TO:	Members of the Legislative Commission on Pensions and Retirement
FROM:	Rachel Barth, Deputy Director
RE:	H.F. 1919 (Daniels); S.F. 1972 (Lourey): MSRS-General; Service Credit Purchase for Five Correction Counselor 1 Trainees
DATE:	March 19, 2016

Summary of H.F. 1919 (Daniels); S.F. 1972 (Lourey)

H.F. 1919 (Daniels); S.F. 1972 (Lourey) permits five current state employees to purchase service credit from the general state employees retirement plan of the Minnesota State Retirement System (MSRS-General) for the two months they were Correction Counselor 1 Trainees. The bill requires the five employees to pay the member contributions they would have made in 1989, plus interest, and the Department of Corrections (DOC) to pay the balance of the full actuarial value required under MN Stat. § 356.551. If all parties pay the required amounts, the five employees' start dates of MSRS-General membership will move from August 1989 to June 1989, which will make them eligible for the Rule of 90 early normal retirement provision.

Background Information

The five employees were Correction Counselor 1 trainees from June 1989 to August 1989. As trainees, they were excluded from MSRS-General coverage under MN Stat. 1988 § 352.01, subd. 2b, para. 21 and did not become MSRS members until they were hired in their full-time corrections counselor positions in August 1989. Therefore, the employees were not eligible for the Rule of 90 since their MSRS membership start date was after June 30, 1989. The employees claim that during their training, the DOC trainer informed them that they would be eligible for the Rule of 90, which they relied on. However, neither the DOC nor MSRS provided further information or benefit statements stating that the employees were eligible for the Rule of 90. MSRS informed the employees that they were not eligible for the Rule of 90 because they were not contributing members until after June 30, 1989.

The employees requested additional service credit from MSRS, which the MSRS executive director denied in April 2013. The employees appealed to the MSRS board of directors in October 2014. The board upheld the executive director's determination, because the employees period of time as trainees did not fall under the exception in MN Stat. 1988 § 352.01, subd. 2a, para. 10, which states that trainees are included in MSRS coverage if they are "performing the duties of the classified position for which they will be eligible to receive immediate appointment at the completion of the training period." During the training period, the employees spent a large portion of time in the classroom and touring facilities, were paid less than half of the hourly wage of a corrections counselor, performed duties under the supervision of full-time counselors, and not all trainees were hired as counselors at the conclusion of the training period. The board concluded that the employees were learning how to perform the duties, but did not actually perform those duties, and therefore their time as trainees did not fall under the exception.

The employees appealed the board's decision to the Minnesota Court of Appeals. On August 17, 2015, the court held that the board's decision to deny the employees' request for additional service credit was supported by substantial evidence that the employees did not fall under the statutory trainee exception. The court also held that MSRS does not have to provide the Rule of 90 to the employees because their DOC trainer allegedly stated they would be eligible. The court stated that, assuming the DOC trainer did make such a statement, he or she merely made a mistake and did not have the authority to change state statute. The court affirmed the MSRS board's decision that the employees are ineligible for the Rule of 90.

Policy Considerations

H.F. 1919 (Daniels); S.F. 1972 (Lourey) raises the following pension and public policy issues:

1. No Evidence of Error. Based on the facts presented in the Court of Appeals decision, there does not appear to be evidence of an error. Under the applicable statute, the employees were excluded from MSRS coverage because they were trainees and did not become eligible for MSRS coverage until after June 30, 1989. Based on the information the MSRS board and Court of Appeals relied on, the employees training period does not satisfy the statutory exception that provides MSRS coverage to trainees, because the employees did not perform the duties of a corrections counselor during the training period. The employees were therefore not erroneously excluded from coverage by the DOC or MSRS.

   The employees also assert that they relied on the DOC trainer's statement that their period of training would qualify them for the Rule of 90 and should therefore be eligible. The employees have not provided any documents from the DOC or MSRS that state that they are eligible for Rule of 90. If the DOC did make such a statement, it was a misinterpretation of the statute, not wrongful conduct, and as the Court of Appeals noted, the DOC does not have the authority to provide a retirement benefit that is contrary to statute. Employing units do not always properly interpret the applicable retirement law and approval of the proposed legislation based on a misstatement of one DOC trainer and alleged reliance without evidence of an actual employer or retirement plan error could set an inappropriate precedent.

2. Precedent and the Appeals Process. There does not appear to be precedent for providing retirement coverage for a group or individual for service ineligible for coverage without evidence of retirement plan or employer error. There are past examples of the Legislative Commission on Pensions and Retirement (LCPR) approving legislation that permitted an individual to purchase service credit for periods of employment that were ineligible for public retirement plan coverage and therefore gain eligibility for the Rule of 90. Those cases presented employer or retirement plan errors that involved either erroneous coverage exclusion that the statute provided for or consistent written and spoken communication to the group or individuals that they were eligible for the Rule of 90 from the retirement plan. Based on the facts presented to the MSRS board and Court of Appeals, the employees' training period did not satisfy the requirements in the statutory exception that would have provided them with retirement coverage. Also, although the employees claim that the DOC trainer informed them that they were eligible for the Rule of 90, there is no evidence of consistent written or spoken communication from the DOC or MSRS stating that the employees were eligible. Allowing the five employees to purchase service credit for a period of employment ineligible for MSRS coverage and gain Rule of 90 eligibility without evidence of error would set a new precedent.

If enacted, the proposed legislation will circumvent the decisions of the MSRS board and Minnesota Court of Appeals. The employees participated in the appeals process provided in MN Stat. § 356.96, which allows retirement plan members to appeal the executive director's decision to the applicable retirement board, and eventually to the Court of Appeals. The intent behind the appeals procedure is to provide members the opportunity to present their side of a situation and result in a final decision regarding the issue. The employees have had three opportunities to present their side of the situation, none of which have resulted in a favorable decision for them, and now they are asking the legislature to provide a fourth opportunity through special legislation. If the proposed legislation is approved, it will set a precedent that will undermine the appeals process and any decision made by the executive director, retirement plan board, and the Court of Appeals that is not favorable to a member.

3. Cost. The proposed legislation requires the employees to pay the equivalent member contributions they would have paid for the two month period, plus interest, and the DOC must pay the balance of the full actuarial cost. The member contributions, plus interest, for two months will be a relatively minor portion of that cost. However, the actuarial cost to MSRS for providing the Rule of 90 to the five employees will be a very large cost. The DOC will bear a majority of a large cost for what the MSRS board and Court of Appeals has determined to not be an employer error that merits a remedy.