



H.F. xxxx

S.F. 1643
(Senjem)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-General
Relevant Provisions of Law: Special legislation
General Nature of Proposal: Authorizes the commencement of a PERA-General annuity for a city council member while remaining in elected office.
Date of Summary: March 3, 2008

Specific Proposed Changes

- Permits an elected city council member with PERA-General coverage for that service to commence annuity while remaining in elected office, providing the PERA-General coverage is ended.

Policy Issues Raised by the Proposed Legislation

1. Personal responsibility; equity concerns with permitting an individual to reverse coverage election.
2. Question of whether PERA should have permitted the individual to have PERA-General coverage for the elected service.
3. Consistency with prior legislative treatment in similar situation.
4. Self-help remedy; the individual could terminate from elected office, eliminating the need for special law treatment.

Potential Amendment

S1643-1A is a technical amendment, changing a reference from "retired" to "terminated".



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director *EB*
RE: H.F. xxxx; S.F. 1643 (Senjem): PERA-General; Authorizing Olmstead County Employee/
Rochester City Council Member to Terminate Plan Coverage and Commence Annuity
DATE: March 3, 2008

Summary of H.F. xxxx; S.F. 1643 (Senjem)

H.F. xxxx; S.F. 1643 (Senjem) allows a General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) member, with past PERA-covered service as a school district employee and with current employment with Olmstead County and as an elected city council member, who elected PERA-General coverage for that elected service, to be treated as a PERA-General terminated member following termination of the Olmstead County employment, enabling the individual to commence drawing a PERA-General annuity although the individual remains in elected service.

Public Pension Problem of Sandra Means, Addressed by H.F. xxxx; S.F. 1643 (Senjem)

The eligible individual, Sandra Means, was an employee of Independent School District No. 535, Rochester, from 1993 to 2003, with PERA-General coverage for that employment. Ms. Means was elected to the Rochester City Council in 2003 and continues to serve. Ms. Means also works on a contract basis for Olmstead County. When Ms. Means was elected to the city council, she elected PERA-General coverage for that elected service. Ms. Means wants to commence receipt of a PERA-General annuity after terminating from the Olmstead County employment, but while continuing to service on the city council, which is not possible under general law because the individual remains an active PERA-General member due to the covered city council employment.

Ms. Means is seeking legislative help to address a pension problem that appears to be self-inflicted, caused by the individual's election of PERA-General coverage for the elected service.

Background Information

- A. Background information on PERA-General appears in Appendix A.
- B. Background information on the PERA Defined Contribution Plan appears in Appendix B.
- C. Background information on legislative actions in situations bearing similarity to the current request appears in Appendix C.

Discussion and Analysis

H.F. xxxx; S.F. 1643 (Senjem) allows a General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) member, with past PERA-covered service as a school district employee and with current employment with Olmstead County and as an elected city council member, who elected PERA-General coverage for that elected service, to be treated as a PERA-General terminated member following termination of the Olmstead County employment, enabling the individual to commence drawing a PERA-General annuity although the individual remains in elected service.

A question raised by this bill is whether Ms. Means should have been permitted access to PERA-General for the elected service. The options for elected officials were revised by the 2001 Legislature, when PERA-General law was revised in an effort to exclude newly elected local government officials (those first taking office after July 1, 2002) from PERA-General coverage for that elected or appointed service (Laws 2001, First Special Session, Chapter 10, Article 11, Section 4). According to H.F. xxxx; S.F. 1643 (Senjem), this individual was first elected in 2003, which is after the date on which newly elected local government officials were to be excluded from that plan. Ms. Vanek, PERA's Executive Director, has indicated that PERA interpreted the 2001 language as being applicable to all newly elected officials who were not already members of PERA-General, due either to elected service or non-elected service. In the case of Ms. Means, she was already an active PERA-General member due to other public employment, and because of that other service she was permitted to access PERA-General for the elected service

although the elected service did not commence until 2003. This elected official exclusion language was again revised in 2007 (Laws 2007, Chapter 134, Article 2, Section 14), to remove any question on this eligibility issue. No newly elected official, whether or not he or she is already a PERA member due to non-elected service, can be covered by PERA-General for that elected employment.

