



**H.F. 1779**  
(Sailer)

**S.F. 1626**  
(Skoe)

**Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* MSRS-General and PERA-General  
*Relevant Provisions of Law:* Uncoded special law provision  
*General Nature of Proposal:* Authorizes back payment of annuity amounts under the Combined Service Annuity provision.  
*Date of Summary:* March 27, 2007

**Specific Proposed Changes**

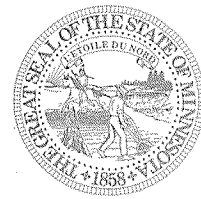
- Authorizes back payment of annuity amounts under the Combined Service Annuity portability provision where alleged failure of retirement plans to cross-notify each other delayed recognition of prior service credit.

**Policy Issues Raised by the Proposed Legislation**

1. Merit of the claim: Extent of retirement plan culpability.
2. Equitable considerations adverse to constituent.
3. Appropriateness of special legislation instead of appeals process completion.
4. Appropriate interest rate on back payment amounts.
5. General lack of coherent policy on retroactive annuity and benefit accruals.

**Potential Amendments**

None



TO: Members of the Legislative Commission on Pensions and Retirement

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

RE: H.F. 1779 (Sailer); S.F. 1626 (Skoe): MSRS/PERA; Annuity Back Payments, Combined Service Annuity Annuitant

DATE: March 26, 2007

#### Summary of H.F. 1779 (Sailer); S.F. 1626 (Skoe)

H.F. 1779 (Sailer); S.F. 1626 (Skoe) entitles Mary C. Bauck, described by a set of pertinent circumstances, to receive back payments of the annuity amounts from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) that would have been paid if MSRS and PERA had properly engaged in cross-notifying each other of retirements in process and implementing the Combined Service Annuity provision, plus 8.5 percent compound interest.

#### Public Pension Problem of Mary C. Bauck

From the various documents provided by and telephone conversations with Fred Bauck, it appears that Mary C. Bauck has a period of unpaid retirement annuity amounts from the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and has a period of unpaid increased retirement annuity amounts from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) that cannot be addressed by either retirement plan administratively.

Mary C. Bauck is a 59-year-old former State and local government employee who resides in Frazee, Minnesota. Ms. Bauck was employed by Clearwater County from October 1968 to April 1970, covered by PERA-General, was employed by the Concentrated Employment Program in Detroit Lakes April 1970 to November 1970, probably covered by MSRS-General, and was employed by the Department of Welfare/Human Services (DHS) from December 1970 to April 2004, covered by MSRS-General. Ms. Bauck's employment position was eliminated in April 2004, and she retired from MSRS-General under the "Rule of 90" early normal retirement age provision rather than exercise employment seniority bumping rights or accept a transfer to St. Paul, but did so apparently with minimal benefit counseling by DHS or MSRS. She began receiving an MSRS-General annuity for May 2004. In January 2006, Ms. Bauck received a notice for a prospective retirement counseling workshop from PERA, which prompted her to inquire about her PERA-General service credit. She indicates that she had relied on MSRS to correctly identify her public service in calculating her benefit and that she had not been contacted by PERA during the 35 years that preceded the receipt of the January 2006 PERA workshop notice. Ms. Bauck applied for and began drawing a PERA-General annuity for January 2005 under the Combined Service Annuity provision, Minnesota Statutes, Section 356.30, retroactive one year under PERA-General law, and MSRS also recalculated her MSRS-General annuity under the Combined Service Annuity provision. Ms. Bauck requested back payments of the increased MSRS-General annuity and the PERA-General annuity to May 2004, but both plans denied her request and the MSRS Board rejected her subsequent appeal.

#### Discussion and Analysis

H.F. 1779 (Sailer); S.F. 1626 (Skoe) awards back retirement annuity amounts for all or part of a 20-month period payable by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), plus 8.5 percent compound interest, to Mary C. Bauck, a long-time state employee with a short period of prior PERA-General covered employment, because MSRS-General and PERA-General failed to promptly identify her Combined Service Annuity eligibility, resulting in an initial understated retirement annuity amount.

