



**S.F. 1311**  
(Hann)

**H.F. 1409**  
(Loon)

**Executive Summary of Commission Staff Materials**

*Affected Pension Plan(s):* PERA-General  
*Relevant Provisions of Law:* Special Law Provision  
*General Nature of Proposal:* Permits Hennepin County employee to apply for disability benefit by waiving the minimum service requirements.  
*Date of Summary:* March 9, 2009

**Specific Proposed Changes**

- Authorizes a Hennepin County employee to apply for disability benefits from the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), notwithstanding a requirement in PERA disability law that at least two years of service must be provided after returning to PERA-covered employment before an individual is permitted to apply for disability benefits.

**Policy Issues Raised by the Proposed Legislation**

1. Justification for Waiver.
2. Self-Help Remedy.
3. Likelihood of Successful Disability Determination.
4. Limited Size of Benefit.
5. Cost to PERA.
6. Actuarial Condition of PERA.

**Potential Amendments**

There are no Commission staff amendments.



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Ed Burek, Deputy Director *EB*  
RE: S.F. 1311 (Hann); H.F. 1409 (Loon): PERA-General; Waiver of Minimum Return to Employment Required for Disability Application; Certain Hennepin County Employee  
DATE: March 9, 2009

Summary of S.F. 1311 (Hann); H.F. 1409 (Loon)

S.F. 1311 (Hann); H.F. 1409 (Loon) authorizes Ms. Beth Sulciner to apply for disability benefits from the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), notwithstanding a requirement in PERA disability law that at least two years of service must be provided after returning to PERA-covered employment before an individual is permitted to apply for disability benefits.

Public Pension Complaint of Beth Sulciner

Ms. Beth Sulciner has several periods of public employment covered by PERA-General, giving her several years of service credit in that plan. From September 11, 1995, to August 6, 1996, she was employed by the Anoka-Hennepin school district. In 2000, she became employed by Hennepin County and remained in that employment through December 2004. She was again employed by Hennepin County April 2, 2007, with the last position held being that of Principal Child Support Officer.

Ms. Sulciner has had several leaves from public employment including a maternity leave, a leave due to injury requiring surgery, and leaves relating to more serious medical problems. Ms. Sulciner has stated that after starting Hennepin County employment in 2000, she was diagnosed with a brain tumor in 2001 and had surgery. Sometime during 2008 she was again diagnosed with a brain tumor and went on leave, having surgery for that tumor in December 2008. She remains on leave at the current time. Ms. Sulciner wanted to apply in August or September 2008 for disability under PERA's disability provision (Minnesota Statutes, Section 353.33) but discovered that she is not eligible to apply because of a requirement that if there has been any termination of employment, the individual must return to employment for at least two years before the individual is eligible to apply for PERA-General disability benefits. Ms. Sulciner's most recent employment with Hennepin County started in April 2007. She does not have two years of service since that date, so she is prohibited from applying for PERA-General disability. Ms. Sulciner has indicated that she currently is applying for Social Security disability benefits.

Background Information

- PERA-General Disability Provision background information can be found in **Attachment A**.
- PERA-General Medical Leaves of Absence. Individuals on a medical leave without pay can obtain service credit for the leave if the requirements stated in Minnesota Statutes, Section 353.02, Subdivision 16, Paragraph (a), Clause (4), and Section 353.0161, are met. To use this provision, the individual must return to public service for a minimum of three months to be eligible to make payment for the leave. Minnesota Statutes, Section 353.0161, specifies the payment terms, basically the equivalent of employee and employer contributions plus interest if payment is made within one year, or full actuarial value if payment is made after one year.
- Service Credit for Periods of Workers' Compensation. If an individual is receiving workers' compensation and either no salary or reduced salary, the individual can receive service credit and full salary credit under another PERA provision, Minnesota Statutes, Section 353.01, Subdivision 40. To receive the service and salary credit, that provision allows the individual to make contributions based on the difference between the salary received, if any, and the salary the individual received prior to the period of workers' compensation payments, with interest, within one year of the time the workers' compensation payments end, or within 20 days of termination of public service whichever is earlier.

Discussion and Analysis

S.F. 1311 (Hann); H.F. 1409 (Loon) authorizes Ms. Beth Sulciner to apply for disability benefits from the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) notwithstanding a requirement in PERA law that at least two years of service must be provided after returning to PERA-covered employment before an individual is permitted to apply for disability benefits.

