



H.F. 3798
(Murphy, M.)

S.F. 3324
(Betzold)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS, PERA, TRA, First Class City Teacher Plans
Relevant Provisions of Law: Portions of Minnesota Statutes, Chapters 43A, 352, 352D, 353, 353D, 353F, 354, 356
General Nature of Proposal: Benefit-related and administrative provisions for MSRS, PERA, TRA, first class city teacher plans
Date of Summary: April 3, 2008

Specific Proposed Changes

- Increases TRA reemployed annuitant exempt income limit to \$46,000.
- Revises reemployed annuitant account holding period for numerous plans to permit earlier receipt.
- Revises and restricts state employee postretirement option program to make it more likely that the program will not violate federal in-service distribution requirements.
- Changes the TRA strike period and leave of absence service credit purchase procedures by revising time limits and interest computation procedures.
- Revises MSRS and PERA leave of absence service credit purchase provisions.
- Prohibits a PERA employed disabilitant from receiving service credit in a PERA plan unless further disability payments are waived.
- Clarifies MSRS-General to MSRS-Correctional transfer procedures.
- Makes other changes of an administrative nature.

Policy Issues Raised by the Proposed Legislation

1. Whether many of the provisions in the bill are appropriate for a bill which is supposed to be administrative in nature.
2. Whether the state employee postretirement option program should be revised or repealed.
3. Complexity of the programs and interaction between programs making it difficult for Legislature to grasp the full extent of the changes and the policy implications of those changes.
4. Proposed changes in reemployed annuitant exempt earnings limit will create considerable discrepancies in policies between plans.
5. Whether the changes in reemployed annuitant savings accounts are appropriate.
6. Divergent changes in leave of absence/strike period provisions will create differences in treatment between similar plans, and partially reverses move last year to uniform treatment.
7. Whether to create a system to handle privatization requests, rather than handling each proposed privatization through separate bills.
8. Whether to approve removal of three institutions added to PERA privatization chapter in the past, but for which the purchase or leasing agreement failed to occur.
9. Whether to depart from existing policy by permitting in-service distributions for TRA teachers who are at least age 62.

Potential Amendments

- H3798-1A removes Article 1.
- H3798-2A adds an effective date, the day following final enactment.
- H3798-3A repeals this program, effective July 1, 2009, with a further requirement that no post-retirement option employment positions may be created or renewed after July 1, 2008.
- H3798-4A revises language to ensure that all PERA termination of service requirements and separation requirements in PERA law that might prohibit PERA staff from taking part in the post-retirement option program are waived for purposes of using this program.
- H3798-5A adds a similar minimum age 62 requirement if the MnSCU returning annuitant program found in MSRS, TRA, and first class city teacher law has the same conflict with federal requirements.

