

# Legislative Commission on Pensions and Retirement

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TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Chad Burkitt, Analyst

DATE: March 19, 2019

RE: H.F. xxxx; S.F. xxxx (Revisor #19-4692): PERA; Removing a sunset date and modifying the phased retirement program.

## Summary of H.F. xxxx; S.F. xxxx (Revisor #19-4692)

HF xxxx; SF xxxx (Revisor #19-5692) modifies Minn. Stat. § 353.371, the postretirement option program for the General Employees Retirement Plan of the Public Employees Retirement Association (PERA General). The bill strikes the sunset date that would require the program to end on July 1 of this year. The bill also makes some minor substantive and administrative changes to the section, including changing the name of the program from “postretirement option” to “phased retirement option.”

## Background Information

The current postretirement option (“PRO”) was established through the 2009 Omnibus Retirement Bill. The program allows a person over age 62 already eligible to collect an annuity to collect their annuity while continuing to work in a position that is at least a 25% reduction in hours and no more than half time. A similar program has existed since 2005 for state employees in the Minnesota State Retirement System’s (MSRS) General Employees Retirement Plan.

Federal law specifically contemplates and allows for phased retirement programs. The federal Pension Protection Act of 2006 clarified that pension plans are permitted to make in-service distributions to members age 62 or older (See 26 U.S.C. § 401(a)(36) (2018)). IRS regulations have also long allowed for in-service distributions when an employee has reached the plan’s normal retirement age. PERA’s PRO complies with these federal requirements by limiting who is eligible for a PRO to only employees age 62 or older. Section 353.371 does not allow an employee who has obtained normal retirement age through the Rule of 90, but is under age 62 to enter into a PRO agreement.

According to Commission materials from 2009, the intent for the program was to offer employers an option to retain knowledgeable and experienced employees who would otherwise retire by offering them significantly reduced hours and pay, while allowing them to receive a retirement annuity. This saves the employer some of the cost of salary, and provides the employee an incentive to remain employed. Concerns regarding the cost and usage of the PRO caused the Commission to add an expiration date of July 1, 2019. Concerns about the cost may have been exacerbated by the then ongoing “Great Recession.”

Both PERA and the League of Minnesota Cities support making the PERA PRO program permanent.

### Detailed Description of Changes to the PRO

The bill makes the following substantive changes to existing statute:

Section	Summary of substantive changes
1	<ul style="list-style-type: none"><li>• Clarifies that elected officials are not permitted to enter into a PRO.</li><li>• Clarifies that the eligibility requirements must be met no later than the end of the month in which the PRO begins.</li></ul>
4	<ul style="list-style-type: none"><li>• Removes the requirement that the initial period of a PRO agreement is limited to 1 year.</li><li>• Prohibits an employee from being employed under a PRO agreement or combination of PRO agreements for longer than 5 years.</li></ul>
5	<ul style="list-style-type: none"><li>• Requires documentation of a PRO agreement be provided to PERA before the employee's annuity start date.</li></ul>
6	<ul style="list-style-type: none"><li>• Establishes a new reporting requirement that employers must report the number of hours worked by employees covered by a PRO within 14 days of the end of each pay period.</li></ul>
7	<ul style="list-style-type: none"><li>• Establishes a new reporting requirement that employers and employees must inform PERA that the employee has terminated from a PRO covered position.</li><li>• Clarifies that any public employment that occurs after the PRO agreement cannot commence until at least 30 days after employment under the PRO ends.</li></ul>
8	<ul style="list-style-type: none"><li>• Repeals the expiration of the PRO program.</li></ul>

In addition to the substantive changes listed above, the bill makes several technical changes intended to improve readability and clarity of the section. The bill also changes the name of the program from "postretirement option" to "phased retirement option," which is the typical name for this type of program.

### Discussion and Analysis

The bill raises the following policy issues:

1. Duration of PRO agreement. The bill restricts each employee to a total of 5 years working under any and all PRO agreements. The issue is whether this restriction is proper.
2. Cost. The issue is whether the program is subsidized by members that do not use the PRO. To the extent that the program encourages members who are eligible for the Rule of 90 to collect their unreduced annuity early, the program may lead to some additional cost for the PERA General Plan. However, some or all of that cost may be offset by members that are ineligible for the Rule of 90 and retire under PRO earlier than they otherwise would have without the program.
3. Conformity with MSRS PRO. The issue is whether the PERA or MSRS PRO would benefit from conforming changes. The PERA PRO and MSRS PRO differ in two respects. First, the PERA PRO requires the employee to be at least age 62; the MSRS PRO allows someone under the age of 62 to enter into a PRO if they have a bona fide 30-day termination of service. Second, the MSRS PRO requires the employee to qualify for an unreduced pension benefit under the Rule of 90 or by having reached the normal retirement age of 66; the PERA PRO does not.