



S.F. 605
(Jungbauer)

H.F. 757
(Murphy, M., by req.)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS
Relevant Provisions of Law: Minnesota Statutes, Section 352.86
General Nature of Proposal: MnDOT Pilots; Aircraft Pilot Disability and Retirement Provisions Modification
Date of Summary: March 6, 2009

Specific Proposed Changes

This bill revises the Minnesota State Retirement System (MSRS) transportation department pilots provision (Minnesota Statutes, Section 352.86) by removing any mandatory retirement age for pilots; by permitting disability applications after age 62; by permitting application for disability benefits from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), and using an occupation-specific standard; and by closing the provision to new hires.

Policy Issues Raised by the Proposed Legislation

1. Sufficient need for change.
2. Nature of the change; best policy.
3. Disability change issues and cost.
4. Drafting issues.

Potential Amendments

S0605-1A is a delete-everything amendment which adds an effective date, the day following final enactment; specifies at the beginning of the provision that the provision cannot be used by any new hires; and revises the disability subdivision by clarifying MSRS responsibilities and the standards that MSRS will apply if a disability occurs.

S0605-2A is comparable to S0605-1A except that any disability will be handled as in current law. Current law requires that any disability payment must come from the State Airports Fund and not from MSRS.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director EB
RE: S.F. 605 (Jungbauer); H.F. 757 (Murphy, M., by Request): MnDOT Pilots; Aircraft Pilot Disability and Retirement Provisions Modification
DATE: March 5, 2009

Summary of S.F. 605 (Jungbauer); H.F. 757 (Murphy, M., by Request)

S.F. 605 (Jungbauer); H.F. 757 (Murphy, M., by request) revises the Minnesota State Retirement System (MSRS) transportation department pilots provision (Minnesota Statutes, Section 352.86) by removing any mandatory retirement age for pilots; by permitting disability applications after age 62; by permitting application for disability benefits from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), and using an occupation-specific standard; and by closing the provision to new hires.

MSRS-General Pilot Provision Background

Under MSRS-General law, MSRS-General members are entitled to unreduced benefits provided the individuals retire at or after reaching the normal retirement age for the plan. That age is specified in law (Minnesota Statutes, Section 352.01, Subdivision 25) as age 65 for members who first became public employees before July 1, 1989. For those hired later, normal retirement age is age 65 or "retirement age" age as defined in federal law for Social Security purposes (United States Code, Title 42, Section 416(1), as amended), but not to exceed age 66.

MSRS-General includes a few provisions enacted because in certain occupations individuals were required to retire before the normal retirement age specified in MSRS plan law. The two exceptions are military affairs personnel (Minnesota Statutes, Section 352.85) and Minnesota Department of Transportation (MnDOT) pilots (Minnesota Statutes, Section 352.86). The justification for the military affairs personnel provision is that federal laws and regulations require those individuals to retire at an earlier age than the normal retirement age specified for MSRS-General. A similar argument applied when the MnDOT pilot provision was enacted into law in 1982. MnDOT pilots were required by Federal Aviation Administration regulation to retire at age 60. However, at the current time the MnDOT provision has lost much or all of its justification.

The MnDOT pilots provision was enacted in 1982 (Laws 1982, Chapter 575, Section 3), coded as Minnesota Statutes, Section 352.86. Under that provision pilots employed by MnDOT, who elected coverage by this special provision through an irrevocable election, could retire at age 60 with an unreduced MSRS-General annuity despite a normal retirement age for the plan of age 65, because of an age 60 retirement age imposed under federal regulations. An additional employee contribution was set at 1.6 percent of salary to pay for the enhanced retirement benefit, with a matching employer contribution.

Through a transportation funding bill in 1983 (Laws 1983, Chapter 293, Section 98 and 99), the MnDOT pilots mandatory retirement age was shifted from age 60 to 62, and regulating this mandatory retirement age apparently shifted from the Federal Aviation Administration regulations to MnDOT rules. A position-specific disability provision was also added to the statute. If a pilot became physically or mentally disabled and unable to continue as a pilot, the individual was to receive a disability benefit payable from the State Airports Fund equal to 75 percent of current monthly salary. This benefit was to continue until age 62 or for five years, whichever is earlier. This benefit was in lieu of any disability benefit from MSRS or from workers' compensation.

