



H.F. 3358
(Howes)

S.F. 3640
(Olson, M.)

Executive Summary of Commission Staff Materials

Affected Pension Plan: MSRS-General
Relevant Provisions of Law: Special law request
General Nature of Proposal: Service credit purchase for period of temporary, intermittent employment
Date of Summary: March 10, 2008

Specific Proposed Changes

- Individual seeks to purchase service credit for a period of temporary, intermittent employment, which appears to be properly excluded from plan coverage

Policy Issues Raised by the Proposed Legislation

1. Concern about undermining statute if service was properly excluded from coverage.
2. Size of the full actuarial value purchase amount, and likelihood of it being paid if the employer does not subsidize.
3. Equity concern, long delay in seeking remedy.

Potential Amendments

H3358-1A can be used if the Commission concludes there is some basis for concluding that the employer caused harm, requires employer to subsidize the purchase on behalf of the employee.

H3358-2A enables the individual to make the purchase within one month of the section's effective date if employment ends because the Ah-Gwah-Ching Center is closed.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Edward Burek, Deputy Executive Director *EB*
RE: H.F. 3358 (Howes); S.F. 3640 (Olson, M.): MSRS; Service Credit Purchase of Temporary Laborer 1 – Intermittent, Department of Natural Resources Employment
DATE: March 11, 2008

Summary of H.F. 3358 (Howes); S.F. 3640 (Olson, M.)

H.F. 3358 (Howes); S.F. 3640 (Olson, M.) permits Patrick Pitzen to purchase allowable service credit at full actuarial value from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) for employment from May 1974 through June 30, 1977, when he was employed as a Temporary Laborer 1 – Intermittent by the Department of Natural Resources.

Public Pension Problem of Patrick Pitzen

Patrick Pitzen of Walker, Minnesota, is a long-term state employee who currently works as a registered nurse for the Department of Human Services at the Ah-Gwah-Ching Center. Mr. Pitzen desires to be able to retire under the "Rule of 90" early normal retirement age provision, Minnesota Statutes, Section 352.116, Subdivision 1, Paragraph (b), at the earliest possible age because of the impending closure of the Ah-Gwah-Ching Center and the prospect of a long commute to continue in state employment. Mr. Pitzen has periods of employment with the Department of Natural Resources from May 1974 to June 30, 1977 which was not credited as allowable service by MSRS-General. MSRS-General coverage commenced on July 1, 1977, when Mr. Pitzen became an Unlimited Intermittent, Laborer 1 Tenured. Mr. Pitzen desires to be able to purchase service credit for some or all of his Department of Natural Resources employment during the May 1974 to June 30, 1977 period when, according to information supplied by MSRS, he was classified as a Temporary Laborer 1 – Intermittent.

Background Information

Background information on the following relevant topics is set forth in the designated attachments:

- A. Public Pension Plan Service Credit. Attachment A discusses how service credit functions within a public pension plan as a mechanism for determining vesting, calculating benefits, and allocating the cost of retirement coverage.
- B. Prior Service Credit Purchase Special Legislation. Attachment B discusses the role of special legislation in resolving demands for allowable service credit for past uncredited periods of time, past service credit purchase special legislation, and the Commission Principles of Pension Policy statement on the topic.
- C. "Rule of 90" Benefit Tier Eligibility and Other Pre-July 1, 1989, Benefits. Attachment C discusses the 1989 benefit increases and the nature of the "Rule of 90" benefit tier.

Discussion and Analysis

H.F. 3358 (Howes); S.F. 3640 (Olson, M.) permits Patrick Pitzen to purchase allowable MSRS-General service credit for periods of employment from May 1974 through June 30, 1977, when he was employed as a Department of Natural Resources Temporary Laborer 1 – Intermittent employee, if he makes a full actuarial value payment.

The proposed legislation raises or presents an opportunity to raise several pension and related public policy issues that may merit Commission consideration and discussion, as follows:

1. Undermining Statutes. The issue is whether applicable law excluded Mr. Pitzen from plan coverage. If Mr. Pitzen was properly excluded from the plan, a policy concern is that permitting him to purchase service credit contradicts and undermines the applicable law. If individuals are permitted to purchase periods excluded by law from coverage, the prohibition is undermined and in effect is changed to an optional coverage provision. The employment is excluded from coverage unless the employee later decides to purchase it.