The two-year requirement found in the PERA disability provision, Minnesota Statutes, Section 353.33, Subdivision 1, is most likely intended to protect the plan from harm. Public plan disability provisions are intended to provide disability benefits to those who become disabled during the time period in which the individual is a public employee providing public service. The two-year return to public employment requirement is a way to keep individuals with a serious injury or illness which began while the individual was not a public employee from returning to employment covered by the plan solely to receive disability benefits from that plan. The two-year period may also ensure that individuals who are awarded disability benefits have provided a reasonable amount of recent public service to justify the payment of a benefit.

Some form of two-year return to work requirement is found in all major public plans. The PERA provision is Minnesota Statutes, Section 353.33, Subdivision 1. A similar Minnesota State Retirement System (MSRS) provision is in Minnesota Statutes, Section 352.113, Subdivision 1. The Teachers Retirement Association (TRA) provision is Minnesota Statutes, Section 354.48, Subdivision 1, and the first class city teachers plan provision is Minnesota Statutes, Section 354A.36, Subdivision 1.

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

1. Justification for Waiver. The Commission may wish to decide through testimony whether a waiver is justified in this case. An issue is whether this is the type of circumstance which the prohibition in law is intended to restrict, or whether the circumstances are sufficiently unique and compelling that a waiver is appropriate. The Commission may also wish to consider that permitting waivers may lead to other special law requests and to an undermining of the prohibition.
2. Self-Help Remedy. The issue is whether this legislation is needed at all, given a possible self-help remedy. The individual began the most recent employment period on April 2, 2007. If the individual can obtain service credit for all of that period by taking advantage of leave of absence service credit purchase provisions in PERA law, in April 2009 the individual would have two years of service credit since the April 2007 reemployment date, and this bill would not be necessary.
3. Likelihood of Successful Disability Determination. The issue is whether there is reasonable likelihood that PERA's staff and board will conclude that this individual meets the total and permanent standard in PERA's law to qualify for disability. The bill does not grant the individual a disability; it merely permits the individual to apply for disability so that determination can be made by PERA. While the ultimately decision will be PERA's, if the Commission concludes that it is highly unlikely that this person would qualify under PERA's total and permanent standard, that would be an argument for not recommending the bill to pass.
4. Limited Size of Benefit. An issue is that the benefit may not be sufficient to provide much meaningful assistance, given other sources of income this individual and this individual's family may have. If the benefit is not significant, there may be little need for the bill or little justification for granting a waiver of normal application requirements. The individual does not have many years of service, and a disability benefit is computed like a retirement annuity (which is based on salary and service credit), but without any reduction due to early receipt. The PERA executive director should be able to provide an estimate of the monthly benefit amount.
5. Cost to PERA. Any benefit would impose a cost on PERA. That cost, in terms of the total reserves needed to provide the benefit, should be available from PERA's executive director.
6. Actuarial Condition of PERA. The issue is PERA's current actuarial condition as indicated in the most recent actuarial valuation:

	2008		2008	
<u>Membership</u>				
Active Members	145,238	Normal Cost	7.74%	\$383,111,000
Service Retirees	54,855	Administrative Expenses	0.19%	\$9,410,000
Disabilitants	2,046	Normal Cost & Expense	7.93%	\$392,521,000
Survivors	6,979			
Deferred Retirees	42,308	Normal Cost & Expense	7.93%	\$392,521,000
Nonvested Former Members	116,805	Amortization	6.29%	\$311,528,000
Total Membership	368,231	Total Requirements	14.22%	\$704,049,000
<u>Funded Status</u>				
Accrued Liability	\$17,729,847,000	Employee Contributions	6.00%	\$297,220,000
Current Assets	\$13,048,970,000	Employer Contributions	6.63%	\$328,211,000
Unfunded Accrued Liability	\$4,680,877,000	Employer Add'l Cont.	0.00%	\$0
Funding Ratio	73.60%	Direct State Funding	0.00%	\$0
		Other Govt. Funding	0.00%	\$0
		Administrative Assessment	0.00%	\$0
		Total Contributions	12.63%	\$625,431,000
<u>Financing Requirements</u>				
Covered Payroll	\$4,952,751,000	Total Requirements	14.22%	\$704,049,000
Benefits Payable	\$824,372,000	Total Contributions	12.63%	\$625,431,000
		Deficiency (Surplus)	1.59%	\$78,618,000

