



S.F. 305
(Bakk)

H.F. 122
(Dill)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS-General
Relevant Provisions of Law: Special Law Provision
General Nature of Proposal: Extension of 180-day deadline for disability benefit application
Date of Summary: March 4, 2009

Specific Proposed Changes

- The proposed special legislation permits a former state employee to apply for an MSRS-General disability benefit despite missing the current 180-day deadline.

Policy Issues Raised by the Proposed Legislation

1. Equitable factors.
2. Likelihood that MSRS-General disability benefit entitlement can be established.
3. Policy behind disability benefit application time limits and appropriateness of varying Minnesota time limits.
4. Appropriateness of achieving consistent disability benefit time limitations for various Minnesota public pension plans.
5. Precedent.

Potential Amendments

Alternative General Law Substantive Amendments

- S0305-1A sets a general three-year time limitation on all Minnesota statewide and major local general employee retirement plans.
- S0305-2A eliminates any deadline for disability benefit applications for all Minnesota statewide and major local general employee retirement plans.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *JLM*
RE: S.F. 305 (Bakk); H.F. 122 (Dill): MSRS-General; Extension of Disability Benefit Application Deadline in Certain Cases
DATE: March 4, 2009

Summary of S.F. 305 (Bakk); H.F. 122 (Dill)

S.F. 305 (Bakk); H.F. 122 (Dill) permits a class of individuals, designed to be limited to David Jokela, Jr., to apply with the Minnesota State Retirement System (MSRS) for an MSRS-General Plan disability benefit despite missing the statutory 180-day post-termination limit and receive a disability benefit if otherwise qualified. The special authority for Mr. Jokela would expire within one year of enactment.

Public Pension Problem of David Jokela Jr.

David Jokela, Jr., is a 42-year-old former employee of the Minnesota Veterans Home at Silver Bay, Minnesota, who terminated his state employment after being injured on the job in June 2007. As a state employee, Mr. Jokela was a member of the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). Mr. Jokela apparently also suffers from various mental health problems and is now subject to a 50 lb. lifting restriction in conducting employment duties. Mr. Jokela has been found to be disabled for purposes of the federal Old Age, Survivors, and Disability Insurance Program (Social Security) and currently receives Social Security disability benefits. Mr. Jokela neglected to apply for an MSRS-General disability benefit on a timely basis, indicating on April 24, 2008, to the MSRS Board of Directors that he lacked knowledge of the disability benefit application process. The MSRS staff rejected his April 2008 disability benefit application under Minnesota Statutes, Section 352.113, Subdivision 4, Paragraph (e), which requires disability applications within 180 days of the termination of employment. Upon appeal to the MSRS executive director and to the MSRS board of directors, the MSRS staff disallowance of Mr. Jokela's application was confirmed. Mr. Jokela desires to be able to apply for an MSRS-General disability benefit, but appears unlikely to prevail upon his recent appeal to the Minnesota Court of Appeals of the MSRS benefit denial.

Background Information on Time Limitations for Disability Benefit Applications

Background information on the topic of statutory time limitations on the filing of a disability benefit application for the various statewide and major local Minnesota retirement plans is attached as **Attachment A**.

Discussion and Analysis

S.F. 305 (Bakk); H.F. 122 (Dill) permits David Jokela, Jr., to apply for a disability benefit from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) despite missing the current 180-day from employment termination deadline.

The proposed legislation raises the following pension and related public policy issues for consideration by the Commission:

1. Equitable Factors. The policy issue is the relative weighting of the equitable factors favoring or disfavoring Mr. Jokela in obtaining special authority to apply for a disability benefit from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). Despite the approach, Mr. Jokela needs a special authorization to apply for an MSRS-General disability benefit after the 180-day time limit on making an application has expired. The Commission's Principles of Pension Policy (Principle II.C.11.) cover deadline extensions and waivers and provides that they should be permitted only if, on a case-by-case basis, it is determined that there is a sufficient equitable basis for the extension or waiver. The medical and other information provided with the request indicates a petitioner who has severe limitations and problems, but does not address the question of why Mr. Jokela did not more promptly pursue an MSRS-General disability benefit beyond a vague indication that he was "unaware of the benefits" and only "recently was told about

them and the time frame with applying for the benefits.” The explanation, without additional embellishment or substantiation, may not be sufficient to carry the burden of demonstrating a sufficient equitable basis for the Commission to allow the deadline extension. Either additional documentation from or testimony by Mr. Jokela appears to be necessary to demonstrate the favorable equities.

