



H.F. 2279
(Doty)

S.F. 2027
(Koering)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS-General, MSRS-Correctional
Relevant Provisions of Law: Proposed Special Law
General Nature of Proposal: Transfer MCF-St. Cloud Stores Clerk service to MSRS-Correctional
Date of Summary: March 27, 2007

Specific Proposed Changes

- Allow prior MCF-St. Cloud Stores Clerk service to transfer from MSRS-General to MSRS-Correctional despite the position not identified as eligible for Correctional coverage, if the Department of Corrections determines the position should have been in MSRS-Correctional.

Policy Issues Raised by the Proposed Legislation

1. Whether this position met the criteria (at a minimum, 75 percent inmate contact) used for inclusion of position in MSRS-Correctional, and if so, why it has not previously been identified as a qualifying position despite a thorough review of positions in 1996.
2. Whether the Legislature, rather than the Department of Corrections, should make this coverage determination.
3. Whether the Department of Corrections supports the bill.
4. Lack of any stated criteria to be used to determine whether coverage should be transferred.
5. Delay in seeking remedy.
6. Proposal rejected by MSRS Board, may have been appealed to Court of Appeals.
7. Impact on similar positions, or others with same employment title.
8. Payment terms appear to be inadequate; provides windfall to individual, adds unfunded liability to MSRS-Correctional.
9. Payment terms inconsistent with other bills transferring positions to MSRS-Correctional.

Potential Amendments

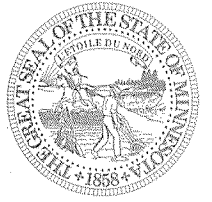
H2279-1A may be needed to clarify the ending date of the Stores Clerk service.

H2279-2A specifies that, at a minimum, the position must have met the 75 percent inmate contact requirement to be eligible for transfer.

H2279-3A revises payment terms by adding interest to employee contribution, requiring employer contribution with interest, and requiring the Department of Corrections to pay for the cost of any required actuarial calculations.

H2279-4A revises payment terms by requiring a full actuarial value payment, as follows:
1. Individual pays the MSRS-General/Correctional contribution differential plus interest.
2. Assets are transferred from MSRS-General to MSRS-Correctional equal to the funded portion of benefits accrued for the Stores Clerk service in the MSRS-General Plan
3. If the sum of the employee contribution amount and the asset transfer is less than the value of the service credit in MSRS-Correctional, the employer is to pay the difference.

H2279-5A The Legislature, rather than Department of Corrections, would decide whether the service should transfer.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Edward Burek, Deputy Director

RE: H.F. 2279 (Doty); S.F. 2027 (Koering): MSRS-General, MSRS-Correctional: Transfer of Past Stores Clerk Service from General Plan to Correctional Plan

DATE: March 23, 2007

Summary of H.F. 2279 (Doty); S.F. 2027 (Koering)

H.F. 2279 (Doty); S.F. 2027 (Koering) would permit Renee Trepanier to transfer MCF-St. Cloud employment as a Stores Clerk from General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) coverage to MSRS-Correctional coverage, if the Department of Corrections certifies that the individual met the requirements for Correctional Plan inclusion. The service credit transfer, if allowed, requires an asset transfer from MSRS-General and an additional contribution amount payment by the employee.

Public Pension Problem of Renee Trepanier

Based on information when Commission staff last reviewed this issue in 2006, Renee Trepanier is an employee of the Minnesota Department of Corrections employed at the Minnesota Correctional Facility – St. Cloud. Ms. Trepanier currently is a Central Services Administrative Specialist-Intermediate at MCF-St. Cloud, assigned to the institution canteen. That position is included in MSRS-Correctional. Apparently, the position title previously was Stores Clerk-Senior. While she held the Stores Clerk-Senior position, that position was added to MSRS-Correctional by language included in the 1996 Criminal Justice Appropriations legislation, Laws 1996, Chapter 408, Article 8, Sections 9-18 and 21-23. That legislation included prospective coverage plus authority to transfer any prior service as a Stores Clerk-Senior, and Ms. Trepanier elected to transfer that prior service from MSRS-General to MSRS-Correctional.

