



S.F. 1266
(Pappas)

H.F. 1527
(Kahn)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MnSCU
Relevant Provisions of Law: Minnesota Statutes, Chapter 136F
General Nature of Proposal: Early separation incentive program authorized.
Date of Summary: March 17, 2009

Specific Proposed Changes

- The proposed legislation allows MnSCU to implement an early separation incentive program of cash payments or MSRS Health Care Savings Plan deposits.

Policy Issues Raised by the Proposed Legislation

1. Unclear sufficiency of the targeting of the incentives.
2. Lack of any limits on incentives.
3. Incentive program campus implementation lacks approval or review process.
4. Dissonance of having a management tool sponsored by an employee organization.
5. Lack of restrictions on the reemployment of MnSCU personnel taking early separations.
6. Appropriateness of new early retirement incentive when MnSCU has not utilized the Section 356.351 retirement incentive.
7. Past rejection by the Commission.
8. Precedent.

Potential Amendments

- S1266-1A requires advance notification of the appropriate legislative committees and interested parties of proposed early separation incentive program eligibility provisions.
- S1266-2A sets a salary-related limit on any early separation incentive offer.
- S1266-3A requires institution presidents to file an early retirement incentive offer fact sheet with the MnSCU Board at the time of making any offer, including disclosure of any relationships between the president and the employee other than professional.
- S1266-4A prohibits any post-early-separation employment or retention as a consultant for five years.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *LA Martin*
RE: S.F. 1266 (Pappas); H.F. 1527 (Kahn): MnSCU; Early Separation Incentive Program Authorization
DATE: March 17, 2009

Summary of S.F. 1266 (Pappas); H.F. 1527 (Kahn)

S.F. 1266 (Pappas); H.F. 1527 (Kahn) amends Minnesota Statutes, Chapter 136F, governing the Minnesota State Colleges and Universities System (MnSCU), by adding two new sections which authorize the MnSCU Board of Trustees to establish an early separation incentive program consisting of either cash incentives, employer contributions to the Minnesota State Retirement System (MSRS) post-retirement health savings plan, or a combination of the two, and permits the incentives to be offered by the MnSCU Chancellor or by MnSCU college or university presidents to personnel consistent with MnSCU Board of Trustee-established eligibility requirements, with the cost of the incentives to be borne by the system office or by the applicable college or university, whichever applies. The incentive program is exempted from the Public Employees Labor Relations Act (PELRA) unfair labor practice prohibition and the PELRA former employee benefit limitation. The incentive program would sunset after five years and annual reports on its utilization to the MnSCU board and to the Legislative Reference Library are required.

Background Information

Background information on past early retirement incentive programs is contained in **Attachment A**.

Analysis and Discussion

S.F. 1266 (Pappas); H.F. 1527 (Kahn) authorizes MnSCU to establish an early separation incentive program of cash payments, or employer contributions to the MSRS post-retirement health care savings plan, or a combination of the two, under eligibility requirements specified by the MnSCU Board of Trustees and offered to personnel positions specified by the MnSCU college or university president or, within the system office, by the MnSCU Chancellor.

The proposed legislation will raise several pension and related public policy issues for Commission consideration and potential discussion, including the following:

1. Unclear Sufficiency of the Targeting of the Incentives. The policy issue is the sufficiency of any eligibility requirements in a MnSCU early retirement incentive to target the program. The proposed legislation requires the MnSCU Board of Trustees to specify the eligibility requirements for an incentive program, but does not itself specify any minimum eligibility content requirements, thus giving the MnSCU Board of Trustees full discretion in designing the program. The 1986 Department of Finance study of the 1984-1986 temporary "Rule of 85" early retirement incentive program and the 1995 Office of the Legislative Auditor, Program Evaluation Division, study of the 1993 early retirement incentives both concluded that those incentive programs provided significant benefit windfalls to personnel who were likely to retire shortly after the incentive anyway because the programs were not sufficiently targeted. The proposed legislation assumes that a requirement that each MnSCU college or university bear the cost of the incentive program will induce the MnSCU Board to establish appropriate and sufficient targeting requirements and will induce MnSCU college or university presidents to implement the program in a cost-effective manner. Theoretically, the broad delegation to MnSCU should work, but there are no guarantees that it will, there is no requirement that there will be any periodic oversight, and there are no clear available remedies if this broad delegation to MnSCU does not work.

