



**H.F. 3713**  
(Nelson)

**S.F. 3405**  
(Betzold)

**Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* PERA-P&F  
*Relevant Provisions of Law:* Minnesota Statutes, Sections 353.031 and 353.656  
*General Nature of Proposal:* Requires employer to make reasonable effort to find employment positions for injured police officers and firefighters; increases duty disability benefits for those who become disabled after more than 20 years of service.  
*Date of Summary:* March 13, 2008

**Specific Proposed Changes**

- Requires the employer to make a reasonable effort to find suitable employment positions for injured police officers and firefighters; and
- increases the duty disability benefits for those who become disabled after more than 20 years of service.

**Policy Issues Raised by the Proposed Legislation**

1. The issue is whether there is sufficient reason to consider section 1 of the bill when the substance of the proposed provision seems adequately covered in existing law.
2. Issues of reversing 2007 legislative changes.
3. Issue of treating duty disabilitants and total and permanent disabilitants comparably.
4. PERA position.
5. Benefit improvement/cost issue.
6. PERA-P&F actuarial condition.
7. Consideration of contribution rate increase.
8. Effective date issues.

**Potential Amendments**

- H3713-1A** removes section 1 from the bill.
- H3713-2A** adds a July 1, 2008, effective date to Sections 1 and 2.
- H3713-3A** removes section 2 from the bill.
- H3713-4A** adds a July 1, 2008, effective date to Section 1 and a July 1, 2007, retroactive effective date to Section 2.
- H3713-5A** revises PERA-P&F employee and employer contribution rates starting in 2009 by 1.2 percent of pay (from 9.4 percent of pay to 10.6 percent) while the employer contribution would increase by 1.8 percent of pay (from 14.1 percent to 15.9 percent).
- H3713-6A** revises PERA-P&F employee and employer contribution rates starting in 2009 by 1.1 percent of pay (from 9.4 percent of pay to 10.5 percent) while the employer contribution would increase by 1.7 percent of pay (from 14.1 percent to 15.8 percent).



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director <sup>EB</sup>

RE: H.F. 3713 (Nelson); S.F. 3405 (Betzold): PERA-P&F; Adding Requirement that Employer Make Reasonable Effort to Provide Less Hazardous Duty Position to Injured PERA-P&F Members, and Increasing Duty Disability Benefits in Long Service Situations

DATE: March 11, 2008

General Summary of H.F. 3713 (Nelson); S.F. 3405 (Betzold)

H.F. 3713 (Nelson); S.F. 3405 (Betzold) requires the employer to make a reasonable effort to find suitable employment positions for injured police officers and firefighters, and increases the duty disability benefits for those who become disabled after more than 20 years of service.

Background Information

In the 2004 and 2006 Sessions, the Legislature began addressing problems with the Public Employees Police and Fire Plan (PERA-P&F) disability benefit program. Major revisions followed in the 2007 Session when the Legislature passed considerable reforms for that plan to limit abuse and bring some cost control to the PERA-P&F disability program. Laws 2007, Chapter 134, Article 4 (the source bills were H.F. 125 (Murphy, M.); S.F. 84 (Betzold) in the form of delete-everything amendment H0125-3A, as amended) was requested by the Public Employees Retirement Association (PERA), and it revised PERA-P&F disability benefit provisions and survivor provisions relating to all disabilities that commence after July 1, 2007, as follows:

1. Two revised disability categories were created, duty disability and regular disability, replacing the prior "duty" and "non-duty" categories, and the duty disability category was further divided into a total and permanent duty disability subgroup and other duty disability subgroup.

As revised, the duty disability subcategory is a physical or psychological disability caused by performing job-related duties protecting the property and personal safety of others that present inherent dangers (rather than being any disability that occurs or is related to being on duty), and which results in the individual being unable to perform the normal duties of the position for a period of at least one year.

In contrast, a total and permanent duty disability is a duty disability for which the individual qualifies under the total and permanent disability standard usually used for general employee plans. To meet a total and permanent disability standard, the individual must be unable to perform any gainful employment.

The final category, regular disability, is any job-related disability resulting from activity that did not present inherent danger, and all disabilities resulting from any non-duty activity.