Before Ms. Trepanier was a Stores Clerk-Senior, she held the position of Stores Clerk. Ms. Trepanier contends that her service as a Stores Clerk, the position she held from April 25, 1990, to August 31, 1994, should also be allowed to transfer from MSRS-General to MSRS-Correctional. However, that was not permitted because, while Stores Clerk-Senior was included in the 1996 legislation, the Stores Clerk position was not. Excluding the Stores Clerk position from MSRS-Correctional coverage is justifiable if the position did not meet the criteria for inclusion. The general criteria used is that eligible positions must have at least 75 percent inmate contact, and is most justifiable if the individual is expected to respond to incidents to retain control and protect property and the safety of others. Clearly, not including this position in MSRS-Correctional coverage is justified if the position did not meet criteria for inclusion. There are other possible explanations, however. In a letter dated November 24, 2002, Ms. Trepanier contends that the position was not included simply because she had left that position. Possibly, the position was vacant or eliminated when Ms. Trepanier was promoted to the Stores Clerk-Senior position in 1994. The Commission may wish to better understand the factual situation through testimony by Ms. Trepanier and from the Department of Corrections.

Ms. Trepanier has appealed to the MSRS Board of Directors to allow her to transfer her service as a Stores Clerk from April 25, 1990 to September 7, 1994, to MSRS-Correctional. The appeal apparently was unsuccessful, or there would be no need for the current legislative request. Commission staff is not aware of whether she filed an appeal with the Court of Appeals.

Background Information on the MSRS-Correctional State Employees Retirement Plan

Background information on the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) is contained in Appendix A.

Actuarial Condition of MSRS-Correctional

Transfers of past coverage into MSRS-Correctional can negatively impact the plan by adding more liabilities to the plan than the plan gains in assets, unless specific steps are taken to avoid that outcome. Although this impact may not be significant if a few individuals have coverage transferred, the Commission may be concerned about the continuing long-term trend, which began in the early 1970s, of transferring additional positions into this plan.

The MSRS-Correctional Plan has funding problems. The actuarial condition of MSRS-Correctional according to the July 1, 2006, actuarial report is shown below. According to the report, the plan is about 83 percent funded, and the contributions, as indicated in the table, are seriously insufficient to finance this plan over the longer term. The contributions are deficient by nearly 9.7 percent of payroll. In 2006, the Commission and Legislature passed employee and employer contribution rate increases that will phase in over several years, creating an eventual total contribution increase of 7.03 percent per year, considerably less than the increase amount needed based on the most recent actuarial work summarized in the table below.

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

Discussion and Analysis

Renee Trepanier indicates that she has not received 4.33 years of allowable service credit in MSRS-Correctional for her service as a Stores Clerk at MCF-St. Cloud, although her Stores Clerk-Senior service was permitted to transfer (the Stores Clerk-Senior classification has been subsequently renamed as a Central Services Administrative Specialist-Intermediate). H.F. 2279 (Doty); S.F. 2027 (Koering) would allow Ms. Trepanier with a transfer of 4.33 years of allowable service credit from MSRS-General to MSRS-Correctional for her 1990-1994 service as a Stores Clerk at MCF-St. Cloud if the Department of Corrections certifies that the position should have qualified for MSRS-Correctional coverage.

Bills were introduced for Ms. Trepanier in 2003, as H.F. 1377 (Blaine); S.F. 1752 (Koering); and in 2005 as H.F. 2544 (Blaine); S.F. 2404 (Koering) and H.F. 2941 (Otremba); S.F. 2404 (Koering). None of those bills were heard by the Commission. Those bills required the Commission to decide whether Ms. Trepanier's Store Clerk service should transfer to the Correctional Plan. The present bill, in contrast, would have the Department of Corrections decide whether the service met "requirements for coverage," and if it did, the service would transfer. One problem with the proposed legislation is that it fails to specify what the necessary requirements are. The present bill also differs from past bills regarding payment terms. The present bill provides a windfall to the individual by not charging interest on additional contribution amounts, and requires no current payment from the Department of Corrections to MSRS-Correctional. Perhaps that is intended to lessen opposition by the Department of Corrections to the bill, but it is likely to harm the pension fund.

