HF 4301 (Her); SF 4202 (Dahms):
Public Employees Retirement Association (PERA)
Administrative Bill

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Introduction

Affected Plans: General Employee Retirement Plan (PERA General)
Public Employees Police and Fire Retirement Plan (PERA P&F)
Local Government Correctional Service Retirement Plan (PERA Correctional)

Laws Amended: Various sections of Chapter 353

Brief Description: HF 4301 (Her); SF 4202 (Dahms) amends a number of statutes governing the Public Employees Retirement Association (PERA) pension plans. The amendments do not substantively affect the amount of a benefit or eligibility for a benefit and make changes of an administrative or technical nature.

Section-by-Section Summary

Section 1: Exclusion for seasonal employees.

Section 1 of HF 4301 (Her); SF 4202 (Dahms) amends one of the categories of employees excluded from eligibility for Public Employees Retirement Association (PERA) coverage under Minnesota Statutes, Section 353.01, Subdivision 2b. The exclusion for seasonal employees at paragraph 19, which is defined as employment that is limited in duration to "185 consecutive calendar days," is revised to "a period of six months" to be consistent with the exclusion for temporary employees at subdivision 2b, clause (5) and subdivision 12a.

Section 2: Purchase of service credit for period of military service.

Section 2 amends Minnesota Statutes, Section 353.0141, Subdivision 1, by adding a new requirement and clarifying that a member of a PERA plan may purchase service credit for less than the entire period of military service. Under current law, a member who misses the deadline to purchase service credit for military service under Section 353.014 ("federally protected military service") or whose military service precedes the member's public employment is able to purchase service credit for up to five years of military service. Section 2 adds the requirement that a member must be employed with a public employer for at least six months to be eligible to make a purchase.

In addition, Section 2 clarifies that a member may purchase service credit for less than all of the period of military service, as follows:

- If the period of service is one year or less, the entire period must be purchased;
- If the period of service is longer than one year, the member may purchase the entire period, up to five years, or may purchase a portion of the service that is not less than one year and is in increments of six months.

Section 3: Eligibility for a normal retirement annuity.

Section 3 amends Minnesota Statutes, Section 353.29, Subdivision 1, to clarify that a member is eligible for a normal retirement annuity upon termination of public service. Current law states that eligibility is upon termination of “membership,” which, by definition, does not occur if a member has terminated public service. This corrects inaccurate drafting.

Section 4: Commencement of retirement annuity.

Section 4 is the first of three amendments in the bill to bring consistency to the earliest date an annuity can begin when an application is required, but is not submitted by the member before or shortly after the event that entitles the member to begin to receive the annuity.

Section 4 amends subdivision 7 of Minnesota Statutes, Section 353.29, which addresses when a member is entitled to begin payment of a retirement annuity. For instance, if a member retires from public employment on June 15, the member could begin receiving an annuity on July 1, if the member has submitted an application to PERA to begin the annuity. If the member does not file the application until several months or more after the date on which the member’s annuity could begin, the question is how far back will PERA go to retroactively start the annuity and include all missed payments in the first annuity payment? The answer is five months back or, as stated in Section 4, an annuity will begin on the later of (i) the first day of the first calendar month after the date of termination of public service or (ii) "up to five months before the first of the month in which a complete application is received by the executive director…." Section 4 amends Section 353.29, Subdivision 7, to incorporate the five-month lookback rule.

Section 5: Commencement of a bounce-back annuity.

Section 5 is the second of three amendments in the bill to incorporate the five-month lookback rule. Section 5 amends Minnesota Statutes, Section 353.30, Subdivision 3c, which applies to the commencement of a single life annuity after the death of a member’s spouse or other designated beneficiary. A single life annuity will provide larger monthly payments than a joint and survivor annuity, so if the spouse or other beneficiary (the joint annuitant) dies before the member, the larger payments under a single life annuity will "bounce-back." The language change provides for a five-month lookback where the verification of death is not received by PERA shortly after the death.