2. Total and permanent duty disability benefits are 60 percent of the high-five salary, plus three percent of the high-five for each year of service over 20. (This is the treatment which under prior law had been provided to all duty disability.)
3. Duty disabilities other than total and permanent duty disabilities are capped at 60 percent of the high-five salary, rather than 60 percent plus three percent of the high-five for each year of service over 20.
4. Regular disabilities are capped at 45 percent of the high-five salary, rather than being computed like a service annuity based on actual service, with a minimum benefit of 45 percent of the high five.
5. Duty-related disability cases who do not meet the total and permanent disability standard and all regular disability cases who are at least age 55 at the time of disability but have less than 20 years service in duty disability cases, or 15 years service in regular disability cases, can receive disability benefits for five years, then the disability benefit must terminate.
6. The disability benefit, except those received by total and permanent duty disability cases, is converted to a retirement annuity when the member reaches age 55; or for those who are 55 when the disability commenced, on the five-year anniversary of the disability; or when a member elects to convert to an early retirement annuity rather than the disability benefit.

7. Disability benefits can be retroactive for up to 90 days if salary or salary-equivalent benefits were not received during that period.
8. Disability benefits are not allowed if disability is due to illegal drug use and the individual has not taken part in a rehabilitation program and ceased drug use.
9. Three years of service, rather than one year of service, will be required to qualify for surviving spouse annuities if the member's death was not a line-of-duty death. (A "line-of-duty death" is a new term defined as a death that occurs while performing duties specific to protecting the property and personal safety of others and that present inherent dangers specific to the positions covered by the PERA-P&F. A "not-line-of-duty death" is any death that is not a line-of-duty death.)
10. Surviving spouse benefits in death-while-active situations are increased from 50 percent to 60 percent of final salary in line-of-duty death situations, and the family maximums related to line-of-duty deaths are revised accordingly.
11. Early retirement (by any individual who becomes a PERA-P&F member after June 30, 2007, or by a former member who is reinstated after that date) will require a reduction of .2 percent for each month that the individual is under age 55, rather than one-tenth.

These changes were in response to high and rising PERA-P&F disability provision costs. Information provided to the Commission last year when the Commission considered the above changes showed the normal cost of plan disability benefit provisions, as presented in the plan actuarial reports for selected years from 1990 through 2006. For comparison, the table included three general employee plans (MSRS-General, PERA-General, and TRA), the two correctional employee plans (MSRS-Correctional and PERA-Correctional), and the two statewide public safety plans (the State Patrol Retirement Plan and PERA-P&F).

- For the general employee plans, the normal cost of disability benefit coverage is generally less than one-half of one percent of payroll.
- For the quasi-public safety/correctional employee plans, the normal cost of disability benefit coverage approaches that of public safety plan disability coverage.
- The public safety plan disability normal cost is much higher, over 2.3 percent of payroll in the State Patrol Plan and in excess of 3.4 percent of payroll in PERA-P&F as of the 2006 actuarial valuation.

The PERA-P&F disability normal cost approximately doubled as a percentage of payroll since 1990. The size of that increase actually could be considerably understated in the table, because it is based on the actuarial assumptions regarding probabilities of collecting disability benefits. In recent years those probabilities seriously understate usage. A recent experience study indicated that actual disability was 180 percent of the predicted number.

**Table 1**  
Normal Cost of Disability Benefits  
Expressed as Percentage of Covered Payroll

	1990	1995	2003	2004	2005	2006
PERA-General	0.30%	0.49%	0.37%	0.34%	0.35%	0.36%
MSRS-General	0.25%	0.27%	0.42%	0.45%	0.43%	0.42%
TRA	0.47%	0.62%	0.21%	0.18%	0.19%	0.21%
PERA-P&F	1.70%	2.12%	2.26%	3.50%	3.42%	3.42%
State Patrol	1.84%	2.39%	2.43%	2.50%	2.50%	2.34%
MSRS-Correctional	0.21%	0.24%	1.25%	1.61%	1.60%	3.06%
PERA-Correctional	n/a	n/a	1.86%	1.54%	1.53%	1.49%

*Source: Plan actuarial valuation reports for identified years*

While general employee plans set a stringent requirement to qualify for disability (that the individual must be incapable due to injury or disease of performing any meaningful employment), public safety plans typically use a requirement that the individual be unable to perform in the individual's assigned position. While unquestionably there are many public safety disabilitants who are severely disabled as a result of protecting the safety of others, there are also public safety plan disabilitants who have marginal impairments and function well, who have considerable employable skills, and who are earning considerable income from reemployment while receiving disability benefits. Some of these disability claims are due to injury while not at work, or while at work but not performing an employment-related duty.

