



H.F. 2124/2125

(Murphy, M., by request)

S.F. 1664/1663

(Betzold)

(In the form of delete-all amendment H2124-1A)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS-Correctional and State Patrol Retirement Plan
Relevant Provisions of Law: Minnesota Statutes, Sections 352.95; 352B.01; 352B.10; and 352B.105
General Nature of Proposal: Adds new disability definitions and revises age at which disabilitants transfer from disability to normal retirement
Date of Summary: April 23, 2007

Specific Proposed Changes

- Adds definitions of duty disability, regular disability, normal duties, and less frequent duties.
- Revises the age that plan disabilitants transfer from disability status to normal retirement status from general age 65 to general age 55.

Policy Issues Raised by the Proposed Legislation

1. Legislative intent problem; the definitions will be non-operative which can create a legislative intent problem; adopting definitions without corresponding changes in the actual disability benefit provisions conflicts with statute that presumes that all changes in law are presumed to have meaning.
2. Proper notice; the proposed changes in State Patrol Retirement Plan definitions were not included in the original bills.
3. Age Discrimination Act (ADA); whether the proposed changes are ADA compliant.
4. Eligible transfer groups; it is unclear whether the changes are intended to apply to existing disabilitants, new disabilitants, or just to new hires.

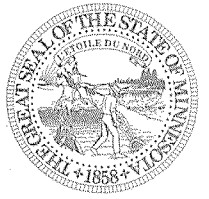
Potential Amendments

H2124-2A removes all the disability-to-retirement transfer age provisions.

H2124-3A removes the inoperative definitions. (This amendment should not be used with H2124-2A; the two amendments together would remove all sections.)

H2124-4A could be used, if the Commission chooses to retain the disability-to-retirement transfer provisions, to include coverage of existing employees and disabilitants, and to specify transfer procedures for the existing disabilitants.

H2124-5A, an alternative to H2124-4A, would have the transfer provisions apply to any individuals who become disabled after the effective date but not to existing disabilitants.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: H.F. 2124 (Murphy, M., by request); S.F. 1664 (Betzold), and
H.F. 2125 (Murphy, M., by request); S.F. 1663 (Betzold), in the form of Delete-Everything
Amendment H2124-1A: MSRS-Correctional/State Patrol; Amending Disability Benefit
Provisions, Revising Disabilitant Transfer-to-Retirement Age, Creating Disability Definitions

DATE: April 16, 2007

Introduction

David Bergstrom, Executive Director of the Minnesota State Retirement System (MSRS), has requested that H.F. 2124 (Murphy, M., by request); S.F. 1664 (Betzold) and H.F. 2125 (Murphy, M., by request); S.F. 1663 (Betzold) be considered in the form of delete-everything amendment H2124-1A, which is drawn to H.F. 2124/S.F. 1664.

Summary of Delete-Everything Amendment H2124-1A

Delete-everything amendment H2124-1A adds definitions of regular disability, duty disability, normal duties, and less frequent duties to the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) and the State Patrol Retirement Plan, and revises the MSRS-Correctional and State Patrol Retirement Plan disabilitant transfer to normal retirement status at normal retirement age provisions to require transfer to the normal retirement status at age 55 or the five-year anniversary of the effective date of the disability, whichever is later, rather than at age 65 or the five-year anniversary of the effective date of the disability, whichever is later.

Background Information

- A. MSRS-Correctional. Background information on the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), the actuarial condition of MSRS-Correctional, and MSRS-Correctional disability issues is set forth in Attachment A.
- B. State Patrol Retirement Plan. Background information on the MSRS-administered State Patrol Retirement Plan, the actuarial condition of the State Patrol Retirement Plan, and State Patrol Retirement Plan disability issues is set forth in Attachment B.
- C. Age Discrimination Issues and the ADA. Background information on age discrimination issues and the Age Discrimination Act of 1967 (ADA) is set forth in Attachment C.

Section-by-Section Summary

Section 1 adds a "regular disability" definition for MSRS-Correctional, defined as a physical or psychological condition expected to last at least one year which prevents a member from performing the normal duties of the employment position, and which results from a disease or injury arising from activities while not at work, or while at work but performing duties that do not present inherent dangers specific to the occupations covered by MSRS-Correctional.

Section 2 adds a "duty disability" definition for MSRS-Correctional, defined as a physical or psychological condition expected to last at least one year which prevents a member from performing the normal duties of the employment position, and which results from a disease or injury arising from activities while at work and performing duties that present inherent dangers specific to the occupations covered by MSRS-Correctional.

Section 3 adds a "normal duties" definition for MSRS-Correctional, defined as specific tasks designated in the job description and performed on a frequent basis.

Section 4 adds a "less frequent duties" definition for MSRS-Correctional, defined as tasks designated in the job description and performed occasionally or when assigned.

Section 5 revises the MSRS-Correctional medical evidence provision, Section 352.95, Subdivision 4, to conform to the change in disability to retirement transfer date provisions in Section 6.

Section 6 revises the MSRS-Correctional disabilitant retirement status at normal retirement age provision (Section 352.95, Subdivision 5) to require transfer to the normal retirement status at age 55 or the five-year anniversary of the effective date of the disability, whichever is later, rather than at age 65 or the five-year anniversary of the effective date of the disability, whichever is later, and by making corresponding changes in optional annuity election dates.

Section 7 adds a “regular disability” definition for the State Patrol Retirement, defined as a physical or psychological condition expected to last at least one year which prevents a member from performing the normal duties of the employment position, and which results from a disease or injury arising from activities while not at work, or while at work but performing duties that do not present inherent dangers specific to the occupations covered by the State Patrol Retirement Plan.

Section 8 adds a “duty disability” definition for the State Patrol Retirement, defined as a physical or psychological condition expected to last at least one year which prevents a member from performing the normal duties of the employment position, and which results from a disease or injury arising from activities while at work and performing duties that present inherent dangers specific to the occupations covered by the MSRS State Patrol Plan.

Section 9 adds a “normal duties” definition for the State Patrol Retirement, defined as specific tasks designated in the job description and performed on a frequent basis.

Section 10 adds a “less frequent duties” definition for the State Patrol Retirement, defined as tasks designated in the job description and performed occasionally or when assigned.

Section 11 revises the State Patrol Retirement Plan disabilitant optional annuity election provision (Section 352B.10, Subdivision 5) to provide an optional annuity election at age 55 or the five-year anniversary of the effective date of the disability, whichever is later, rather than at age 65 or the five-year anniversary of the effective date of the disability, whichever is later.

Section 12 revises the State Patrol Retirement Plan disabilitant retirement status at normal retirement age provision (Section 352B.105) to require termination of disability benefits and transfer to normal retirement status at age 55 or the five-year anniversary of the effective date of the disability, whichever is later, rather than at age 65 or the five-year anniversary of the effective date of the disability, whichever is later.

Section 13, Effective Date. Sections 1 to 12 are effective on the day following final enactment.

Discussion and Analysis

Delete-All Amendment H2124-1A revises MSRS-Correctional and State Patrol Retirement Plan law by adding definitions of regular disability, duty disability, normal duties, and less frequent duties and by revising the disabilitant transfer to normal retirement status at normal retirement age provisions.

The delete-all amendment raises the following policy issues:

1. Need for Change. The issue is whether there is sufficient need for the proposed changes. The Commission may wish to hear testimony from MSRS staff regarding why these changes are appropriate and should be made at this time. MSRS has been concerned about disability utilization in MSRS-Correctional for some time, but the current proposal will have little impact on controlling plan costs. This delete-all amendment is the first step in a multi-stage proposal to be requested in future years. Perhaps it would be better to delay action on at least some parts of the current proposal until next year.
2. Legislative Intent Problem due to Non-Operative Definitions/Conflict with Minnesota Statutes, Section 645.24. The Commission may wish to hear testimony from MSRS staff regarding why the various proposed definitions should be enacted. Presumably, MSRS intends that they be not operative at this time. None of the new definitions (regular disability, duty disability, normal duties, and less frequent duties) are currently used in the plan’s disability benefit provisions, and MSRS is not requesting that the actual disability benefit provisions be revised at this time to use the proposed definitions. The Commission may choose to not recommend inoperative provisions for enactment. The courts and other parties are likely to assume that these definitions must have some current purpose within MSRS statutes. Minnesota Statutes, Section 645.17, Presumptions in Ascertaining Legislative Intent, states that when the courts try to determine legislative intent, the courts may be guided by the presumptions that (1) the Legislature does not intend a result that is absurd, impossible to execute, or unreasonable, and (2) that the Legislature intends the entire statute is to be effective. If

these definitions are intended as a proposal for interested parties to review and consider, then perhaps they should be part of a proposal for circulation rather than as a bill to be enacted into law.