- H3798-6A removes section 1, which would have limited to program to those who are at least age 62, and replaces it with revisions to keep the program open to all eligible retirees with the added restriction that no initial offer to enter the program can be made until at least 30 days after the effective date of retirement, and there must be a 30-day break between the end of a post-retirement option appointment and the offer of a continuation or renewal.
- H3798-7A also removes section 1 and replaces it with revisions to keep the program open to all eligible retirees with the added restriction that no initial offer to enter the program, and no renewal offer, can be made until at least 30 days after the effective date of retirement, unless the individual is at least age 62.
- H3798-8A deletes Article 2, Section 1, the increase in the TRA exempt income limit to \$46,000.
- H3798-9A deletes the new exempt limit amount, \$46,000, and inserts an amount to be specified by the Commission or other legislative committee.
- H3798-10A modifies MSRS, PERA, and first class city teacher plan law to permit use of the same \$46,000 limit that would be created for TRA reemployed annuitants under Section 1.
- H3798-11A would make Article 2, Section 1, effective on January 1, 2009, rather than retroactively from January 1, 2008.
- H3798-12A removes Article 2, Section 2.
- H3798-13A reinstates the requirement that the individual be at least age 65 before the assets of the account are distributed to the individual.
- H3798-14A revises the effective date to be January 1, 2009.
- H3798-15A deletes the sections of this article and replaces them with three sections.
- H3798-16A is comparable to Amendment H3798-13A except in the leave of absence payment procedure language.
- H3798-17A ratifies and makes operative into law TRA's strike period provision, as amended over time.
- H3798-18A removes Article 4 from the bill.
- H3798-19A removes Article 5, Section 1.
- H3798-20A can be used if the Commission concludes that an extension of time for Clearwater County to file local approval forms should not be permitted.
- H3798-21A can be used to remove from the bill the PERA and TRA sections which revise policies regarding terminations if there is an agreement prior to termination to return to employment.
- H3798-22A revises the PERA statement in law regarding terminations; the policy applies only to individuals who return as employees and not those who return as independent contractors of employees of independent contractors.
- H3798-23A reinstates the PERA leave of absence service credit purchase provision, as enacted last year, except for adding the statement that payment may be made anytime prior to termination of service.
- H3798-24A removes PERA's proposed limitation on additional plan coverage for reemployed disabilitants.
- H3798-25A revises the Public Employees Defined Contribution (PEDC) investment option provision by permitting the Commission to specify a date or a time period to be specified after which the revised investment option election is effective.
- H3798-26A revises the full actuarial value computation procedure used by all plans whenever a full actuarial value service credit purchase is to be computed, by replacing "the member's effective date of retirement" with "termination of service," making the terms consistent with the procedure almost always followed by the Commission.
- H3798-27A retains MSRS leave of absence service credit purchase provision as enacted last year. The amendment removes Article 7, Section 1, from the bill.
- H3798-28A removes the MSRS-Unclassified Plan surviving spouse term-certain provision, from the bill.
- H3798-29A removes term-certain options in TRA and the first class city teacher plans.
- H3798-30A provides an alternative solution to the MSRS salary cap enforcement action by removing Section 6 from the bill and replacing it with a repeal of a repealer, removing the 2005 repeal of Minnesota Statutes 2004, Section 356.611, Subdivision 1. That would validate the action taken in the 2005 First Special Session.
- H3798-31A removes the TRA provision which, as revised, would permit in-service distributions to those over age 62.
- H3798-32A leaves Article 8, Section 1, in the bill, but revises it so that the changes in this provision are similar to those which PERA seeks to add to its termination provision.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director *EB*
RE: H.F. 3798 (Murphy, M.); S.F. 3324 (Betzold): MSRS, PERA, TRA; Benefit-Related and Administrative Provisions
DATE: March 5, 2008

General Summary of H.F. 3798 (Murphy, M.); S.F. 3324 (Betzold)

H.F. 3798 (Murphy, M.); S.F. 3324 (Betzold) amends benefit-related and administrative provisions for Minnesota State Retirement System (MSRS), Public Employees Retirement Association (PERA), and Teachers Retirement Association (TRA) as follows:

- (a) increases TRA reemployed annuitant exempt income limit to \$46,000;
- (b) revises the reemployed annuitant account holding period in various plans (including first class city teacher plans) to permit earlier receipt;
- (c) restricts the state employee post-retirement program to conform with federal in-service distribution restrictions;
- (d) changes the TRA strike period and leave of absence service credit purchase procedures by revising time limits and interest computation procedures;
- (e) revises MSRS and PERA leave of absence service credit purchase provisions;
- (f) prohibits a PERA employed disabilitant from receiving service credit in a PERA plan unless further disability payments are waived;
- (g) clarifies General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) to Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) transfers of past service procedure; and
- (h) makes various other changes of a largely administrative nature.

A section-by-section summary and analysis follows.

Article 1 - Post Retirement Option Revision

Article 1, Section 1, revises Minnesota Statutes 2007 Supplement, Section 43A.346, Subdivision 2, the state employee post-retirement option program eligibility provision, by (1) adding a requirement that an eligible individual must be at least age 62; and (2) by stating that, for PERA staff who are covered by this provision, a PERA provision requiring a 30-day separation from service for a termination to be considered valid for purposes of drawing a PERA annuity is waived for purposes of this post-retirement option program.