2. Likelihood that MSRS-General Disability Benefit Entitlement Can Be Established. The policy issue is the likelihood that David Jokela ultimately will be determined by the Minnesota State Retirement System (MSRS) to be totally and permanently disabled under Minnesota Statutes, Section 352.01, Subdivision 17. Mr. Jokela has been determined by Social Security to be disabled under a significantly similar standard and currently receives a Social Security disability benefit. The Social Security standard for disability, as indicated in its program handbook, is an...

... inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person must not only be unable to do his or her previous work but cannot, considering age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. It is immaterial whether such work exists in the immediate work area, or whether a specific job vacancy exists, or whether the worker would be hired if he or she applied for work.

Minnesota Statutes, Section 352.01, Subdivision 17, defines a “total and permanent disability” as being the...

... inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to be of long-continued and indefinite duration. Long-continued and indefinite duration means that the disability has been or is expected to be for a period of at least one year.

Although the standards appear highly similar to each other, the fact finder is different for each benefit and the situation of Mr. Jokela’s receipt of a Social Security disability benefit is not automatically binding on MSRS. If Mr. Jokela is not likely to meet the MSRS disability definition, the proposed legislation is not a sound exercise of legislative effort.

3. Policy Behind Disability Benefit Application Time Limits and Appropriateness of Varying Minnesota Time Limits. The policy issue is whether or not there is an appropriate basis for setting a time limit on disability benefit applications and whether the variability of Minnesota public pension time limits suggests that the 180-day time limit on disability benefit applications in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) is the appropriate deadline. Not all Minnesota public pension plans have a time deadline on disability benefit applications and the MSRS-General time deadline on disability benefit applications is the shortest of the existing deadlines. While the question of disability benefit application time deadlines has not been specifically and extensively addressed by the Commission in recent years, it is clear that the existence of a disability benefit application time deadline does assist the disability benefit determination process by insuring that the question arises in a timely fashion and that the current medical condition of the applicant is identical or very substantially similar to the applicant’s medical condition at or towards the end of public employment. Since most public employees need the financial resources that public pension plan disability benefit coverage provides, the time limitation on disability benefit applications probably does not arise in a large number of disabilities and late applications only occur occasionally. The Commission last considered the topic in 2007 when, as a small part of a large number of disability benefit reforms and changes proposed by the Public Employees Retirement Association (PERA) for the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), the Public Employees Police and Fire Plan (PERA-P&F), and the Local Government Correctional Service Retirement Plan (PERA-Correctional), the PERA disability benefit application time deadline was reduced from three years to 18 months. The lack of any specifically focused consideration of the topic by the Commission in recent years, if ever, the different time limits applicable for Minnesota public pension plans that have time limits, and the absence of time limits for several Minnesota public pension plans all seem to indicate that it may be time for the Commission to institute focused consideration on the topic.
4. Appropriateness of Achieving Consistent Disability Benefit Time Limitations for Various Minnesota Public Pension Plans. The policy issue is the appropriateness of providing for an identical disability

benefit time limitation for the major general employee Minnesota public pension plans. If the need for timely evidence in the decision-making process in determining disability benefit eligibility is the primary reason for current disability benefit application time deadlines, that concern is common to all of the major general employee Minnesota public pension plans and, absent some currently unarticulated special consideration for particular problems, all plans should have the same deadline. If the current set of deadlines are quixotic and have continued by inertia rather than as a reflection of sound policy considerations, the deadlines should be eliminated for all plans.

Amendment S0305-1A establishes a three-year time limitation for disability benefit applications for the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the Teachers Retirement Association (TRA), the first class city teacher retirement fund associations, and the Minneapolis Employees Retirement Fund (MERF).

Amendment S0305-2A eliminates the current time limitations on disability benefit applications for MSRS-General, the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and TRA.

