



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Susan Lenczewski, Executive Director  
RE: S.F. xxxx; H.F. 2236 (Thissen): PERA-P&F; Benefit increase for former members and surviving spouses of a local salaried police and fire relief association.  
DATE: March 17, 2017

### Summary of S.F. xxxx; H.F. 2236 (Thissen)

S.F. xxxx; H.F. 2236 (Thissen) amends Minn. Stat. § 353.651, which deals with retirement annuities for Public Employees Police and Fire Retirement Plan (PERA-P&F) members upon leaving public service.

Specifically, the bill provides for:

1. A pension increase for any person who was a former member or the surviving spouse of a former member of a local salaried police or firefighters relief association that consolidated with PERA-P&F, who elected to have his or her pension calculated under the former local plan, and who had at least 20 years of service or was receiving a disability pension.
2. Effective July 1, 2017, the retiree's annual pension benefit is to be increased to \$38,000 or by 20%, whichever is lower, and the annual benefit of a surviving spouse is to be increased to \$30,000 or by 20%, whichever is lower.
3. Post-retirement adjustments are to be paid on the benefit equal to the rate applicable to PERA-P&F under Minn. Stat. § 356.415, which is currently 1%.
4. To pay for the benefit increases, the state will pay to PERA an amount necessary to amortize the actuarial accrued liability, to be paid in ten equal annual payments beginning July 1, 2017, and ending in 2026. The executive director of PERA will calculate each year the actuarial accrued liability and annual installment amount and notify the state of that amount by June 1 of each year.

### Background Information

- 2014 Legislation and Mandated Study on Local Relief Association Benefits. In 2014, the Commission considered H.F. 1800 (Kahn); S.F. 1620 (Hayden), a proposal to increase the benefits of members and surviving spouses of consolidated former police and paid fire relief associations. The Commission did not take action on the bill, but instead mandated PERA to study the situation of former members and surviving spouses of local paid police and fire relief associations that consolidated into PERA-P&F (*see Laws 2014, Ch. 296, Art. 9, Sec. 7*). A copy of the 2015 PERA report is attached.
- 2015-2016 Legislation. H.F. 1908 (Atkins); S.F. 1774 (Hayden), introduced on March 16, 2015, was similar to the current proposal but funding was to be provided by extending the termination date of the supplemental state aid under Minn. Stat. § 423A.022 paid to PERA-P&F and the State Patrol Plan. On February 24, 2016, the Commission considered HF1908/SF1774 but took no action on the bill.

## Technical Amendment

**H2236-1A** is a technical amendment to correct a cross-reference to the appropriate subdivision of Section 353.415, the section enumerating the plan-specific post-retirement adjustment amounts.

## Policy Considerations

The following considerations summarize and update points raised in memos prepared by former Commission staff members in response to similar legislation proposed in 2014 and HF1908/SF1774.

1. Projected Funding Impact Information is Out of Date. The information on which PERA's cost estimates is based dates back to July 1, 2014, and does not reflect the impact of the updated actuarial assumptions, including increased mortality. Also, Commission staff understands that there have been changes in the retirees and survivors impacted by the legislation, such as deaths and changes in marital status. The passage of time and these developments can be expected to have an impact on the cost of providing increased benefits. Since one of the Commission's duties, under Minn. Stat. § 3.85 is to analyze proposed pension legislation "with particular reference to analysis of their cost," the Commission may wish to consider deferring action until the funding impact can be updated. PERA may reasonably want to rely on the advice of its actuary to ensure the accuracy of any update, which will result in additional expense. This too is a topic for the PERA board and the Commission may want to understand the cost and timing of an actuarial update as well as the PERA board's position on incurring the additional expense.
2. Precedent. The legislation creates precedent and may lead to more requests from retirees in this and other plans for increases in benefits whenever they become aware that similarly situated pension recipients are receiving greater benefits. As drafted, the legislation amounts to acquiescence to a request to swap plans, a less generous plan for a more generous plan. A group of retirees is not satisfied with the benefits currently provided to them and they are requesting to instead be provided with benefits levels more comparable to that which they would have at the current time if they were instead covered by the PERA-P&F Plan in its entirety. This could lead to requests from other groups of retirees under the other public pension plans that they also receive benefits comparable to those that would be provided by plans with richer benefit formulas, such as the Teachers Retirement Association, and higher post-retirement adjustment rates, rather than the benefits under their own plans. This would create additional liabilities, be difficult for the plans to administer, and make predicting liabilities and funding requirements nearly impossible.
3. Reversing Irrevocable and Informed Elections. Commission staff understands that the record indicates that these retirees' elections were intended to be irrevocable, that the retirees were given notice of that fact, and that these retirees' elections were freely made. Where pension benefits are the result of choices freely made by a plan's members, the Commission may reasonably choose to decide that PERA-P&F and the taxpayers are under no obligation to relieve these individuals from the consequences of their actions.

