



**H.F. 3082**

(Murphy, M.)

**S.F. 2720**

(Betzold)

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

*Affected Pension Plan(s):* MSRS-Correctional  
*Relevant Provisions of Law:* Minnesota Statutes, Section 352.91, Subdivision 3d  
*General Nature of Proposal:* Adds two occupational positions to plan coverage  
*Date of Summary:* March 3, 2008

### **Specific Proposed Changes**

- Adds two occupational positions (one with an incumbent and one unfilled) in the Department of Corrections to the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) based on a statutory internal review process

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

1. Adequacy of MSRS-Correctional eligibility assessment/determination process.
2. Extent of actual inmate contact in the recommended inclusions.
3. Extent of compliance with other historic plan coverage eligibility requirements.
4. Actuarial condition of MSRS-Correctional; need for additional contribution increases.

### **Potential Amendments**

H3082-1A would phase in additional needed contribution increases through 2010

H3082-2A would phase in additional needed contribution increases through 2012



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Lawrence A. Martin, Executive Director *JAM*  
RE: H.F. 3082 (Murphy, M.); S.F. 2720 (Betzold): MSRS-Correctional; Department of Corrections Recommendations for Plan Coverage Expansion  
DATE: March 3, 2008

Summary of H.F. 3082 (Murphy, M.); S.F. 2720 (Betzold)

H.F. 3082 (Murphy, M.); S.F. 2720 (Betzold) amends Minnesota Statutes 2007 Supplement, Section 352.91, Subdivision 3d, the specification of various Department of Corrections personnel for coverage by the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) by setting forth covered positions in separate numbered classes for ease of reference and citation, by adding two employment positions to plan coverage, involving one incumbent, and by authorizing the transfer of past qualifying Department of Corrections employment service credit in the MSRS General State Employees Retirement Plan (MSRS-General) to MSRS-Correctional for the transferred incumbent Department of Corrections employee.

Background Information

Relevant background information is set forth in the following attachments:

- A. Attachment A summarizes the development of the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional).
- B. Attachment B summarizes the information generally available on the correctional facilities operated by the Department of Corrections.
- C. Attachment C contains Minnesota Statutes 2007 Supplement, Section 352.91, Subdivision 4b, the Department of Corrections procedure for recommending MSRS-Correctional Plan membership changes.
- D. Attachment D contains information on the 2007 MSRS-Correctional coverage change asset transfer and additional payment obligation legislation.

Discussion and Analysis

H.F. 3082 (Murphy, M.); S.F. 2720 (Betzold) would expand the coverage of the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) by two occupational positions and by one additional Department of Corrections employee, pending the filling of a newly created employment position, and permits the incumbent Department of Corrections employee to transfer past service credit for the person in the position in the MSRS General State Employees Retirement Plan (MSRS-General) with additional member and employer payments.

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

1. Adequacy of the Assessment/Determination Process. The policy issue is the adequacy of the process implemented by the Department of Corrections for identifying departmental employment positions for potential inclusion in the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) and its determination of positions for recommendation to the Legislature. Since the MSRS-Correctional Plan was first expanded beyond prison guards and security hospital guards in 1974, both explicit statutory requirements for coverage and historic requirements for coverage have been utilized by the Commission and by the Legislature to decide which occupational positions to include in the plan coverage. If the department has internalized both the statutory and the historic criteria and has seriously and rigorously implemented those criteria in making these recommendations, the Commission and the Legislature can rely on that process without any extensive or intensive scrutiny of the recommendations. This is the third year that the department has undertaken these formal reviews with a recommendation of statutory coverage changes, with the internal process still likely to be in its formative stages or subject to refinement. The process utilized by the Department of Corrections is governed by Minnesota Statutes, Section 352.91, Subdivision 4b, set forth in Attachment C. The

Commission should consider taking sufficient testimony from the department and collective bargaining representatives to gain a comfort level about the department's seriousness, rigor, and conformity to explicit and historic special retirement plan coverage standards in its process.

