



S.F. xxxx

H.F. 347
(Lenczewski)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS-General
Relevant Provisions of Law: Minnesota Statutes, Section 14.48, Subdivision 4
General Nature of Proposal: Eliminates mandatory retirement age for administrative law judges and workers' compensation judges
Date of Summary: March 3, 2009

Specific Proposed Changes

- Removes any mandatory retirement age for administrative law judges and workers' compensation judges (rather than requiring the judge retire by age 70).

Policy Issues Raised by the Proposed Legislation

1. Whether there is sufficient need for the proposed change.
2. Possible lack of support by the Office of Administrative Hearings.
3. Removing any maximum age versus resetting the maximum age.
4. Creating inconsistency with Judges Retirement Plan mandatory retirement age.
5. Lack of legislative action on 2007-2008 bill to revise Judges Retirement Plan mandatory retirement age.
6. Lack of an effective date.

Potential Amendments

- H0347-1A adds an effective date, making the provision effective the day following final enactment.
- H0347-2A revises the bill by changing the mandatory retirement age from age 70 to an age to be determined by the Commission, by filling in the blank.
- H0347-3A, an alternative to H0347-2A, revises the mandatory retirement age from age 70 to an age to be determined by the Commission for judges employed by the Office of Administrative Hearings and for judges of the courts. Before considering this amendment, the Commission may wish to determine through testimony or other means whether this amendment is supported by the judicial branch. The lack of action on the 2007-2008 bill to revise the mandatory retirement age for the judicial branch suggests there is little interest in that change.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director EB
RE: S.F. xxxx; H.F. 347 (Lenczewski): Eliminating Mandatory Retirement Age for Administrative Law Judges and Compensation Judges
DATE: March 3, 2009

Summary of S.F. xxxx; H.F. 347 (Lenczewski)

S.F. xxxx; H.F. 347 (Lenczewski) amends Minnesota Statutes, Section 14.48, Subdivision 4, by striking a requirement that administrative law judges and workers' compensation judges must retire by age 70, thus eliminating any mandatory retirement age.

Background Information

The Office of Administrative Hearings was created in 1976 to provide an impartial hearing process for individuals who disagree with actions taken by government. The office is an independent state agency in the Executive Branch. The office hears and decides cases in three main areas: 1) Administrative Procedures Act state agency contested cases and rulemaking hearings, 2) local government licensing and personnel cases, and 3) workers' compensation benefit hearings. Workers' compensation judges handle the workers' compensation hearings and administrative law judges handle the remaining proceedings. All of these individuals are attorneys with extensive legal backgrounds and practical experience.

The Judges Retirement Plan, administered by the Minnesota State Retirement System (MSRS), covers judges working in the court systems covered by the judicial branch of state government. In contrast, administrative law judges and workers' compensation judges are not employees of the court. They work for the Executive Branch and are covered by a different plan, the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General).

Additional information on the mission and organization of the Office of Administrative Hearings, downloaded from its website, is attached.

Discussion and Analysis

The bill removes any mandatory retirement age for administrative law judges and workers' compensation judges, rather than requiring the judge retire by age 70, and raises the following pension policy issues:

1. Need for the Change. The issue is whether there is sufficient need for the proposed change. The remaining existing law language in the bill (page 1, lines 8 to 14) indicates that the Chief Administrative Law Judge may appoint retired administrative law judges or compensation judges to hear cases. These individuals would be paid the same as a temporary administrative or compensation judge. If the existing law language remains in place, any administrative or compensation judge who is age 70 or older must retire, but may continue providing some service if the individual is appointed to cases by the Chief Administrative Law Judge.
2. Possible Lack of Support by the Office of Administrative Hearings. The Commission may wish to determine through testimony the extent of support by the Office of Administrative Hearings for this bill. An individual I spoke with at the Office of Administrative Hearings claimed the administrative law judges do not support the bill. In his view the present law age 70 mandatory retirement provision serves a useful screening function. Those who can no longer effectively preside over cases are retired by age 70. Those who remain capable of effectively presiding over cases at age 70 or older must also retire, but can continue providing service if assigned to cases by the Chief Administrative Law Judge. Although the bill could be revised to remove the maximum retirement age just for compensation judges while leaving administrative judges unchanged, that may not be practical. If age 70 is a reasonable mandatory retirement age for these employees, presumably it makes sense for all the individuals retained as judges by the Office of Administrative Hearings, both the administrative law judges and the compensation judges. It may not be practical to waive a mandatory age requirement for one and not the other.