The applicable law does appear to have prohibited Temporary Laborer 1 – Intermittent employees from plan coverage, suggesting that Mr. Pitzen, for the period in question, was properly excluded from the pension plan. According to MSRS, Mr. Pitzen’s employment classification during the period in question (May 1974 through June 30, 1977) was Temporary Laborer 1 – Intermittent. Throughout this entire period the MSRS excluded employee provision prohibited temporary employees in the classified service from being covered by the pension plan. That treatment continues in current statute (Minnesota Statutes 2007, Section 352.01, Subdivision 2b, Clause (16)). During the mid-1970s, the period relevant for Mr. Pitzen’s pension problem, the coverage prohibition was found in Minnesota Statutes, Section 352.01, Subdivision 2b, Clause (20). In MSRS statutes, individuals who are defined as “state employees” are covered by the plan, while those who are excluded from coverage are defined to be not state employees. In those mid-1970s editions of Minnesota Statutes, “state employee” did not include:

Minnesota Statutes, Section 352.01, Subdivision 2b, Clause (20)

1973 Supplement	All temporary employees in the classified service, and all seasonal help in the unclassified service employed by either the motor vehicle division or the department of taxation to perform clerical duties.
1974	All temporary employees in the classified service, and all seasonal help in the unclassified service employed by either the motor vehicle division or the department of revenue to perform clerical duties.
1976	All temporary employees in the classified service, all temporary employees in the unclassified service appointed for a definite period of not more than six months and employed less than six months in any one year period and all seasonal help in the unclassified service employed by the department of revenue.
1978	All temporary employees in the classified service, all temporary employees in the unclassified service appointed for a definite period of not more than six months and employed less than six months in any one year period and all seasonal help in the unclassified service employed by the department of revenue.

With rare exceptions, the Commission has not authorized purchases of ineligible employment periods outside of teaching service, and those provisions applicable to teachers have now been repealed. Recent instances of limiting service credit purchases to periods that were eligible for coverage when rendered are:

- Laws 2007, Chapter 134, Article 12, Section 1, Paragraph (a): St. Paul City 1988-1989 unreported employment purchase from the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General).
- 2007 H.F. 1328 (Peterson, S.); S.F. 1325 (Rest): Purchase not approved for St. Paul Community Center service that was not clearly eligible for St. Paul Teachers Retirement Fund Association (SPTRFA).
- Laws 2006, Chapter 271, Article 14, Section 6, Paragraph (a): Anoka Greenhaven Golf Course purchase from PERA-General.
- Laws 2006, Chapter 271, Article 14, Section 11, Paragraph (g): Bloomington School District custodian unreported service purchase from PERA-General.
- Laws 2004, Chapter 267, Article 16, Section 1, Paragraph (c): Mounds View School District unreported employment purchase from PERA-General.

2. Conformity with Commission Policy Principles Regarding Full Actuarial Value Payment Requirement. The Legislative Commission on Pensions and Retirement’s Principals of Pension Policy require a full actuarial value service credit purchase payment so that the service credit purchase is not subsidized by the pension plan and to avoid violating equitable considerations. As drafted, the special purchase provision would result in the payment to the retirement plan of the full actuarial value of the benefit purchased.
3. Size of the Purchase Payment Amount. The policy issue is the large payment obligation due from Mr. Pitzen and the lack of any net financial gain to him. Because of these factors, it is unlikely the purchase will occur if authorized and the legislative effort in processing the proposed special legislation would be wasted. The cost will be substantial because Mr. Pitzen will be asked to pay an

amount equal to the full increase that will occur in his lifetime annuity due to the purchase. It would only be worthwhile financially to purchase the service credit if the Commission and Legislature were to revise the bill language to have the employer cover a portion of the cost. The Commission has used that treatment if the Commission concludes that the employing department failed to treat the individual properly under law.

4. Issue of Whether Employer Caused Harm. The policy issue is the extent of any responsibility by the State of Minnesota for causing the uncredited service credit, which might justify revising the draft to require the employing department to cover part of the cost of the purchase of service credit. If the Commission concludes that the service was properly excluded under law, then there is no basis for any claim that the department or state harmed the individual by not providing plan coverage.
5. Equitable Considerations: Delay in Pursuing Service Credit Purchase. The policy issue is the potential adverse equitable consideration arising from a 33-year delay in pursuing the service credit. The Commission might choose to dismiss Mr. Pitzen's service credit purchase request.
6. Appropriateness of Service Credit Purchase Requests Solely to Gain Earlier "Rule of 90" Eligibility. The policy issue is the appropriateness of the Commission authorizing a service credit purchase solely motivated by a desire to gain earlier access to a "Rule of 90" early normal retirement benefit. Mr. Pitzen's letter appears to indicate that his primary or sole motivation in seeking the purchase is to gain earlier access to a "Rule of 90" benefit. Recent examples of the Commission declining to authorize a service credit purchase to gain the "Rule of 90" are:
 - 2006 H.F. 4020 (Emmer); S.F. 3658 (Koch): Pre-1989 military service credit purchase from PERA-General.
 - 2003 H.F. 63 (Boudreau); S.F. 47 (Day): Pre-1989 part-time Department of Transportation employment purchase from MSRS-General.
 - 2001 H.F. 142 (Boudreau); S.F. 732 (Neuville): Pre-1989 part-time Department of Transportation employment purchase from MSRS-General.
 - 1999 H.F. 1314 (Lenczewski); S.F. 1019 (Johnson, D.H.): Pre-1989 Minnesota Veterans Home temporary employment purchase from MSRS-General.
7. Scope; Similar Individuals. If the Commission determines that law was properly applied, the Commission may choose to be concerned that many similarly situated individuals may request service credit purchases if H.F. 3358 (Howes); S.F. 3640 (Olson, M.) is enacted into law.