The state employee post-retirement option program (Minnesota Statutes, Section 43A.346) was enacted in 2005 as one of several programs intended to allow state employees to transition into full retirement while meeting employer workforce needs. It is based upon provisions in 2005 Session H.F. 1953 (Cornish); S.F. 1845 (Larson), and was passed as part of an Omnibus State Government Finance Bill as Laws 2005, Chapter 156, Article 3, Section 2. That same omnibus bill contained a voluntary hour reduction provision and a voluntary unpaid leave of absence provision.

For purposes of this program, "state employee" means "a person currently occupying a civil service position in the executive or legislative branch," or the staff of MSRS or PERA, the Office of the Legislative Auditor, or the Metropolitan Council. PERA staff was added to this provision last year (Laws 2007, Chapter 134, Article 11, Section 4).

Under the state employee post-retirement option program, state employees who worked at least half-time during the prior five years, who terminate from state service and qualify for an unreduced annuity (including a "Rule of 90" annuity), can agree to accept a post-retirement option position with the same or different appointing authority under which the individual will reduce hours at least 25 percent or to half-time, whichever is the greater reduction. While in the program, reemployed annuitant maximum exempt earnings limitations do not apply. The appointments are for one year but can be renewed for up to five years. The appointing authority has sole discretion to determine whether positions under this program are to be offered. Any offer of a position in this program must be made in writing by the appointing authority to the employee, on a form provided by the Department of Employee Relations and MSRS or PERA (Minnesota Statutes, Section 43A.346, Subdivision 5).

A reading of the current statute strongly implies that these agreements between the individual and the state employer must be reached while the individual is an active employee, before termination of service and commencement of a retirement annuity. Eligible individuals are state employees, defined above as individuals "currently occupying" state employment positions. Any individual who has already terminated is not "currently occupying" the position. The provision further states that any offer of a post-retirement option position must be made in writing by the appointing authority to the employee. Deferred retirement plan members and retirees are not employees.

Based on a review of federal compliance requirements, PERA concluded that this program as stated in current law is not compliant with federal requirements. Because active employees are making arrangements to return to employment with the employing unit following a "termination," PERA is concerned that the federal government would not view these terminations as valid, and that the retirement benefits these individuals begin to draw would be viewed as in-service distributions. In general, allowing in-service distributions is inconsistent with remaining a qualified plan for tax purposes.

PERA's suggestion for addressing this problem is to restrict access to this program to those who are at least age 62. The proposed resolution is based on language that was part of the federal Pension Protection Act of 2006. That act amended Section 401(a) of the Internal Revenue Code by adding a paragraph stating:

A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

That change was effective for plan years after December 31, 2006.

The other change PERA proposes is to add a waiver stating that PERA's 30-day separation from service requirement, found in PERA's definition of retirement (Minnesota Statutes, Section 353.01, Subdivision 28) which requires a complete separation from covered employment for at least 30 days, be waived for purposes of this state employee post-retirement option program. PERA is requesting this waiver because under this program there may be no true separation from service.

Policy issues raised by Article 1, Section 1, are:

1. Appropriate for Administrative Bill. The issue is whether it is appropriate to consider this provision in an administrative bill given the numerous issues it raises and the limited time currently available to the Commission to review a complex matter.
2. Proper Current Action. It would appear that the Legislature, when it created this program in 2005, inadvertently created in-service distribution problems for the pension funds of the employees who take part in this program. The existing law does appear to be out of compliance with federal requirements. The issue is what to do about that problem. PERA is suggesting revising the program to limit it to the group for which an in-service distribution is permitted under federal law, those who are at least age 62. Another alternative is to end the program, or at least suspend it until a broad range of issues involving federal requirements, the need for the program, program design, and how this program integrates with other post-retirement employment, pre-retirement transition-to-full retirement provisions, and early retirement provisions can be studied.
3. In-Service Distribution Issues. The issue is whether the Commission and Legislature want to knowingly permit in-service distributions (to those who are at least age 62), at least on a limited basis to individuals who are in this particular program. In PERA's case, the staff of PERA is covered under this section, but the broad PERA-covered membership in school districts, cities, and

