



**H.F. 2079**  
(Murphy, M.)

**S.F. 1841**  
(Pogemiller)

### **Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* MSRS-General, PERA-General, TRA  
*Relevant Provisions of Law:* Laws 2006, Chapter 271, Article 3, Section 43  
*General Nature of Proposal:* Makes 2006 temporary early retirement incentive permanent  
*Date of Summary:* April 23, 2007

### **Specific Proposed Changes**

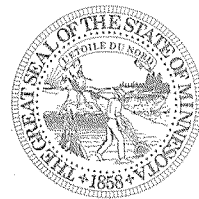
- The 2006 temporary early retirement incentive is made permanent by the removal of the 2006 sunset dates, with the date elimination made retroactive

### **Policy Issues Raised by the Proposed Legislation**

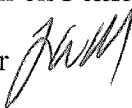
1. Appropriateness of making temporary early retirement incentive permanent.
2. Appropriateness of the entities permitted to offer the early retirement incentive.
3. No monitoring of or final approval over the designation of which employees are to be offered an incentive or option as a check on its fiscal impact.
4. Using pension plan service credit does not necessarily target long-term, higher-paid state employees.
5. Appropriateness of different eligibility service requirements for some MnSCU faculty members and other employees.
6. Retirement incentive could include reemployed annuitants rather than career employees.
7. Retirement incentive eligibility has no upper age limit.
8. Incentive needs clear election process.
9. The incentive is unclear on the nature of the annuity available to be purchased.
10. \$17,000 incentive may have limited appeal.
11. Incentive may provide a windfall to some retirees.
12. Incentive will be futile if substantial rehiring occurs.
13. Lack of coding for a permanent early retirement incentive provision.
14. Appropriateness of retroactivity; need to validate past payments.

### **Potential Amendments**

- H2079-1A (substantive) adds 2008 sunset date for early retirement incentive.
- H2079-2A (substantive) requires data collection on early retirement incentive utilization.
- H2079-3A (substantive) allows Commission to specify particular employing units excluded from early retirement incentive
- H2079-4A (substantive) requires review of decisions to offer early retirement incentives.
- H2079-5A (substantive) keys incentive eligibility to employment records rather than pension plan service credit records.
- H2079-6A (substantive) sets uniform 15-year service eligibility requirement for MnSCU faculty members.
- H2079-7A (substantive) sets uniform five-year service eligibility requirement for MnSCU faculty members.
- H2079-8A (substantive) excludes reemployed annuitants from incentive eligibility.
- H2079-9A (substantive) sets a de facto age 65-70 upper age limit on eligibility.
- H2079-10A (substantive) adds a formal written incentive acceptance requirement.
- H2079-11A (substantive) clarifies annuity purchase factors to be used in connection with conversion of incentive payment.
- H2079-12A (substantive) adds limitations on reemployment as consultant.
- H2079-13A (technical) adds suggested coding in Minnesota Statutes.
- H2079-14A (substantive) deletes retroactive effective date.
- H2079-15A (substantive) retains retroactive effective date and adds benefit/payment validation language.
- H2079-16A (technical) eliminates a grammatically unnecessary clause.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director 

RE: H.F. 2079 (Murphy, M.); S.F. 1841 (Pogemiller): Various Retirement Plans; Permanent Status for 2006 Early Retirement Incentive

DATE: April 23, 2007

Summary of H.F. 2079 (Murphy, M.); S.F. 1841 (Pogemiller)

H.F. 2079 (Murphy, M.); S.F. 1841 (Pogemiller) amends Laws 2006, Chapter 271, Article 3, Section 43, by eliminating the 2006 expiration dates, thereby making the 2006 temporary early retirement incentive permanent.

Background Information

- A. Previous Early Retirement Incentive Programs. Background information on early retirement incentive programs previously enacted by the Legislature is set forth in Attachment A.
- B. 2006 Early Retirement Incentive Program. Background information on the 2006 early retirement incentive program, Laws 2006, Chapter 271, Article 3, Section 43, is set forth in Attachment B.