Testimony from the plan administrators of the various general employee retirement plans will need to be taken if either approach is considered by the Commission.

5. Precedent. The policy issue is whether or not there is an arguably binding precedent for assisting Mr. Jokela by extending or waiving the disability benefit application time deadline and whether or not providing relief to Mr. Jokela would establish an inappropriate precedent for future deadline extension or waiver requests. The Commission staff has identified three instances where special legislation has extended the deadline for a disability benefit application, which are:
 - a. Laws 2000, Chapter 461, Article 19, Section 1, relating to the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and to an employee of the Department of Employment Security;
 - b. Laws 2002, Chapter 392, Article 14, Section 9, relating to the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and to a Blooming Prairie police officer; and
 - c. First Special Session Laws 2005, Chapter 1, Article 2, Section 159, relating to MSRS-General and to a Department of Natural Resources Photo Lab employee.

The 2000 and 2002 special laws were recommended by the Legislative Commission on Pensions and Retirement. The 2005 special law was never considered by or recommended by the Commission. The Commission also has turned down disability benefit application deadline extension requests (see 2003 Session H.F. 740 (Hilstrom); S.F. 801 (Scheid), relating to PERA-General and a former Hennepin County employee). Unless the Commission was to recommend the Jokela special authorization either without adequately establishing his equities or in spite of unfavorable equities, it is unlikely that any legislation assisting Mr. Jokela would establish an arguably binding adverse precedent for additional disability benefit application time deadline extensions or waivers.

Attachment A
Background Information on
Time Limitations for Disability Benefit Applications

With the exception of the Legislators Retirement Plan and the Elected State Officers Retirement Plan, all statewide or major local Minnesota retirement plans provide disability benefit coverage.

Some Minnesota and major local Minnesota retirement plans have limitations on the time period after the termination of employment during which a plan member or someone authorized to act on behalf of the plan member can file a disability benefit application, as follows:

General Employee Retirement Plans

Plan	Eligible Applicant	Time Limit on Application
General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General)	Covered state employee or someone acting on behalf of the employee with satisfactory proof of authority determined by the MSRS executive director (M.S. Sec. 352.113, Subd. 2).	Application must be filed within 180 days of the termination of state employment as long as the disability occurred while in state employment (M.S. Sec. 352.113, Subd. 4, Para. (e)).
General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General)	Covered public employees (M.S. Sec. 353.33, Subd. 1).	Application must be filed within 18 months (M.S. Sec. 353.031, Subd. 3, Para. (a)).
Teachers Retirement Association (TRA)	Covered teacher or another person authorized to act on behalf of the covered teacher (M.S. Sec. 354.48, Subd. 2).	Application must be filed within 18 months following the termination of teaching service (M.S. Sec. 354.48, Subd. 2).
Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified)	Participant (M.S. Sec. 352D.065, Subd. 1).	No time limitation.

Special Retirement Plans

Plan	Eligible Applicant	Time Limit on Application
First Class City Teachers Retirement Fund Associations (DTRFA and SPTRFA)	Coordinated member of the retirement fund association (M.S. Sec. 354A.36, Subd. 1).	No time limitation.
Minneapolis Employees Retirement Fund (MERF)	Head of the department in which the contributing employee was employed, the contributing employee, or a person acting on behalf of the contributing employee (M.S. Sec. 422A.18, Subd. 1).	No time limitation.
Military Affairs Personnel Retirement Plan (MSRS-Military Affairs)	Covered employee (M.S. Sec. 352.85, Subd. 2).	No time limitation.
Transportation Department Pilots Retirement Plan (MSRS-Transportation Pilots)	Covered employee (M.S. Sec. 352.86, Subd. 1a).	No time limitation.
State Fire Marshal Fire/Arson Investigator Retirement Plan (MSRS-Fire Marshal)	Eligible plan member (Minn. Stat. Sec. 352.87, Subd. 4).	No time limitation.