## Attachment A

### Background Information on PERA-General Disability

The General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) is a general employee plan, and its disability provision, which specifies standards, application procedures, and benefit amounts, is Minnesota Statutes, Section 353.33. General employee plans use a total and permanent disability standard, meaning that to be considered eligible for disability benefits under the plan the individual must be unable to perform any gainful employment, for a minimum period of at least one year, due to a medically determined physical or mental impairment. The individual must apply for PERA-General disability on forms provided by the Public Employees Retirement Association (PERA), must provide a report signed by a licensed physician, psychologist, or chiropractor to substantiate the disability claim, and must further authorize the release of any additional medical reports or documentation requested by PERA's executive director. The application could be made while the individual remains on medical leave or vacation, but the disability benefit would not be effective and could not commence while the individual is receiving salary or comparable compensation from the employer.

In PERA-General, individuals are permitted to make a disability benefit application up to three years after termination of covered service. This is considerably longer than in the similar Minnesota State Retirement System General Plan (MSRS-General) or in the statewide Teachers Retirement Association (TRA), which have a 180-day limit, but is shorter than the first class city teacher plans, which have no specified time limit.

PERA, like all the Minnesota public plans, provides disability benefits for total and permanent disability resulting from injury or illness that occurred while the individual is or was a plan active member. Therefore, an individual applying for PERA-General disability benefits would need to provide credible medical documentation that the disabling injury or disease occurred while the individual was a PERA active member. This becomes increasingly difficult as the time period between the end of PERA-covered employment and the application date lengthens. A medical professional may certify that the individual is now totally and permanently disabled, but that professional, and PERA and its medical advisor, may be unable to adequately substantiate that the individual met that standard several years previously, while the individual was an active PERA member, or that significant pre-existing conditions were evident at that earlier time period.

The PERA-General disability benefit is computed like a retirement annuity but without any reduction due to receipt prior to normal retirement age. If an individual's high-five average salary was \$20,000, and the individual had ten years of PERA-General-covered employment, the benefit would be \$3,400 per year. This is obtained by multiplying the high-five average salary (the average salary in the five consecutive years that provide the highest average) times that accrual rate per year (which in PERA-General would be 1.7 percent per year) times the length of covered service. Rather than select an annuity covering only the life of the PERA member, the individual is permitted to elect an optional annuity, called a joint-and-survivor annuity, which is often used to cover the life of the surviving spouse in addition to that of the primary annuitant. This would require a reduction in the monthly annuity amount, in recognition that the benefit may continue for a longer period than if the annuity is solely to cover the life of the disabled or retired PERA member. PERA-General disability benefits are subject to periodic medical review to determine whether the individual continues to meet PERA's disability standards. Benefits terminate if the individual is no longer considered to be disabled.

1.1 A bill for an act  
1.2 relating to retirement; permitting a certain Hennepin County employee to apply  
1.3 for disability by waiving minimum service requirements.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. HENNEPIN COUNTY EMPLOYEE WAIVER OF SERVICE  
1.6 REQUIREMENT TO APPLY FOR DISABILITY.

1.7 (a) Notwithstanding Minnesota Statutes, section 353.33, subdivision 1, an eligible  
1.8 person specified in paragraph (b) is authorized to submit an application for disability  
1.9 benefits from the general employees retirement plan of the Public Employees Retirement  
1.10 Association.

1.11 (b) An eligible person is a person who:

1.12 (1) was born May 6, 1972;

1.13 (2) was employed by Independent School District No. 11, Anoka-Hennepin, from  
1.14 September 11, 1995, to August 6, 1996;

1.15 (3) was employed by Hennepin County from July 31, 2000, to December 30, 2004;

1.16 (4) was again employed by Hennepin County starting April 2, 2007, with the most  
1.17 recent employment position being a principal child support officer;

1.18 (5) has service credit with the Public Employees Retirement Association due to the  
1.19 employment under clauses (2), (3), and (4); and

1.20 (6) has had several leaves from Hennepin County employment of a medical-related  
1.21 nature.

1.22 (c) If an eligible person under paragraph (b) files a valid application, the executive  
1.23 director of the Public Employees Retirement Association shall determine whether that  
1.24 eligible person qualifies to receive a disability benefit under the laws and procedures

**S.F. No. 1311, as introduced - 86th Legislative Session (2009-2010) [09-2762]**

2.1 applicable to the general employees retirement plan of the Public Employees Retirement  
2.2 Association.

2.3 (d) This section expires one year after the effective date of this section.

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