2. Extent of Actual Inmate Contact in the Recommended Inclusions. The policy issue is whether or not the two occupational positions (General Maintenance Worker Lead at MCF-Oak Park Heights and Painter Lead at MCF-Lino Lakes) and the one incumbent in the General Maintenance Worker Lead position recommended by the department actually engage in the required 75 percent of working time direct inmate contact requirement contained in Minnesota Statutes, Section 352.91. The Commission staff reviewed each supplied job description and assessed the job description percentage attribution elements for inmate contact. The Department of Corrections descriptions have improved since 2007, now including a specific indication of the extent of direct inmate contact for each employment responsibility element. While the Commission staff appraisal of the job descriptions is not a substitute for the rigorous process that the department was required to utilize in making its recommendations, the analysis does allow the Commission to focus on those recommendations that might be borderline qualified or actually unqualified. Based on the job description appraisal of the extent of inmate contact, the Commission staff recommends that the Commission take additional testimony or additional appropriate steps to verify the extent of actual contact for both recommended occupational positions.

For the General Maintenance Worker Lead position, there are five responsibility areas that appear to be particular to the position and four highly generalized responsibility areas (i.e., applicable 100 percent of employment time and without any inmate contact designation), with the particular responsibility areas indicating a percentage of total employment time with inmate contact and the percentage of total employment time without inmate contact. While the General Maintenance Worker Lead position job description indicates 80 percent inmate contact, the contact/non-contact percentages for responsibility areas 2 and 5 do not total correctly to the overall total percentage (i.e., area 2 indicates 75 percent of total time, with 70 percent inmate contact and no non-contact time and area 5 indicates 10 percent total time, with 10 percent inmate contact and 5 percent non-contact time) and the narrative for responsibility areas 2 and 5 are not necessarily consistent with the indicated inmate contact figure (i.e., area 2 has two of eight specified tasks with either no inmate contact or potentially nominal inmate contact and area 5 is a generic "other assigned duties as needed" without any specific inmate contact mentioned at all).

For the Painter Lead, where there is no incumbent and the job description is a prediction of the likely employee exposure, rather than any actual measurement of past occurrences or exposures, the job description indicates 80 percent inmate contact, with most inmate contact and most employment time involved in area 1, with some inmate contact assessed for each of the first four areas, but most of the narrative lacking any mention of inmate contact (i.e., for area 1, six of seven indicated tasks include no inmate references, for area 2, all three indicated tasks appear to involve paperwork duties solely, for area 3, all four indicated tasks are inventory or paperwork duties solely, and for area 4, all three indicated tasks are ordering or recordkeeping duties).

3. Extent of Compliance With Other Historic MSRS-Correctional Plan Coverage Requirements. The policy issue is the extent of compliance in its review by the Department of Corrections with the other coverage transfer requirements that the Commission has historically utilized. Since the Commission first reviewed demands from trades personnel and special teachers to be included in MSRS-Correctional Plan coverage in 1974, the Commission has considered as part of its consideration of potential MSRS-Correctional membership inclusion the questions of:
  - i. Intervention Responsibility. Whether or not the considered occupational position was responsible to intervene in the event of a facility incident;
  - ii. Employment Hazards – Workers Compensation Claim History. Whether or not the extent that workers' compensation claims support the notion that the hazards of the positions approximate that of a public safety position.
  - iii. Employment Hazards – Incumbent Related Time Lost History. Whether or not the extent that the position's duty days lost to incidents or employment hazards are consistent with a public-safety-like position.

The Commission staff requested from the Department of Corrections information on the compliance of the various occupational positions recommended for MSRS-Correctional Plan inclusion with these historic requirements. The Department of Corrections information indicated that both employment positions proposed for MSRS-Correctional inclusion have, as an employment requirement, the

obligation to intervene in the event of a facility incident. With respect to workers' compensation claims and with respect to lost work time from facility incidents or employment hazards, the department reported no workers' compensation claims and no lost employment time from incidents or employment hazards, because the General Maintenance Worker Lead incumbent has held the employment position only since mid-December, 2007, and the Painter Lead position is an unfilled position. Thus, the hazards of the employment positions are not independently substantiated and must be assessed from other indicators.