Discussion and Analysis

H.F. 2079 (Murphy, M.); S.F. 1841 (Pogemiller) makes permanent the 2006 early retirement incentives, Laws 2006, Chapter 271, Article 3, Section 43, which expired on September 1, 2006.

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

1. Appropriateness of Making Temporary Early Retirement Incentive Permanent. The policy issue is the appropriateness of eliminating the expiration date on a temporary early retirement incentive, thereby making the incentive program a permanent part of most state or local school district employment. The 2006 early retirement incentive program, first proposed in 2005, was designed by the Middle Management Association, the state's third largest labor union and was extremely short, in force from June 2, 2006, to September 1, 2006. given its very short duration, no indication by proponents before the Legislative Commission on Pensions and Retirement or the House Governmental Operations Committee that the program was intended to be a demonstration program, the lack of any reporting mechanism about the utilization of the program by any covered agency, and the unavailability of any comprehensive information on the potential success of the program little foundation has been built for a conversion of the program to a permanent part of public employment. Early retirement incentives have been a recurring request of some segment of the public employee workforce over the past two decades or more and have been suggested as a potential solution for virtually any state budgetary circumstance or broader economic or labor supply condition. Prudence would appear better served, if the Commission is convinced that there is a public concern that is best addressed by promoting early retirements, by extending the 2006 incentive on a limited duration basis and by adding some reporting requirement that would allow for a programmatic evaluation of the results of the program prior to making it permanent.

If the Commission desires to retain the program as a renewed temporary program, **Amendment H2079-1A** would extend the early retirement incentive until June 30, 2008, thereby allowing the 2009 Commission and Legislature to revisit the issue with more experience of the incentive as a demonstration program.

If the Commission desires to ensure that sufficient information on the utilization of the incentive is gathered to allow for a judgment about its appropriateness and fiscal viability, **Amendment H2079-2A** requires the Department of Employees Relations, with respect to the executive branch of state government, the Department of Education, with respect to school districts, and Minnesota State Colleges and Universities System (MnSCU), with respect to the MnSCU system, collect information on the utilization of the incentive and the fiscal impact of the incentive.

2. Appropriateness of the Entities Permitted to Offer the Early Retirement Incentive. The policy issue is the appropriateness of the entities that were permitted to offer the 2006 early retirement incentive and would be permitted to offer early retirement incentives under the permanent provision. The 2006 early retirement incentive applied to the executive branch of state government, the legislative branch of state government, the Board of Public Defense, the Minnesota Historical Society, the Minnesota State Colleges and Universities System, or any school district. There are ambiguities in the 2006 incentive authorization provision that would continue if the provision were made permanent. The term “executive branch” is used in general parlance, but appears to lack a constitutional or a statutory definition. The Minnesota Constitution, in Article V, refers to an “executive department” and indicates that it consists of the five constitutional officers, and, in Article V, Section 3, includes a reference to “the principal officer in each of the executive departments.” Minnesota Statutes, 16A.011, defines the terms “executive agency” and “executive branch state agency” without defining the term “executive branch.” It is unclear whether the provision covers the constitutional officers or the statewide retirement plan administrations. It also does not include the University of Minnesota, which employs a large number of employees covered by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). It does not include “quasi” or “semi” state agencies. The inclusion of the State Board of Public Defense, but no other judicial branch employing unit, may not be well considered in a permanent incentive authority. The inclusion of school districts and not other local governmental entities also may not be founded in sound policy appropriate for a permanent program. If the Commission does not desire to extend any authority comprehensively, it may be clearer to identify what public employers it wishes to exclude from the authority rather than the current piecemeal inclusions.

If the Commission wishes to take a different approach to granting the authority to offer incentives, **Amendment H2079-3A** makes the incentive applicable to all public employers employing one or more persons covered by a Minnesota defined benefit retirement plan other than a to-be-specified list of excluded agencies or entities.