Public Safety Employee Retirement Plans

Plan	Eligible Applicant	Time Limit on Application
Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional)	Covered correctional employee (M.S. Sec. 352.95, Subd. 1).	No application before the day after the last day the correctional employee physically was on the job; no time limitation on application (M.S. Sec. 352.95, Subd. 3).
State Patrol Retirement Plan	Member of the plan (M.S. Sec. 352B.101).	No time limitation.
Public Employees Police and Fire Plan (PERA-P&F)	Covered PERA-P&F member (M.S. Sec. 353.33, Subd. 1).	Application must be filed within 18 months (M.S. Sec. 353.031, Subd. 3, Para. (a)).
Local Government Correctional Service Retirement Plan (PERA-Correctional)	Covered local government correctional employee (M.S. Sec. 353E.06, Subd. 1).	Application must be filed within 18 months (M.S. Sec. 3, Para. (a)).

1.1 moves to amend S.F. No. 305; H.F. No. 122, as follows:

1.2 Page 1, after line 5, insert:

1.3 "Section 1. Minnesota Statutes 2008, section 352.113, subdivision 1, is amended to
1.4 read:

1.5 Subdivision 1. **Age and service requirements.** An employee covered by the
1.6 system, who is less than normal retirement age and who becomes totally and permanently
1.7 disabled after three or more years of allowable service, is entitled to a disability benefit
1.8 in an amount provided in subdivision 3. The disability benefit application must be filed
1.9 with the executive director within three years of the employee's termination of state
1.10 employment. If the disabled employee's state service has terminated at any time, the
1.11 employee must have at least two years of allowable service after last becoming a state
1.12 employee covered by the system. Refunds may be repaid under section 352.23 before the
1.13 effective accrual date of the disability benefit under subdivision 2.

1.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

1.15 Sec. 2. Minnesota Statutes 2008, section 352.113, subdivision 4, is amended to read:

1.16 Subd. 4. **Medical or psychological examinations; authorization for payment of**
1.17 **benefit.** (a) An applicant shall provide medical, chiropractic, or psychological evidence to
1.18 support an application for total and permanent disability.

1.19 (b) The director shall have the employee examined by at least one additional
1.20 licensed chiropractor, physician, or psychologist designated by the medical adviser. The
1.21 chiropractors, physicians, or psychologists shall make written reports to the director
1.22 concerning the employee's disability including expert opinions as to whether the employee
1.23 is permanently and totally disabled within the meaning of section 352.01, subdivision 17.

1.24 (c) The director shall also obtain written certification from the employer stating
1.25 whether the employment has ceased or whether the employee is on sick leave of
1.26 absence because of a disability that will prevent further service to the employer and as a
1.27 consequence the employee is not entitled to compensation from the employer.

1.28 (d) The medical adviser shall consider the reports of the physicians, psychologists,
1.29 and chiropractors and any other evidence supplied by the employee or other interested
1.30 parties. If the medical adviser finds the employee totally and permanently disabled, the
1.31 adviser shall make appropriate recommendation to the director in writing together with
1.32 the date from which the employee has been totally disabled. The director shall then
1.33 determine if the disability occurred within 180 days of filing the application, while still
1.34 in the employment of the state, and the propriety of authorizing payment of a disability
1.35 benefit as provided in this section.

2.1 (e) ~~A terminated employee may apply for a disability benefit within 180 days of~~
 2.2 ~~termination as long as the disability occurred while in the employment of the state. The~~
 2.3 ~~fact that an employee is placed on leave of absence without compensation because of~~
 2.4 ~~disability does not bar that employee from receiving a disability benefit.~~

2.5 (f) Unless the payment of a disability benefit has terminated because the employee is
 2.6 no longer totally disabled, or because the employee has reached normal retirement age as
 2.7 provided in this section, the disability benefit must cease with the last payment received
 2.8 by the disabled employee or which had accrued during the lifetime of the employee unless
 2.9 there is a spouse surviving. In that event, the surviving spouse is entitled to the disability
 2.10 benefit for the calendar month in which the disabled employee died.

2.11 **EFFECTIVE DATE.** This section is effective the day following final enactment
 2.12 and applies retroactively from July 24, 2007, for a former state employee who was born on
 2.13 March 8, 1966, was employed by the Minnesota Veterans Home at Silver Bay, Minnesota,
 2.14 and terminated state employment on July 25, 2007.

