repayment of refunds no later than six months after the effective date of the disability benefit.

Additional Background Information

- A. PERA Disability Benefits and Disability Issues. Additional information on PERA-P&F disability issues, including the nature of current PERA-P&F disability benefits and utilization problems is provided in Attachment A.
- B. Federal Income Tax Treatment. Background information on federal income tax treatment of disability benefit coverage is provided in Attachment B.

Discussion and Analysis

H.F. 127 (Murphy, M.); S.F. 85 (Betzold) in large part modifies PERA disability application procedures by requiring more specific information on the nature of the injury or disease, and by authorizing more extensive medical reporting, both prior to the initial disability determination and afterwards, to determine

whether the individual continues to be disabled. The employer must report actions the employer took to provide continued employment to the individual. Any PERA-P&F or PERA-Correctional disability application must indicate whether the claimed disabling event occurred or is due to performing an act specific to the inherent dangers of positions eligible for PERA-P&F or PERA-Correctional coverage.

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

1. Need for Change. The issue is whether there is sufficient need to consider this bill. PERA would contend that the changes contained in this bill are needed to clarify disability policies and procedures, to help contain PERA-P&F disability utilization and the resultant cost of disability in that plan, and to establish procedures for PERA-Correctional to avoid any possible future disability utilization problems in that plan.
2. Proper Length of Time to File for Disability Following Termination. The bill includes language setting a time limit of 18 months, rather than three years, to file a disability application following termination of service (page 2, line 1 and 2). The issue is whether this is the proper length of time. The Commission may wish to hear testimony on this matter. The drafting suggests that PERA believes the existing law provides too long a window, making it difficult to determine whether a claimed disabling condition is due to illness or injury that began before the individual terminated service.

The PERA proposal to use 18 months is consistent with current Teacher Retirement Association (TRA) disability law (Section 354.48, Subdivision 2). However, if the PERA proposal is adopted, there would continue to be considerable differences in treatment across plans. The Minnesota State Retirement System (MSRS) has a much shorter window, 180 days, which is approximately six months (Section 352.113, Subdivision 4). The 180-day window language applies to the MSRS General State Employees Retirement Plan (MSRS-General) and to the MSRS Correctional State Employees Retirement Plan (MSRS-Correctional). Although the MSRS-administered State Patrol Retirement Plan is generally comparable to PERA-P&F, nothing is stated in Chapter 352, the State Patrol Retirement Plan chapter, setting any time limit in that plan for filing a disability application.

3. Scope. The issue is the proper scope of the changes in length of time to file disability following termination. If the Commission is convinced that the proposed changes are appropriate for PERA, those changes might also be appropriate for various MSRS plans and for TRA.
4. Permitting Repayment of Refunds after Disability Occurs. Language on page 5, lines 11 to 16, permits individuals to repay refunds after a disability has occurred. This is existing law language that is being moved to a new provision. However, the Commission may wish to consider whether to eliminate that practice, given PERA's stated aim to control disability costs in its plans, particularly in PERA-P&F. When individuals take a refund, they forfeit service credit. If an individual is later rehired in a position covered by the plan, they are permitted by law to repay the refund previously taken with interest, which reestablishes the lost service credit. The specific question raised here is whether an individual who forfeited service credit by taking a refund should be permitted to repurchase that service after a disabling event has occurred. An individual in this circumstance would want to purchase the lost service credit if the purchase would enable the individual to qualify for disability benefits or to receive a higher benefit. The authority in existing law is equivalent to permitting an individual to collect on an insurance policy for a home destroyed by fire, by purchasing an insurance policy after the house has burned. The Commission may wish to hear testimony on this matter. If the Commission were to remove this authority, that action may lead to special law requests allowing repayment of refunds by PERA plan disabilitants. If the Commission seems likely to recommend such special laws for enactment, the Commission may wish to leave the existing policy in place.
5. Justification for Striking Vocational Rehabilitation Language. In an existing PERA-General disabilitant continuing eligibility for benefit provision, PERA is proposing to strike a requirement that continuation of disability benefits is contingent upon a disabilitant's participation in a vocational rehabilitation evaluation if PERA believes the individual may be able to return to gainful employment. This stricken language appears on page 7, lines 16 to 18. The issue is why that language is being stricken, since this requirement seems to be a tool to help control plan disability costs. The Commission may wish to seek additional testimony to determine if striking this vocational rehabilitation language is appropriate.
6. Application Issue. The issue is whether these changes are meant to apply to existing disabilitants or to new disabilitants only, which could be clarified by adding language to the effective date provision.

Potential Amendments for Commission Consideration

Amendment H0127-1A is a technical amendment updating some language on page 3, line 26; revising proposed language on page 4, line 29, in a continuing disability provision, to clarify that disability benefits will continue only if the individual remains disabled; and adding some clarifying language to the trail work period provision.

Amendment H0127-2A would revise the length of time to file a disability claim following termination from 18 months, as proposed in the bill, or a length of time to be set by the Commission. If the Commission concludes that the time period should remain unchanged from existing law, the Commission can insert “three years” in place of 18 months. If the Commission were to conclude that PERA should adopt a time limit comparable to that used in MSRS General and Correctional, the Commission could insert “180 days”.

Amendment H0127-3A could be used to prohibit any repaying of a refund or any other action to purchase service credit after a disabling event has occurred.

Amendment H0127-4A reinstates the stricken vocational rehabilitation language on page 7, lines 16 to 18.

Amendment H0127-5A revises the effective date to make the changes apply only to individuals who become disabled after the effective date.

Amendment H0127-6A, an alternative to H0127-5A, revises the effective date to make the provisions apply prospectively to existing disabilitants and to those individuals who become disabled after the effective date.