Amendment S1266-1A would require that any early separation incentive eligibility requirements be filed with the legislative committees with higher education jurisdiction, be posted in the MnSCU internet home page, and be the subject of a public hearing before their final adoption.

2. Lack of Any Limits on Incentives. The policy issue is the appropriateness of the proposed incentive program because there are no limits on them, including the cash payment incentive. Without some limits, the Legislature and the public may be disconcerted in the future if very sizable incentives are granted. The proposed incentive program is an “early separation incentive program” rather than an “early retirement incentive program,” presumably countenancing the potential that beneficiaries of the incentive could be substantially younger than normal retirement ages. In addition to providing incentives to relatively young MnSCU employees who terminate their employment, the cash payments could approach or exceed a person’s annual salary without reference to the person’s subsequent employment status by MnSCU or by the state or without reference to the person’s subsequent career compensation, the employer contribution to the post-retirement health care savings plan could potentially exceed federal tax law limits, subjecting MnSCU and the state to federal tax law penalties, or the combination of incentives in amount could be deemed by the public as excessive.

Amendment 1266-2A places a limit on any early separation incentive offered, set at a to-be-specified percentage of the MnSCU employee’s salary.

3. Incentive Program Campus Implementation Lacks Approval or Review Process. The policy issue is the appropriateness of an incentive program which is implemented on a decentralized basis without any formal approval or review process. As set forth in the proposed legislation, the MnSCU Board will specify the package of incentive benefits and will specify the broad eligibility requirements to qualify for the incentive and each MnSCU institution president or the MnSCU Chancellor would actually offer the incentive to particular designated programs, departments, or personnel at the institution or at the system office. The college or university president or the Chancellor would not be required to justify making the incentive offer to the applicable personnel, on a financial basis or otherwise, to any other entity within MnSCU or outside of MnSCU. Thus, incentives that cost more financially than they gain or incentives that are offered for reasons of nepotism or other inappropriate reasons could be granted by a college or university president or by the MnSCU Chancellor and could not be revoked by the MnSCU or by any other entity before the damage occurs. While the MnSCU Chancellor and the MnSCU college and university presidents clearly merit trust and discretion in managing these institutions, that discretion should be handled consistent with MnSCU’s public mission and a need to be accountable to the public, which are factors that argue for some procedural constraints on the incentive offer process.

Amendment 1266-3A requires that a fact sheet be filed with the MnSCU Board whenever an early separation incentive is offered that discloses the rationale for the offer, the incentive amount, the expectation about whether or not the position will be refilled, the one-, five-, and ten-year financial savings expected to result from the early separation, and the disclosure of any factor beyond a professional relationship that could be viewed by a third-party as influencing the incentive offer.

4. Dissonance of Having a Management Tool Sponsored by an Employee Organization. The policy issue is the appropriateness of an early separation incentive management tool that is being proposed by the applicable employee organization rather than by the MnSCU administration. Early retirement incentive programs that are used sparingly and in a well-targeted fashion can be an effective management tool to correct for workforce imbalances. Early retirement incentive programs that are framed as, or become, additional employee entitlement programs supplant the conventional employment benefit program and lose their management effectiveness. When proposed by an employee organization rather than by the employer itself, policymakers should be suspicious about the motivations for the program and should give the proposal additional scrutiny.
5. Lack of Restrictions on the Reemployment of MnSCU Personnel Taking Early Separations. The policy issue is the appropriateness of the program where the early separation incentive program lacks any restrictions on the reemployment of the person by MnSCU or by the state or the person’s subsequent retention as a consultant to MnSCU or to the state. If the incentive is intended to induce the person to leave state employment, the person will defeat the program if the person can reemerge in state employment or can be retained as a state consultant. The proposed legislation could be improved by the addition of a ban on reemployment or subsequent retention as a consultant. While the reemployment/retention restriction should not be so long as to be punitive or unreasonable, it should be long enough to avoid a potential “revolving door” phenomenon that would not actually provide any budget relief for MnSCU.