counties is not. Permitting in-service distributions to individuals in this program is likely to create pressure to permit this treatment for a much larger group, any members of our public pension plans who are at least age 62. While in-service distributions may be permitted under federal law for the age 62 and older age group, the Commission may wish to address the question of whether this reflects good pension policy. This is not a subject that the Commission has previously addressed. The Commission may choose to be aware that the Teachers Retirement Association (TRA), in Article 8, Section 1, of this proposed draft legislation, is proposing to permit in-service distributions to any TRA member who is at least age 62 if the individual submitted a termination notice, even individuals who immediately return to full employment. Permitting in-service distributions is contrary to a core concept that the purpose of retirement plan benefits is to support individuals who are truly retired.

4. Consensus Regarding Appropriate Changes. The suggested changes in this provision came from PERA. However, most of the individuals in this program are drawing benefits from Minnesota State Retirement System (MSRS) plans. A question is whether MSRS agrees there is a problem, and whether MSRS agrees that the proposed change is an appropriate solution.
5. Effective Date Questions. Currently, no effective date is included for this provision. The Commission may wish to consider adding an effective date. As part of this consideration, the Commission may wish to consider that the federal law change permitting in-service distributions if the individual is at least age 62 is effective for plan years after December 31, 2006.
6. Issue of Employees in Program Who Are Less Than Age 62. The issue is what happens to individuals currently in the program who are not at least age 62. Presumably, if the proposed changes in this section are enacted, no new employees under age 62 will be permitted in the program, but will existing employees under age 62 be terminated from the program? The Commission may wish to hear testimony on this matter.
7. Scope of Change. The issue is the scope of the change, whether to limit change to this one program, or whether similar changes are needed in other programs. For example, there are numerous provisions in law which permit Minnesota State Colleges and Universities System (MnSCU) employees to terminate service and return to work under an agreement under which they will not earn more than \$46,000 and will be employed on a one-third to two-thirds of full-time basis. These provisions can be construed as requiring, or certainly permitting, these employee/employer agreements to be reached prior to the individual terminating service for purposes of commencing the annuity. If the post-retirement option program under Section 43A.346 has an in-service distribution problem worthy of addressing, it would seem that these MnSCU employee provisions share that flaw. These MnSCU provisions are found in several different defined benefit plans which might provide coverage to some MnSCU employees. The MSRS provision is Section 352.1155, the TRA provision is Section 354.445, and the first class city teacher plan provision is Section 354A.31, Subdivision 3a.
8. Interaction with Other Provisions. The Commission may choose to be aware that other provisions of law, some included in the current bill, interact with this provision. Changes in those provisions may impact the need for this program or alter how to best structure this program. Article 2, Section 2, of this bill would revise the treatment of reemployed annuitant savings accounts, permitting a retiree to access those accounts far sooner following the end of the reemployment period. If that provision is enacted, it may impact the need for or utilization of the post-retirement option program, which waives the use of reemployed annuitant accounts for individuals who are in the program. Another provision, Article 2, Section 1, would greatly increase the amount that a retired TRA member, who is reemployed in TRA-covered employment, could earn before triggering deferrals to a reemployed annuitant account. The new maximum exempt reemployed annuitant salary would be \$46,000. If that change is made for TRA, similar increases for the retirees of other plans, including MSRS and PERA, are likely to also be enacted. If the maximum exempt income limit for all reemployed retirees were \$46,000, there may be little need for the post-retirement option program, at least as it is currently structured. The program contains a waiver from use of reemployed annuitant savings accounts for those who are in the program, but that may no longer be needed if a general \$46,000 exempt income limit were in place. The post-retirement option program requires a cutback in service, with no individual in the program being permitted to work more than 50 percent time. Few individuals would earn \$46,000 or more working at most half-time.