In 2004 (Laws 2004, Chapter 267, Article 7, Section 1), the MnDOT provision was revised to apply to those prohibited from continuing as a pilot after age 65, rather than age 62, by MnDOT policy rather than MnDOT rule. There have been no revisions in the provision since 2004.

The current law version of the pilots provision can be summarized as follows. The provision applies to MnDOT pilots who elect, through an irrevocable election, to be covered by this enhanced coverage section. Despite a stated mandatory retirement age of age 65 for pilots, the provision permits individuals covered by the provision to retire as early as age 62 with no reduction due to early retirement. If the pilot becomes disabled and no longer able to continue as a pilot, the individual is entitled to a disability benefit

paid out of the State Airports Fund rather than from MSRS-General equal to 75 percent of salary. Receipt of the disability benefit ends at age 62 or after five years, whichever comes first. For this additional coverage, the employee and employer pay additional contributions of 1.6 percent of salary.

Discussion and Analysis

The desire to change the current law version of the MnDOT pilots provision began in 2007, when a MnDOT pilot, upon reaching age 65, refused to retire and filed an age discrimination claim. MnDOT settled the age discrimination complaint by eliminating its mandatory retirement policy for pilots and by requiring Federal Aviation Authority flight physicals every six months for department pilots, the chief pilot, and aviation representatives providing emergency backup.

Since MnDOT had removed any mandatory retirement age for pilots, it began examining the treatment provided under Minnesota Statutes, Section 352.86, the MnDOT pilot provision. MnDOT concluded the treatment provided by that section could no longer be justified and began working with MSRS on suitable revision of this law. S.F. 605 (Jungbauer); H.F. 757 (Murphy, M., by request) reflects that effort. Under this bill, the treatment provided under the pilots provision will continue for those who have elected it in the past. These individuals elected this coverage and made the required additional contributions to pay for the enhanced benefits provided. To remove that coverage could be viewed as unfair and might be successfully challenged in court. Under this bill the provision is closed. No new hire can make this election.

The bill includes revisions in the disability coverage subdivision of the MnDOT pilot provision. Motivation for the changes seems to be some combination of addressing age discrimination concerns without radically departing from past MnDOT policy. Individuals under normal retirement age, rather than under age 62, can apply for a disability benefit. Rather than paying this disability benefit entirely from the State Airports Fund as in existing law, part of the benefit will be paid by MSRS. New proposed language permits the individual to apply for an MSRS-General disability benefit. In reviewing a case, MSRS will apply an occupation-specific standard, rather than the total and permanent standard which ordinarily applies in the MSRS-General Plan. If the individual qualifies for an MSRS-General disability benefit under this revised standard, MSRS will commence payment. The individual will also receive a payment from the State Airports Fund that, when combined with the MSRS disability benefit, totals to 75 percent of salary. Consistent with existing law, the payment from the State Airports Fund cannot exceed five years. Under this change, less money would come from the State Airports Fund because the payment from that fund would be reduced by amounts paid by MSRS. MSRS may have some potential new liability under these bills because it would pay benefits if someone becomes disabled.

The group covered by these bills is very small. MSRS indicated that the MnDOT pilots special coverage provision applies to only four individuals. The youngest is over age 58 while the others are nearing normal retirement age. Dave Bergstrom, Executive Director of MSRS, believes that no one ever covered by this provision became disabled. If one or more of the currently covered individuals were to become disabled, the payment of disability benefits rather than retirement benefits would be brief because of the current ages.

The proposed legislation raises a number of pension and related public policy issues that merit consideration and potential discussion by the Commission, as follows:

1. Sufficient Need for Change. The issue is whether there is sufficient need to revise this provision. An argument for revising the MnDOT pilots provision is little or no justification for permitting new hires to elect this special coverage, because MnDOT no longer has any mandatory retirement age for pilots. Therefore, regarding retirement annuities, they should be treated the same as any other MSRS-covered employee. Also, a MnDOT official has indicated to Commission staff that MnDOT does not feel the special disability coverage provided by the MnDOT pilots provision is needed or appropriate in the future. MnDOT intends to provide training and employment opportunities to any pilot who happened to become unable to continue as a pilot due to occupation-specific disability. If the pilot met the total and permanent standard normally applied to MSRS-General disability applicants, MSRS would provide a disability benefit under its standard provision.
2. Nature of the Change. If some change is justified, the issue is whether this proposal reflects the best policy, or whether other options need to be considered. Closing the provision to new hires, as this proposal does, will eventually end use of the provision. Any effort to revise the proposal to include those who have already elected the provision could be viewed as unfair to the individuals who have paid for these enhanced benefits, and might lead to a lawsuit in the courts.