Under the applicable consolidation laws (Minn. Stat. Ch. 353A), active members of the local relief association at the time of consolidation were given a choice between the local benefit plan in its entirety, including the local plan's post-retirement adjustments, or the PERA-P&F plan in its entirety. Individuals who, at the time of consolidation had already terminated from the employment for which they were covered by the local relief association, were limited to benefits under local relief association

laws, except that they could choose post-retirement adjustments under the local plan provisions or those of PERA-P&F. Thus, regardless of whether the retirement, disability, or survivor benefit was computed under local law or PERA-P&F provisions, the individual had a choice between local plan and PERA-P&F post-retirement adjustments. Local plan post-retirement adjustments typically are tied to changes in active duty salary. While procedures differed between local plans, generally the retirees were to receive the same percentage increase in benefits as the percentage increase in the local salaries being paid to top grade patrol officers or firefighters. The PERA-P&F adjustments, for much of this period, was a percent increase matching inflation, plus additional amounts related to investment results in excess of the plan's investment return assumption. Through portions of the 1980s, post-retirement adjustments may have been higher when computed under the local plan laws. During the 1990s, the adjustments under the PERA-P&F provisions were very generous, because of exceptional stock market performance, and likely exceeded post-retirement adjustments provided under local plan provisions. More recently, particularly since 2010, PERA-P&F adjustments have been very low, and we are again in a period where adjustments are very likely to be higher under local plan provisions. For the indefinite future, PERA-P&F is expected to provide only a 1% annual post-retirement adjustment.

4. Concern that Members May Not Have Received Adequate Counseling When Electing Benefits. While Commission staff has no information to suggest that this is a concern, it is possible that PERA staff may not have provided adequate counseling and information prior to member elections. If that occurred, the question is whether the legislation is a reasonable approach to address such a concern, since benefit increases are provided on a global basis to a large group of benefit recipients. The Commission may wish to consider that addressing a problem of deficient counseling may be more appropriate for individual legislation when the facts of each case have been investigated and determined and the Commission is able to give attention to the specific arguments and equity issues in each case.
5. Windfall Concern. The Commission may wish to consider that the group covered by the legislation includes individuals who were active members at the time of consolidation and who specifically chose local plan benefits because they provided the individual with a specific advantage, *e.g.*, the local plan provided the individual with a higher benefit. The local plans typically permitted individuals to retire with full benefits as early as age 50, which would not be permitted under PERA-P&F, and local plans often would provide benefits to a surviving spouse at no direct cost to the retiree. In contrast, under PERA-P&F the individual would have had to take a monthly benefit reduction to provide survivor coverage. If an individual specifically chose local plan benefits for reasons such as this, and is now to receive a further increase in benefits under the proposed legislation, the increased benefits may be considered a windfall.
6. Post-Retirement Adjustment Issues. Many local plans provided adjustments matching the percentage increase in active duty police officer or firefighter salaries. Over the long term, those increases are likely to have at least kept pace with, and probably exceeded, inflation, which should have provided excellent protection for retirees. For retirees with that protection, there is little basis for a claim of harm. In any event, anyone receiving post-retirement adjustments based on local plan provisions is receiving those adjustments because the active member, retiree, or disabled individual freely elected those adjustments rather than those of PERA-P&F.
7. Future Post-Retirement Adjustments Are Only 1%. After increasing the pension amount, the legislation provides that the pension is to be adjusted over time using the PERA-P&F post-retirement

adjustment procedure. Doing so overturns the election of local plan post-retirement adjustments which each retiree covered by the legislation freely made. In addition to reversing that election, the legislation saddles that individual or his or her survivor with post-retirement adjustments, going forward, which are likely to be inferior to those provided under the local law provisions. PERA-P&F post-retirement adjustments are currently only 1% per year. If the legislation is enacted, the group may request additional legislation in the future, claiming that this legislation harmed them going forward.

8. PERA Board Position is Unknown. Commission staff understands that the PERA board has not adopted a formal position regarding these benefit increases. Since the PERA board may be in the best position to understand the impact of these benefit increases on the fund generally and are charged as fiduciaries with protecting the fund, among other duties, the Commission may wish to consider deferring action until the PERA board's position is known.

### **Attachments**

- Commission staff summary of the PERA Report
- PERA January 16, 2015, "Local Police and Fire Benefit Plans" report (without appendices)
- Amendment H2236-1A
- HF2236 (Thissen)