3. Procedural Issues. The proposed State Patrol Retirement Plan definitions of regular disability, duty disability, normal duties, and less frequent duties, were not included in either H.F. 2124 (Murphy, M., by request); S.F. 1664 (Betzold) or in H.F. 2125 (Murphy, M., by request); S.F. 1663 (Betzold), the two bills from which elements of delete-all amendment H2124-1A were drawn. While the State Patrol Retirement Plan definitions are comparable to the proposed MSRS-Correctional definitions and with definitions proposed by PERA in another bill, and while consistency across comparable plans is a desirable characteristic, some individuals may be concerned about the lack of adequate notice to interested parties.
4. Cost Impact. The issue is the cost impact on MSRS-Correctional and the State Patrol Retirement Plan. Revising the disability-to-retirement transfer age will have some minor impact on plan cost because free surviving spouse coverage will end sooner and that revision may induce fewer individuals to seek disability benefits for minor impairments. Hopefully, MSRS can provide an estimate of this impact.
5. Changes in Age Discrimination Provisions. There are several issues related to the changes proposed in disability-to-retirement transfer provisions and related time periods for making optional annuity elections, as follows:
 - Whether the Proposed Changes are ADA-Compliant. As noted in the age discrimination background information in Attachment C, when an effort was made in 1993 to make ADA-compliant changes, the revisions were inconsistent across comparable plans, and in some cases were probably unnecessary or incorrect. This current proposal is an effort to at least partly correct that situation. Based on the current proposal, MSRS is indicating that transfer age should have remained based on the normal retirement age for these public safety plans rather than the normal retirement age for a general employee plan. The proposal is to use age 55 or the five-year anniversary of the disability, whichever is later, rather than age 65 or the five-year anniversary of the disability. If the current proposal is correct, then the 1993 changes were in error and unnecessarily extended free surviving spouse coverage in MSRS public safety plans for ten years longer than needed for ADA compliance. Similarly, although Public Employees Police and Fire Retirement Plan (PERA-P&F) plan policy is not addressed here, the complete repeal of the PERA-P&F disability-to-retirement transfer provision seems an unnecessary response to the need for ADA compliance. MSRS should document to the Commission's satisfaction why "age 55 or the five-year anniversary of the disability, whichever is later" is an acceptable approach.
 - Proper Scope of Any Proposed Change. Making the transfer-age changes that MSRS proposed will not create consistency across all comparable plans because PERA-P&F currently has no transfer provision. That provision was repealed in 1993, leaving PERA-P&F disability status indefinitely. In a separate bill, (H.F. 125 (Murphy, M., by request; S.F. 84 (Betzold)), PERA is proposing to reestablish the PERA-P&F disability-to-retirement transfer, but that proposal may not be fully consistent with the MSRS proposal. As of this writing, PERA is considering whether to revise its proposal to include a disability-to-retirement transfer provision covering all PERA-P&F disability status except those who are severely disabled performing duty-related functions, disabled to the extent that the individual could qualify as disabled under the more stringent standards used for general employee plans (a standard of being incapable of performing any gainful employment).
 - Which Employees are Covered by the Transfer Age Change. It is not clear which employees are covered by current law rather than the proposed transfer age change. The Commission may wish to consider adding clarifying language. The revisions could cover existing disability status, or just new or existing employees who become disabled after the date the proposal is enacted, or just new hires. On one extreme, making the changes effective for all employees including existing disability status will maximize any cost reduction, but it would create questions of fairness and whether the change can be viewed as a benefit takeaway from existing disability status without any offsetting compensating changes. Those concerns would lessen if the change applies to those who become disabled after the effective date, and would be at most a minor consideration if applied only to new employees. However, making the changes apply only for new hires will not produce any meaningful impact for many years.

Potential Amendments for Commission Consideration, Drawn to Delete-All Amendment H2124-1A

Amendment H2124-2A would remove all the disability-to-retirement transfer date provisions from the delete-all amendment. The Commission could use this amendment if the Commission has reservations about the appropriateness of the proposed MSRS treatment, or if the Commission wishes to delay consideration of this issue until next year when a more comprehensive and consistent proposal involving MSRS and other retirement systems can be developed. That proposal might also address disability-to-retirement transfer provisions applicable to general employee plans. When these plans have transfer provisions, they base the transfer date on age 65 or the five-year anniversary of the disability, whichever is later. Age 65 is the normal retirement age for pre-1989 hires. The normal retirement age for post-June 30, 1989, hires can exceed age 65.

Amendment H2124-3A would remove the proposed inoperative definitions from the delete-all amendment. The Commission could use this amendment if it concludes that inoperative provisions should not be enacted.

Amendment H2124-4A. If the Commission chooses to retain the disability-to-retirement provisions this amendment could be used to have the changes apply to all new and existing employees, including existing disabilitants. Existing disabilitants currently between age 55 and 65 would be transferred to retirement 90 days after the effective date of the bills, and can elect joint-and-survivor coverage prior to that transfer. By including existing disabilitants, this approach likely would not be favored by the existing disabilitants in MSRS-Correctional and in the State Patrol Retirement Plan, and might be challenged in the courts.

Amendment H2124-5A is an alternative to H2124-5A, and would have the disability-to-retirement provisions apply to any individuals who become disabled after the effective date. This is the approach PERA is advocating in its PERA-P&F disability policies bill.

Attachment A
Background Information on the
Correctional State Employees Retirement Plan of the
Minnesota State Retirement System (MSRS-Correctional)

General Information

The Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) was established in 1973 as a result of collective bargaining by the State of Minnesota with the American Federation of State, County and Municipal Employees (AFSCME), Council 6, and the resulting implementing legislation. Up to that point, correctional guards and most other correctional system employees were covered by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). Some correctional system employees were covered by the Teachers Retirement Association (TRA). MSRS-Correctional was created as a separate plan, with the membership in 1973 largely limited to correctional guards and correctional counselors in adult correctional facilities. In subsequent years, by amendments to the coverage group of the plan, the coverage group was expanded to include additional correctional positions in both adult and juvenile correctional facilities. In 1996, the MSRS-Correctional Plan membership was increased by more than 400 State employees by virtue of the inclusion of 33 additional employment classifications who were certified by the Department of Corrections or the Department of Human Services as having at least 75 percent inmate or patient contact. In 1999, the MSRS-Correctional Plan membership was increased by an estimated 115 State employees employed in nine employment positions with the Minnesota Extended Treatment Option (METO) on-campus program at the Cambridge Regional Human Services Center.

One of the attractions of MSRS-Correctional for groups seeking this coverage is that the plan pays higher benefits than a general employee plan and has an earlier normal retirement age. While this coverage is advantageous to the employee, it is more expensive for the employer because of the higher benefits and earlier retirement age in the Correctional Plan compared to the General Plan. The Correctional Plan offers a hybrid of general employee plan and public safety plan features. MSRS-Correctional members are coordinated members, like members of MSRS-General and unlike members of the Public Employees Retirement Association Police and Fire Plan (PERA-P&F). Like a public safety plan, members can retire without a reduction for early retirement at age 55 or with a reduction at age 50. This annuity is computed using a 2.4 percent per-year-of-service benefit accrual factor. (For each year of covered service, the individual will receive 2.4 percent of the high-five average salary, which is the five years of covered salary which produces the highest average). Duty-related disability benefits are generous, typical of a public safety plan. The duty-related disability receives 50 percent of high five average salary, plus 2.4 percent of high five average salary for each year in excess of 20 years of allowable service. Also like a public safety plan, MSRS-Correctional uses an occupational definition of disability rather than the total impairment disability definition used by MSRS-General.

Another attraction of MSRS-Correctional coverage is that post-retirement health care coverage may be provided by the employer. MSRS administrators indicate that eligibility may depend upon the specific union to which the member belongs. In cases where employer-paid health care is an option, the individual must retire between ages 50 and 55 to be eligible for that coverage.

The premise for MSRS-Correctional coverage is that certain employment positions in correctional or analogous security hospital or psychopathic personality treatment center service place the individual in a high degree of physical danger, and there is sufficient need for a particularly vigorous workforce in these specific positions to warrant a separate plan with larger retirement benefits payable at an earlier normal retirement age.

Actuarial Condition of MSRS-Correctional

Based on the most recent actuarial study, July 1, 2006, MSRS-Correctional had a funding ratio of 83 percent, and the total contributions were 9.7 percent of payroll less than the contribution level needed to pay off the remaining unfunded liabilities by the full funding date. In 2006, the Legislature passed employee and employer contribution rate increases of 2.91 percent for the employee and 4.12 percent for the employer, to be phased in over a few years, to partially address the problem. That total increase is 7.03 percent of payroll, considerably less than the 9.7 percent of pay deficiency noted in the 2006 actuarial work.