3. Disability Change Issues and Cost. The proposal shifts some cost, if any individual in the group were to become disabled, from the State Airports Fund to MSRS-General. The Commission may wish to hear through testimony why that shift is being sought. Mr. Bergstrom, the MSRS Executive Director, indicates that the MSRS liability would be immaterial given the ages of the few individuals covered by this special coverage provision, and that he is comfortable with the bill. He also indicates that the individuals covered by this MnDOT pilots provision have paid extra contributions to help finance an early retirement without any early retirement deduction, but few if any have used that provision. The disability benefit which MSRS would provide is equal to the annual benefit which these individuals would have received if they had chosen the early retirement provision. Therefore, Mr. Bergstrom feels that any payments that MSRS would make if a disability occurs can be absorbed by MSRS, without any need to revise the additional employee and employer contributions required under this section of law. Given that position, the Commission has not drawn an amendment to revise the contribution rates.
4. Drafting Issues:
 - The bill does not have an effective date;
 - Closing the provision to new members could be simplified and clarified; and
 - The disability benefit subdivision could be revised to better clarify the responsibilities of MSRS and the standards that MSRS will apply if a disability occurs.

Amendments for Consideration

Amendment S0605-1A is a delete-everything amendment which adds an effective date, the day following final enactment; specifies at the beginning of the provision that the provision cannot be used by any new hires; and revises the disability subdivision by clarifying MSRS responsibilities and the standards that MSRS will apply if a disability occurs.

Amendment S0605-2A is comparable to S0605-1A except that any disability will be handled as specified in the bill, except all payments will be made from the State Airports Fund. Current law requires that any disability payment must come from the State Airports Fund and not from MSRS. The Commission may wish to consider this amendment if it concludes that MSRS should not take over responsibility for paying disability benefits, as is required by the bill as drafted.

Attachment A

Background Information on Age Discrimination Issues and the ADA

The Age Discrimination Act of 1967 (ADA) forbids workplace discrimination based on age. In 1993, the Minnesota State Retirement System (MSRS), the Public Employees Retirement Association (PERA), and the Teachers Retirement Association (TRA), attempted to revise their plans for ADA compliance. Although the staff memo at the time advised delaying any action so time could be devoted to further review ADA issues, various provisions of MSRS, PERA, and TRA plans were revised through an administrative bill and enacted as Laws 1993, Chapter 307, Article 2. These plan revisions had the effect of revising benefits in various plans, in some cases improving those benefits.

One area that was reviewed was mandatory retirement ages. Mandatory retirement at a specified age can be deemed discriminatory because it does not focus on the individual and his or her ability to continue to perform their job. Rather it is based on a rough proxy—age. Another area was service accrual caps. Some systems, notably the MSRS-administered State Patrol Retirement Plan, did not permit further service credit accrual by plan members beyond age 60. This could be viewed as discriminatory because an older member of the plan is being treated differently than a younger member in the retirement plan. Repeal of this service credit cap was sought because MSRS received a letter of noncompliance from the Equal Employment Opportunity Commission (EEOC), due to a complaint from a member of the State Patrol Retirement Plan who was subject to this cap.