3. No Monitoring of or Final Approval Over the Designation of Which Employees are to be Offered an Incentive or Option as a Check on its Fiscal Impact. The policy issue is the lack of any mention of a mechanism for the monitoring of or granting final approval over agency designation of employees to be offered an early retirement incentive or post-retirement option in order to insure that there is an actual fiscal savings and in order to minimize any potential discrimination or other impropriety in making the designations and offers. While the up-front cost to the employing unit of up to \$17,000 in offering an early retirement incentive should insure that the early retirement incentive program in each agency is actually targeted and well considered, inadvertent mistakes are still possible that could be avoided if some review or approval process is utilized, and some mischief could occur where employees with political, social, or family connections are inappropriately included in the early retirement incentive offer, but could be avoided with the existence of a “second look” review or approval process. **Amendment H2079-4A** would implement a “second look” review/approval process for employers authorized to offer the incentive.
4. Using Pension Plan Service Credit Does Not Necessarily Target Long-Term, Higher-Paid State Employees. The policy issue is the appropriateness of using a minimum of five years of service credit as a suitable measure for selecting eligible employees. The usual rationale for an early retirement incentive program is that inducing early retirements by long-service employees who are higher on the salary ladder and who are closer to retirement produces a more positive budget balancing impact than layoffs, which target the least senior and least well-paid employees. However, the proposed legislation conditions the incentive on a minimum of five years of service credit, presumably in any of Minnesota’s statewide or major local pension plans. Thus, someone with four years of teaching service in the former Minneapolis Teachers Retirement Fund Association (MTRFA) who may have changed careers (or may even have retired from MTRFA) and now has an additional year of public employment could qualify for the \$17,000 incentive, which could cost more than a layoff. A better measure to limit the program to long-term employees would be to focus the qualifications to the length of state employment. The Department of Employee Relations (DOER) maintains records of state employment for seniority, vacation leave accrual, and sick leave accrual purposes and could be used as an appropriate mechanism for verifying the employment duration requirement. The personnel departments of other public employers maintain similar records. These employment records, related to the actual employing unit offering the incentive, may be a better mechanism for targeting the incentive to improve the fiscal impact of the program. **Amendment H2079-5A** shifts the eligibility service requirement to employment records.
5. Appropriateness of Different Eligibility Service Requirements for Some MnSCU Faculty Members and Other Employees. The policy issue is the lack of a clear policy rationale for requiring only five years of service for retirement incentive eligibility for those faculty members of the Minnesota State

Colleges and Universities System (MnSCU) covered by the higher education Individual Retirement Account Plan and for requiring 15 years of service for MnSCU faculty covered by the Teachers Retirement Association (TRA) or other defined benefit plans and for all other eligible employees. The initial 2005 version of the proposed legislation that became Laws 2006, Chapter 271, Article 3, Section 43, did not include this differential in the service length eligibility requirements within MnSCU based on which retirement plan coverage the faculty member selected and between MnSCU and all other covered employers. The differential was likely inserted into the amendment that became the 2006 law in order to advantage MnSCU faculty members, but the differential never was subjected to any particularized scrutiny. In addition to hearing from MnSCU officials about the appropriateness of treating similar faculty members differently because of their prior retirement coverage choice, the Commission should consider taking testimony from other interested parties about the policy appropriateness of imposing heavier eligibility requirements on employees outside of MnSCU.

If the Commission determines that the MnSCU eligibility requirements differential is inappropriate in a permanent early retirement incentive, **Amendment H2079-6A** imposes a uniform 15-year service requirement while **Amendment H2079-7A** imposes a uniform five year service requirement.

