



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Susan Lenczewski, Executive Director  
RE: Supplemental Information on H.F. 3606 (Erhardt); S.F. xxxx: MSRS; Individual  
Legislation Permitting Service Credit Transfer from MSRS-General to MSRS-Correctional  
DATE: April 12, 2016

H.F. 3606 (Erhardt) was considered by the Pension Commission at its meeting on April 5, 2016. At that meeting, questions were raised by Commission members regarding the precedential effect of a decision to approve the legislation and the factual record as to whether the Minnesota State Retirement System (MSRS), the Department of Corrections (DOC), or Mr. Daniel Ahlness committed error. Determining whether an error occurred and who or what entity was responsible for the error is important because the imposition of the non-employee cost depends on which entity, if any, committed error. If this case, either the DOC will have to pay or MSRS will have to absorb approximately \$33,000, if the bill becomes law and Mr. Ahlness makes his payment.

### Precedential Effect

Both MSRS and the DOC are concerned with the precedential effect if the Commission approves the bill. Many of the DOC employees affected by the expansion of coverage under the MSRS-Correctional Plan in 1996 are reaching retirement age or have already begun to receive pensions. As these individuals review their pension benefit and compare with others, it can be expected that they will be watching the outcome of the decision of the Commission as to Mr. Ahlness.

With regard to past precedent, there was legislation introduced by then-Representative Goodwin in 2001 that would have provided for the transfer of service from MSRS-General to MSRS-Correctional for one individual. The Commission file on this bill does not provide enough facts to know whether the circumstances of the DOC employee at issue in 2001 were similar to Mr. Ahlness' circumstances. In 2001, the Commission took no action on that bill, along with three other bills dealing with MSRS-Correctional Plan members.

### Assessing Error and Responsible Party

Proving the absence of notice with records that are nearly 20 years old and may be incomplete, at best, is a difficult, if not impossible, task. The facts are not yet clear as to:

- Whether MSRS had responsibility to provide Mr. Ahlness with a request form for electing the service transfer when it appears that MSRS could not have been aware that Mr. Ahlness' past service was eligible for the service transfer and did not receive notice from the DOC to that effect;
- Whether Mr. Ahlness was aware of his right to elect and purchase the service transfer but failed to obtain and file the request form and make the required payment; or
- Whether the DOC had known that Mr. Ahlness' past service was eligible for transfer but failed to provide notice to MSRS that Mr. Ahlness had such service.

Commission staff is aware of the following:

1. In 1996, the MSRS-Correctional Plan membership was increased by more than 400 State employees by virtue of the inclusion of additional employment classifications which were certified by the Department of Corrections or the Department of Human Services as having at least 75 percent inmate contact. The affected employees were allowed to retain their prior MSRS-General or Teachers Retirement Association (TRA) retirement coverage if they so desired. For State employees newly included in MSRS-Correctional, an option was provided to transfer prior State employment service to the plan if there were no breaks in the prior service of more than 180 days and the prior service was comparable to service eligible for MSRS-Correctional coverage. To transfer the service, the State employee had to contribute in a lump sum the difference, for the period of service, between the employee contribution that would have been made to MSRS-Correctional and the employee contribution made to the prior plan, plus six percent interest. For those individuals transferring past coverage, assets representing the funded portion of the present value of the benefits earned to date were transferred from TRA or MSRS-General, as applicable, to MSRS-Correctional.
2. By statute, affected employees were given until June 30, 1999, to elect the service transfer and make the payment.
3. At some point after 1996 and before the June 30<sup>th</sup> deadline, the various DOC facilities sent MSRS lists of employees who may have past service that qualified for the service transfer (position was eligible and individual had the requisite inmate contact).
  - (a) MSRS has copies of these lists, but is not able to locate Mr. Ahlness' name on these lists.
  - (b) DOC does not have copies of these lists.
4. MSRS sent employees identified on these lists a letter that attached a form called "Request to Buy Back Service Eligible Under the Correctional Plan." If the employee wanted to buy back service, he or she had to obtain the signature of the DOC that the employee's position was eligible for transfer to Correctional Plan coverage. The employee would then return the form, signed by the employee and the DOC, to MSRS. The employee then had to make a payment to MSRS to have the service transferred.
  - (a) None of the employee files at DOC for these employees contain a copy of the MSRS request form, either signed by DOC or unsigned.
  - (b) MSRS has records in employee files showing whether the employee was certified by DOC and whether the employee made the payment. Some certified employees made the payment, others did not.
5. The files for Mr. Ahlness at MSRS or DOC do not contain a copy of the MSRS request form, signed or unsigned.