The proposed legislation raises several pension and related public policy issues, as follows:

1. Appropriateness of Transfer; Nature of Ms. Trepanier's Duties 1990-1994. The policy issue is the appropriateness of the requested transfer of past service credit, given the available information on Ms. Trepanier's employment duties from April 25, 1990, to September 7, 1994. Direct inmate contact of 75 percent or more is the basic standard for MSRS-Correctional coverage. It is questionable whether Ms. Trepanier's Stores Clerk service met that standard. Ms. Trepanier provided position descriptions and performance evaluations for June 21, 1990, October 28, 1994, and August 27, 2001. The position descriptions do not, on their face, indicate a substantial amount of inmate contact by Ms. Trepanier and provide no information on whether that inmate contact occurs solely or primarily with non-threatening or model inmates or with the general population, whether that inmate contact occurs with correctional officers or other security personnel present or not, and whether Ms. Trepanier is actually expected to intervene in incidents or only to report problematic behavior or activity to other correctional personnel. While the June 21, 1990, position description indicates supervision by Ms. Trepanier of six inmates under the reportability section, inmate contact was indicated only for duties #4 and #7, which total only 20 percent of her time. While the June 21, 1990, document includes a handwritten note by Ms. Trepanier about more extended inmate contact, the note appears without any supervisor notation, comment, or approval, and the note indicates only generalized inmate contact, not the direct contact that Minnesota Statutes, Section 352.91, Subdivision 3d, Paragraph (a), requires. While the October 28, 1994, position description indicates supervision by Ms. Trepanier of seven inmates under the reportability section, inmate contact was indicated only for duties #4 and #6, which total only 25 percent of her time. Similarly, the August 27, 2001, position description indicates that Ms. Trepanier supervises an inmate crew under the reportability section; inmate contact was indicated only for duties #1 and #3, which total 60 percent of her time. Additional information in testimony or through submissions for the record will be needed to substantiate the amount and nature of Ms. Trepanier's actual inmate contact as a Stores Clerk during the 1990-1994 period.
2. Position of the Department of Corrections. The issue is whether the Department of Corrections supports the bill, which requires the Department of Corrections to decide whether the service should qualify for MSRS-Correctional coverage, rather than requiring the Legislature to make that decision.
3. Lack of Criteria for Determining Whether MSRS-Correctional Plan Coverage is Appropriate. The issue is the lack of any stated criteria for the Department of Corrections to use in deciding whether the position should have been included in the Correctional plan. The bill states (page 1, lines 21 and 22) that the service credit can transfer "if the department (Corrections) certifies that the employee met the eligibility requirements for coverage," but there is no statement of what criteria should be used in making that determination. The Commission may wish to specify criteria through an amendment.
4. Disparity Between August 31, 1994, Stores Clerk-Senior Promotion Date and September 7, 1994, Requested Transfer Period End Date. The policy issue is a disparity in the dates between Ms. Trepanier's promotion to Stores Clerk-Senior, indicated on the record as August 31, 1994, and Ms. Trepanier's request to transfer a period of correctional service ending at September 7, 1994. Some explanation will be needed why Ms. Trepanier previously transferred past service credit only back to September 8, 1994, under the 1996 legislation, if she was actually promoted to Stores Clerk-Senior on August 31, 1994, as indicated in a September 14, 1994, letter from Ann O'Brien, MCF-St. Cloud Human Resource Management Director, and in the November 24, 2002, letter from Ms. Trepanier to Senator Koering.
5. Appropriateness of the Proposed Transfer for Service That Was Excluded From the 1996 Department of Corrections Request. The policy issue is the appropriateness of the requested past service credit transfer when the service period was not included in the 1996 transfer. The 1996 transfer legislation (Laws 1996, Chapter 408, Article 8, Sections 9-18 and 21-24) was the result, according to testimony presented to the Commission in 1996, of a comprehensive and in-depth appraisal/reappraisal of the retirement coverage eligibility status of all correctional facility positions by the Department of Corrections and of all St. Peter Security Hospital positions by the Department of Human Services. The issue of MSRS-Correctional retirement coverage eligibility had been discussed or pursued on some level for almost a decade before 1996, and the 1995 Interim review by the Department of Corrections/Department of Human Services of its employees was intended to resolve all outstanding coverage issues. If the 1996 Department of Corrections/Department of Human Services review was as complete as it was portrayed to the Commission in 1996 and if Ms. Trepanier's 1990-1994 position should have qualified for MSRS-Correctional Plan coverage on its merits, the 1996 review should have identified that period of service for transfer. If the 1995-1996 Department of Corrections review was comprehensive, then presumably this period of service should not be considered eligible for MSRS-Correctional coverage.