## Discussion and Analysis

H.F. 3713 (Nelson); S.F. 3405 (Betzold) requires the employer to make a reasonable effort to find suitable employment positions for injured police officers and firefighters, and increases the duty disability benefits for those who become disabled after more than 20 years of service from 60 percent of the high-five average salary, to 60 percent plus an additional three percent for each year of service credit over 20 years.

H.F. 3713 (Nelson); S.F. 3405 (Betzold) raises several pension issues for Commission consideration, as follows:

1. Sufficient Need for Section 1. The issue is whether there is sufficient reason to consider section 1 of the bill, when the substance of the proposed provision seems adequately covered in existing law. Section 1 would add a subdivision to PERA's disability determination procedure, Minnesota Statutes, Section 353.031, requiring the employer to "make every reasonable attempt to provide less hazardous duty employment positions for marginally or less severely disabled" police officers and firefighters "with the same compensation, fringe benefits, and other terms and conditions of employment" as the individual would have received if the injury or illness had not occurred.

However, Minnesota Statutes already includes a requirement that the employer make every effort to find suitable employment accommodation for an injured officer or firefighter. Minnesota Statutes 2007, Section 353.031, subdivision 3, paragraph (f), reads in relevant part:

Any claim to disability must be supported by a report from the employer indicating that there is no available work that the employee can perform in the employee's disabled condition and that all reasonable accommodations have been considered. Upon request of the executive director, an employer shall provide evidence of the steps the employer has taken to attempt to provide reasonable accommodations and continued employment to the claimant.

Presumably, the first reasonable accommodation the employer would attempt is to identify or create a position for the individual with salary and fringe benefits for the individual comparable to that which the individual had at the time of the disabling event.

2. Section 2: Issues of Reversing 2007 Legislative Changes. Section 2 would increase the benefit to a duty disabilitant from 60 percent of the high-five average salary to 60 percent of the high-five average salary plus three percent of the high-five for every year in excess of 20. This can be seen as a return to the 2006 and earlier duty disability provision of this plan. This is a step back from the reform enacted in 2007.

The Commission may choose to consider whether it is too early to reconsider any of the changes enacted as reform measures last year. The Commission may also choose to consider whether any reversal of the provisions passed last year will lead to pressure to reverse other benefit-related actions enacted as part of that legislation, including those related to general disabilitants, survivors, the status of disabilitants at normal retirement age, and the reduced subsidy of early retirement. Any reversal of the 2007 provisions will increase PERA-P&F contribution requirements. This, in turn, creates a need to further increase employee and employer contribution rates, placing greater burdens on state aid and local employers. Higher PERA-P&F contribution rates will reduce the excess police state aids and all aid programs financed in whole or part from those excess aids.

3. Section 2: Issue of Treating Duty Disabilitants and Total and Permanent Disabilitants Comparably. The Commission may wish to consider that this proposal would give all PERA-P&F duty disabilitants the same disability benefit, although some meet the total and permanent disability standard enacted last year and others do not. Those who meet the total and permanent disability standard have disabilities sufficiently severe that they are unable to provide any form of gainful employment. In contrast, those who meet the less stringent position-specific duty disability are employable, and many are making considerable income through employment in the public and private sector. If the benefit improvement under this bill, which is for duty disabilitants who do not meet the total and permanent disability standard, is approved, that may support a later effort to further increase the benefits of the total and permanent disabilitants.
4. PERA Position. The Public Employees Retirement Association (PERA) executive director has indicated that PERA's board does support the benefit improvement proposed in section 2.

The Commission may wish to hear testimony from PERA on this matter. One question is why PERA recommended the revision in duty disability last year only to reverse its position this year. Another question is whether PERA intends to propose any further unraveling of last year's reform package. A third is why PERA contends this benefit enhancement is appropriate when the 2007 efforts are unlikely to fully restore PERA-P&F to financial health even if investment markets were strong, which they definitely are not.

5. Section 2, Benefit Improvement/Cost Issue. The Commission does not typically consider benefit improvements without actuarial information on cost and the impact of that cost on contribution rate requirements. There does not appear to be a cost estimate for this proposal by an actuary.