Section 6: Commencement of a survivor annuity.

Section 6 is the third of three amendments in the bill to incorporate the five-month lookback rule. Section 6 amends Minnesota Statutes, Section 353.31, Subdivision 8, which applies to the commencement of a survivor annuity after a member's death. The language change provides for a five-month lookback where the survivor's application is not received by PERA shortly after the death.

Section 7: Refunds after the death of a member.

Section 7 amends Minnesota Statutes, Section 353.32, Subdivision 4, to correct an incorrect reference. Subdivision 4 directs the disposition of a refund if a member's beneficiary does not apply for the refund. Current law states that the refund shall be disposed as provided in Section 356.631, which is a section that provides for sources of funding for public pension and retirement plans. The correction changes this reference to Section 356.65 (titled "Disposition of Abandoned Public Pension Fund Amounts").

Section 8: Augmentation language corrections.

Section 8 amends Minnesota Statutes, Section 353.34, Subdivision 3, to correct language that is unclear or contains drafting errors. Subdivision 3 was substantially revised in the 2018 omnibus pension bill to end augmentation as of January 1, 2019.

Section 9: Phased Retirement Option (PRO).

Section 9 is the first of three amendments to Minnesota Statutes, Section 353.371, which provides for the Phased Retirement Option (PRO). PRO is available to members of PERA General who wish to begin receiving their retirement annuity, while continuing to work a reduced schedule for the member's current public employer. Section 9 amends Section 353.371, Subdivision 1, to clarify language and state that a member wishing to use the PRO must continue working in the same position for the same employer as the member had prior to entering into the PRO.

Section 10: Phased Retirement Option (PRO).

Section 10 is the second of three amendments to Minnesota Statutes, Section 353.371, which provides for the Phased Retirement Option (PRO). Section 10 amends Section 353.371, Subdivision 2, to clearly state that a member covered by a PRO is entitled to begin receiving a retirement annuity even though the member has not had a termination of public service, notwithstanding applicable sections of Chapter 353 that require termination of public service.

Section 11: Phased Retirement Option (PRO).

Section 11 is the third of three amendments to Minnesota Statutes, Section 353.371, which provides for the Phased Retirement Option (PRO). Section 11 adds a new subdivision to Section 353.371, which provides a penalty for violating a phased retirement agreement. If a member works more hours than is permitted under the agreement, the phased retirement agreement is terminated and payment of the member's retirement annuity is suspended.

Section 12: Eligibility for a retirement annuity under the PERA Police and Fire Plan.

Section 12 amends Minnesota Statutes, Section 353.651, Subdivision 1, to clarify that the vesting requirement that must be satisfied in order to be eligible for a retirement annuity does not mean 100% vested, but that any percentage of vesting above zero will satisfy the vesting requirement. Under PERA P&F, until July 1, 2010, a member went from 0% to 100% after three years of service. Beginning July 1, 2010, vesting was phased in over a number of years. Until July 1, 2014, vesting went from 50% after 5 years to 100% after 10 years, in 10% increments. Since July 1, 2014, vesting starts at 50% after 10 years, increasing to 100% at 20 years, in 5% increments. The reference to vesting in this statute needed to be updated to reflect phased vesting, rather than the cliff vesting in effect until 2010.

Section 13: Duty disability under the PERA Police and Fire Plan.

Section 13 amends Minnesota Statutes, Section 353.656, Subdivision 1, to clarify eligibility for a duty disability benefit under PERA P&F. Under subdivision 1, paragraph (b), a member is eligible for a duty disability benefit in either of two situations:

(1) The member has not met the requirements for a retirement annuity under Section 353.651; or

(2) The member has met the requirements for a retirement annuity, but does not have at least 20 years of service.