The proposed legislation raises the following pension and related public policy issues:

1. Personal Responsibility; Equity Issues. Ms. Means made a decision to have elected employment covered by PERA-General, a decision which she now regrets. Unless it can be documented that Ms. Means was somehow misled, the Commission may conclude that no legislative action is warranted. However, the Commission and Legislature has granted relief in the recent past to a city council member in a similar situation.
2. Possible Error by PERA. An issue is whether PERA erred in permitting Ms. Means to elect PERA-General coverage for the elected service. If the Commission were to conclude that the 2001 language was sufficiently clear regarding the PERA-General exclusion of newly elected officials, then the Commission may contend that PERA erred in permitting this individual access to PERA-General. Allowing the individual to terminate coverage by that plan despite continuing as an elected official may be justified on that basis.
3. Prior Legislative Actions, Proper Model for Legislation. The bill as drafted is modeled after the language used in 2003 to provide a solution in a similar situation. Description of that 2003 legislation and earlier efforts to provide resolution to similar pension problems is found in Appendix C.
4. Pressure for Additional Requests. The Commission may wish to consider that authorizing any change in coverage or deletion of coverage may lead to other requests for comparable treatment.
5. Self-Help Remedy. Given the policy issues raised by any legislative effort to address these types of situations, the Commission may wish to consider that Ms. Means has a self-help remedy; she can resign from the city council and the county employment and commence receipt of an annuity.

Potential Amendment for Commission Consideration

- Amendment S1643-1A is a technical amendment, changing “retired” on page 1, line 15, to “terminated”. Ms. Means terminated employment with Independent School District No. 5353, Rochester in 2003, but has not retired from that school district because the annuity has not commenced.

Appendix A
Background Information on the
General Employee Retirement Plan of the
Public Employees Retirement Association (PERA-General)

The General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) is governed by Minnesota Statutes, Chapter 353, and various other provisions of law. It is a defined benefit retirement plan that provides disability coverage, survivor benefits, and retirement coverage to over 146,000 non-public safety employees throughout the state. PERA-General provides coverage to public employees (other than public safety employees) who work for the counties, cities, and in non-teaching positions in school districts. PERA currently has over 52,000 retirees and 39,000 deferred retirees. PERA-General assets exceed \$13.5 billion, but liabilities exceed \$17.7 billion, creating a funding ratio of 76 percent.

PERA-General is a defined benefit plan, meaning that the retirement benefit the plan provides is determined by formulas in law, which are based on the average of salary close to retirement (the average of the five consecutive years that provides the highest average salary), the percentage of that high-five salary that the individual receives per year of service (called an accrual rate), and the number of years of service. The normal retirement age is 65 to 66. That is the age at which an individual, following termination of covered service, can receive an annuity without any penalty due to early commencement of the benefit. Under law, a terminated employee may begin drawing annuity as early as age 55, but with a reduction due to early retirement.

In PERA-General or in any other of our defined benefit plans for paid public employees, the individual must terminate from the covered public employment prior to drawing the annuity. An individual cannot be an active member of a plan (in other words, an individual who continues to provide service covered by the plan and who makes contributions due to that service) and draw an annuity. This reflects the basic idea that retirement benefits are for retirees.

Appendix B
Background Information on the
Public Employees Retirement Association
Defined Contribution Plan

The Public Employees Retirement Association (PERA) Defined Contribution Plan, governed under Minnesota Statutes, Chapter 353D, and various other law, is an entirely different type of plan than PERA-General. Under a defined contribution plan, the benefit is not specified; rather, the contribution rates to the plan are specified or defined in law. The eventual benefit is determined by the accumulated value of the contributions made to the individual's account over time, plus the investment earnings on those contributions. The account's value at the time of retirement or disability is referred to as the "terminal value." The monthly benefit that can be paid is the monthly value that can be supported given the terminal value and the individual's expected remaining lifetime. Under the PERA Defined Contribution Plan, the terminal value is payable in a lump sum at the withdrawal date, or the individual may specify that the amount be transferred to an insurance company or other annuity provider, with the proceeds used to purchase an annuity.