MSRS-Correctional 2006		
<u>Membership</u>		
Active Members		3,910
Service Retirees		1,101
Disabilitants		168
Survivors		106
Deferred Retirees		817
Nonvested Former Members		<u>388</u>
Total Membership		6,490
<u>Funded Status</u>		
Accrued Liability		\$647,480,269
Current Assets		<u>\$535,356,819</u>
Unfunded Accrued Liability		\$112,123,450
Funding Ratio	82.68%	
<u>Financing Requirements</u>		
Covered Payroll		\$162,744,640
Benefits Payable		\$26,506,726
Normal Cost	17.69%	\$28,786,714
Administrative Expenses	<u>0.21%</u>	<u>\$341,764</u>
Normal Cost & Expense	17.90%	\$29,128,478
Normal Cost & Expense	17.90%	\$29,128,478
Amortization	<u>5.44%</u>	<u>\$8,853,309</u>
Total Requirements	23.34%	\$37,981,787
Employee Contributions	5.69%	\$9,260,170
Employer Contributions	7.98%	\$12,987,022
Employer Add'l Cont.	0.00%	\$0
Direct State Funding	0.00%	\$0
Other Govt. Funding	0.00%	\$0
Administrative Assessment	<u>0.00%</u>	<u>\$0</u>
Total Contributions	13.67%	\$22,247,192
Total Requirements	23.34%	\$37,981,787
Total Contributions	<u>13.67%</u>	<u>\$22,247,192</u>
Deficiency (Surplus)	9.67%	\$15,734,595

MSRS-Correctional Disability Issues

Mercer Human Resources Consulting, the Minnesota State Retirement System (MSRS) actuary, completed a Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) experience study in 2004 covering the period 1998-2003. In an experience study, the actuary reviews the actual experience of the plan [number of deaths by age group (mortality), terminations from the plan (turnover), disability, actual age at retirement, and any other factor deemed worthy of review] and compares the actual experience with the numbers expected given the assumptions used in the official actuarial reports. The results of that experience study lead to recommendations to revise demographic actuarial assumptions in ways that would considerably increase predicted plan costs and the required contributions. The Commission approved the use of these revised actuarial assumptions and those revised assumptions were first used in the July 1, 2006, actuarial valuation. The revised assumptions assume fewer terminations, more early retirements, longer life-expectancies, and far more disability than previously predicted.

In recommending the revised assumptions, the MSRS actuary demonstrated the likely impact using results from the MSRS-Correctional Plan July 1, 2002, actuarial report. Those results, shown in Table 1 below, indicate that the revised disability assumptions, based on the plan's recent actual experience, were expected to increase plan costs by 0.8 percent of covered payroll.

Table 1
Impact of Assumption Changes as of July 1, 2002
MSRS-Correctional Plan

	Before Assumption Changes	Mortality	Disability*	Retirement	Withdrawal	Total	After Assumption Changes
Normal Cost	15.0%	0.7%	0.6%	-0.3%	2.0%	3.0%	18.0%
Supplemental Contribution	-0.5%	1.1%	0.2%	-0.2%	0.1%	1.2%	0.7%
Expense Allowance	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%
Total Required Contribution	14.7%	1.8%	0.8%	-0.5%	2.1%	4.2%	18.9%
Statutory Contributions	13.7%						13.7%
Sufficiency/(Deficiency)	-1.0%						-5.2%

* Disability rates and disability mortality

The previous and revised MSRS-Correctional disability assumptions are shown below. Basically, for males, the revised assumptions assume considerably increased disability at every age. For females, at every age disability rates are twice the previous assumption.

Table D
Disability Assumptions – Prior and Current Rates
MSRS-Correctional Plan

Age	Prior Assumption Per 10,000 Occurrences		Prior Assumption Percentages		Current Assumption Per 10,000 Occurrences		Current Assumption Percentages	
	Male	Female	Male	Female	Male	Female	Male	Female
20	4	4	.04%	.04%	5	8	.05%	.08%
21	4	4	.04%	.04%	5	8	.05%	.08%
22	5	5	.05%	.05%	7	10	.07%	.10%
23	5	5	.05%	.05%	7	10	.07%	.10%
24	6	6	.06%	.06%	8	12	.08%	.12%
25	6	6	.06%	.06%	8	12	.08%	.12%
26	6	6	.06%	.06%	8	12	.08%	.12%
27	7	7	.07%	.07%	9	14	.09%	.14%
28	7	7	.07%	.07%	9	14	.09%	.14%
29	8	8	.08%	.08%	11	16	.11%	.16%
30	8	8	.08%	.08%	11	16	.11%	.16%
31	9	9	.09%	.09%	12	18	.12%	.18%
32	9	9	.09%	.09%	12	18	.12%	.18%
33	10	10	.10%	.10%	13	20	.13%	.20%
34	10	10	.10%	.10%	13	20	.13%	.20%
35	11	11	.11%	.11%	15	22	.15%	.22%
36	12	12	.12%	.12%	16	24	.16%	.24%
37	13	13	.13%	.13%	17	26	.17%	.26%
38	15	15	.15%	.15%	20	30	.20%	.30%
39	16	16	.16%	.16%	21	32	.21%	.32%
40	18	18	.18%	.18%	24	36	.24%	.36%
41	20	20	.20%	.20%	27	40	.27%	.40%
42	22	22	.22%	.22%	29	44	.29%	.44%
43	24	24	.24%	.24%	32	48	.32%	.48%
44	26	26	.26%	.26%	35	52	.35%	.52%
45	29	29	.29%	.29%	39	58	.39%	.58%
46	32	32	.32%	.32%	43	64	.43%	.64%
47	36	36	.36%	.36%	48	72	.48%	.72%
48	41	41	.41%	.41%	55	82	.55%	.82%
49	46	46	.46%	.46%	61	92	.61%	.92%
50	50	50	.50%	.50%	67	100	.67%	1.00%
51	57	57	.57%	.57%	76	114	.76%	1.14%
52	64	64	.64%	.64%	85	128	.85%	1.28%
53	72	72	.72%	.72%	96	144	.96%	1.44%
54	80	80	.80%	.80%	107	160	1.07%	1.60%
55	88	88	.88%	.88%	117	176	1.17%	1.76%
56	98	98	.98%	.98%	131	196	1.31%	1.96%
57	108	108	1.08%	1.08%	144	216	1.44%	2.16%
58	118	118	1.18%	1.18%	157	236	1.57%	2.36%
59	129	129	1.29%	1.29%	172	258	1.72%	2.58%
60	141	141	1.41%	1.41%	188	282	1.88%	2.82%
61	154	154	1.54%	1.54%	205	308	2.05%	3.08%
62	167	167	1.67%	1.67%	223	334	2.23%	3.34%
63	0	0	0	0	0	0	0	0
64	0	0	0	0	0	0	0	0
65	0	0	0	0	0	0	0	0
66	0	0	0	0	0	0	0	0
67	0	0	0	0	0	0	0	0
68	0	0	0	0	0	0	0	0
69	0	0	0	0	0	0	0	0
70	0	0	0	0	0	0	0	0

Attachment B

Background Information on the State Patrol Retirement Plan

The State Patrol Retirement Plan was established in 1943, (Laws 1943, Chapter 637) and initially provided retirement coverage solely for state highway patrol troopers. Currently, the State Patrol Retirement Plan provides retirement coverage for four distinct groups of law enforcement officers, the State Patrol Division of the Department of Public Safety, the Bureau of Criminal Apprehension of the Department of Public Safety, the Enforcement (Game Wardens) Division of the Department of Natural Resources, and the Gambling Enforcement Division of the Department of Public Safety.

A separate retirement plan had been established for game wardens (the Game Wardens Retirement Plan) in 1955. In 1961, the State Police Retirement Plan was established for Bureau of Criminal Apprehension agents and officers and, when it was created, it absorbed the Game Wardens Retirement Plan. In 1969, the State Police Retirement Plan was in turn merged into the State Patrol Retirement Plan. In 1990, law enforcement officers in the Gambling Enforcement Division of the Department of Public Safety were added to the State Patrol Retirement Plan. With the exception of a small number of data processing personnel in the Bureau of Criminal Apprehension who were grandparented into the plan in 1987-1988, all members of the State Patrol Retirement Plan are peace officers licensed by the Peace Officers Standards and Training Board.

As a public safety pension plan, the State Patrol Retirement Plan pays larger retirement annuities, disability benefits, and survivor benefits than a general employee retirement plan and has an earlier normal retirement age for the retirement annuity. Because of these benefit plan differences, the plan has a greater actuarial cost and greater member and employer contributions than a general employee retirement plan. As law enforcement officers, members of the State Patrol Retirement Plan are not covered by Social Security under both state and federal law for their state law enforcement employment.

The retirement benefit provided for a member retiring at the plan's normal retirement age, age 55, is three percent of the high-five average salary for each year of service. A member who is age 55 or older with 30 years of service and has a high-five average salary of \$75,000 will receive an annuity of \$67,500. Members can retire as early as age 50 with only a slight reduction due to early retirement. The reduction is 1/10 of a percent for each month (1.2 percent per year) that the individual is under age 55. These early retirement annuities are subsidized. For disability determinations, the plan uses an occupational definition of disability, an inability to perform the specific job, rather than the more stringent definition used by general employee plans, which require an inability to perform any gainful employment. The disability benefit is generous. If the disability is duty-related, the benefit is computed just like a service pension except there is no reduction due to early receipt. The minimum service-related disability benefit is equivalent to a 20-year service pension. Non-duty-related disability benefits are computed the same way, except that the minimum benefit is equivalent to a 15-year pension, and the individual must have at least one year of service credit to be eligible.