PERA has indicated by email that the cost of proposed benefit improvement "is uncertain, given that we haven't had any real experience with the new definition. If reinstated based on past disabilities approved (both duty and non-duty) it would cost us .5 percent of pay. However, reinstating it only for duty disability with our new definition is expected to have much less of an impact."

The Commission may wish to consider whether it is appropriate to consider this benefit proposal, particularly given the existing contribution rate deficiencies of this plan, as indicated below.

6. PERA-P&F Actuarial Condition. The issue is the current actuarial condition of PERA-P&F. According to the 2007 actuarial report, although PERA-P&F is 95 percent funded it has a serious contribution rate problem. Contributions currently made under law total 20.5 percent, creating a 5.6 percent contribution deficiency. Contribution rate increases are being phased in over a few years, with the last increase set to occur in 2009. Under existing law, for 2009 and thereafter the employee contribution rate is 9.4 percent of pay, and the employer rate is 14.1 percent of pay, for a total of 23.5 percent of pay. The current actuarial work below indicates that the total required contributions already exceed 26 percent of pay.

PERA-P&F 2007		
<u>Membership</u>		
Active Members		10,720
Service Retirees		4,938
Disabilitants		803
Survivors		1,291
Deferred Retirees		1,200
Nonvested Former Members		814
Total Membership		19,766
<u>Funded Status</u>		
Accrued Liability		\$5,669,346,646
Current Assets		<u>\$5,382,707,345</u>
Unfunded Accrued Liability		\$286,639,301
Funding Ratio	94.94%	
<u>Financing Requirements</u>		
Covered Payroll		\$699,841,244
Benefits Payable		\$280,266,868
Normal Cost	22.19%	\$155,328,501
Administrative Expenses	<u>0.10%</u>	<u>\$699,841</u>
Normal Cost & Expense	22.29%	\$156,028,342
Normal Cost & Expense	22.29%	\$156,028,342
Amortization	<u>3.77%</u>	<u>\$26,384,015</u>
Total Requirements	26.06%	\$182,412,357
Employee Contributions	8.20%	\$57,386,982
Employer Contributions	12.30%	\$86,080,473
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	20.50%	\$143,467,455
Total Requirements	26.06%	\$182,412,357
Total Contributions	<u>20.50%</u>	<u>\$143,467,455</u>
Deficiency (Surplus)	5.56%	\$38,944,902

7. Consideration of Contribution Rate Increase. The Commission may wish to consider increasing contribution rates for this plan. If last year's legislation was urgently needed to address the cost of the PERA-P&F plan, then presumably there is a need to face the cost implications of partially unraveling that package. When the Commission considers a benefit improvement, it is common practice to increase contribution rates to cover the cost of the increase plus a further increase to eliminate existing contribution deficiencies in the plan. There is no section in this bill which revises contribution rates. The Commission may wish to consider an amendment to address contribution rates.
8. Effective Date Issues. The sections of the bill do not have effective dates. The Commission may wish to add effective dates. If the Commission were to consider using July 1, 2008, that could create a problem. Individuals who became duty disabilitants after the effective date of last year's legislation (July 1, 2007) and prior to the effective date of 2008 legislation may argue that the change should be retroactive to July 1, 2007, to include them. If the Commission does not recommend use of the retroactive effective date, it is likely that a bill will be introduced next year to extend the enhanced benefit to those who became disabled after last year's legislation became effective and prior to passage of this year's legislation.

#### Potential Amendments for Commission Consideration

1. **Amendment H3713-1A** removes section 1 from the bill.
2. **Amendment H3713-2A** can be used if section 1 remains in the bill, and adds a July 1, 2008, effective date.
3. **Amendment H3713-3A** removes section 2.
4. **Amendment H3713-4A** can be used if section 2 remains in the bill, and adds a July 1, 2008, effective date to Section 1 and a July 1, 2007, retroactive effective date to Section 2.
5. **Amendment H3713-5A** revises PERA-P&F employee and employer contribution rates starting in 2009, assuming the cost of this benefit improvement is .5 percent of payroll and assuming the plan total requirements are as indicated in the 2007 actuarial valuation, which was 26.06 percent of pay. That total requirement, plus an estimated .5 percent of pay to cover the benefit improvement, totals 26.56 percent of pay. Under existing law, contributions in 2009 and thereafter must equal 23.5 percent of pay, which would leave a contribution deficiency of 3.06 percent of pay. The increase proposed in the amendment totals 3.0 percent of pay, divided 60 percent employer/40 percent employee, to conform to the usual sharing of burden in a public safety plan. The employee contribution rate would increase in 2009 by 1.2 percent of pay (from 9.4 percent of pay to 10.6 percent) while the employer contribution would increase by 1.8 percent of pay (from 14.1 percent to 15.9 percent).
6. **Amendment H3713-6A** is an alternative to Amendment H3713-5A. It is comparable to Amendment H3713-5A except that the assumed cost of the benefit increase is one-quarter percent of pay rather than one-half percent of pay. The employee contribution rate would increase in 2009 by 1.1 percent of pay (from 9.4 percent of pay to 10.5 percent) while the employer contribution would increase by 1.7 percent of pay (from 14.1 percent to 15.8 percent).