The PERA Defined Contribution Plan began in 1987, with the enactment by the Legislature of a defined contribution plan (the Ambulance Service Retirement Fund) for certain basic and advanced life support emergency medical service personnel. In 1990, the plan was renamed the Public Employees Defined Contribution Plan and membership was expanded to include elected and appointed local government officials other than county sheriffs (county sheriffs are members of the Public Employees Police and Fire Retirement Plan). Because of the change in possible coverage, local government officials who were PERA-General members were given a chance to elect, prior to July 1, 1990, to terminate PERA-General coverage and to become members of the defined contribution plan, retaining a right in PERA-General to a refund or deferred annuity. If a local elected official did not have PERA-General coverage or coverage by some other plan for the prior elected service, the participating elected local government official was authorized to make prior service contributions to the defined contribution plan equal to the contributions that would have occurred if the plan had been in effect, plus six percent interest. PERA Defined Contribution Plan coverage was again expanded in 1996 to allow certain physicians who are local government employees to elect PERA Defined Contribution Plan coverage rather than PERA-General.

Appendix C

Prior Legislative Actions Similar to the Current Request

Commission staff reviewed all provisions enacted relating to local elected officials from 1987 to the current date and found some similar situations, with the 1998 and 2003 situations being most similar.

- 1990 Legislation. When the Public Employees Retirement Association (PERA) Defined Contribution Plan was first expanded to include elected local government officials, officials with prior PERA General Employee Retirement Plan (PERA-General) coverage for the elected service were given a chance to elect, prior to July 1, 1990, to terminate PERA-General coverage and to become members of the PERA Defined Contribution Plan, retaining a right in PERA-General to a refund or deferred annuity. Presumably, the Legislature created defined contribution plan coverage for elected officials because it felt that this form of coverage was more suitable, at least for some. The provision to allow previously elected officials to transfer coverage to the PERA Defined Contribution Plan presumably reflects a legislative position that these individuals should not be forced to retain defined benefit coverage now that a more suitable option had been created. This is a different situation than that of the individual covered by the current bill.
- 1993 Legislation. In 1993, the Legislature was asked to authorize another election for elected officials to transfer prospective coverage to the PERA Defined Contribution Plan (1993 Session S.F. 871 (Lessard); H.F. 1214 (Anderson)). The election would have had to be made by July 1, 1993. The Legislative Commission on Pensions and Retirement heard the bill and recommended that it not pass.

A provision did pass as part of an Omnibus Pension Bill in 1993 which addressed a pension problem for an individual who would have been covered by the Lessard/Anderson bill, but the provision went beyond the treatment proposed in the Lessard/Anderson bills. The provision permitted a Deer River City employee, who was born on March 3, 1939, who was an elected official of Blackberry Township from 1972 to March 1990, to make contributions to the PERA Defined Contribution Plan based on that past elected service, and authorized a transfer of prospective city employment service coverage to the PERA Defined Contribution Plan. However, the language did include a requirement that no refunds or annuities could commence from any plan until the individual had terminated all service covered by PERA-General and the PERA Defined Contribution Plan. The provision presents considerable pension policy issues, and Commission staff has found no record that the provision was ever heard or approved by the Commission. The provision may have become part of the pension bill through a floor amendment.

- 1998 Legislation. In 1998, the Commission considered a blind amendment, LCPR98-47, to allow a PERA Coordinated member, who contributed to the plan due to Suburban Hennepin County Regional Park district employment and also due to employment as a current elected member of the Minneapolis Park and Recreation Board, to begin drawing an annuity upon termination from the non-elective position although he continues as an elected official. The high-five average salary would be computed on the salary from his non-elected service position only. Relating to the elected or appointed service, within one year the individual could elect a refund of past contributions due to that service or Public Employees Defined Contribution Plan coverage. If the defined contribution plan coverage is elected, past contributions (employee and employer) due to appointed or elected service on the Park Board will transfer to the defined contribution plan with six percent interest. Amendment LCPR98-47 was recommended to pass and became Laws 1998, Chapter 390, Article 3, Section 19.
- 2003 Legislation. In 2003, the Legislature addressed the pension problem of a Bemidji City Council member who was elected to the Bemidji City Council in 2000, taking office in 2001. The individual was also a Beltrami County employee, with PERA-General coverage. The individual elected PERA-General coverage for her elected city council service, and at some point terminated from the county employment. The individual wanted to start drawing a PERA-General annuity but is unable to do so because she remained a PERA-General active plan member due to her election of PERA-General coverage for the city council service.