6. Appropriateness of the Transfer Request Several Years after the Alleged Omission of Ms. Trepanier's 1990-1994 Service. The policy issue is the appropriateness of the considerable delay in Ms. Trepanier bringing forward this request to correct an alleged omission of her 1990-1994 service in the 1996 MSRS-Correctional legislation. The timeliness of requested corrective action is always a policy consideration. Although there is an equitable maxim that equity will not suffer a wrong to occur without a remedy, there also is an equitable maxim that equity aids the vigilant and not those who slumber on their rights. If Ms. Trepanier was done a wrong in 1996 by a failure to include her 1990-1994 service credit in a transfer to MSRS-Correctional, that grievance should have become apparent to her and to the Department of Corrections in 1997. Ms. Trepanier first raised the issue with her local legislators in 2002. The Commission may choose to have Ms. Trepanier testify about the reason for this delay and the Commission may choose to consider whether that delay should rule out consideration of the issue at this time.
7. Ms. Trepanier's Appeal to the MSRS-Board of Directors. In 2004, Ms. Trepanier appealed to the MSRS Board of Directors after the MSRS Executive Director rejected a request by her to transfer the Stores Clerk service. Presumably, that appeal was denied, or the Commission would not now be reviewing a legislative request. In the opinion of Commission staff, the MSRS board lacks authority to grant Ms. Trepanier's request. However, Ms. Trepanier could appeal the MSRS decision to the State Court of Appeals. The Commission may wish to determine whether this issue is currently under court consideration, since it would seem inappropriate for the Commission to deal with the transfer request at this time if the matter is before the courts.
8. Impact of the Request on Other Stores Clerks within the Department of Corrections; Precedent. The policy issue is the impact that a potential favorable action on Ms. Trepanier's request will have on the retirement coverage of other former Stores Clerks at MCF-St. Cloud and at other correctional facilities and its potential precedent value if there are other former Stores Clerks in state employment with MSRS-General coverage. Historically, the Commission has preferred to have whole employment classifications included in or excluded from MSRS-Correctional coverage, at least within a correctional institution. In reviewing Ms. Trepanier's request, the Commission will likely need information about the number of Department of Corrections employees with past service as a Stores Clerk at MCF-St. Cloud or at other correctional facilities, the nature of the employment of these individuals during that service in the past and currently, and the likelihood that other correctional employees will be making the same request as Ms. Trepanier.
9. Appropriateness of the Payment Terms. The issue is the appropriateness of the payment terms. The payment terms as drafted provide a windfall to the individual (by not requiring interest on the additional employee contribution payment) at the expense of the pension fund, and MSRS-Correctional is likely to take on more liability than it gains in assets. Given this plan's funding and contribution level difficulties, the Commission may wish to consider whether these payment terms are appropriate for this fund, given its condition. The Commission may wish to consider that there are several actual or potential participants in this process: the employee, the employer, the MSRS-General Plan fund from which some assets will be taken, and the MSRS-Correctional Plan fund which will receive some assets. Regarding the employee, at a minimum the Commission would usually require interest at 8.5 percent (the assumed investment earnings rate for the pension fund) to compensate the fund for not receiving the contributions at the time that the service was rendered. The current bill does not require an interest payment. The employer plays a large role in financing the pension fund. The employer can pay now, or pay more later. The more that the employer injects into the MSRS -Correctional Plan currently, the less unfunded liability would be created. Any additional unfunded liability must be amortized, and as noted above, the MSRS-Correctional Plan fund is not on target to amortize its liabilities by the full funding date. Regarding the two pension plans involved, the Commission may wish to consider that a transfer of assets between the two funds creates a trade-off. The Commission could transfer an amount from MSRS-General equal to the liability released from the fund by the transfer of service credit. This keeps MSRS-General whole, but this transfer alone would not be sufficient to cover the liabilities added to MSRS-Correctional, because it is a more expensive plan providing higher benefits and an earlier normal retirement age. Unless additional assets are also added at the time of the transfer by the employee and or employer, unfunded liability will be created in MSRS-Correctional. Commission staff amendments include one or more revisions in the payment terms for the Commission to consider.
10. Consistency with Other Bills Adding Employees to MSRS-Correctional. The Commission also wish to consider that there are other bills introduced this session which would add various Department of Corrections (H.F. 1912 (Murphy, M.); S.F. 423 (Betzold)) and Department of Human Services (H.F. 1911 (Murphy, M.); S.F. 937 (Betzold)) employees to MSRS-Correctional. The Department of Corrections bill includes a provision to transfer service, although the Department of Human Services