4. Actuarial Condition of MSRS-Correctional; Need for Additional Contribution Increases. The policy issue is the actuarial condition of the MSRS-Correctional Retirement Plan and any need for additional contribution increases to support the retirement plan. The following sets forth the July 1, 2005, July 1, 2006, and July 1, 2007, actuarial valuation results for the MSRS-Correctional Plan:

	2005		2006		2007	
<u>Membership</u>						
Active Members		3,607		3,910		4,332
Service Retirees		1,025		1,101		1,210
Disabilitants		150		168		174
Survivors		104		106		118
Deferred Retirees		738		817		851
Nonvested Former Members		<u>351</u>		<u>388</u>		<u>494</u>
Total Membership		5,975		6,490		7,179
<u>Funded Status</u>						
Accrued Liability		\$546,117,680		\$647,480,269		\$708,291,710
Current Assets		<u>\$503,573,272</u>		<u>\$535,356,819</u>		<u>\$583,318,116</u>
Unfunded Accrued Liability		\$42,544,408		\$112,123,450		\$124,973,594
Funding Ratio	92.21%		82.68%		82.36%	
<u>Financing Requirements</u>						
Covered Payroll		\$147,385,402		\$162,744,640		\$187,309,014
Benefits Payable		\$19,025,766		\$26,506,726		\$28,564,915
Normal Cost	15.01%	\$22,111,459	17.69%	\$28,786,714	17.68%	\$33,124,289
Administrative Expenses	<u>0.20%</u>	<u>\$294,771</u>	<u>0.21%</u>	<u>\$341,764</u>	<u>0.22%</u>	<u>\$412,080</u>
Normal Cost & Expense	15.21%	\$22,406,230	17.90%	\$29,128,478	17.90%	\$33,536,369
Normal Cost & Expense	15.21%	\$22,406,230	17.90%	\$29,128,478	17.90%	\$33,536,369
Amortization	<u>2.50%</u>	<u>\$3,684,635</u>	<u>5.44%</u>	<u>\$8,853,309</u>	<u>5.51%</u>	<u>\$10,320,727</u>
Total Requirements	17.71%	\$26,090,865	23.34%	\$37,981,787	23.41%	\$43,857,096
Employee Contributions	5.69%	\$8,386,229	5.69%	\$9,260,170	6.40%	\$11,987,777
Employer Contributions	7.98%	\$11,761,355	7.98%	\$12,987,022	9.10%	\$17,045,120
Employer Add'l Cont.	0.00%	\$0	0.00%	\$0	0.00%	\$0
Direct State Funding	0.00%	\$0	0.00%	\$0	0.00%	\$0
Other Govt. Funding	0.00%	\$0	0.00%	\$0	0.00%	\$0
Administrative Assessment	<u>0.00%</u>	<u>\$0</u>	<u>0.00%</u>	<u>\$0</u>	<u>0.00%</u>	<u>\$0</u>
Total Contributions	13.67%	\$20,147,584	13.67%	\$22,247,192	15.50%	\$29,032,897
Total Requirements	17.71%	\$26,090,865	23.34%	\$37,981,787	23.41%	\$43,857,096
Total Contributions	<u>13.67%</u>	<u>\$20,147,584</u>	<u>13.67%</u>	<u>\$22,247,192</u>	<u>15.50%</u>	<u>\$29,032,897</u>
Deficiency (Surplus)	4.04%	\$5,943,281	9.67%	\$15,734,595	7.91%	\$14,824,199

A phase-in of increased member and employer contributions was imposed over the period 2007-2010, but even with the contribution increases fully phased in, the plan has a contribution deficiency of some magnitude, as follows:

Normal Cost	17.68%	\$33,124,289
Administrative Expenses	0.22%	\$412,080
Amortization	<u>5.51%</u>	<u>\$10,320,727</u>
Total Requirements	23.41%	\$43,857,096
Employee Contributions	8.60%	\$16,108,575
Employer Contributions	<u>12.10%</u>	<u>\$22,664,391</u>
Total Contributions	20.70%	\$38,772,966
Total Requirements	23.41%	\$43,857,096
Total Contributions	<u>20.70%</u>	<u>\$38,772,966</u>
Deficiency (Surplus)	2.71%	\$5,084,130

To gain contribution equilibrium for the retirement plan, additional increases will be needed in the member and employer contribution rates to the retirement plan.