To be eligible for a retirement annuity, a member must have separated from public service, attained at least age 55 (the plan's normal retirement age), and be vested, which means at least 50% vested. The new language inserted into subdivision 1, paragraph (b), clarifies that "separation from public service" is not one of the conditions that is considered in determining whether a member is eligible for a duty disability benefit. With these changes, a member is eligible for a duty disability benefit if the member is (i) under age 55 or is not at least 50% vested, or (ii) is at least age 55, but has fewer than 20 years of service.

Section 14: Regular disability under the PERA Police and Fire Plan.

Section 14 amends Minnesota Statutes, Section 353.656, Subdivision 3, to make the same clarifications regarding eligibility for regular disability as are being made under Section 13 with regard to eligibility for duty disability.

Section 15: Survivor benefits under the PERA Police and Fire Plan.

Section 15 amends Minnesota Statutes, Section 353.657, Subdivision 1, to clarify the vesting requirement to allow for partial or total vesting and makes other clarifications.

Section 16: Retroactive correction to duty disability to reflect actual operation.

Section 16 amends Minnesota Statutes, Section 353.656, Subdivision 1, Paragraph (c), to change language currently in the statutes that has not been followed in practice by PERA since July 1, 2007. Current language, which is also considered in Section 13, above, states:

> *(b) To be eligible for a benefit under paragraph (a), the member must have:*
>
> *(1) not met the requirements for a retirement annuity under section 353.651, subdivision 1; or*
>
> *(2) met the requirements under that subdivision, but does not have at least 20 years of allowable service credit.*
>
> *(c) **If paragraph (b), clause (2)**, applies, the disability benefit must be paid for a period of 60 months from the disability benefit accrual date and at the end of that period is subject to provisions of subdivision 5a.*

The new language, which is how PERA has actually administered this provision, will change paragraph (c) to eliminate the language *"If paragraph (b), clause (2),"* above. Paragraph (c) is to be amended to read, retroactively effective as of July 1, 2007, through December 31, 2019: *"(c) The disability benefit must be paid for a period of 60 months from the disability benefit accrual date and at the end of that period is subject to provisions of subdivision 5a."*

Under subdivision 5a, disability benefits are paid until the member reaches the normal retirement age of 55, at which time the benefit is considered a retirement benefit and is no longer tax-free to the member. If the member reaches age 55 while receiving disability benefits, PERA has permitted the member to continue receiving disability benefits until the end of the 60-month period.

Because PERA has been paying 60 months of disability benefit to members who satisfied either clause (1) or (2) of paragraph (b), Section 16 amends subdivision 1, paragraph (c), to remove the condition that limited receiving 60 months of disability to only members who have reached age 55 with at least 10 years of service but less than 20 years.

Beginning January 1, 2020, PERA changed the way it has been administering the duty disability benefit to comply with current law.

Section 17: Repeal of provision permitting reduction of an annuity upon application by a retiree.

This section repeals Minnesota Statutes, Section 353.30, Subdivision 4, which, under current law, permits a member to apply to have the member's monthly annuity payments reduced or temporarily suspended for as long as requested. The Teachers Retirement Association (TRA) is seeking the repeal of a similar provision in its governing statutes in the TRA administrative bill approved by the Commission at its last meeting (March 3, 2020). PERA and TRA believe that this provision in their respective statutes has been used in the past to allow members to qualify for public assistance or other benefits to which the member would not be qualified because of the pension income the member is receiving from PERA or TRA. This is not a practice PERA or TRA wish to permit.

Another concern with continuing to allow members to reduce or temporarily cease their monthly pension payments is that an annuity that is not a series of substantially equal periodic payments may not meet the definition of an "annuity" under the federal Internal Revenue Code, which could affect the taxation of the benefit.

Effective Date

All sections are effective July 1, 2020, except Sections 13 and 14, which are retroactively effective as of January 1, 2020, and Section 15, which corrects the language of the statute back to July 1, 2007, to bring the language into conformity with actual operation as it relates to the duty disability benefit, as explained in Section 15, above.

Legislative Commission on Pensions and Retirement

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