Changes were also made to various disability provisions specifying when disabilitants were deemed to be retired rather than disabled, and provisions specifying when disabilitants could elect joint-and-survivor coverage. Prior to the 1993 changes, in most MSRS, PERA, and TRA plans eligibility for disability benefits ended at the plan's normal retirement age, typically age 65 for general employee plans and age 55 for public safety plans. The logic of the pre-1993 approach was that rather than continuing to be involved in the process of overseeing a disability case, the individual should simply be treated as a retirement annuitant, since the individual had reached an age where he or she was eligible to retire without reduction under the plan's retirement annuity provisions. However, under the ADA these policies might be viewed as discriminatory and punitive. Perhaps individuals who do not want to retire should not be forced to retire. Also, if an individual recovered from the disability sufficiently to return to employment covered by the same plan, the individual would not be able to accrue additional service credit because he or she would be treated as a reemployed retiree rather than as a recovered disabilitant returning to work. The change that was adopted in 1993 for most of the included plans was to terminate disability status and transfer the individual to retiree status not at the plan's normal retirement age, but at age 65 or the five-year anniversary of the disability, whichever is later. While this would not create much difference for general employee plans, that same requirement was used for the MSRS public safety plans, so that rather than transferring at age 55, the transfer would occur a minimum of ten years later. That is of some significance, because in the public safety plans individuals in disability status receive surviving spouse coverage without cost to the disabilitant. A retiree who wants spousal coverage must take a joint-and-survivor annuity, which requires a reduction from the monthly annuity amount to finance that coverage. The "age 65 or the five-year anniversary of the disability, whichever is later" language was added to the MSRS, PERA, and TRA general employee plans, and to the MSRS public safety plans, apparently based on the advice of a PERA-retained consultant who deemed it necessary for all of these plans. For some unknown reason, however, PERA did not take this approach with its Public Employees Police and Fire Plan (PERA-P&F) plan. Rather than revise the PERA-P&F disabilitant transfer-to-retirement provision, the 1993 law repealed that PERA-P&F provision. As a consequence of that repealer, rather than transferring from disability to retirement at some specified age, PERA-P&F disabilitants remained in disability status indefinitely, with free spousal coverage.

The age discrimination compliance changes enacted in 1993 were premature for several reasons.

1. First, there was insufficient understanding of what changes were needed. The ADA was little more than a general statement that employers cannot discriminate based on age, with little guidance as to what constituted discrimination. The EEOC was mandated to adopt rules to implement the ADA, but had not done so as of the 1993, when most of the age discrimination changes to Minnesota public plans were adopted. In suggesting changes in the MSRS, PERA, and TRA laws, the executive directors were relying on MSRS's experience of a noncompliance letter from the EEOC regarding the age 60 service credit cap in the State Patrol Retirement Plan, and advice from an actuarial and consulting firm employed by PERA. The consultant's advice was claimed to be based on discussions with EEOC staff, but discussions are not a perfect substitute for rules.
2. A second reason was that despite claims of relying on the same sources for guidance, the proposed changes were not fully consistent across comparable plans.
3. Another problem was that the scope of the included plans was incomplete. While MSRS, PERA, and TRA were proposing changes, no ADA compliance changes were proposed for first class city teacher plans, the Minneapolis Employees Retirement Fund (MERF), or local police and paid fire plans.
4. A fourth reason for taking more time to review the matter was that some of the changes were benefit enhancements which increased plan costs. If it was later determined that some of these changes were unnecessary for ADA compliance, it could be difficult to remove these changes at a later date.

1.1 moves to amend S.F. No. 605; H.F. No. 757, as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2008, section 352.86, subdivision 1, is amended to read:

1.4 Subdivision 1. **Eligibility; retirement annuity.** ~~A person who is employed by~~
1.5 This section applies to any employee of the Department of Transportation in the civil
1.6 service employment classification of aircraft pilot or chief pilot, who is covered for
1.7 that employment by the general employee retirement plan of the system under section
1.8 352.01, subdivision 23, and who elects this elected before June 1, 2008, special retirement
1.9 coverage under subdivision 3, who is prohibited from performing the duties of aircraft
1.10 pilot or chief pilot after reaching age 65 by a policy adopted by the commissioner of
1.11 transportation, and this section by an irrevocable election on forms provided by the
1.12 executive director.

1.13 Subd. 2. **Retirement annuity.** An eligible person under subdivision 1 who
1.14 terminates employment as a state employee on or after age 62 but prior to normal
1.15 retirement age is entitled, upon application, to a retirement annuity computed under
1.16 section 352.115, subdivisions 2 and 3, without any reduction for early retirement under
1.17 section 352.116, subdivision 1.