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

1. Merit of the Claim; Extent of Retirement Plan Culpability. The policy issue is the question of the merit of the claim of Mary C. Bauck and whether or not the potential negligence or errors by the Minnesota State Retirement System (MSRS) and the Public Employees Retirement Association (PERA) are significant enough to make a retirement plan or the retirement plans culpable for a back payment of annuity amounts. Under the Combined Service Annuity provision, Minnesota Statutes, Section 356.30, first enacted in 1975 (Laws 1975, Chapter 232), Ms. Bauck had an entitlement in April 2004, when her state employment position was eliminated and she retired, to a combined service annuity from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and from the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) as an alternative to separately calculated annuities from each under the service-in-more-than-one-plan portability provisions, Minnesota Statutes, Sections 352.72, Subdivision 1, and 353.71, Subdivision 1. However, according to Ms. Bauck, she was never advised of her Combined Service Annuity alternative entitlement by MSRS in 2004 and only became aware of the portability possibility in 2006 when PERA, subsequent to her MSRS-General retirement, notified her of a prospective retiree counseling workshop, her first reported contact from PERA in decades. While Minnesota Statutes, Section 356.30, does not mandate the applicable retirement plans to inquire of other plans about any prior service credit prospective retirees may have, it is the understanding of the Commission staff that there is a routine administrative procedure for the retirement plans to identify prospective retirees with portability provision eligibility, which failed with respect to Ms. Bauck. The affected retirement administrations, MSRS and PERA, should be provided an opportunity to correct the factual record derived from Ms. Bauck's correspondence and to explain its procedures under the Combined Service Annuity provision.
2. Any Equitable Considerations Adverse to Mary C. Bauck. The policy issue is whether or not there are any equitable considerations related to Mary C. Bauck that argue against the potential special legislation. While there is no specific Commission Principles of Pension Policy provision directly applicable to this request, a frequent consideration with special legislative requests covered by a Principles provision is the absence of any significant adverse equitable consideration related to the requester. The sole readily identifiable adverse consideration in this instance is Ms. Bauck's failure to remember her 1968-1970 employment by Clearwater County that remains service credited by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and to apply for a PERA-General annuity at the same time that she applied for an annuity from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). If dual retirement applications had been filed, there was a greater likelihood that Ms. Bauck's Combined Service Annuity eligibility would have been recognized in a timely fashion. The short period of her PERA-General service and the time that has subsequently elapsed may explain this failure, but the Commission may wish to hear from Ms. Bauck on the subject.
3. Appropriateness of Special Legislation Instead of Completion of the Statutory Appeals Process. The policy issue is the appropriateness of Commission and legislative consideration of pension-related disputes for which the full statutory appeals process has not been exhausted. Mary C. Bauck appealed her situation to the Minnesota State Retirement System (MSRS) board, her appeal was rejected by the MSRS board, and Ms. Bauck declined to appeal that rejection to the Minnesota Court of Appeals. The Commission should be cautious about becoming involved in administrative appeals before their appeal to the Court of Appeals or after the Court of Appeals time deadline period has expired. The Legislature will encourage more special legislation rather than the prescribed avenue for dispute resolution if it readily hears special legislation that is really an appeal of an adverse retirement system board determination. The legislative route to an appeal could become a less costly and less rigorous alternative to the Court of Appeals. The appellate process was established to ensure consistency and accuracy in appeals from adverse pension determinations and that desired consistency and accuracy could be lost with legislative intervention.
4. Appropriate Interest Rate for Back Payments of Annuity Amounts. The policy issue is the appropriateness of requiring 8.5 percent compound interest on the amount of back payments payable by the Minnesota State Retirement System (MSRS) and by the Public Employees Retirement Association (PERA) under the proposed legislation. The rate is equal to the pre-retirement interest rate actuarial assumption applicable to both affected retirement plans and the interest rate payable on prior refunds repaid to both affected retirement plans, but exceeds the rate both retirement plans pay on refunded accumulated member contributions and exceeds the market interest rate generally available from financial institutions by the general public. Because legislatively mandated back payments of annuity amounts are infrequent or rare, the Commission staff cannot point to any prior special legislation as a precedent. Since the amount of the back payment is modest, perhaps \$1,000,

the amount of interest payable also will be relatively small in amount no matter what interest rate is specified.

5. Lack of Coherent Policy on Retroactive Annuity and Benefit Accruals. The policy issue is the broad issue of the inconsistency between the various retirement plans regarding the period over which a retirement annuity or benefit may accrue retroactively and the lack of policy coherence that arises from that inconsistency. The two retirement plans applicable in this case, the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), differ, with MSRS-General permitting retroactive accruals up to 180 days and with PERA-General permitting retroactive accruals up to one year. The topic of retroactive accrual rates is a mandatory item to be addressed by proposed retirement plan administrative legislation under Minnesota Statutes, Section 356B.01, Paragraph (b), enacted in 1994, but remains unaddressed by any post-1994 proposed administrative legislation. It is unclear to the Commission staff why any retroactivity in accrual dates is appropriate, but with retroactivity, differing periods between similar retirement plans are particularly difficult to explain.