3. Removing Any Maximum Age versus Resetting the Maximum Age. If the Commission concludes that some change is appropriate, an alternative for consideration is to increase the maximum age from age 70 to a somewhat higher age, rather than eliminating any mandatory retirement age.
4. Creating Inconsistency with Judges Plan Mandatory Retirement Age. The mandatory retirement age for judges covered by the judicial branch is age 70. This is found in a Judges Retirement Plan provision, Minnesota Statutes, Sections 490.121, Subdivision 21d. The proposed change in this bill for administrative law judges and compensation judges will cause these judges to have a different mandatory retirement age than judges in the judicial branch.
5. Lack of Legislative Action on a Prior Bill to Revise Judges Plan Mandatory Retirement Age. The Commission may wish to consider that a recent bill to revise the mandatory retirement age for judges in the judicial branch from age 70 to age 75 was not enacted. That bill was 2007-2008 S.F. 1708 (Latz); H.F. 1647 (Simon): Increasing judges' mandatory retirement age to age 75. The bill was introduced in 2007 and was not heard by any legislative committee.
6. Lack of an Effective Date. The Commission may wish to consider adding an effective date.

Potential Amendments for Commission Consideration

- Amendment H0347-1A adds an effective date, making the provision effective the day following final enactment.
- Amendment H0347-2A revises the bill by changing the mandatory retirement age from age 70 to an age to be determined by the Commission, by filling in the blank.
- Amendment H0347-3A, an alternative to H0347-2A, revises the mandatory retirement age from age 70 to an age to be determined by the Commission for judges employed by the Office of Administrative Hearings and for judges of the courts. Before considering this amendment, the Commission may wish to determine through testimony or other means whether this amendment is supported by the judicial branch. The lack of action on the 2007-2008 bill to revise the mandatory retirement age for the judicial branch suggests there is little interest in that change.

THE OFFICE OF ADMINISTRATIVE HEARINGS

Background and Mission

The Minnesota Office of Administrative Hearings was established in 1976 to provide a fair, prompt and impartial hearing process for citizens who disagree with actions taken by government. The Office is an independent state agency. It is one of 25 so-called "central panel" hearing agencies across the nation. Prior to 1976, hearing officers presiding at contested ("trial type") cases were employees of the agency involved in the case. The 1975 legislature reform eliminated this appearance of impropriety in contested cases and also gave the Office a role in controversial rulemaking hearings in order to ensure meaningful public participation. Workers' Compensation Judges were transferred to the Office in 1982. The Office hears and decides cases in three main areas:

- o Administrative Procedure Act (APA) state agency contested cases and rulemaking hearings.
- o Local government licensing and personnel cases.
- o Workers' Compensation benefit hearings.

All of these proceedings are conducted by Administrative Law Judges and Workers' Compensation Judges in a manner similar to what occurs in a court of law. However, these judges are members of the Executive Branch of government rather than the Judicial Branch. All are attorneys with extensive legal backgrounds and practice experience. The Administrative Law Judges are organized into groups based upon subject matter expertise so that only certain Administrative Law Judges are assigned to particular cases such as utility rates, environmental, special education, disability benefits, or mediation. Only Workers' Compensation Judges hear workers' compensation benefit cases.

It is not appropriate to contact a judge either by telephone or in writing concerning the merits or substance of your case without the other party or parties being involved. It is permissible to contact a judge without notice to the other party concerning procedural matters only. In addition to fair and knowledgeable decisionmaking, the Office has stressed the timely conduct of hearings and issuance of decisions. In administrative law matters, the average time to issue a decision is 20 days after the close of the record. In workers' compensation matters, decisions are issued in an average of 35 days after the hearing.

