



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.

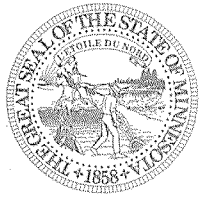
Potential Amendments

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 Ascertainning 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 payroll 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
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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			After Assumption Changes			
	Mortality	Disability*	Retirement	Withdrawal	Total		
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%
Sufficiency/(Deficiency)							-5.2%

* Disability rates and disability mortality