Potential Amendments for Commission Consideration

1. Amendment H3358-1A may be used if the Commission concludes that an employing unit caused harm. The amendment shifts much of the cost of the service credit purchase to the employing units. The eligible individual would pay employee contributions plus interest and the Department of Natural Resources and the Department of Human Services would equally share in payment of the remainder. If the Commission wishes to remove one of those employers, that can be done through a verbal amendment to the amendment.
2. Amendment H3358-2A, which can be used with Amendment H3358-1A or separately, could be used if the Commission wishes to revise the expiration date language to accommodate a possible closure of the Ah-Gwah-Ching Center up to one month after the section's effective date (day following final enactment) causing the eligible employee to terminate service. If that occurs, the individual could make a service credit purchase up to one month after the section's effective date, notwithstanding an earlier statement in the bill requiring payment prior to termination of service. This would address a concern of the eligible individual, which is that the Center might close before the bill can be enacted.

Attachment A

Background Information on Public Pension Plan Service Credit

Retirement Plan Service Credit

- a. Defined Benefit Plans. Most Minnesota public pension plans are defined benefit plans. In defined benefit plans, the pension benefit amount that is ultimately payable is pre-determinable or fixed using a formula or comparable arrangement. The fixed element of the benefit amount leaves a variable element, which is the funding required to provide that benefit. The formula utilizes allowable service credit and salary credit in the calculation, averaging the salary amounts for the five successive years' average salary period that produces the highest amount for use as the base to which is applied a total percentage amount determined by assigning a percentage amount to each year of allowable service credit.
- b. Historical Shift in Plan Types and to Salary-Based Plans. Minnesota's statewide retirement plans were not originally salary-related pension plans, with the predecessor to TRA established in 1915 as a money purchase (defined contribution) plan, with the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) established in 1929 as a set dollar amount (\$200 per month) plan, and with the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) established in 1931 also as a set dollar amount (\$200 per month) plan. Conversion to salary-related pension plans occurred for MSRS-General and PERA-General in 1957, which was a recommendation of the initial interim predecessor to the Legislative Commission on Pensions and Retirement, and for TRA in 1969, which was a recommendation of the initial permanent predecessor to the Pension Commission. The first class city teacher retirement fund associations and Minneapolis Employees Retirement Fund (MERF) generally shifted to salary-related pension plans in the 1950s (the Duluth Teachers Retirement Fund Association (DTRFA) shifted in 1971).
- c. Definition of Minnesota Defined Benefit Public Pension Plan Service Credit. Allowable service credit in Minnesota's statewide and major local defined benefit retirement plans generally includes many different service periods, which are:
 1. Covered Current Service. Employment is a covered position with a covered employer for which member contributions have been deducted and transmitted to the retirement plan;
 2. Historic Credit in Plan Records. Service credit as reflected in the records of the retirement plan that predates the plan's establishment or reformulation;
 3. Military Service Leave. Periods of service in the U.S. Armed Forces during a leave of absence;
 4. Temporary Disability Periods. Periods of leaves caused by a temporary disability;
 5. Credit Reinstated by a Refund Repayment. Periods of service covered by a prior refund of member contributions which have been repaid subsequently;
 6. Part-Time Employment. Periods where full service credit is granted for part-time employment;
 7. Sabbatical Leaves and Other Leaves of Absence with Pay. Periods of an authorized leave of absence during which the member is paid a whole or a partial salary;
 8. Extended Leaves of Absence Without Pay. Periods of an authorized leave of absence without pay;
 9. Labor Union Employment or Elective Service. Periods of employment as an exclusive collective bargaining representative or as an elected official;
 10. Parental or Family Leaves of Absence. Periods of leaves or breaks in service for parental or family reasons;
 11. Strike Periods. Periods of a labor union strike; and
 12. Out-of-State Teaching or Other Outside Service. Periods of teaching service, Peace Corps service, or VISTA service.
- d. Purpose of Service Credit. Service credit in a Minnesota defined benefit retirement plan exists for three reasons, determining vesting rights, determining eligibility for an early normal retirement annuity, and determining the amount of a retirement annuity.