bill does not. The Commission might recommend revision of the Department of Corrections bill transfer requirement, and might add a transfer provision to the Department of Human Services bill. The Commission may wish to delay any final action on H.F. 2279 (Doty); S.F. 2027 (Koering) to ensure that the Commission recommends consistent payment terms on all of these bills.

11. Procedural Issues. The Commission may wish to determine through testimony whether this matter was appealed to the Court of Appeals. If a court action is in progress, the Commission may choose to not consider a legislative solution at this time. If Ms. Trepanier's request has been rejected by the court, the Commission might also decide not to take action.

Potential Amendments for Commission Consideration

Amendment H2279-1A would revise the date, if necessary, specifying when the Stores Clerk service ended. As noted in previous discussion, the bill as drafted indicates that the Stores Clerk service ended on September 7, 1994, but various attached documents indicate that Ms. Trepanier was promoted on August 31, 1994.

Amendment H2279-2A would specify minimum criteria for the Department of Corrections to use in deciding whether the individual should be included. That minimum criteria is 75 percent inmate contact. The Department could choose to use additional criteria beyond this minimum requirement.

Amendments H2279-3A and H2279-4A are alternative ways of revising the payment terms. As noted previously, there are other bills ((H.F. 1912 (Murphy, M.); S.F. 423 (Betzold) for certain Department of Human Services employees, and H.F. 1911 (Murphy, M.); S.F. 937 (Betzold) for certain Department of Corrections employees) which will add new positions to the MSRS-Correctional Plan. The Commission may wish to delay any final consideration of this bill for Ms. Trepanier until the Commission decides on consistent payment terms to be used in all these bills.

Amendment H2279-3A would revise the payment terms in H.F. 2279 (Doty); S.F. 2027 (Koering) to be consistent with that appearing in H.F. 1911 (Murphy, M.); S.F. 937 (Betzold), as currently drafted. However, when the Commission hears those other bills it may choose to revise those terms. In addition to the asset transfer from MSRS-General, this amendment to H.F. 2279 (Doty); S.F. 2027 (Koering) would add interest to the employee contributions, and add an employer contribution requirement with interest. While this provides MSRS-Correctional with some additional assets, the net result on the funding ratio of the MSRS-Correctional is ambiguous, but seems unlikely to provide MSRS-Correctional with sufficient assets to not negatively impact its funding ratio. The impact, however, would be minute since the bill only deals with a single individual. The amendment also includes a subdivision as found in H.F. 1911 (Murphy, M.); S.F. 937 (Betzold), requiring the Department of Corrections to pay for the cost of any required actuarial calculations.

Amendment H2279-4A would apply payment terms as contained in recent Commission staff drafts to address Ms. Trepanier's pension concern, most recently a 2006 draft. The payment procedure is designed to transfer the service credit while leaving both the MSRS-General and MSRS-Correctional funding ratios unharmed and unchanged. The MSRS-Correctional Plan would receive an amount representing the full actuarial value of the transferred service credit multiplied by the funding ratio applicable to its active members, leaving the plan's funding ratio unchanged by the transfer. The total payment to the fund is composed of several components. First, the individual would pay in a lump sum an amount representing additional contributions (the contribution differential between the MSRS-General plan and MSRS-Correctional plan during the applicable period) plus 8.5 percent interest from the approximate midpoint of the period until paid. Second, assets transfer from MSRS-General to MSRS-Correctional equal to the funded portion of benefits accrued for the Stores Clerk service in the MSRS-General Plan. The employee contribution amount and the asset transfer from MSRS-General are added, and if the total is less than the value of the service credit in the MSRS-Correctional plan, the employer makes a contribution to make up the difference.

Amendment H2279-5A would remove the requirement that the Department of Corrections decide whether Ms. Trepanier's Store Clerk service should be in MSRS-Correctional and would instead have the Legislature make that decision.