**MSRS** | Minnesota State Retirement System  
MNDCP | Minnesota State Deferred Compensation Plan  
HCSP | Health Care Savings Plan

August 3, 2006

Ms. Mary C. Bauck  
35708 N LITTLE MCDONALD DRIVE  
FRAZEE MN 56544-8932

Dear Ms. Bauck:

In response to your July 28, 2006 letter, I have reviewed your records and must officially deny your request to adjust your monthly benefit retroactively to April of 2004. Our law allows us to pay benefits retroactively up to 180 days before an application for retirement is filed. MSRS adjusted your benefits back 180 days from the day you filed your application with the Public Employees Retirement Association (PERA).

I did discuss your case with the MSRS and PERA attorney from the Attorney General's office, and he indicated that we could not go back any further than 180 days, as stipulated by law.

If you wish to appeal my decision, you may do so before the MSRS Board of Directors. I have attached a copy of our appeal procedure, Minnesota Statutes 352.031, subdivision 3, Petition for Review (page 2). This requires that your appeal petition include a sworn, notarized statement of the reasons you believe my decision should be reversed or modified. You have 60 days after receipt of this letter to appeal the decision.

If you have any questions or would like additional information, please feel free to call me at 651-284-7888.

Sincerely,

  
David Bergstrom  
Executive Director

Enclosure  
Certified Mail

LCP & R NOV 20 2006

*This appeal denied, Nov 16, 2006, 10:15 AM  
3 abstentions.*

Petition to Appeal the Decision in the Matter of the Request for Pension Benefit  
Adjustment State in the Attached Letter from David Bergstrom, Executive Director

Decision Stated in Attached Letter of August 3, 2006

Mary Bauck, Annuitant ID #5110162729

Attachments: Correspondence between MSRS and me and PERA and me since  
January of 2006

Statement of Reasons

I wish to appeal the denial of the adjustment to my MSRS pension and argue for the adjustment of my pension benefit in conformity with the procedure provided for in the Statutes at 352.031.

I have two related arguments that I believe show that the adjustment I seek ought to be granted; one deals with the language in the Statutes, and the other is based on good faith and fairness and the circumstances under which I retired.

As I understand it, denials of the adjustment have been based on the following language in 352.115:

Subd. 8. Accrual of annuity. State employees shall apply for an annuity. The application must not be made more than 90 days before the time the employee is eligible to retire by reason of both age and service requirements. If the director determines an applicant for annuity has fulfilled the legal requirements for an annuity, the director shall authorize the annuity payment in accordance with this chapter and payment must be made as authorized. An annuity shall begin to accrue no earlier than 180 days before the date the application is filed with the director, but not before the day following the termination of state service or before the day the employee is eligible to retire by reason of both age and service requirements. ....(balance of paragraph is not relevant).

What this means to me is that there is nothing "retroactive" about the proposed adjustment. The director received the application in April of 2004, so this subdivision does not prevent the making of any adjustment since the later months of 2003! I find the references in MSRS correspondence to the date when I made application to PERA for their combined benefit to be entirely beside the point. Since "application" is not given any special, technical meaning in the definitions in 352.01, we are entitled to assume that it means, essentially, "application for a retirement annuity from MSRS." Chapter 352 is about MSRS, not PERA.

So my first set of reasons why I think the decision of the Director should be reversed can be summarized in the following argument:

MSRS ought to make the adjustment, if I am entitled to it, and the statute does not prevent it.

I am entitled to it, and the statute does not prevent it. Therefore,

MSRS ought to make the adjustment.

It might be objected that I had the opportunity to claim the combined benefit when I applied in April of 2004, and, because I did not, my "real" application date for part of the benefit is the date that MSRS learned about the combined service -- approximately the date of the PERA application. This brings me to the other argument, the one based on the circumstances of my career and fairness.

Since leaving my first job in Clearwater County in the late 1960's and all through my 34 years with the Department of Human Services, I had neither thought of nor heard from PERA. I know now that at least one other employee in very similar circumstances, whose name and affidavit I believe I can furnish, received regular mailings from PERA throughout his State career and into retirement. But I did not, and I naively assumed that my PERA contributions would somehow find their way into an MSRS account in my name, sort of like my vacation and sick leave balances did. I *do* remember that I never claimed a refund, but, with no reminders and so many years, I forgot about PERA entirely until 2006.

Early in 2004, the rural quality control reviewers of DHS, of which I was one, were informed that our positions were being eliminated to meet work force reduction goals. Each of us was offered a position in the central office in St. Paul, and those of us with enough seniority were in a position to "bump" as well. In the period leading up to our April 21 last day, there were quite a number of fairly complicated alternatives to consider. Should one accept the transfer? Draw

unemployment first and then retire? Retire immediately? Bump someone? I finally decided on immediate retirement under the rule of 90 and got my first pension check on May 1, 2004 at the age of 57.