OAH Organization

The Office of Administrative Hearings is headed by a Chief Administrative Law Judge. The Chief Administrative Law Judge must be learned in the law, is appointed by the Governor for a six-year term, and must be confirmed by the Senate. The Office has two divisions. The Workers' Compensation Division employs 29 Workers' Compensation Judges. The Administrative Law Division hears state agency Administrative Procedure Act cases and local government cases. OAH employs 7 full-time Administrative Law Judges and contracts with 5 part-time Administrative Law Judges. The majority of the part-time Administrative Law Judges are situated in greater Minnesota. The central office, with 42 support staff, is located in Minneapolis.

There is a Workers' compensation satellite office in Duluth, where three Workers' Compensation Judges are stationed. A Workers' Compensation Judge is also stationed in Detroit Lakes. Additionally, full-time Workers' Compensation Judges and Administrative Law Judges travel throughout the state of Minnesota to conduct hearings. Except for workers' compensation matters, OAH bills each government unit for which it conducts hearings at an hourly rate for time expended in conducting hearings, traveling to the hearing location and writing a decision. The Workers' Compensation Division is funded by the Special Compensation Fund, which derives its revenue from a percentage fee of Workers' Compensation insurance premiums paid by employers.

OAH Jurisdiction

Approximately 6,200 workers' compensation cases are referred to OAH each year. Approximately 4,600 cases are settled prior to hearing in part through the use of "settlement weeks". Approximately 1,600 cases require a full hearing and a written decision each year. OAH schedules approximately 600 contested cases for state agencies and local government and issues approximately 250 final or recommended decisions in those cases. Twenty-five contested rulemaking hearings are conducted in an average year with a written report prepared by the Administrative Law Judge for each hearing. OAH also reviews all rules adopted without a hearing for legality. OAH does not hear reemployment or welfare benefit cases.

Examples of Administrative Procedure Act contested case hearings for state agencies include the following:

Health

- o Nursing home penalty assessments
- o Nursing home discharge
- o WIC program terminations

Pollution Control Agency

- o Permits for air or water discharge
- o Enforcement action
- o Hazardous waste citations

Human Services

- o Day care and foster care licenses
- o Reimbursement rates for nursing homes

Veterans Affairs

- o Hiring, demotion and removal of veterans in public employment

Public Utilities Commission

- o Rate-setting for electricity, telephone and natural gas
- o Resolving service areas disputes
- o Certificates of Need for major energy projects

Natural Resources

- o Alterations of wetlands
- o Permits to work in public waters
- o Appeals of trespass citations

Human Rights

- o Discrimination in employment, housing and public accommodations

Labor and Industry

- o OSHA penalty citations

Transportation

- o Railroad clearance variances
- o Appeals of relocation awards

All State Agencies

- o Resolving personnel disputes over suspension, demotion or removal
- o Licensing actions

How Are Hearings Referred to OAH?

For Administrative Procedure Act cases, state agencies are either required by law to set up an APA hearing with an Administrative Law Judge presiding, or are required to offer a citizen affected by state agency action an APA hearing. When OAH receives a request to assign an Administrative Law Judge, a judge is selected based upon expertise and availability, for the preferred hearing dates. The agency is then advised of the ALJ appointed and it sends out a Notice of Hearing to the parties with the hearing date and the name of the Administrative Law Judge. For rulemaking proceedings, a hearing with an ALJ is conducted only when 25 people request one, or if the agency decides to conduct a hearing.

Local government, such as cities, counties and school districts, are not required to use Administrative Law Judges, but often contract with the Office to conduct hearings such as public employee discipline matters, code enforcement or municipal licensing cases. OAH does not have authority to initiate an administrative law case itself. Workers' compensation matters are referred to the Office from the Department of Labor and Industry, which is where an injured worker initially files a petition for benefits.