The policy reason for having a more lucrative benefit program for public safety employee retirement plans is that public safety employment (police officer or firefighter service) is particularly hazardous, that it requires the maintenance of a particularly vigorous and robust workforce to meet the strenuous requirements of the employment position, and that the normally expected working career of a public safety employee will be significantly curtailed as a consequence of the hazards and strenuous requirements of that type of employment when compared to a general public employee.

Public employee pension plans are intended to assist the governmental personnel system by encouraging the recruitment of qualified and motivated new employees, the retention of able and valued existing employees, and the orderly and predictable out-transitioning of employees at the expected end or normal conclusion of their working career. For public safety employees, public safety employee retirement plans provide more lucrative benefits to assist in the recruitment and retention of new and existing personnel, but most clearly emphasize the out-transitioning function.

Actuarial Condition of the State Patrol Retirement Plan

Based on the most recent actuarial study, July 1, 2006, the State Patrol Retirement Plan had a funding ratio 96 percent. While the funding ratio was quite high, the total contributions were 5.7 percent of payroll less than the contribution level needed to pay off the remaining unfunded liabilities by the full funding date. In 2006, the Legislature passed employee and employer contribution rate increases of 2.0 percent for the employee and 3.0 percent for the employer, to be phased in over a few years, to address the problem.

State Patrol Plan 2006		
<u>Membership</u>		
Active Members		851
Service Retirees		626
Disabilitants		41
Survivors		179
Deferred Retirees		33
Nonvested Former Members		8
Total Membership		1,738
<u>Funded Status</u>		
Accrued Liability		\$641,479,078
Current Assets		<u>\$618,990,349</u>
Unfunded Accrued Liability		\$22,488,729
Funding Ratio	96.49%	
<u>Financing Requirements</u>		
Covered Payroll		\$57,765,450
Benefits Payable		\$38,767,492
Normal Cost	24.41%	\$14,098,467
Administrative Expenses	<u>0.18%</u>	<u>\$103,978</u>
Normal Cost & Expense	24.59%	\$14,202,445
Normal Cost & Expense	24.59%	\$14,202,445
Amortization	<u>2.10%</u>	<u>\$1,213,075</u>
Total Requirements	26.69%	\$15,415,520
Employee Contributions	8.40%	\$4,852,298
Employer Contributions	12.60%	\$7,278,447
Employer Add'l Cont.	0.00%	\$0
Direct State Funding	0.00%	\$0
Other Govt. Funding	0.00%	\$0
Administrative Assessment	<u>0.00%</u>	<u>\$0</u>
Total Contributions	21.00%	\$12,130,745
Total Requirements	26.69%	\$15,415,520
Total Contributions	<u>21.00%</u>	<u>\$12,130,745</u>
Deficiency (Surplus)	5.69%	\$3,284,775

State Patrol Plan Disability Issues

MSRS State Patrol Plan disability has not been significant compared to other public or correctional plans. A 2004 MSRS State Patrol Plan experience study done by the MSRS actuary did not lead to any recommendations to revise that plan's disability rate assumptions.

Attachment C

Background Information on Age Discrimination Issues and the ADA

The Age Discrimination Act of 1967 (ADA) forbids workplace discrimination based on age. In 1993, the Minnesota State Retirement System (MSRS), the Public Employees Retirement Association (PERA), and the Teachers Retirement Association (TRA), attempted to revise their plans for ADA compliance. Although the staff memo at the time advised delaying any action so time could be devoted to further review ADA issues, various provisions of MSRS, PERA, and TRA plans were revised through an administrative bill and enacted as Laws 1993, Chapter 307, Article 2. These plan revisions had the effect of revising benefits in various plans, in some cases improving those benefits.

One area that was reviewed was mandatory retirement ages. Mandatory retirement at a specified age can be deemed discriminatory because it does not focus on the individual and his or her ability to continue to perform their job. Rather it is based on a rough proxy--age. Another area was service accrual caps. Some systems, notably the MSRS-administered State Patrol Retirement Plan, did not permit further service credit accrual by plan members beyond age 60. This could be viewed as discriminatory because an older member of the plan is being treated differently in the retirement plan than a younger member. Repeal of this service credit cap was sought because MSRS received a letter of non-compliance from the Equal Employment Opportunity Commission (EEOC), due to a complaint to that organization from a member of the State Patrol Plan who was subject to this cap. Changes were also made to various disability provisions specifying when disabilitants were deemed to be retired rather than disabled, and provisions specifying when disabilitants could elect joint-and-survivor coverage. Prior to the 1993 changes, in most MSRS, PERA, and TRA plans eligibility for disability benefits ended at the plan's normal retirement age, typically age 65 for general employee plans and age 55 for public safety plans. The logic of the pre-1993 approach was that rather than continuing to be involved in the process of overseeing a disability case, the individual should simply be treated as a retirement annuitant, since the individual had reached an age where he or she was eligible to retire without reduction under the plan's retirement annuity provisions. However, under the ADA these policies might be viewed as discriminatory and punitive. Perhaps individuals who do not want to retire should not be forced to retire. Also, if an individual recovered from the disability sufficiently to return to employment covered by the same plan, the individual would not be able to accrue additional service credit because he or she would be treated as a reemployed retiree rather than as a recovered disabilitant returning to work. The change that was adopted in 1993 for most of the included plans was to terminate disability status and transfer the individual to retiree status not at the plan's normal retirement age, but at age 65 or the five-year anniversary of the disability, whichever is later. While this would not create much difference for general employee plans, that same requirement was used for the MSRS public safety plans, so that rather than transferring at age 55, the transfer would occur a minimum of ten years later. That is of some significance, because in the public safety plans individuals in disability status receive surviving spouse coverage without cost to the disabilitant. A retiree who wants spousal coverage must take a joint-and-survivor annuity, which requires a reduction from the monthly annuity amount to finance that coverage. The "age 65 or the five-year anniversary of the disability, whichever is later" language was added to the MSRS, PERA, and TRA general employee plans, and to the MSRS public safety plans, apparently based on the advice of a PERA-retained consultant who deemed it necessary for all of these plans. For some unknown reason, however, PERA did not take this approach with its PERA-P&F plan. Rather than revise the PERA-P&F disabilitant-transfer-to-retirement provision, the 1993 law repealed that PERA-P&F provision. As a consequence of that repealer, rather than transferring from disability to retirement at some specified age, PERA-P&F disabilitants remained in disability status indefinitely, with free spousal coverage.

The age discrimination compliance changes enacted in 1993 were premature for several reasons. First, there was insufficient understanding of what changes were needed. The ADA was little more than a general statement that employers can not discriminate based on age, with little guidance as to what constituted discrimination. The EEOC was mandated to adopt rules to implement the ADA, but had not done so as of the 1993, when most of the age discrimination changes to Minnesota public plans were adopted. In suggesting changes in the MSRS, PERA, and TRA laws, the executive directors were relying on MSRS's experience of a non-compliance letter from the EEOC regarding the age 60 service credit cap in the State Patrol Retirement Plan, and advice from an actuarial and consulting firm employed by PERA. The consultant's advice was claimed to be based on discussions with EEOC staff, but discussions are not a perfect substitute for rules. A second reason was that despite claims of relying on the same sources for guidance, the proposed changes were not fully consistent across comparable plans. A third problem was that the scope of the included plans was incomplete. While MSRS, PERA, and TRA were proposing changes, no ADA compliance changes were proposed for first class city teacher plans, the Minneapolis Employees Retirement Fund (MERF), or local police and paid fire plans. A fourth reason for taking more time to review the matter was that some of the changes

were benefit enhancements which increased plan costs. If it was later determined that some of these changes were unnecessary for ADA compliance, it could be difficult to remove these changes at a later date.

352.95, Minnesota Statutes 2006

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352.95 DISABILITY BENEFITS.

Subdivision 1. **Job-related disability.** A covered correctional employee who becomes disabled and who is expected to be physically or mentally unfit to perform the duties of the position for at least one year as a direct result of an injury, sickness, or other disability that incurred in or arose out of any act of duty that makes the employee physically or mentally unable to perform the duties is entitled to a disability benefit. The disability benefit may be based on covered correctional service only. The benefit amount is 50 percent of the average salary defined in section 352.93, plus an additional percent equal to that specified in section 356.315, subdivision 5, for each year of covered correctional service in excess of 20 years, ten months, prorated for completed months.

Subd. 1a. **Optional annuity election.** A disabled correctional employee may elect the normal disability benefit or an optional annuity as provided in section 352.116, subdivision 3. The election of an optional annuity must be made before commencement of payment of the disability benefit and becomes effective the date on which the disability benefit begins to accrue as provided in subdivision 3. Upon becoming effective, the optional annuity shall begin to accrue on the same date as provided for the disability benefit.

Subd. 2. **Non-job-related disability.** A covered correctional employee who, after rendering at least one year of covered correctional service, becomes disabled and who is expected to be physically or mentally unfit to perform the duties of the position for at least one year because of sickness or injury that occurred while not engaged in covered employment is entitled to a disability benefit based on covered correctional service only. The disability benefit must be computed as provided in section 352.93, subdivisions 1 and 2, and must be computed as though the employee had at least 15 years of covered correctional service.