Amendment 1266-4A prohibits a person who takes an early separation incentive under the program from being reemployed or retained as a consultant directly or indirectly by the MnSCU for a period of five years after the acceptance of an offer.

6. Appropriateness of New Early Retirement Incentive When MnSCU Has Not Utilized the Section 356.351 Retirement Incentive. The policy issue is the appropriateness of MnSCU, or the Inter Faculty Organization (IFO) on its behalf, pursuing the creation of a new early retirement incentive when MnSCU has not availed itself of the early retirement incentive mechanism enacted in 2006 in the form of Minnesota Statutes, Section 356.351. Minnesota Statutes, Section 356.351, permits a state or other employee who has at least five years of service, who is immediately eligible to a retirement annuity upon retirement, who terminates employment before July 15, 2009, and who is offered the incentive by the state employee's employing unit may have \$17,000 deposited in their post-retirement healthcare savings plan or used to purchase retirement plan service credit towards a "Rule of 90" early normal retirement benefit or to purchase an additional money purchase annuity. That incentive has a pre-offer approval process, is paid for by the entity making the offer, prohibits the reemployment of a person utilizing the incentive, and has an annual utilization report requirement. MnSCU has not reported that it has utilized the existing incentive. Before creating a new incentive, it may be appropriate to require that MnSCU attempt to use the existing incentive first.
7. Past Rejection by the Commission. The policy issue is the appropriateness of the proposed legislation in 2009 when the Legislative Commission on Pensions and Retirement laid over a virtually identical proposal for interim study in 2003, after receiving testimony from the Commissioner of Finance opposing early retirement incentive programs. If the budget problem facing the state and the Legislature in 2002-2003 did not merit the creation of this program, it is unclear that the current budget problem is so significantly different that a different response by the Commission now represents good public policy. The IFO and MnSCU should be provided an opportunity to explain why the system cannot adequately out-transition current retirement-eligible employees of the systems without the proposed program.
8. Precedent. The policy issue is whether or not there is an existing precedent for the incentive program and what is the incentive program's potential to become a precedent for extensions to other employees. While there are precedents for early retirement incentives, there are no recent (i.e., post-1993) precedents for an early retirement incentive without specific qualifications, limits, and expiration dates. The pair of Metropolitan Council early retirement incentive programs under Laws 1995, Chapter 262, Article 1, Sections 17 to 25; and Laws 1999, Chapter 222, Article 7, stand for the counter-precedent. If this proposed early retirement incentive program was enacted, there is little about the MnSCU economic or personnel circumstances that could be distinguished from another public employer when the Legislature is considering a proposed extension of this authority to another agency and the MnSCU early retirement incentive would clearly be viewed by many as a binding precedent for similar legislation.