I recount this, because I was later told that all of the State agencies hold retirement workshops to help prospective retirees with some of the decisions that I had to make more or less on the spur of the moment. I know now that one of the things covered in those workshops is the possibility of a combined benefit and the explanation of how the various retirement systems are related to one another, but, in 2004, I had no guidance at all as to how to proceed. And I certainly did not know that I might be entitled to something over and above the pension that MSRS had been projecting in their regular mailings. I believe that if I had had the benefit of an organized workshop, I probably would have been encouraged to check with PERA, and then both MSRS and PERA would have known about the combined service.

As it was, I did make a timely, if hurried, application for the MSRS benefit feeling that MSRS would accurately compute the benefit taking into account all of my experience, including what I erroneously believed had "rolled over" from PERA.

And then, in January of 2006, my husband (who opens the mail) found an announcement from PERA of a workshop for prospective retirees. This is the first communication of any kind that I had received from PERA in 35 years. During that time, I changed my address three times and my last name once. Yet we got this announcement in my name at our current address. So we contacted PERA and learned about their combined benefit, applied for it, and I now receive a small pension that was made retroactive to the extent allowed for in the PERA statute.

The argument based on fairness may be summarized as:

I was deprived of the two major sources of information about the possibility of a combined benefit (regular mailings and the retirees workshop) because of circumstances beyond my control.

I would have had every reason to claim the combined benefit in my timely application of April, 2004.

It is unfair and contrary to the mission of MSRS to deny an earned benefit applied for in good faith.

On the issue of why I did not specifically claim the combined benefit in my application of April, 2004, I can only say that I didn't claim it, because I didn't know I was entitled, and that it is draconian, if not totally unreasonable, to expect me to know it. Further, the statute does not speak to the issue of whether the application



must be correct in every detail in order to count as an application. And MSRS must consider it a *bona fide* application, or they wouldn't have paid any benefit on it.

I certify and swear that the statements and reasons put forward herein are true and correct to the best of my knowledge and belief.

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Mary C. Bauck

This document was signed before me by Mary C. Bauck on August 14, 2006.

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Notary Public

This Document can be made available in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE No. **1779**

March 7, 2007

Authored by Sailer

The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

1.1 A bill for an act  
1.2 relating to retirement; Minnesota State Retirement System and Public Employees  
1.3 Retirement Association; providing annuity back payments to a certain annuitant  
1.4 who was not timely accorded a combined service annuity.

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

1.6 Section 1. MSRS-GENERAL AND PERA-GENERAL; ANNUITY BACK  
1.7 PAYMENTS.

1.8 (a) Notwithstanding any provision of Minnesota Statutes, sections 352.115,  
1.9 subdivision 8, and 353.29, subdivision 7, to the contrary, an eligible annuitant described in  
1.10 paragraph (b) is entitled to a back payment of annuities from the general state employees  
1.11 retirement plan of the Minnesota State Retirement System and from the general employees  
1.12 retirement plan of the Public Employees Retirement Association as provided in paragraph  
1.13 (c). The back payments are intended to correct the consequences of any negligence or  
1.14 error of the retirement plans in failing to promptly implement a combined service annuity.

1.15 (b) An eligible annuitant is a person who:

1.16 (1) was born on April 1, 1947;

1.17 (2) was employed by Clearwater County and was covered by the general employees  
1.18 retirement plan of the Public Employees Retirement Association in 1968, 1969, and 1970;

1.19 (3) was employed by the Rural Minnesota Concentrated Employment Program  
1.20 in 1970;

1.21 (4) was employed by the state of Minnesota by the Department of Human Services  
1.22 or its predecessor from 1970 to 2004; and

1.23 (5) retired from state employment under the rule of 90 on April 20, 2004.

2.1           (c) The back payments are the amount of the annuity of the eligible annuitant from  
2.2 the general employees retirement plan of the Public Employees Retirement Association for  
2.3 eight months, representing the period May 1, 2004, to December 31, 2004, plus compound  
2.4 interest on the total amount at the rate of 8.5 percent from September 1, 2004, to the date  
2.5 of payment, and the amount of the increase in the annuity of the eligible annuitant from  
2.6 the general state employees retirement plan of the Minnesota State Retirement System  
2.7 on account of Minnesota Statutes, section 356.30, for 20 months, representing the period  
2.8 May 1, 2004, to December 31, 2005, plus compound interest on the total amount at the  
2.9 rate of 8.5 percent from May 1, 2005, to the date of payment.

2.10           Sec. 2. **EFFECTIVE DATE.**

2.11           Section 1 is effective the day following final enactment.