Subd. 3. **Applying for benefits; accrual.** No application for disability benefits shall be made until after the last day physically on the job. The disability benefit shall begin to accrue the day following the last day for which the employee is paid sick leave or annual leave but not earlier than 180 days before the date the application is filed.

Subd. 4. **Medical or psychological evidence.** (a) An applicant shall provide medical, chiropractic, or psychological evidence to support an application for disability benefits. The director shall have the employee examined by at least one additional licensed physician, chiropractor, or psychologist who is designated by the medical adviser. The physicians, chiropractors, or psychologists with respect to a mental impairment, shall make written reports to the director concerning the question of the employee's disability, including their expert opinions as to whether the employee is disabled within the meaning of this section. The director shall also obtain written certification from the employer stating whether or not the employee is on sick leave of absence because of a disability that will prevent further service to the employer, and as a consequence, the employee is not entitled to compensation from the employer.

(b) If, on considering the reports by the physicians, chiropractors, or psychologists and any other evidence supplied by the employee or others, the medical adviser finds the employee disabled within the meaning of this section, the advisor shall make the appropriate recommendation to the director, in writing, together with the date from which the employee has been disabled. The director shall then determine the propriety of authorizing payment of a disability benefit as provided in this section.

(c) Unless the payment of a disability benefit has terminated because the employee is no longer disabled, or because the employee has reached either age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later, the disability benefit must cease with the last payment which was received by the disabled employee or which had accrued during the employee's lifetime. While disability benefits are paid, the director has the right, at reasonable times, to require the disabled employee to submit proof of the continuance of the disability claimed. If any examination indicates to the medical adviser that the employee is no longer disabled, the disability payment must be discontinued upon the person's reinstatement to state service or within 60 days of the finding, whichever is sooner.

Subd. 5. **Retirement status at normal retirement age.** The disability benefit paid to a disabled correctional employee under this section shall terminate at the end of the month in which the employee reaches age 65, or the five-year anniversary of the effective date of the disability benefit, whichever is later. If the disabled correctional employee is still disabled when the employee reaches age 65, or the five-year anniversary of the effective date of the disability benefit, whichever is later, the employee shall be deemed to be a retired employee. If the employee had elected an optional annuity under subdivision 1a, the employee shall receive an

annuity in accordance with the terms of the optional annuity previously elected. If the employee had not elected an optional annuity under subdivision 1a, the employee may within 90 days of attaining age 65 or reaching the five-year anniversary of the effective date of the disability benefit, whichever is later, either elect to receive a normal retirement annuity computed in the manner provided in section 352.93 or elect to receive an optional annuity as provided in section 352.116, subdivision 3, based on the same length of service as used in the calculation of the disability benefit. Election of an optional annuity must be made within 90 days before attaining age 65 or reaching the five-year anniversary of the effective date of the disability benefit, whichever is later. If an optional annuity is elected, the optional annuity shall begin to accrue on the first of the month following the month in which the employee reaches age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later.

Subd. 6. Disability benefit for certain employees with regular plan service. If the employee is entitled to receive a disability benefit as provided in subdivision 1 or 2 and has credit for less covered correctional service than the length of service upon which the correctional disability benefit is based, and also has credit for regular plan service, the employee is entitled to a disability benefit or deferred retirement annuity based on the regular plan service only for that service which when combined with the correctional service exceeds number of years on which the correctional disability benefit is based. The disabled employee who also has credit for regular plan service must in all respects qualify under section 352.113 for a disability benefit based on the regular plan service, except that the service may be combined to satisfy length of service requirements. Any deferred annuity to which the employee is entitled based on regular plan service must be augmented as provided in section 352.72 while the employee is receiving a disability benefit under this section.

Subd. 7. Resumption of employment. If the disabled employee resumes gainful work, the disability benefit must be continued in an amount which when added to current earnings and workers' compensation benefits does not exceed the salary rate of the disabled employee at the date of disability as adjusted by the same percentage increase in United States average wages used by Social Security in calculating average indexed monthly earnings for the same period.

History: 1973 c 653 s 44; 1980 c 342 s 6; 1981 c 68 s 12,13; 1983 c 128 s 15,16; 1984 c 564 s 16; 1984 c 574 s 9; 1Sp1985 c 7 s 7; 1986 c 444; 1987 c 229 art 6 s 1; 1989 c 319 art 13 s 22,23; art 17 s 4,5; 1993 c 307 art 1 s 22; art 2 s 6-8; 1994 c 465 art 3 s 30; 1996 c 438 art 2 s 2; 1997 c 233 art 1 s 27,28; 1Sp2001 c 10 art 3 s 11-13; 2002 c 392 art 11 s 52; 2004 c 267 art 8 s 5-7

352B.10, Minnesota Statutes 2006

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352B.10 DISABILITY BENEFITS.

Subdivision 1. **Injuries; payment amounts.** A member who becomes disabled and who is expected to be physically or mentally unfit to perform duties for at least one year as a direct result of an injury, sickness, or other disability that incurred in or arose out of any act of duty, is entitled to receive disability benefits while disabled. The benefits must be paid in monthly installments. The benefit is an amount equal to the member's average monthly salary multiplied by 60 percent, plus an additional percent equal to that specified in section 356.315, subdivision 6, for each year and pro rata for completed months of service in excess of 20 years, if any.

Subd. 2. **Disabled while not on duty.** If a member with at least one year of service becomes disabled and is expected to be physically or mentally unfit to perform the duties of the position for at least one year because of sickness or injury that occurred while not engaged in covered employment, the individual is entitled to disability benefits. The benefit must be computed as if the individual were 55 years old at the date of disability and the annuity was payable under section 352B.08. If a disability under this subdivision occurs after one year of service but before 15 years of service, the disability benefit must be computed as though the individual had credit for 15 years of service.

Subd. 3. **Annual and sick leave; work at lower pay.** No member is entitled to receive a disability benefit payment when the member has unused annual leave or sick leave, or under any other circumstances when, during the period of disability, there has been no impairment of salary. If the disabilitant resumes gainful employment, the disability benefit must be continued in an amount which, when added to current earnings, does not exceed the salary rate received by the person at the date of disability, which must be adjusted over time by the percentage increase in United States average wages used by the Social Security Administration in calculating average indexed monthly earnings for the old age, survivors, and disability insurance programs for the same period.

Subd. 4. **Proof of disability.** (a) No disability benefits may be paid unless adequate proof is furnished to the executive director of the existence of the disability.

(b) Adequate proof of a disability must include a written expert report by a licensed physician, by a licensed chiropractor, or with respect to a mental impairment, by a licensed psychologist.

(c) Following the commencement of benefit payments, the executive director has the right, at reasonable times, to require the disabilitant to submit proof of the continuance of the disability claimed.

Subd. 5. **Optional annuity.** A disabilitant may elect, in lieu of spousal survivorship coverage under section 352B.11, subdivisions 2b and 2c, the normal disability benefit or an optional annuity as provided in section 352B.08, subdivision 3. The choice of an optional annuity must be made in writing, on a form prescribed by the executive director, and must be made before the commencement of the payment of the disability benefit, or within 90 days before reaching age 65 or before reaching the five-year anniversary of the effective date of the disability benefit, whichever is later. The optional annuity is effective on the date on which the disability benefit begins to accrue, or the month following the attainment of age 65 or following the five-year anniversary of the effective date of the disability benefit, whichever is later.

History: 1943 c 637 s 8; 1957 c 869 s 6; 1959 c 642 s 5; 1961 c 493 s 3; 1965 c 889 s 4; 1969 c 693 s 3; 1973 c 178 s 11; 1973 c 755 s 3; 1975 c 359 s 23; 1977 c 429 s 16; 1981 c 68 s 14; 1Sp1985 c 7 s 8; 1986 c 444; 1987 c 229 art 7 s 1; 1989 c 319 art 1 s 11; art 17 s 8,9; 1992 c 464 art 1 s 40; 1993 c 307 art 2 s 12-14; 1995 c 262 art 3 s 3; 1996 c 438 art 2 s 3; 1997 c 233 art 1 s 33; 1Sp2001 c 10 art 3 s 15; 2002 c 392 art 11 s 52; 2004 c 267 art 8 s 8-12; art 9 s 6

645.17, Minnesota Statutes 2006

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645.17 PRESUMPTIONS IN ASCERTAINING LEGISLATIVE INTENT.

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

- (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;
- (2) the legislature intends the entire statute to be effective and certain;
- (3) the legislature does not intend to violate the Constitution of the United States or of this state;
- (4) when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; and
- (5) the legislature intends to favor the public interest as against any private interest.

History: 1941 c 492 s 17

1.1 moves to amend H.F. No. 2124; S.F. No. 1664, as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2006, section 352.95, is amended by adding a
1.4 subdivision to read:

1.5 Subd. 1b. **Regular disability.** "Regular disability," physical or psychological,
1.6 means a disabling condition that is expected to prevent a member, for a period of not less
1.7 than 12 months, from performing the normal duties of the position held by a person who is
1.8 a member of the correctional state employees retirement plan, and which results from a
1.9 disease or an injury that arises from any activities while not at work, or while at work and
1.10 performing those normal or less frequent duties that do not present inherent dangers that
1.11 are specific to the occupations covered by the correctional state employees retirement plan.