2.15 Sec. 3. Minnesota Statutes 2008, section 354.48, subdivision 2, is amended to read:

2.16 Subd. 2. **Applications; accrual.** (a) A person described in subdivision 1, or another
 2.17 person authorized to act on behalf of the person, ~~may~~ must make written application on
 2.18 a form prescribed by the executive director for a total and permanent disability benefit
 2.19 ~~only.~~ The disability benefit application must be filed with the executive director within the
 2.20 ~~18-month~~ 36-month period following the termination of teaching service.

2.21 (b) The benefit accrues from the day following the commencement of the disability
 2.22 or the day following the last day for which salary is paid, whichever is later, but does not
 2.23 begin to accrue more than six months before the date on which the written application
 2.24 is filed with the executive director. If salary is being received for either annual or sick
 2.25 leave during the disability period, the disability benefit accrues from the day following
 2.26 the last day for which this salary is paid.

2.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.28 Sec. 4. Minnesota Statutes 2008, section 354A.36, subdivision 1, is amended to read:

2.29 Subdivision 1. **Minimum age, service, and salary requirements.** Any coordinated
 2.30 member who has at least three years of allowable service credit, has an average salary of at
 2.31 least \$75 per month, and has become totally and permanently disabled ~~shall be~~ is entitled
 2.32 to a disability benefit. If the disabled coordinated member's allowable service credit has
 2.33 not been continuous, at least two years of the required allowable service shall be required
 2.34 to have been rendered subsequent to the last interruption in service. The disability benefit

3.1 application must be filed with the executive director of the teachers retirement fund
 3.2 association within 36 months of the coordinated member's termination of teaching service.

3.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.4 Sec. 5. Minnesota Statutes 2008, section 422A.18, is amended by adding a subdivision
 3.5 to read:

3.6 Subdivision 1. **Age and service requirements.** A contributing employee who
 3.7 is less than the normal retirement age and who becomes disabled as determined under
 3.8 subdivision 1a after at least three years of allowable service is entitled to a disability
 3.9 benefit. The disability benefit must be filed with the executive director within 18 months
 3.10 of the employee's termination of covered employment.

3.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.12 Sec. 6. Minnesota Statutes 2008, section 422A.18, subdivision 1, is amended to read:

3.13 ~~Subdivision 1~~ Subd. 1a. **Expert examination.** (a) Upon the application of the
 3.14 head of the department in which a contributing employee is employed, or upon the
 3.15 application of the contributing employee or of one acting in the employee's behalf, the
 3.16 retirement board shall place the contributor on disability and pay the person a disability
 3.17 allowance under this section if the medical board, after an expert examination of the
 3.18 contributor made at the place of residence of the contributor or at a place mutually agreed
 3.19 upon, ~~shall certify~~ certifies to the retirement board that the contributor is physically or
 3.20 mentally incapacitated for the performance of further service to the city and ~~recommend~~
 3.21 recommends that the contributor be placed on disability.

3.22 (b) The medical board ~~shall consist~~ consists of the city physician, a physician,
 3.23 chiropractor, or licensed psychologist to be selected by the retirement board, and a
 3.24 physician, chiropractor, or licensed psychologist to be selected by the employee.

3.25 (c) The disability of an employee resulting from injury or illness received in the
 3.26 performance of the duties of the city service ~~shall be defined as~~ is a duty disability.

3.27 (d) A disability incurred as a result of injury or illness not connected with the
 3.28 performance of ~~such~~ city service ~~shall be defined as~~ is a nonduty disability. ~~In order to~~
 3.29 ~~be entitled to a retirement allowance for a nonduty disability, an employee shall have~~
 3.30 ~~rendered five or more years of service to the city.~~

3.31 **EFFECTIVE DATE.** This section is effective the day following final enactment."

3.32 Renumber the sections in sequence and correct the internal references

3.33 Delete the title and insert:

3.34 "A bill for an act

- 4.1 relating to retirement; various retirement plans; providing a general three-year
- 4.2 time limitation on disability benefit applications; amending Minnesota Statutes
- 4.3 2008, sections 352.113, subdivisions 1, 4; 354.48, subdivision 2; 354A.36,
- 4.4 subdivision 1; 422A.18, subdivision 1, by adding a subdivision."