- **Amendment H3082-1A** would retain the current contribution increase phase-in period, until 2010, but increases each incremental increase to eliminate the contribution deficiency.
- **Amendment H3082-2A** would extend the contribution increase phase-in period from 2010 to 2012, with additional increments resulting in a sufficient total contribution in 2012.

## Attachment A

### Background and Historical Information on the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional)

1. Pre-1973 Correctional State Employee Retirement Coverage. Before 1973, all employees of the Department of Corrections were covered by the State Employees Retirement Association (SERA) until 1967, and then by SERA's successor, the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). MSRS-General's predecessor was established in 1929 (Laws 1929, Chapter 191).

MSRS-General has been a defined benefit plan since its creation 1929 and has been entirely coordinated with the federal Social Security program since 1957. At that time, coordination was available on an "all or none" basis. The then SERA members, by a majority vote on a Social Security referendum, chose coordination. At the same time, and on the same basis of all or none coverage, the other two statewide funds, the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and the Teachers Retirement Association (TRA), held similar referenda, which were rejected by the existing membership of those plans. TRA coordinated with Social Security in 1959 on a "split fund" basis, with the members who did not elect Social Security coverage placed in a phasing-out Basic program. In 1965-1967, PERA coordinated on a "split fund" basis.

The SERA/MSRS-General benefit plan has changed considerably since 1929. Significant plan changes have occurred in 1967, when retirement coverage and contributions were extended to a person's full salary (up to a limit of \$4,800 before 1965 and a limit of \$7,200 before 1967), in 1969, when the predecessor to the Minnesota Post Retirement Investment Fund was created, in 1973, when the calculation of retirement benefits shifted from a career average salary to the highest five successive years average salary and the benefit accrual rates were simplified and increased, in 1989, when the "Rule of 90" benefit tier was created, in 1992, when the Minnesota Post Retirement Investment Fund adjustment mechanism was revised, and in 1997, when the benefit accrual rates were increased to achieve "uniformity" among the various general employee retirement plans.

2. 1973 Creation of the MSRS-Correctional Retirement Plan. 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, Council 6, and the resulting implementing legislation (Laws 1973, Chapter 653, Sections 39 to 44). The membership of the 1973 plan was limited to a small number of employees of the Department of Corrections or of the Department of Public Welfare (now Human Services), as follows:

Attendant Guard	Director of Attendant Guards
Attendant Guard Supervisor	Guard Farmer Garden
Correctional Captain	License Plant Manager
Correctional Counselor I	Prison Industry Foreman
Correctional Counselor II	Prison Industry Supervisor
Correctional Counselor III	Food Service Manager
Correctional Counselor IV	Prison Farmer Supervisor
Correctional Lieutenant	Prison Farmer Assistant Supervisor
Correctional Officer	Rehabilitation Therapist
Correctional Sergeant	

Pre-July 1, 1973, service in a covered position was generally transferred from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), as was prior state employment as a houseparent, guard instructor, and guard farmer dairy. The identification of the state personnel for inclusion in the plan was made by the collective bargaining process and the administrations of the two affected departments. Although a separate retirement plan, MSRS-Correctional shared the State Employees Retirement Fund as its funding and investment mechanism until 1987, when a separate retirement fund was created for the MSRS-Correctional Retirement Plan. The creation of the MSRS-Correctional Retirement Plan, with an age 55 normal retirement age, coincided with the imposition of a statutory early mandatory retirement age for correctional personnel covered by MSRS-Correctional. Under Laws 1973, Chapter 653, Section 12, the previously applicable age 70 mandatory retirement age was reduced for correctional employees to age 65 as of July 1, 1974, to age 62 as of January 1, 1975, and phased down to age 55 as of July 1, 1976. The creation of the MSRS-Correctional Plan was part of an initiative to accelerate the retirement of the prior cadre of Minnesota prison guards, to upgrade the function and reliability of the security personnel at the state's correctional

facilities, reflected in the renaming of the prison guards as correctional officers, to increase the pre-employment educational attainment of correctional personnel to match their upgraded job responsibilities, and to reduce the amount of contraband that was then entering correctional facilities from correctional employees. The initial active membership of the plan on July 1, 1973, was 677.

