



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Rachel Barth, Deputy Director  
RE: H.F. 2560 (Zerwas); S.F. xxxx: PERA-P&F; Permitting Payment of Duty Disability and Rescission of Retirement Annuity  
DATE: March 21, 2016

### Summary of H.F. 2560 (Zerwas); S.F. xxxx

H.F. 2560 (Zerwas); S.F. xxxx permits Lawrence Farber to rescind his decision to receive a retirement annuity he began receiving on January 1, 2009, and instead receive a duty disability benefit from the Public Employees Police and Fire Retirement Plan (PERA-P&F), effective retroactively January 1, 2009. In order to receive a PERA-P&F duty disability benefit, Mr. Farber must present evidence to the PERA executive director that demonstrates he would have been entitled to receive a duty disability benefit if he had applied and that he was not aware of his entitlement to receive such a benefit due to a medical misdiagnosis.

### Background Information and Considerations

Lawrence Farber is a retired police officer from the City of Fridley and retired member of the PERA-P&F plan. Mr. Farber retired on December 31, 2008 and began collecting retirement benefits on January 1, 2009. He was 51 years old when he retired, which reduced his benefit to account for retiring before the normal retirement age of 55. Mr. Farber named his then-spouse as the 100% joint annuitant and is currently receiving a monthly benefit of \$4,203. In 2013, Mr. and Mrs. Farber divorced and Mrs. Farber now receives \$1,849 per month pursuant to their divorce decree and will receive 100% of the benefit upon Mr. Farber's death. Mr. Farber was also a County Commissioner from 2009 to 2013.

Mr. Farber states that he injured his shoulder while on duty in October 2006 and he reported his injury per department policy. He began to feel more pain in the spring of 2007, which led to two surgeries. Mr. Farber completed rehabilitative therapy in 2008 and was told his shoulder was fine. He was released to work in April 2008 and retired that December. Two years later, Mr. Farber's shoulder began to cause pain and an MRI revealed that he had two ruptured discs in his neck, which resulted in neck surgeries in 2011, 2012, and 2014.

Mr. Farber claims that he contacted PERA many times about changing his retirement annuity to a disability benefit. 2013 is the first, and only, time PERA has a record of Mr. Farber inquiring about PERA-P&F disability benefits. He specifically requested information on the MN Stat. Chapter 299A provisions dealing with continued employer-paid health insurance coverage for police officers injured in the line of duty. Mr. Farber made a couple of workers compensation claims while he was an active police officer, but there is no documentation that those injuries contributed to his retirement or prevented him from performing the duties of a police officer at the time he retired. Mr. Farber reached a settlement with the City of Fridley for workers compensation that stipulated that the date of the onset of Mr. Farber's disability was August 1, 2015, stemming from the injury sustained in October 2006.

Under MN Stat. § 353.01, subd. 41, a duty disability is defined as a physical condition that prevents a PERA-P&F member from performing normal employment duties due to an injury incurred during the performance of those duties, which was in effect when Mr. Farber retired. In order to receive a duty disability, a member must provide evidence that the disability occurred while on the job and that the disability is preventing them from performing normal employment duties. Mr. Farber claims that at the time of his retirement he was unaware of the option to apply for disability benefits due to a medical misdiagnosis. There is evidence that Mr. Farber was injured on the job in 2006, but there is currently a question of whether that injury prevented him from fulfilling his duties.

Also, under MN. Stat. § 353.656, subd. 5a, a duty disability is converted to a retirement annuity when the member either reaches the normal retirement age of 55 or receives the benefit for five years, whichever is later. If Mr. Farber receives a retroactive duty disability from 2009, his disability would have converted to a retirement annuity in 2014, so the benefit he would receive if the proposed legislation is enacted would be a retirement annuity. There would be little benefit for a retroactive disability benefit other than the significant health care benefits the City of Fridley would be required to pay under MN Stat. Chapter 299A, which appears to be the motivation behind the proposed legislation.

If an individual receives a duty disability from PERA-P&F, MN Stat. § 299A.456 requires the employer to pay for the individual's, and any dependents, health care costs until the individual reaches age 65. If the proposed legislation is enacted, the City of Fridley will be required to pay Mr. Farber's health care costs, including any dependents such as children or spouses, for approximately seven more years until he reaches age 65. It is unclear if the city would be required to retroactively pay health care costs from the past seven years, but if so, the city would have to pay an additional seven years. This would impose a significant cost to the city.