The Commission recommended a solution which was enacted as Laws 2003, First Special Session, Chapter 12, Article 15, Section 5. Like the 1998 legislation, the 2003 legislation treated the individual as though they had not chosen PERA-General coverage for the elected service. That allowed the individual to commence receipt of the PERA-General annuity. The PERA-General annuity was to be computed based on the county service only, excluding elected service salary and service credit. The individual was given an opportunity to elect PEDC coverage for the elected service. If that election were made, the prior contributions to PERA-General made on the elected service transfer to a PERA Defined Contribution Plan account for the individual, plus six percent interest. If the individual did not want PERA Defined Contribution Plan coverage for the elected employment, the individual would receive a refund with interest from PERA-General based on the employee contributions that the individual made to that fund for the elected service.

Sec. 4. Minnesota Statutes 2000, section 353.01, subdivision 2b, is amended to read:

Subd. 2b. [EXCLUDED EMPLOYEES.] The following public employees ~~shall~~ are not eligible to participate as members of the association with retirement coverage by the public employees retirement plan, the local government correctional employees retirement plan under chapter 353E, or the public employees police and fire retirement plan:

(1) ~~elected~~ public officers, other than county sheriffs, who are elected to a governing body, or persons who are appointed to fill a vacancy in an elective office, ~~who do not elect to participate in the association by filing an application for membership of a governing body, whose term of office first commences on or after July 1, 2002, for the service to be rendered in that elective position. Elected governing body officials who were active members of the association's coordinated or basic retirement plans as of June 30, 2002, continue participation throughout incumbency in office until termination of public service occurs as defined in subdivision 11a;~~

(2) election officers or election judges;

(3) patient and inmate personnel who perform services ~~in~~ charitable, penal, or correctional institutions ~~of~~ for a governmental subdivision;

(4) employees who are hired for a temporary position under subdivision 12a, and employees who resign from a nontemporary position and accept a temporary position within 30 days in the same governmental subdivision, ~~but not those. An employer must not apply the definition of temporary position so as to exclude employees who are hired for an unlimited period to fill positions that are permanent or that are for an unspecified period but who are serving a probationary period at the start of the employment. If the period of employment extends beyond six consecutive months and the employee earns more than \$425 from one governmental subdivision in any one calendar month, the department head shall report the employee for membership and require employee deductions be made on behalf of the employee under section 353.27, subdivision 4.~~

The membership eligibility of an employee who resigns or is dismissed from a temporary position and within 30 days accepts another temporary position in the same governmental subdivision is determined on the total length of employment rather than on each separate position. Membership eligibility of an employee who holds concurrent temporary and nontemporary positions in one governmental subdivision is determined by the length of employment and salary of each separate position;

(5) ~~employees whose actual salary from one governmental subdivision does not exceed \$425 per month, or whose annual salary from one governmental subdivision does not exceed a stipulation prepared in advance, in writing, that the salary must not exceed \$5,100 per calendar year or per school year for school employees for employment expected to be of a full year's duration or more than the prorated portion of \$5,100 per employment period for employment expected to be of less than a full year's duration;~~

~~(6)~~ employees who are employed by reason of work emergency caused by fire, flood, storm, or similar disaster;

~~(7)~~ (6) employees who by virtue of their employment in one governmental subdivision are required by law to be a member of and to contribute to any of the plans or funds administered by the Minnesota state retirement system, the teachers retirement association, the Duluth teachers retirement fund association, the Minneapolis teachers retirement association, the St. Paul teachers retirement fund association, the Minneapolis employees retirement fund, or any police or firefighters relief association governed by section 69.77 that has not consolidated with the public employees retirement association, or any local police or firefighters consolidation account but who have not elected the type of benefit coverage provided by the public employees police and fire fund under sections 353A.01 to 353A.10, or any persons covered by section 353.665, subdivision 4, 5, or 6, who have not elected public employees police and fire plan benefit coverage. This clause must not be construed to prevent a person from being a member of and contributing to the public employees retirement association and also belonging to and contributing to another public pension fund for other