6. Retirement Incentive Could Include Reemployed Annuitants Rather than Career Employees. The policy issue is the appropriateness of potentially including public pension plan annuitants who have become reemployed in covered employment and are unlikely to produce the type of salary savings that are needed to offset a \$17,000 expenditure. Many local police and paid firefighter relief associations permitted retirements at age 50 and those retirees may have sought second careers in covered employment and would qualify for the incentive. State Patrol Retirement Plan retirees, who typically retire at age 55, are not covered by any reemployed annuitant earnings limitations, and routinely are reemployed in state employment, potentially could qualify for the incentive. These employees are unlikely to be a good target group for the salary savings presumably hoped to be gained by the incentive or post-retirement option. Disallowing employees who have already retired from another Minnesota public pension plan will avoid second career reemployed annuitants from eligibility, thereby maintaining the targeting on long-term career employees. If the Commission decides to exclude annuitants who are pursuing a second career from this incentive, **Amendment H2079-8A** would exclude this group.
7. Retirement Incentive Eligibility Has No Upper Age Limit. The policy issue is the appropriateness of attempting to provide an early retirement incentive or post-retirement option for employees who are older than the generally applicable normal retirement age. The proposed legislation, in effect, sets a minimum age of 55 by requiring immediate retirement eligibility, but has no upper-end age limitation or surrogate condition. If an employee already is eligible to receive an unreduced normal retirement annuity, their continuation in employment likely has some other rationale and they consequently would be less likely or unlikely to utilize the incentive. Any incentive offered to these employees could simply become a windfall for them, especially if future changes in working conditions and workload overtime could easily lead them to retire without an incentive.

If the Commission desires to exclude employees from eligibility who are continuing employment into a more advanced age, where continued employment motivations are less clear and where windfalls from the incentive are more likely, **Amendment H2079-9A** would add that exclusion.

8. Incentive Needs Clear Election Process. The policy issue is the need for a clear manner in which an eligible employee in a designated employment position elects to take the incentive. Acceptance of the early retirement incentive offer simply by terminating employment should be avoided. While that action is a perfectly acceptable manner to indicate agreement to some offers, retirement is a very serious life-changing event and utilizing a written acceptance process rather than acceptance through employment termination would provide more clarity in the process. **Amendment H2079-10A** would implement a formal written incentive acceptance.
9. The Incentive is Unclear on the Nature of the Annuity Available to be Purchased. The policy issue is the need to more clearly specify what kind of annuity is available to be purchased. Most annuities in public retirement plans are single life annuities. Optional annuity forms include term certain and for life annuities. Term certain annuities not for life may be more appropriate than term certain and for life annuities. Using a term certain annuity that is also not payable for life as part of the incentive, with a consequent shorter average payout period, will permit the incentive annuity to be used as a bridging device between employment and a regular retirement annuity at a later age. If the term certain annuity is the usual term certain annuity currently provided by Minnesota public pension plans (i.e., for a period of years and for life) the \$17,000 incentive amount likely will produce too small a monthly amount (about \$100 per month at age 65, about \$95 per month at age 60, and about \$90 per

month at age 58) to permit this bridging. The Minnesota State Retirement System (MSRS) currently provides some term-certain and for-life optional annuities, but does not provide relative short-term term-certain and not-for-life optional annuities currently. Annuities from the Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) currently are limited to the small number of MSRS-Unclassified participants who do not elect a transfer to the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) or who do not elect to take the MSRS-Unclassified account balance in a lump sum and purchase an annuity from an insurance company. Conversion of a dollar amount into an annuity under the MSRS-Unclassified Program is done at the MSRS-General factors for transfers to the Minnesota Post Retirement Investment Fund. If MSRS-Unclassified Program retirees do not differ significantly from MSRS-General in their retired life mortality and if the MSRS-Unclassified Program retirement annuity purchasers under this legislation also do not differ considerably, the provision does not expose MSRS-General to too great a risk exposure from this practice.

If the provision is intended to be permanent as a result of this proposed legislation, some greater attention to this MSRS-Unclassified annuity conversion process is in order. **Amendment 11A** is an attempt by the Commission staff to better structure the annuity conversion process.