1.12 Sec. 2. Minnesota Statutes 2006, section 352.95, is amended by adding a subdivision
1.13 to read:

1.14 Subd. 1c. **Duty disability.** "Duty disability," physical or psychological, means a
1.15 disabling condition that is expected to prevent a member, for a period of not less than 12
1.16 months, from performing the normal duties of the position held by a person who is a
1.17 member of the correctional state employees retirement plan, and that is the direct result of
1.18 an injury incurred during, or a disease arising out of, the performance of normal duties or
1.19 the actual performance of less frequent duties, either of which are specific to protecting
1.20 property and the personal safety of others and that present inherent dangers that are
1.21 specific to the positions covered by the correctional state employees retirement plan.

1.22 Sec. 3. Minnesota Statutes 2006, section 352.95, is amended by adding a subdivision
1.23 to read:

1.24 Subd. 1d. **Normal duties.** "Normal duties" means specific tasks designated in the
1.25 applicant's job description and which the applicant performs on a day-to-day basis, but

do not include less frequent duties which may be requested to be done by the employer from time to time.

Sec. 4. Minnesota Statutes 2006, section 352.95, is amended by adding a subdivision to read:

Subd. 1e. **Less frequent duties.** "Less frequent duties" means tasks designated in the applicant's job description as either required from time to time or as assigned, but which are not carried out as part of the normal routine of the applicant's job.

Sec. 5. Minnesota Statutes 2006, section 352.95, subdivision 4, is amended to read:

Subd. 4. **Medical or psychological evidence.** (a) An applicant shall provide medical, chiropractic, or psychological evidence to support an application for disability benefits. The director shall have the employee examined by at least one additional licensed physician, chiropractor, or psychologist who is designated by the medical adviser. The physicians, chiropractors, or psychologists with respect to a mental impairment, shall make written reports to the director concerning the question of the employee's disability, including their expert opinions as to whether the employee is disabled within the meaning of this section. The director shall also obtain written certification from the employer stating whether or not the employee is on sick leave of absence because of a disability that will prevent further service to the employer, and as a consequence, the employee is not entitled to compensation from the employer.

(b) If, on considering the reports by the physicians, chiropractors, or psychologists and any other evidence supplied by the employee or others, the medical adviser finds the employee disabled within the meaning of this section, the advisor shall make the appropriate recommendation to the director, in writing, together with the date from which the employee has been disabled. The director shall then determine the propriety of authorizing payment of a disability benefit as provided in this section.

(c) Unless the payment of a disability benefit has terminated because the employee is no longer disabled, or because the employee has reached either age ~~65~~ 55 or the five-year anniversary of the effective date of the disability benefit, whichever is later, the disability benefit must cease with the last payment which was received by the disabled employee or which had accrued during the employee's lifetime. While disability benefits are paid, the director has the right, at reasonable times, to require the disabled employee to submit proof of the continuance of the disability claimed. If any examination indicates to the medical adviser that the employee is no longer disabled, the disability payment must be discontinued upon the person's reinstatement to state service or within 60 days of the finding, whichever is sooner.

Sec. 6. Minnesota Statutes 2006, section 352.95, subdivision 5, is amended to read:

Subd. 5. **Retirement status at normal retirement age.** The disability benefit paid to a disabled correctional employee under this section shall terminate at the end of the month in which the employee reaches age ~~65~~ 55, or the five-year anniversary of the effective date of the disability benefit, whichever is later. If the disabled correctional employee is still disabled when the employee reaches age ~~65~~ 55, or the five-year anniversary of the effective date of the disability benefit, whichever is later, the employee shall be deemed to be a retired employee. If the employee had elected an optional annuity under subdivision 1a, the employee shall receive an annuity in accordance with the terms of the optional annuity previously elected. If the employee had not elected an optional annuity under subdivision 1a, the employee may within 90 days of attaining age ~~65~~ 55 or reaching the five-year anniversary of the effective date of the disability benefit, whichever is later, either elect to receive a normal retirement annuity computed in the manner provided in section 352.93 or elect to receive an optional annuity as provided in section 352.116, subdivision 3, based on the same length of service as used in the calculation of the disability benefit. Election of an optional annuity must be made within 90 days before attaining age ~~65~~ 55 or reaching the five-year anniversary of the effective date of the disability benefit, whichever is later. If an optional annuity is elected, the optional annuity shall begin to accrue on the first of the month following the month in which the employee reaches age ~~65~~ 55 or the five-year anniversary of the effective date of the disability benefit, whichever is later.

Sec. 7. Minnesota Statutes 2006, section 352B.01, is amended by adding a subdivision to read:

Subd. 12. **Regular disability.** "Regular disability," physical or psychological, means a disabling condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the State Patrol retirement plan, and which results from a disease or an injury that arises from any activities while not at work, or while at work and performing those normal or less frequent duties that do not present inherent dangers that are specific to the occupations covered by the State Patrol retirement plan.

Sec. 8. Minnesota Statutes 2006, section 352B.01, is amended by adding a subdivision to read:

Subd. 13. **Duty disability.** "Duty disability," physical or psychological, means a disabling condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the State Patrol retirement plan, and that is the direct result of an injury

4.1 incurred during, or a disease arising out of, the performance of normal duties or the actual
4.2 performance of less frequent duties, either of which are specific to protecting property
4.3 and the personal safety of others and that present inherent dangers that are specific to the
4.4 positions covered by the State Patrol retirement plan.

4.5 Sec. 9. Minnesota Statutes 2006, section 352B.01, is amended by adding a subdivision
4.6 to read:

4.7 Subd. 14. **Normal duties.** "Normal duties" means specific tasks designated in the
4.8 applicant's job description and which the applicant performs on a day-to-day basis, but
4.9 do not include less frequent duties which may be requested to be done by the employer
4.10 from time to time.

4.11 Sec. 10. Minnesota Statutes 2006, section 352B.01, is amended by adding a
4.12 subdivision to read:

4.13 Subd. 15. **Less frequent duties.** "Less frequent duties" means tasks designated in
4.14 the applicant's job description as either required from time to time or as assigned, but
4.15 which are not carried out as part of the normal routine of the applicant's job.

4.16 Sec. 11. Minnesota Statutes 2006, section 352B.10, subdivision 5, is amended to read:

4.17 Subd. 5. **Optional annuity.** A disabilitant may elect, in lieu of spousal survivorship
4.18 coverage under section 352B.11, subdivisions 2b and 2c, the normal disability benefit or
4.19 an optional annuity as provided in section 352B.08, subdivision 3. The choice of an
4.20 optional annuity must be made in writing, on a form prescribed by the executive director,
4.21 and must be made before the commencement of the payment of the disability benefit, or
4.22 within 90 days before reaching age ~~65~~ 55 or before reaching the five-year anniversary
4.23 of the effective date of the disability benefit, whichever is later. The optional annuity
4.24 is effective on the date on which the disability benefit begins to accrue, or the month
4.25 following the attainment of age ~~65~~ 55 or following the five-year anniversary of the
4.26 effective date of the disability benefit, whichever is later.

4.27 Sec. 12. Minnesota Statutes 2006, section 352B.105, is amended to read:

4.28 **352B.105 TERMINATION OF DISABILITY BENEFITS.**

4.29 Disability benefits payable under section 352B.10 must terminate on the transfer
4.30 date, which is the end of the month in which the disabilitant becomes ~~65~~ 55 years old or
4.31 the five-year anniversary of the effective date of the disability benefit, whichever is later.
4.32 If the disabilitant is still disabled on the transfer date, the disabilitant must be deemed to
4.33 be a retired member and, if the disabilitant had chosen an optional annuity under section
4.34 352B.10, subdivision 5, must receive an annuity under the terms of the optional annuity
4.35 previously chosen. If the disabilitant had not chosen an optional annuity under section

5.1 352B.10, subdivision 5, the disabilitant may then choose to receive either a normal
5.2 retirement annuity computed under section 352B.08, subdivision 2, or an optional annuity
5.3 as provided in section 352B.08, subdivision 3. An optional annuity must be chosen within
5.4 90 days of attaining the transfer date. If an optional annuity is chosen, the optional annuity
5.5 accrues on the first of the month next following the transfer date.

5.6 Sec. 13. **EFFECTIVE DATE.**

5.7 Sections 1 to 12 are effective the day following final enactment."

5.8 Delete the title and insert:

5.9 "A bill for an act

5.10 relating to retirement; proposing disability definitions in the correctional state
5.11 employees and State Patrol retirement plans; amending certain correctional and
5.12 State Patrol plan retirement status at normal retirement age disability provisions;
5.13 amending Minnesota Statutes 2006, sections 352.95, subdivisions 4, 5, by
5.14 adding subdivisions; 352B.01, by adding subdivisions; 352B.10, subdivision
5.15 5; 352B.105.