The Nature of Administrative Hearings

The hearings tend to be less formal than court proceedings. However, the amount of formality and process for each hearing will depend on the nature of the case. The length and complexity of hearings range from a fifteen minute tax certificate revocation case without attorneys to a multi-week utility rate hearing with several parties all represented by attorneys. While court evidentiary rules are not directly applicable in administrative proceedings, they may be used as guidelines. At the hearing, each party presents his or her case through testimony or written exhibits. Each party may be represented by an attorney, may bring in witnesses or ask that witnesses be subpoenaed to the hearing. A record is kept of all proceedings at the hearing either on tape or by a court reporter. Many parties represent themselves in administrative hearings depending on the complexity of the matter.

Once the hearing is concluded, the judge reviews the evidence and issues a written decision. This decision is based only on the evidence and testimony in the record. The judge produces either a final decision, binding on both parties, or a recommended decision, depending on the type of case involved. Final decisions are made in workers' compensation cases. Where a recommended decision is prepared, the government agency involved makes the final decision. Final decisions are appealable to the Minnesota Court of Appeals for administrative law cases, and to the Workers' Compensation Court of Appeals for workers' compensation matters. The final decision or recommended decision will contain information on how to file an appeal or how to file exceptions if the party disagrees with the findings.

Conclusion

The Office of Administrative Hearings is committed to providing Minnesota's citizens and businesses with a fair and expeditious hearing process, which guarantees their due process rights and ensures their participation in state agency action affecting their lives. An administrative hearing provides the opportunity to appear before an Administrative Law Judge or a Workers' Compensation Judge to obtain an unbiased and objective review of the action in question. To find out more about the Office of Administrative Hearings, contact:

Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **1647**

March 5, 2007

Authored by Simon and Berns

The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to courts; raising the mandatory retirement age for judges; amending
1.3 Minnesota Statutes 2006, section 490.121, subdivision 21d.

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

1.5 Section 1. Minnesota Statutes 2006, section 490.121, subdivision 21d, is amended to
1.6 read:

1.7 Subd. 21d. **Mandatory retirement date.** "Mandatory retirement date" means the
1.8 last day of the month in which a judge has attained ~~70~~ 75 years of age.

1.9 **EFFECTIVE DATE.** This section is effective July 1, 2007.

1.1 moves to amend S.F. No.; H.F. No. 347, as follows:

1.2 Page 1, after line 14, insert:

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

- 1.1 moves to amend S.F. No.; H.F. No. 347, as follows:
- 1.2 Page 1, line 7, reinstate the stricken language and delete the new language
- 1.3 Page 1, line 8, reinstate everything before "~~70~~:" and after "~~70~~" insert "..."and
- 1.4 reinstate ":-"

1.1 moves to amend S.F. No.; H.F. No. 347, as follows:

1.2 Page 1, line 7, reinstate the stricken language and delete the new language

1.3 Page 1, line 8, reinstate everything before "70:" and after "70" insert "..."and
1.4 reinstate "-"

1.5 Page 1, after line 14, insert:

1.6 "Sec. 2. Minnesota Statutes 2008, section 490.121, subdivision 21d, is amended to read:

1.7 Subd. 21d. **Mandatory retirement date.** "Mandatory retirement date" means the
1.8 last day of the month in which a judge has attained ~~70~~ ... years of age.

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

1.10 Amend the title accordingly

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE NO. **347**

January 29, 2009

Authored by Lenczewski

The bill was read for the first time and referred to the Committee on State and Local Government Operations Reform,
Technology and Elections

1.1 A bill for an act
1.2 relating to state government; eliminating mandatory retirement age for
1.3 administrative law judges and compensation judges; amending Minnesota
1.4 Statutes 2008, section 14.48, subdivision 4.

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

1.6 Section 1. Minnesota Statutes 2008, section 14.48, subdivision 4, is amended to read:

1.7 Subd. 4. ~~Mandatory retirement~~ Appointment of retired judge. ~~An administrative~~
1.8 ~~law judge and compensation judge must retire upon attaining age 70.~~ The chief
1.9 administrative law judge may appoint a retired administrative law judge or compensation
1.10 judge to hear any proceeding that is properly assignable to an administrative law judge
1.11 or compensation judge. When a retired administrative law judge or compensation judge
1.12 undertakes this service, the retired judge shall receive pay and expenses in the amount
1.13 payable to temporary administrative law judges or compensation judges serving under
1.14 section 14.49.