

Legislative Commission on Pensions and Retirement

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TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Susan Lenczewski, Executive Director

SUBJECT: H.F. 549 (Dettmer); S.F. 1444 (Anderson, B.): PERA plans; Purchase of service for periods of military service

DATE: March 19, 2019

Introduction

H.F. 549 (Dettmer); S.F. 1444 (Anderson, B.) expands the right of members covered by the Public Employees Retirement Association (PERA) General Employee Retirement Plan (PERA General), Police and Fire Retirement Plan (PERA P&F), and Local Government Correctional Plan (PERA Correctional) to purchase service credit for periods of military service. Service credit is used in determining the extent to which a member is vested in his or her accrued benefit and in determining the amount of the member's accrued benefit, which is calculated by multiplying years of service by average final pay over five years, and a multiple, such as 1.7.

In general, the bill accomplishes the following:

- Moves the detailed language regarding the right to purchase service credit for military service out of PERA's definitions section, which is Minnesota Statutes, Section 353.01, and into a new Section 353.014, identified as federally protected military leave;
- Inserts notice requirements in new Section 353.014; and
- Adds new Section 353.0141, which provides for service credit purchases that go beyond the federally protected service periods and are more expensive.

Background

A federal law known as the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) requires qualified retirement plans, including the State's pension plans for public employees, to permit members who take leave to perform service in the "uniformed services" the opportunity to pay the employee contributions not paid during the period of the leave and receive service credit for the period of the leave. USERRA imposes a number of requirements, including the following:

- Payment of the employee contributions must be made during a period that begins with the date of return to public employment and extends for three times the period of the military leave or, if less, five years;

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- The plan is not required to give credit for more than five years of service or give credit for service prior to the start of the service member's public employment; and
- The returning service member cannot be required to pay interest on the employee contributions.

State law was amended to incorporate these USERRA requirements shortly after the federal law took effect.

The perennial issue that arises at the legislature involves constituents who are members of the State's public pension plans and who find themselves in either of the following two situations, but still want credit under their public pension plan for the period of military service:

- The member returns to public employment after a period of military service and misses the deadline for making payment of the missed employee contributions (i.e., three times the period of the leave or, if less, five years after return to public employment).
- The member begins public employment after the period of military service, whether immediately or years later, and wants to purchase service credit for the period of military service, even though it did not occur during the period of public employment but occurred prior to the period of public employment.

Neither federal law nor current Minnesota law governing the PERA pension plans requires providing returning military service member the right to purchase service for a period of military service in either of the two circumstances described above.

Nonetheless, the legislature has acted to provide this right in these situations in the past. Most recently, in 2006, the legislature amended PERA's statutes to permit a returning service member the right to purchase credit for military service in the circumstances described above. For a variety of reasons, including administrative burden and cost, the law included a sunset provision that repealed the law in 2013.

Amendment H0549-1A

The executive director and staff at PERA reviewed the bill and provided comments and suggested changes. To the extent they were acceptable to the House author, these changes are set forth in Amendment H0549-1A. The following summary of the bill notes the changes made by the amendment as they appear in the bill.

Section-by-Section Summary

Section 1: Amendment to PERA's Definition Section.

Section 1 amends Minnesota Statutes, Section 353.01, Subdivision 16, which is the definition for "allowable service." Specifically, Clause (8) of this definition describes in detail the right of a member to receive allowable service credit for periods of military service, as required by federal law. The substantive description of the amount of the service credit permitted and the conditions for receiving the credit is deleted and replaced with a reference to "a period of

uniformed services leave purchased under Section 353.014.” A new Clause (9) is inserted that refers to “a period of military service purchased under Section 353.0141.”

Section 2: New Section for USERRA-Protected Military Leave.

Section 2 adds new Section 353.014, which is titled “Federally Protected Military Leave” to distinguish this right to purchase service credit for military leave from the new expanded right, that goes beyond the federally-protected leave and is more expensive.

Section 2 is a restatement of current law, found in Minnesota Statutes, Section 353.01, Subdivision 16, Clause (8), except for the following changes:

- The provision has been divided into subdivisions and headings for each subdivision added, for clarification.
- Notice requirements have been added as Subdivisions 5 and 6. Subdivision 5 requires the employer of an employee returning to work after a period of service in the uniformed services to provide notice to the executive director of PERA within 14 days of the employee’s return. Subdivision 6 requires the executive director of PERA to notify the returning employee of the right to purchase service credit for the period of the uniformed services leave within 30 days after receiving the notice from the employer. The additional extensive notice and meeting requirements in the bill, which had required the executive director to give notice every six months and meet with the employee, have been amended out by Amendment H0549-1A, so only the employer notice to the executive director and the initial executive director notice to the employee have been retained.

Section 3: New Section for Other Military Leave.

Section 3 adds new Section 353.0141, which is titled “Other Military Leave.” This section provides a new expanded right to purchase service credit for a period of military leave. Under Section 3, a member of one of the PERA plans can purchase up to five years of service credit for the following periods of military service:

- The same service that could have been purchased under current Clause (8) or new Section 353.014, except that the returning employee failed to meet the deadline for payment. In other words, the employee did not pay the required employee contributions within the required payment period, which starts on the first day of return to employment and ends five years later or, if less, three times the length of the military leave.
- Any period of military service prior to the start of public employment. For instance, if an employee begins working for a municipal police department at age 35 and had been in the military when he or she was ages 22 through 25, the employee can purchase service credit under the PERA P&F for those 3 years of military service.

Subdivision 3 of new Section 353.0141 states that the cost to purchase service credit under this section is the amount determined under Minnesota Statutes, Section 356.551. Under Section

356.551, the cost to be paid by a member wanting to purchase service credit for a military leave is the greater of:

- The actuarial present value of the difference between the pension benefit with the years of military service included and the pension benefit without including the years of military service in the benefit calculation; or
- The sum of the employee contributions and employer contributions that would have been made for the period of the military service plus interest from the end of the year in which contributions would otherwise have been made to the date on which the payment is received by the plan.

Section 4: Amendment to Minnesota Statutes, Section 356.551.

Amendment H0549-1A amends the bill by modifying Section 356.551, which is the section referred to in new Section 353.0141. As described above, Section 356.551 requires calculating the cost of a service credit purchase by determining the higher of two calculations. One of these, the actuarial present value is amended by Section 4, as set forth in Amendment H0549-01, to provide greater protection to PERA against an actuarial loss due to the employee retiring early with a subsidized early retirement benefit, dying or becoming disabled prior to normal retirement age, or possible future changes to actuarial assumptions.

Policy Considerations

Briefly, the bill and the amendment raise the following concerns:

- There may be substantial cost and staff time spent performing actuarial calculations for members who are considering purchasing service credit for military service, especially when the member decides not to make the purchase.
- The military service may have been covered under a federal retirement program, which would result in the member who purchases service under a PERA plan in getting two retirement benefits based on the same period of service.
- Allowing service credit purchases for periods of military service before the employee begins public employment may set a precedent for allowing other types of service credit purchases such as for service in the peace corps.