Vesting is the circumstance of possessing a non-forfeitable right to an eventual retirement annuity, even if covered employment is terminated before reaching retirement age. In virtually all Minnesota defined benefit retirement plans, the vesting period is three years of service credit, which need not be

consecutive periods of service and which may include service covered by more than one Minnesota defined benefit retirement plan.

Early normal retirement annuity eligibility in Minnesota defined benefit retirement plans generally means qualification for the "Rule of 90," where a member can retire with an unreduced retirement annuity when the sum of the person's age and service credit total at least 90, or for the Minneapolis Employees Retirement Fund (MERF) or the Basic Program of the Minneapolis Teachers Retirement Fund Association (MTRFA-Basic), means qualification for the "30 and out" unreduced retirement annuity payable when a person has credit for at least 30 years of service credit.

Retirement annuity determination is the calculation of a member's defined benefit retirement annuity, using the plan's benefit accrual rate percentage (frequently 1.7 percent per year of service credit), multiplied by the member's service credit, and the total applied to the member's final average salary figure (highest five years average salary).

Defined benefit retirement plans exist to provide a retirement annuity at the conclusion of an employee's normal working lifetime. Service credit allows for the retirement plan to bear its proportional share of the burden of the ultimate total retirement annuity amount based on the amount of the total employment period spent with the applicable employer.

Attachment B

Background Information on Prior Service Credit Purchase Special Legislation

- a. Service Credit Purchases. Although most Minnesota public retirement plan service credit is acquired by rendering covered employment services and having member contributions deducted from periodic compensation for those services, some employment services or comparable endeavors are omitted from Minnesota public retirement plan coverage for some reason or member contributions fail to be deducted for some reason.

When allowable service is not credited by a Minnesota public retirement plan in the normal course of events and the applicable person believes that the period of service should be credited as allowable service credit, the situation can be corrected administratively if an omitted member contribution is involved (and the three-year correction period has not elapsed for the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), the Public Employees Police and Fire Retirement Plan (PERA-P&F), or the PERA Local Government Correctional Employees Retirement Plan (PERA-Correctional) or the situation can be corrected by special legislation for the person involved or for the group of individuals involved.

- b. Special Legislation Service Credit Purchase Authorization. In Minnesota, until 1999, there were few general law service credit purchase authorizations, and service credit purchase authorizations were generally special law provisions.

The primary general law service credit purchase authorization was Minnesota Statutes 2004, section 354.51, enacted in 1931, when the Teachers Retirement Association (TRA) was a defined contribution retirement plan, which allows TRA members with 15 years of service who have pre-1953 out-of-state teaching service to purchase that service by making equivalent member contributions, plus interest at the rate of 8.5 percent per annum.

During the period 1957-2007, the Legislature has enacted 257 special laws authorizing one person or a small group of individuals to purchase prior service credit, distributed over the years as follows:

<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>
1957	1	1974	5	1983	2	1992	6	2001	10
1959	4	1975	10	1984	3	1993	7	2002	2
1961	5	1976	4	1985	2	1994	8	2003	6
1963	6	1977	9	1986	6	1995	7	2004	1
1965	5	1978	9	1987	3	1996	6	2005	1
1967	1	1979	7	1988	7	1997	3	2006	14
1969	2	1980	4	1989	12	1998	9	2007	3
1971	2	1981	14	1990	10	1999	8		
1973	4	1982	16	1991	6	2000	8		

A majority of special prior service credit purchase laws relate to the three major general employees retirement plans, with 33 special laws relating to the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), with 81 special laws relating to the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), and with 49 special laws relating to the Teachers Retirement Association (TRA).

In considering special law service credit purchase requests, through at least 1999, the Legislative Commission on Pensions and Retirement has generally followed its Principles of Pension Policy, which require:

1. Individual Review. The Commission considers each service credit purchase request separately, whether the request is proposed legislation for a single person or is proposed legislation relating to a group of similarly situated individuals.
2. Public Employment. The period requested for purchase should be a period of public employment or service that is substantially akin to public employment. This is consistent with the notion that public pension plans should be providing coverage for public employees for periods of time when they were serving the public through public employment or through quasi-public employment. Coverage for a period when an individual provided private sector employment is not consistent with this statement.