**Ed Burek**

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**From:** Mary.Vanek@state.mn.us  
**Sent:** Tuesday, March 11, 2008 6:31 AM  
**To:** Ed Burek  
**Subject:** RE: H.F. 3713; S.F. 3405: PERA P&F: Less Hazardous Duty Requirement; Increasing Long Service Duty Disability Benefit

We support the second section, and need to consult with the League of MN Cities on the first section. While we don't disagree that the concept of Section 1 makes sense, we're not sure how to effectively administer it, especially for smaller departments. I think it needs some work.

The cost of reinstating the full calculation for duty disability is uncertain, given we haven't had any real experience with the new definition. If reinstated based on past disabilities approved (both duty and non-duty) it would cost us .5 percent of pay. However, reinstating it only for duty disability with our new definition is expected to have much less of an impact.

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**From:** Ed Burek [mailto:edward.burek@lcpr.leg.mn]  
**Sent:** Monday, March 10, 2008 12:08 PM  
**To:** 'Mary.Vanek@state.mn.us'  
**Subject:** H.F. 3713; S.F. 3405: PERA P&F: Less Hazardous Duty Requirement; Increasing Long Service Duty Disability Benefit

Mary,

Regarding this bill, is it safe to assume that you and your board support the first section, which requires the employer to find suitable work for less severely injured police officers and firefighters, but not the second, which returns the duty disability provision to its per-2007 form, by providing an additional 3.0 percent benefit for each year in excess of 20?

Do you have any information on the cost implications of this bill if it were to pass?

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**Ed Burek**

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**From:** Mary.Vanek@state.mn.us  
**Sent:** Tuesday, March 11, 2008 12:54 PM  
**To:** Ed Burek  
**Subject:** RE: PERA Support for Benefit Increase Under H.F. 3713; S.F. 3405

this is the one provision we indicated that we could support -- and would have compromised on last year if they hadn't asked to derail the entire bill. I have made it absolutely clear that everything else is off the table.

With the new disability definition, this is the one area for which I am still confident that we can compromise and still achieve savings. We cannot return to regular disability calculated at full years of service or to the automatic survivor coverage. P&F members had been using disability as a surrogate for unreduced retirement at age 50 -- our data absolutely demonstrates that -- and with the old duty definition, it was hard for us to deny duty status, but that is not the case now. You need to understand that this is something we have worked with others on since the changes last year. Yes, someone may ask for more, but we won't budge on more. The members of the LCPR will need to decide if they are comfortable taking this compromise position.

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**From:** Ed Burek [mailto:edward.burek@lcpr.leg.mn]  
**Sent:** Tuesday, March 11, 2008 10:56 AM  
**To:** May Vanek (mary.vanek@state.mn.us)  
**Subject:** PERA Support for Benefit Increase Under H.F. 3713; S.F. 3405

Your e-mail indicates that PERA supports increasing the PERA P&F duty disability benefit from 60 percent of high-five to 60 percent of the high-five plus an additional 3.0 percent for each year in excess of 20 years of service. This is a return to the pre-2007 duty disability provision, and puts them on a par with the total and permanent duty disability category. Why does PERA support this change? If the Commission approves this bill, other groups with downsized benefits (general disability, spouses who will lose automatic coverage, treatment of disabilitants at normal retirement age) under the 2007 legislation will be asking that pre 2007 treatment be restored. It will be difficult to keep the 2007 provisions, passed as reform measures to control PERA P&F disability costs, from completely unraveling.

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