9. Other Bills/Alternative Resolution. The Commission may choose to be aware that another bill, H.F. 3436 (Nelson); S.F. 3136 (Betzold), a state employee post-retirement employment provision modification, is a joint MSRS/Department of Employee Relations bill which tries to address problems in the post-retirement option program, but in a different manner than that proposed in the bill currently before the Commission. Rather than limiting the program to those who are at least age 62, H.F. 3436 (Nelson); S.F. 3136 (Betzold) seeks to address in-service distribution problems by ensuring there is a true separation from service by adding a requirement that any offer, whether verbal or in writing, cannot be made until at least 30 days after the employee's retirement. The Commission might choose to delete this article from the current bill and deal with these issues when H.F. 3436 (Nelson); S.F. 3136 (Betzold) is heard.
10. Study. While the Commission and Legislature may feel a need to make some short-term changes in this program for federal compliance, the Commission and Legislature may also wish to study the general issue of transitioning into full retirement. Currently, there are programs which require individuals to terminate service, commence benefits, and be rehired on a less-than full-time basis. There are programs which permit individuals to start part-time employment for several years before they submit a resignation, without negatively impacting their high-five average salary when they do terminate and commence benefits. There are reemployed annuitant exempt earnings provisions (which differ from plan to plan, and with some plans having no provision) which probably impact where and if retirees will seek at least partial employment. Finally, there are many provisions which encourage early retirement, at ages where individuals are still quite productive, at the same time that federal government policies are discouraging early withdrawal from the workforce. There may be overlap between programs, there may also be gaps in coverage, and there are inconsistent treatments between similar groups, and early retirement policy as reflected in Minnesota law is in conflict with federal retirement policy. Perhaps further study is needed about government labor force needs and how to best meet those needs while remaining in compliance with federal code requirements.

Article 1 Amendments for Consideration

1. **Amendment H3798-1A** removes Article 1 in its entirety. The Commission may choose to take this action if the Commission concludes that given the complexity of the issues raised, the limited time available for Commission consideration, and no immediate harm will occur if no action is taken. The Commission may also choose to use this amendment if it wishes to address problems in the post-retirement option program within the context of H.F. 3436 (Nelson); S.F. 3136 (Betzold), rather than the current bill. If the Commission does not use Amendment H3798-1A, the following additional amendments are provided for Commission consideration.
2. **Amendment H3798-2A** adds an effective date, the day following final enactment. If the Commission concludes that a retroactive effective date to January 1, 2007, or some other past date is needed, that could be done by verbal amendment. A problem with a retroactive effective date is that the program probably had individuals in the program who are younger than age 62.
3. **Amendment H3798-3A** repeals this program, effective July 1, 2009, with a further requirement that no post-retirement option employment positions may be created or renewed after July 1, 2008. (Under law, these appointments last for one year. Thus, all existing positions in the program will have terminated by July 1, 2009.)
4. **Amendment H3798-4A** revises the new language on lines 2. 24 and 2.25, to ensure that all PERA termination of service requirements and separation requirements in PERA law that might prohibit PERA staff from taking part in the post-retirement option program are waived for purposes of using this program.
5. **Amendment H3798-5A** adds a similar minimum age 62 requirement to those programs if the Commission concludes that the MnSCU returning annuitant program found in MSRS, TRA, and first class city teacher law has the same conflict with federal requirements as this post-retirement option program.
6. **Amendment H3798-6A** is an alternative way of addressing issues with the post-retirement option program, using the solution proposed in H.F. 3436 (Nelson); S.F. 3136 (Betzold). The amendment removes section 1, which would have limited to program to those who are at least age 62, and replaces it with revisions to keep the program open to all eligible retirees with the added restriction that no initial offer to enter the program can be made until at least 30 days after the effective date