Attachment A

Background Information on Early Retirement Incentive Programs Previously Enacted

Minnesota has utilized several early retirement incentives in connection with its public employee workforce over the past several years. Prior to 1982, there was little systematic legislative experience with early retirement incentives for Minnesota public employees other than the teacher mobility provisions of the mid-1970s. Since 1982, the following early retirement incentives have been enacted to apply to Minnesota public employees:

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Year	Citation	Coverage Group(s)	Retirement Plan Based Early Retirement Incentive	Other Employment Benefit Early Retirement Incentive
1982	Laws 1982, Ch. 522, Sec. 1 and 2	State employees and University of Minnesota employees	None	Pre-age 65 state paid health insurance coverage
1984-1987	Minnesota Statutes, Sec. 356.70	Members of MSRS-General, PERA-General, TRA, First Class Teachers	Full accrued benefit without reduction when "Rule of 85" reached	N/A
1990	Laws 1990, Ch. 591, Art. 2, Sec. 6	MSRS-General, MSRS-Correctional, State Patrol	N/A	Pre-age 65 state paid health insurance coverage
1991	Laws 1991, Ch. 345, Art. 1, Sec. 112	Various state and retirement plan employees	N/A	Pre-age 65 state paid health insurance coverage
1992	Laws 1992, Ch. 499, Art. 7, Sec. 12 and 13	Teachers	N/A	Pre-age 65 employer paid health insurance coverage
1992	Laws 1992, Ch. 513, Art. 4, Sec. 58 and 59	Various state, retirement plan, and public employees, teachers	N/A	Pre-age 65 employer paid health insurance coverage
1993	Laws 1993, Ch. 192, Sec. 108	Members of MSRS-General, PERA-General, or MERF	Additional benefit of 0.25 percent of final average salary for each year of service up to 30 years	Alternative benefit of pre-age 65 employer-paid health insurance coverage
1993	Laws 1993, Ch. 224, Art. 8, Sec. 17 and 18	Members of TRA or First Class City Teachers	Additional benefit of 0.10 percent of final average salary for each year of service up to 30 years	Additional benefit of pre-age 65 employer-paid health insurance coverage
1994	Minnesota Statutes, Sec. 122.23, Subd. 20	Teachers in consolidating school districts	Purchase of up to five additional years of service credit	Pre-age 65 employer-paid health insurance coverage, extended leaves of absence, or severance payment
1994	Laws 1994, Ch. 518	Various local government employees	Same as Laws 1993, Ch. 192, Sec. 108	Same as Laws 1993, Ch. 192, Sec. 108
1994	Laws 1994, Ch. 572, Sec. 3	Displaced higher education employees	Purchase of up to two additional years of service credit	Pre-age 65 employer-paid health insurance coverage
1995	Laws 1995, Ch. 262, Art. 1, Sec. 17-25	Metropolitan Council employees; Minnesota Historical Society employees	Additional benefit of 0.25 percent of final average salary for each year of service up to 30 years for MSRS-General, PERA-General, or MERF members and additional benefit of 0.10 percent of final average salary for each year of service up to 30 years for TRA or first class city teacher retirement fund association members	Alternative benefit of pre-age 65 employer-paid health insurance coverage
1999	Laws 1999, Ch. 222, Art. 7	Employees of the Metropolitan Council	Additional benefit of 0.25 percent of final average salary for each year of service up to 30 years	None
2002	Laws 2002, Ch. 392, Art. 14, Sec. 1	State employees	N/A	Permits voluntary leaves up to 320 hours of leave without losing seniority rights, insurance, and pension and other benefits for the period ending June 30, 2003