- 1.1 moves to amend H.F. No. 2124; S.F. No. 1664, the delete everything
- 1.2 amendment (H2124-1A), as follows:
- 1.3 Page 2, delete section 5
- 1.4 Page 3, delete section 6
- 1.5 Page 4, delete sections 11 and 12
- 1.6 Page 5, line 7, delete "12" and insert "8"
- 1.7 Renumber the sections in sequence and correct the internal references
- 1.8 Amend the title accordingly

- 1.1 moves to amend H.F. No. 2124; S.F. No. 1664, the delete everything
- 1.2 amendment (H2124-1A), as follows:
- 1.3 Page 1, delete sections 1, 2, and 3
- 1.4 Page 2, delete section 4
- 1.5 Page 3, delete sections 7 and 8
- 1.6 Page 4, delete sections 9 and 10
- 1.7 Page 5, line 7, delete "12" and insert "4"
- 1.8 Renumber the sections in sequence and correct the internal references
- 1.9 Amend the title accordingly

..... moves to amend H.F. No. 2124; S.F. No. 1664, the delete everything amendment (H2124-1A), as follows:

Page 5, after line 5, insert:

"Sec. 13. **EXISTING DISABILITANT OPTIONAL ANNUITY ELECTION PROCEDURES.**

Subdivision 1. **Eligibility.** An eligible person is a person who:

(1) was a correctional state employees retirement plan or State Patrol retirement plan disabilitant immediately before the effective date of this section;

(2) was at least age 55 on that date; and

(3) had not previously elected an optional annuity under Minnesota Statutes, section 352.95, subdivision 5, or Minnesota Statutes, section 352B.10, subdivision 5, whichever is applicable.

Subd. 2. **Election.** Notwithstanding sections 6, 11, and 12, an eligible person under subdivision 1 must be permitted to elect an optional annuity on a written form prescribed by the executive director of the Minnesota State Retirement System. An election under this subdivision can occur no later than 90 days after the effective date of this section.

Subd. 3. **Application.** If an eligible person under subdivision 1 makes an optional annuity election under subdivision 2, that person shall receive an annuity under the terms of the chosen optional annuity commencing on the date the person is deemed under law to be a retired member rather than a disabled member.

Sec. 14. **STATUS TRANSFERS.**

Notwithstanding revised transfer dates specified in sections 6 and 12, members who were disabilitants as of the effective date of this section and lose that status due to section 6 or 12 shall be transferred to retired status 90 days after the effective date of this section."

Page 5, line 7, delete "12" and insert "14" and after "enactment" insert "and apply to new hires after the effective date and to existing plan members, including members

- 2.1 who are correctional state employees retirement plan or State Patrol retirement plan
- 2.2 disabilitants on the effective date."
- 2.3 Renumber the sections in sequence and correct the internal references
- 2.4 Amend the title accordingly

1.1 moves to amend H.F. No. 2124; S.F. No. 1664, the delete everything
1.2 amendment (H2124-1A), as follows:

1.3 Page 5, line 7, after "enactment" insert "and apply to members whose effective date
1.4 of disability is on or after the day following final enactment"

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **2125**

March 14, 2007

Authored by Murphy, M., by request

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; extending filing deadlines; requiring certain written
1.3 applications; amending disability benefit provisions; amending Minnesota
1.4 Statutes 2006, sections 352.113, subdivision 4; 352.95, subdivisions 3, 4, 5;
1.5 352B.10, subdivision 5, by adding a subdivision.

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

1.7 Section 1. Minnesota Statutes 2006, section 352.113, subdivision 4, is amended to read:

1.8 Subd. 4. **Medical or psychological examinations; authorization for payment of**
1.9 **benefit.** (a) An applicant shall provide medical, chiropractic, or psychological evidence to
1.10 support an application for total and permanent disability.

1.11 (b) The director shall have the employee examined by at least one additional
1.12 licensed chiropractor, physician, or psychologist designated by the medical adviser. The
1.13 chiropractors, physicians, or psychologists shall make written reports to the director
1.14 concerning the employee's disability including expert opinions as to whether the employee
1.15 is permanently and totally disabled within the meaning of section 352.01, subdivision 17.

1.16 (c) The director shall also obtain written certification from the employer stating
1.17 whether the employment has ceased or whether the employee is on sick leave of
1.18 absence because of a disability that will prevent further service to the employer and as a
1.19 consequence the employee is not entitled to compensation from the employer.

1.20 (d) The medical adviser shall consider the reports of the physicians, psychologists,
1.21 and chiropractors and any other evidence supplied by the employee or other interested
1.22 parties. If the medical adviser finds the employee totally and permanently disabled, the
1.23 adviser shall make appropriate recommendation to the director in writing together with the
1.24 date from which the employee has been totally disabled. The director shall then determine
1.25 if the disability occurred within ~~180 days~~ 18 months of filing the application, while still

2.1 in the employment of the state, and the propriety of authorizing payment of a disability
2.2 benefit as provided in this section.

2.3 (e) A terminated employee may apply for a disability benefit within ~~180 days~~ 18
2.4 months of termination as long as the disability occurred while in the employment of the
2.5 state. The fact that an employee is placed on leave of absence without compensation
2.6 because of disability does not bar that employee from receiving a disability benefit.

2.7 (f) Unless the payment of a disability benefit has terminated because the employee is
2.8 no longer totally disabled, or because the employee has reached normal retirement age as
2.9 provided in this section, the disability benefit must cease with the last payment received
2.10 by the disabled employee or which had accrued during the lifetime of the employee unless
2.11 there is a spouse surviving. In that event, the surviving spouse is entitled to the disability
2.12 benefit for the calendar month in which the disabled employee died.

2.13 Sec. 2. Minnesota Statutes 2006, section 352.95, subdivision 3, is amended to read:

2.14 Subd. 3. **Applying for benefits; accrual.** No application for disability benefits
2.15 shall be made until after the last day physically on the job. The disability benefit shall
2.16 begin to accrue the day following the last day for which the employee is paid sick leave
2.17 or annual leave but not earlier than 180 days before the date the application is filed. A
2.18 terminated employee must file a written application which meets the requirements under
2.19 section 352.113, subdivision 4, paragraph (e).

2.20 Sec. 3. Minnesota Statutes 2006, section 352.95, subdivision 4, is amended to read:

2.21 Subd. 4. **Medical or psychological evidence.** (a) An applicant shall provide
2.22 medical, chiropractic, or psychological evidence to support an application for disability
2.23 benefits. The director shall have the employee examined by at least one additional licensed
2.24 physician, chiropractor, or psychologist who is designated by the medical adviser. The
2.25 physicians, chiropractors, or psychologists with respect to a mental impairment, shall
2.26 make written reports to the director concerning the question of the employee's disability,
2.27 including their expert opinions as to whether the employee is disabled within the meaning
2.28 of this section. The director shall also obtain written certification from the employer
2.29 stating whether or not the employee is on sick leave of absence because of a disability that
2.30 will prevent further service to the employer, and as a consequence, the employee is not
2.31 entitled to compensation from the employer.

2.32 (b) If, on considering the reports by the physicians, chiropractors, or psychologists
2.33 and any other evidence supplied by the employee or others, the medical adviser finds
2.34 the employee disabled within the meaning of this section, the advisor shall make the

3.1 appropriate recommendation to the director, in writing, together with the date from which
3.2 the employee has been disabled. The director shall then determine the propriety of
3.3 authorizing payment of a disability benefit as provided in this section.

3.4 (c) Unless the payment of a disability benefit has terminated because the employee is
3.5 no longer disabled, or because the employee has reached either age 65 55 or the five-year
3.6 anniversary of the effective date of the disability benefit, whichever is later, the disability
3.7 benefit must cease with the last payment which was received by the disabled employee
3.8 or which had accrued during the employee's lifetime. While disability benefits are paid,
3.9 the director has the right, at reasonable times, to require the disabled employee to submit
3.10 proof of the continuance of the disability claimed. If any examination indicates to the
3.11 medical adviser that the employee is no longer disabled, the disability payment must
3.12 be discontinued upon the person's reinstatement to state service or within 60 days of
3.13 the finding, whichever is sooner.

3.14 Sec. 4. Minnesota Statutes 2006, section 352.95, subdivision 5, is amended to read:

3.15 Subd. 5. **Retirement status at normal retirement age.** The disability benefit
3.16 paid to a disabled correctional employee under this section shall terminate at the end of
3.17 the month in which the employee reaches age 65 55, or the five-year anniversary of the
3.18 effective date of the disability benefit, whichever is later. If the disabled correctional
3.19 employee is still disabled when the employee reaches age 65 55, or the five-year
3.20 anniversary of the effective date of the disability benefit, whichever is later, the employee
3.21 shall be deemed to be a retired employee. If the employee had elected an optional annuity
3.22 under subdivision 1a, the employee shall receive an annuity in accordance with the
3.23 terms of the optional annuity previously elected. If the employee had not elected an
3.24 optional annuity under subdivision 1a, the employee may within 90 days of attaining age
3.25 65 55 or reaching the five-year anniversary of the effective date of the disability benefit,
3.26 whichever is later, either elect to receive a normal retirement annuity computed in the
3.27 manner provided in section 352.93 or elect to receive an optional annuity as provided
3.28 in section 352.116, subdivision 3, based on the same length of service as used in the
3.29 calculation of the disability benefit. Election of an optional annuity must be made within
3.30 90 days before attaining age 65 55 or reaching the five-year anniversary of the effective
3.31 date of the disability benefit, whichever is later. If an optional annuity is elected, the
3.32 optional annuity shall begin to accrue on the first of the month following the month in
3.33 which the employee reaches age 65 55 or the five-year anniversary of the effective date of
3.34 the disability benefit, whichever is later.