10. \$17,000 Incentive May Have Limited Appeal. The policy issue is the potential disparity between the expectations for the success of this proposed incentive in encouraging large salary savings accruing to the employing unit through the accelerated or premature retirement of numerous senior high-paid employees and its actual performance. In a retirement setting, \$17,000 is less significant than it might initially appear. For all retirees from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the present value of their retirement benefits is in excess of \$150,000. The present value of the retirement benefit of a new retiree at age 60, with 30 years of service credit, and a \$50,000 highest five successive years average salary approaches \$300,000. Thus, an additional \$17,000 in value is not a large percentage increase in retirement value. For employees contemplating retirement at a relatively early age (at age 55 or thereabouts) and with an average life expectancy of at least 78 years, the \$17,000 incentive value may be spread very thin, meaning that fewer employees will be induced to prematurely terminate public employment than may have been expected by the designers of the incentive. With the incentive becoming permanent, over time, the \$17,000 incentive amount will become decreasingly influential.
11. Incentive May Provide a Windfall to Some Retirees. The policy issue is the potential that the proposed early retirement incentive may be offered to some employees who would have terminated public employment in the near term anyway, without the incentive, thereby providing them with a windfall and reducing the actual net savings that the employing unit would receive. The windfall potential can only be countered by careful targeting by the affected employing unit, where the employer has a good sense of the future plans of its employees who will retire in the near term anyway, induced by increasing workloads or other changing employment conditions, and its employees for whom up to \$17,000 would provide the necessary nudge into a premature retirement and adjusts accordingly.
12. Incentive Will be Futile if Substantial Rehiring Occur. The policy issue is the futility potentially involved with the proposed early retirement incentive if employees who take the incentive are reemployed by the same employer or retained as a consultant by the same employer in the near term following retirement. The incentive will produce the most salary savings if the position of the retiring employee is not filled and if total public employment is reduced on balance by the incentive. One way to insure that maximum savings is to prohibit the retiree receiving the incentive from being reemployed by the public sector or from being retained as a consultant by the public sector for a period of years after retirement. **Amendment H2079-12A** would impose a limitation of an unspecified period of years on post-incentive reemployment or retention as a consultant.
13. Lack of Coding for a Permanent Early Retirement Incentive Provision. The policy issue is the appropriateness of the lack of any coding proposed for the provision now that the early retirement incentive program is proposed to be converted from a temporary program to a permanent program. As a temporary program, Laws 2006, Chapter 271, Article 3, Section 43, was properly excluded from coding in Minnesota Statutes and subsequent publication and republication. If proposed to be permanent, the incentive should be coded so that it can be readily found by employers and employees alike. **Amendment H2079-13A** adds suggested coding.
14. Appropriateness of Retroactivity; Need to Validate Past Payments. The policy issue is the appropriateness of a retroactive effective date for the proposed shift to a permanent early retirement incentive, the appropriateness of retroactivity back to the initial effective date of the 2006 law, and, if the

retroactivity is needed to add omitted recipients or to legitimize prior payments, the appropriateness of that validation without explicit language. The changes in the bill, as drafted, are limited to the striking of the time limitations that make the program temporary. If the intent is to make the early retirement incentive permanent, an immediate effective date on a provision that lacked future eligibility limitations would appear to accomplish that change. The extension of the effect of these changes back to June 1, 2006, has no clear effect unless the retroactive effective date is a murky attempt to legitimate incentive payments to some individuals who did not fully comply with the eligibility limitations. The proponents of the proposed legislation should be provided an opportunity to better explain the intent of the retroactive effective date and why that retroactive effective date is the best remedy to the need that led to its inclusion in the bill. If the need for retroactivity is not clear, **Amendment H2079-14A** changes the effective date to an immediate effective date. If the retroactivity is needed to cover appropriate, but noncompliant past early retirement payments, **Amendment H2079-15A** validates those payments.

#### Technical Amendment

**Amendment H2079-16A** eliminates a clause that was necessary when there was an additional time limitation on one of the potential uses of the early retirement incentive payment amount, but with the proposed elimination of the time termination date on that health care savings plan deposit authority, is not grammatically necessary or helpful anymore.