Year	Citation	Coverage Group(s)	Retirement Plan Based Early Retirement Incentive	Other Employment Benefit Early Retirement Incentive
2003	Laws 2003, First Special Session, Ch. 1, Art. 2, Sec. 130	State employees	N/A	State government appointing authorities may allow employees to take leaves without pay for up to 1040 hours prior to June 30, 2005. Vacation, sick leave, seniority, and health care benefits continue to accrue during the leave period in the applicable pension plan; employee and employer contributions must be made to the applicable plan. An appointing authority may, at its discretion, pay the employee contributions on behalf of the employee.
2003	Laws 2003, First Special Session, Ch. 12, Art. 1	PERA-General, PERA-P&F, PERA-Correctional	N/A	Public employees who previously worked at least half time may enter into an agreement with the employer to reduce work hour to less than half time. Contributions may be made to the applicable PERA plan as though the individual had not reduced hours. Thus, the employment reduction does not harm the individual's eventual retirement annuity. The second program involves voluntary leaves. If the individual makes the employee contribution to the applicable retirement plan during the leave, the employer must make the applicable employer contribution. Under both programs, all other benefits including health care coverage as provided under the collective bargaining agreement are retained. The programs apply to the period ending June 30, 2005. Inclusion in either program requires an agreement between the employee and employer, and the employer is authorized to designate job classifications or positions that qualify for each option.
2003	Laws 2003, First Special Session, Ch. 12, Art. 3	TRA; First Class City Teacher Retirement Fund Associations	For TRA-covered districts only, the employer may enter into agreements with the exclusive bargaining representative of the teachers in the district to cover, for specific individual teachers, all or a portion of the employee contribution to the retirement plan while the teacher is on an extended leave of absence.	School districts may enter into agreements with the exclusive bargaining representative of the teachers in the district to cover, for specific individual teachers, all or a portion of health care coverage premiums while the teacher is on an extended leave of absence.
2005	Laws 2005, Ch. 156, Art. 3, Sec. 3	State employees	N/A	State employees who previously worked at least half time may enter into an agreement with the employer to reduce work hours to less than half time. Contributions may be made to the applicable MSRS plan as though the individual had not reduced hours. Thus, the employment reduction does not harm the individual's eventual retirement annuity. Expires June 30, 2007.
2005	Laws 2005, Ch. 156, Art. 3, Sec. 4	State government appointing authorities	N/A	State government appointing authorities may allow employees to take leaves without pay for up to 1040 hours prior to June 30, 2005. Vacation, sick leave, seniority, and health care benefits continue to accrue during the leave period in the applicable pension plan; employee and employer contributions must be made to the applicable plan. An appointing authority may, at its discretion, pay the employee contributions on behalf of the employee. Expires June 30, 2007.

Year	Citation	Coverage Group(s)	Retirement Plan Based Early Retirement Incentive	Other Employment Benefit Early Retirement Incentive
2005	Laws 2005, Chapter 156, Article 3, Section 2	Employees of the Executive branch of state government; MSRS staff, Legislative Auditor staff, Metropolitan Council	N/A	An eligible employee who retires with at least five years of covered employment from a half-time or greater position, and who is eligible for an unreduced retirement annuity can accept a post-retirement employment, not to exceed half-time and representing at least a 25 percent reduction from previous work hours. The arrangement can be renewed annually up to five years. Post-retirement annuity reduction provisions are waived while in the position. Payments are made toward healthcare coverage, not to exceed 75 percent of employee-only full time employment coverage.
2005	Laws 2005, First Special Session, Ch. 1, Art. 4, Sec. 98	IRRRB	N/A	IRRRB employees age 60 or more or any age with 30 years of service can be eligible for paid health care to age 65 or cash incentives. Expires June 30, 2006.
2006	Laws 2006, Ch. 271, Art. 3, Sec. 43	Executive branch or legislative branch of state government; Board of Public Defense; Minnesota Historical Society; Minnesota State Colleges and Universities System; school districts.	\$17,000 payment, which could be used to purchase additional service credit to qualify for a "Rule of 90" retirement or to purchase an additional annuity from the MSRS Unclassified State Employees Retirement Program.	\$17,000 payment alternatively could be deposited in the Minnesota Healthcare Savings Plan.
--	Collective Bargaining Agreement	Patrol, BCA, Conservation Officers	N/A	Employer-paid health and dental insurance premiums
--	Collective Bargaining Agreement	State University Faculty	N/A	Severance payment; employer-paid health insurance premium for one year
--	Collective Bargaining Agreement	State University Administrative Personnel	N/A	Severance payment; employer-paid health insurance premium for one year
--	Collective Bargaining Agreement	Community College Faculty	N/A	Severance payment; employer-paid health insurance premium for one year
--	Personnel Policy	Displaced Higher Ed Board Excluded Administrators	N/A	Severance payment
--	Personnel Policy	Community College Unrepresented Administrators	N/A	Severance payment; employer-paid health insurance premium for one year