4.1 Sec. 5. Minnesota Statutes 2006, section 352B.10, is amended by adding a subdivision
4.2 to read:

4.3 Subd. 2a. **Applying for benefits; accrual.** No application for disability benefits
4.4 shall be made until after the last day physically on the job. The disability benefit shall
4.5 begin to accrue the day following the last day for which the employee is paid sick leave
4.6 or annual leave but not earlier than 180 days before the date the application is filed. A
4.7 member who is terminated must file a written application which meets the requirements
4.8 under section 352.113, subdivision 4, paragraph (e).

4.9 Sec. 6. Minnesota Statutes 2006, section 352B.10, subdivision 5, is amended to read:

4.10 **Subd. 5. Optional annuity.** A disabilitant may elect, in lieu of spousal survivorship
4.11 coverage under section 352B.11, subdivisions 2b and 2c, the normal disability benefit or
4.12 an optional annuity as provided in section 352B.08, subdivision 3. The choice of an
4.13 optional annuity must be made in writing, on a form prescribed by the executive director,
4.14 and must be made before the commencement of the payment of the disability benefit, or
4.15 within 90 days before reaching age ~~65~~ 55 or before reaching the five-year anniversary
4.16 of the effective date of the disability benefit, whichever is later. The optional annuity
4.17 is effective on the date on which the disability benefit begins to accrue, or the month
4.18 following the attainment of age ~~65~~ 55 or following the five-year anniversary of the
4.19 effective date of the disability benefit, whichever is later.

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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE NO. **2124**

March 14, 2007

Authored by Murphy, M., by request

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; amending certain correctional employee disability benefit
1.3 provisions; defining terms; amending age limits; amending Minnesota Statutes
1.4 2006, section 352.95, subdivisions 1, 2, 5, 7, by adding subdivisions.

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

1.6 Section 1. Minnesota Statutes 2006, section 352.95, subdivision 1, is amended to read:

1.7 Subdivision 1. ~~Job-related disability~~ **Duty disability computation of benefit.**

1.8 A covered correctional employee who becomes disabled ~~and who is expected to be~~
1.9 ~~physically or mentally unfit to perform the duties of the position for at least one year as a~~
1.10 ~~direct result of an injury, sickness, or other disability that incurred in or arose out of any~~
1.11 ~~act of duty that makes the employee physically or mentally unable to perform the duties as~~
1.12 ~~defined under subdivision 1b, clause (1),~~ is entitled to a disability benefit. The disability
1.13 benefit ~~may~~ shall be based on covered correctional service only. The benefit amount is 50
1.14 percent of the average salary defined in section 352.93, plus an additional percent equal
1.15 to that specified in section 356.315, subdivision 5, for each year of covered correctional
1.16 service in excess of 20 years, ten months, prorated for completed months.

1.17 Sec. 2. Minnesota Statutes 2006, section 352.95, is amended by adding a subdivision
1.18 to read:

1.19 Subd. 1b. **Occupational disability.** "Occupational disability," for purposes of
1.20 determining eligibility for disability benefits, means a disabling condition that is expected
1.21 to prevent a member, for a period of not less than 12 months, from performing the normal
1.22 duties of the position held by a person who is a member of the state correctional retirement
1.23 plan. Occupational disability benefits are awarded either as:

(1) duty disability, physical or psychological, which means a disabling condition that is the direct result of an injury incurred during, or a disease arising out of, the performance of normal duties or the performance of less frequent duties either of which are specific to the positions covered by the state correctional retirement plan; or

(2) regular disability, physical or psychological, which means a disabling condition resulting from a disease or an injury that arises from any activities while not at work or while at work from performing normal or less frequent duties that do not present inherent dangers specific to the occupations covered by the state correctional retirement plan.

Sec. 3. Minnesota Statutes 2006, section 352.95, is amended by adding a subdivision to read:

Subd. 1c. **Normal duties.** "Normal duties" means specific tasks designated in the applicant's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties which may be requested to be done by the employer from time to time.

Sec. 4. Minnesota Statutes 2006, section 352.95, is amended by adding a subdivision to read:

Subd. 1d. **Less frequent duties.** "Less frequent duties" means tasks designated in the applicant's job description as either required from time to time or as assigned, but which are not carried out as part of the normal routine of the applicant's job.

Sec. 5. Minnesota Statutes 2006, section 352.95, subdivision 2, is amended to read:

Subd. 2. ~~Non-job-related~~ **Regular disability benefit.** A covered correctional employee who was hired prior to July 1, 2007, after rendering at least one year of covered correctional service or a covered correctional employee who was first hired after June 30, 2007, after rendering at least three years of covered correctional plan service, becomes disabled and who is expected to be physically or mentally unfit to perform the duties of the position for at least one year because of sickness or injury that occurred while not engaged in covered employment as defined under subdivision 1b, clause (2), is entitled to a disability benefit based on covered correctional service only. The disability benefit must be computed as provided in section 352.93, subdivisions 1 and 2, ~~and~~. The benefits of a covered correctional employee who was first hired prior to July 1, 2007, and is determined to be disabled under this subdivision must be computed as though the employee had at least 15 years of covered correctional service.

3.1 Sec. 6. Minnesota Statutes 2006, section 352.95, is amended by adding a subdivision
3.2 to read:

3.3 Subd. 2a. **Employer payment of present value.** The employer of a disabled
3.4 employee who qualifies for a duty disability shall be responsible for the present value
3.5 of the benefit. Present value of the disability benefit shall be determined by the state
3.6 retirement system as approved by the actuary retained under section 356.214, for the
3.7 period beginning with the disability accrual date through the date the disabled employee
3.8 would reach age 55. Payment shall be made by the employer of the disabled employee at
3.9 the request of the state retirement system.

3.10 Sec. 7. Minnesota Statutes 2006, section 352.95, subdivision 5, is amended to read:

3.11 Subd. 5. **Retirement status at normal retirement age.** The disability benefit
3.12 paid to a disabled correctional employee under this section shall terminate at the end of
3.13 the month in which the employee reaches age ~~65~~ 55, or the five-year anniversary of the
3.14 effective date of the disability benefit, whichever is later. If the disabled correctional
3.15 employee is still disabled when the employee reaches age ~~65~~ 55, or the five-year
3.16 anniversary of the effective date of the disability benefit, whichever is later, the employee
3.17 shall be deemed to be a retired employee. If the employee had elected an optional annuity
3.18 under subdivision 1a, the employee shall receive an annuity in accordance with the
3.19 terms of the optional annuity previously elected. If the employee had not elected an
3.20 optional annuity under subdivision 1a, the employee may within 90 days of attaining age
3.21 ~~65~~ 55 or reaching the five-year anniversary of the effective date of the disability benefit,
3.22 whichever is later, either elect to receive a normal retirement annuity computed in the
3.23 manner provided in section 352.93 or elect to receive an optional annuity as provided
3.24 in section 352.116, subdivision 3, based on the same length of service as used in the
3.25 calculation of the disability benefit. Election of an optional annuity must be made within
3.26 90 days before attaining age ~~65~~ 55 or reaching the five-year anniversary of the effective
3.27 date of the disability benefit, whichever is later. If an optional annuity is elected, the
3.28 optional annuity shall begin to accrue on the first of the month following the month in
3.29 which the employee reaches age ~~65~~ 55 or the five-year anniversary of the effective date of
3.30 the disability benefit, whichever is later.

3.31 Sec. 8. Minnesota Statutes 2006, section 352.95, subdivision 7, is amended to read:

3.32 Subd. 7. **Resumption of employment.** If the disabled employee resumes gainful
3.33 work other than under subdivision 8, the disability benefit must be continued in an amount
3.34 which when added to current earnings and workers' compensation benefits does not exceed

4.1 the salary rate of the disabled employee at the date of disability as adjusted by the same
4.2 percentage increase in United States average wages used by Social Security in calculating
4.3 average indexed monthly earnings for the same period.

4.4 Sec. 9. Minnesota Statutes 2006, section 352.95, is amended by adding a subdivision
4.5 to read:

4.6 Subd. 8. **Continuation of correctional plan coverage.** An employee who is
4.7 determined to be disabled under this section, and has accrued ten or more years of
4.8 correctional plan covered service who accepts employment covered by the general
4.9 employees retirement plan under section 352.01, may continue coverage under the
4.10 correctional employee retirement plan until the employee reaches age 55. An employee
4.11 who accepts employment under this subdivision shall have monthly disability benefits
4.12 suspended while working in this position.