1.18 Sec. 2. Minnesota Statutes 2008, section 352.86, subdivision 1a, is amended to read:

1.19 ~~Subd. 1a~~ Subd. 3. **Disability benefits.** An employee described in subdivision 1, who is
1.20 less than 62 years of age and who becomes disabled and physically or mentally unfit
1.21 to perform occupational duties due to injury, sickness, or other disability, and who is
1.22 found disqualified for retention as chief pilot or pilot as a result of a physical examination
1.23 required by applicable federal laws or regulations, is entitled upon application to disability
1.24 benefits for a maximum of five years in the amount of may submit an application for
1.25 disability benefits calculated under section 352.113, subdivision 3. In considering the
1.26 disability benefit application, the executive director must use the disability standard
1.27 specified in this subdivision rather than the total and permanent standard specified in
1.28 section 352.113, subdivision 1. If disability benefits commence under section 352.113,
1.29 subdivision 3, the appointing authority shall also provide payments from the state airports
1.30 fund, totaling 75 percent of current monthly salary, to be paid by the appointing authority
1.31 less the amount payable under section 352.113, subdivision 3. Payments from the state
1.32 airports fund must be made for five years or until normal retirement age, whichever is
1.33 earlier. Disability benefits must not continue after the employee reaches age 62. These
1.34 benefits are in lieu of all other state benefits for the disability, including, but not limited to,
1.35 workers' compensation benefits.

2.1 Sec. 3. Minnesota Statutes 2008, section 352.86, subdivision 2, is amended to read:

2.2 Subd. ~~2~~ **4. Additional contributions.** ~~The special retirement annuity authorized~~
2.3 ~~by subdivision 1 shall be financed by~~ An employee covered by this section must pay an
2.4 additional employee contribution from the covered aircraft pilot or chief pilot of 1.6
2.5 percent and an employer contribution from of salary. The Department of Transportation
2.6 must pay an additional employer contribution of of 1.6 percent of salary. These
2.7 contributions are in addition to the contributions required by section 352.04, subdivisions
2.8 2 and 3. They must be made in the manner provided for in section 352.04, subdivisions 4,
2.9 5, and 6.

2.10 Sec. 4. **REPEALER.**

2.11 Minnesota Statutes 2008, section 352.86, subdivision 3, are repealed.

2.12 Sec. 5. **EFFECTIVE DATE.**

2.13 Sections 1 to 4 are effective the day after final enactment."

2.14 Amend the title accordingly

1.1 moves to amend S.F. No. 605; H.F. No. 757, as follows:

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1.10 pilot or chief pilot after reaching age 65 by a policy adopted by the commissioner of
1.11 transportation, and this section by an irrevocable election on forms provided by the
1.12 executive director.

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1.14 terminates employment as a state employee on or after age 62 but prior to normal
1.15 retirement age is entitled, upon application, to a retirement annuity computed under
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1.17 section 352.116, subdivision 1.

1.18 Sec. 2. Minnesota Statutes 2008, section 352.86, subdivision 1a, is amended to read:

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1.20 less than 62 years of age and who becomes disabled and physically or mentally unfit
1.21 to perform occupational duties due to injury, sickness, or other disability, and who is
1.22 found disqualified for retention as chief pilot or pilot as a result of a physical examination
1.23 required by applicable federal laws or regulations, is entitled upon application to disability
1.24 benefits for a maximum of five years in the amount of may submit a disability benefit
1.25 application to the executive director. In considering the disability benefit application, the
1.26 executive director must use the disability standard specified in this subdivision rather
1.27 than the total and permanent standard specified in section 352.113, subdivision 1. If the
1.28 executive director determines that the individual is disabled under the standards specified
1.29 in this subdivision, the appointing authority shall provide payments from the state
1.30 airports fund, totaling 75 percent of current monthly salary, to be paid by the appointing
1.31 authority . The payments from the state airports fund must be made for five years or until
1.32 normal retirement age, whichever is earlier. Disability benefits must not continue after
1.33 the employee reaches age 62. These benefits are in lieu of all other state benefits for the
1.34 disability, including, but not limited to, workers' compensation benefits and any disability
1.35 benefit which might otherwise be payable from the Minnesota State Retirement System.