The various early retirement incentives have been enacted or implemented for a variety of reasons. Most of the early retirement incentives were apparently implemented to assist in resolving state budget difficulties by encouraging retirements instead of layoffs or other involuntary terminations. Those early retirement incentives were enacted not primarily to benefit public employees, but to use a potentially advantageous benefit to induce higher-paid, longer-service employees to terminate active public employment at an earlier age than they otherwise would retire. The savings that potentially will accrue to the public employer in this circumstance are dependent on the employer not filling the employment position with another employee or on the employer filling the employment position with another employee at a much smaller salary.

When a public pension plan provides an early retirement incentive, the public pension plan is fulfilling its prescribed function within the overall personnel compensation and benefit system. Public employee pension plans exist primarily to assist the public employer's personnel system by aiding in the recruitment of new public employees, the retention of existing trained and productive public employees, and the predictable systematic out-transitioning of public employees who have reached the end of their regularly expected productive working career. This is done by adopting a retirement plan that provides a sufficient post-retirement income (adequate based on pre-retirement earnings) and that is competitive with other potential employers. In providing an early retirement incentive, the public employee pension plan is emphasizing the out-transitioning function and is attempting to speed up its timing. Other employment benefit coverage, such as severance pay or employer-paid early retirement health insurance premiums, can also assist in this out-transitioning function.

1.1 moves to amend S.F. No. 1266; H.F. No. 1527, as follows:

1.2 Page 1, line 15, after "incentive." insert "The board of trustees shall file a copy of

1.3 its proposed eligibility requirements with the chairs and ranking members of the Senate

1.4 Committee on Higher Education and the Higher Education Budget and Policy Division of

1.5 the Senate Committee on Finance and with the chair and ranking members of the Higher

1.6 Education and Workforce Development Finance and Policy Division of the Finance

1.7 Committee of the House of Representatives at least 30 days before their final adoption

1.8 by the board of trustees, shall post the same document on the system website at the same

1.9 time, and shall hold a public hearing on the proposed eligibility requirements."

1.1 moves to amend S.F. No. 1266; H.F. No. 1527, as follows:

1.2 Page 1, line 16, after "board." insert "No incentive offered or paid may exceed

1.3 percent of the salary of the applicable employee."

1.1 moves to amend S.F. No. 1266; H.F. No. 1527, as follows:

1.2 Page 2, after line 4, insert:

1.3 "(g) When an incentive under this section is offered, the president of a college or
1.4 university or the chancellor, whichever applies, must file a fact sheet with the board of
1.5 trustees on the incentive offer. The fact sheet must include a summary of the rationale
1.6 for the selection of the particular position to be offered an incentive, the amount of the
1.7 incentive offer, the intention of the president or chancellor with respect to filling the
1.8 position upon its becoming vacant, the expected savings from the incentive offer over one
1.9 year, five years, and ten years, and a disclosure of any relationship between the president
1.10 of chancellor and the employee other than professional, that arguably could be viewed
1.11 by a third party as inappropriately influencing the offer."

1.12 Page 2, line 5, delete "(g)" and insert "(h)"

1.13 Page 2, line 7, delete "(h)" and insert "(i)"

1.14 Page 2, line 13, delete "(i)" and insert "(j)"

1.1 moves to amend S.F. No. 1266; H.F. No. 1527, as follows:

1.2 Page 2, after line 16, insert:

1.3 "(j) A person who accepts an early separation incentive under this section may not
1.4 be directly or indirectly reemployed by or retained as a consultant by the Minnesota State
1.5 Colleges and Universities System for a period of five years after the incentive is paid."