3. 1974 Membership Expansion of the MSRS-Correctional Retirement Plan. The initial expansion for the MSRS-Correctional Retirement Plan occurred in 1974 (Laws 1974, Chapter 520). Following Interim hearings by the Legislative Retirement Study Commission (renamed in 1975 the Legislative Commission on Pensions and Retirement) at the St. Cloud Reformatory and otherwise, the Legislature authorized an expansion in the plan membership to include special teachers, trades personnel, and maintenance personnel at the Minnesota Correctional Facility-Stillwater, the Minnesota Correctional Facility-St. Cloud, and the Minnesota Correctional Facility-Shakopee. The special teachers, trades personnel, and maintenance personnel transferred to coverage by the MSRS-Correctional Retirement Plan were those certified by the then newly created Commissioner of Personnel (now Commissioner of Employee Relations) as being regularly engaged in the rehabilitation, treatment, custody, or supervision of inmates. Credit for past applicable correctional employment, including employment as a special schools counselor or a shop instructor, was transferred to the MSRS-Correctional Retirement Plan. For correctional teachers covered by TRA, a transfer of past member, employer regular, and employer additional contributions from TRA accompanied the service credit transfer. The Commission hearings leading to the 1974 expansion focused primarily on the safety hazards reportedly suffered by these state employees from inmates and the public safety-related rationale of the need to maintain a particularly vigorous workforce through emphasizing an early age normal retirement. The 1974 expansion of the plan increased its active membership by 60, to 737.
4. 1975-1978 MSRS-Correctional Retirement Plan Coverage Changes. In 1975 (Laws 1975, Chapter 230, Section 1), following complaints from correctional personnel facing imminent early retirement, the mandatory retirement age for MSRS-Correctional Plan active members was modified by making it a conditional mandatory retirement age through age 65, with annual extensions beyond the mandatory age if a medical examination supports the extension. The amendment reflected considerable disgruntlement by MSRS-Correctional Plan active members approaching the mandatory retirement age because the 1974 recession considerably reduced the second career employment prospects of the early retirees, especially when those members believed that they retained a physical capacity to continue to perform the employment position responsibilities.

Also in 1975 (Laws 1975, Chapter 368, Section 35), allowable service credit for prior state employment at a correctional facility as a farmer or a farmer manager by an MSRS-Correctional Plan active member on July 1, 1973, was transferred to the plan. Special teachers previously covered by the TRA Basic program had a TRA Basic program retirement annuity amount set as a floor benefit amount.

In 1978 (Laws 1978, Chapter 781, Section 2), institution educational administrators and institution educational supervisors at correctional facilities were included in MSRS-Correctional membership.

5. 1980 Addition of MSRS-Correctional Plan Covered Position Administrative Certification Process. In 1980 (Laws 1980, Chapter 600, Sections 2 through 5), coverage by the MSRS-Correctional Plan was classified as applicable only to employees in adult correctional facilities, and post-June 1, 1980, employment as a special teacher, a tradesperson, or a maintenance person at the Minnesota Correctional Facility-Lino Lakes was included in MSRS-Correctional Plan coverage. Additionally, special authority was enacted for the Commissioner of Personnel (also renamed Employee Relations in 1980), upon the recommendation of the Commissioner of Corrections or the recommendation of the Commissioner of Public Welfare (subsequently renamed Human Services), whichever applies, the notification of and receipt of comments from the Legislative Commission on Pensions and Retirement, and the approval of the Legislative Advisory Committee, to certify additional civil service classifications in adult correctional facilities or in the Minnesota Security Hospital as covered by the MSRS-Correctional Retirement Plan. The provision was codified as Minnesota Statutes, Section 352.91, Subdivision 4. The provision was intended to allow for plan expansions between legislative sessions when there was an urgency to do so.
6. 1981-1987 MSRS-Correctional Retirement Plan Coverage Changes. In 1981 (Laws 1981, Chapter 297, Sections 3 and 4), service credit for pre-1981 state employment as a security guard by an MSRS-Correctional Plan member was transferred to the MSRS-Correctional Plan, with the payment of an additional contribution amount.

