Summary of Amendment S1712-5A
Amends Article 2, Section 3, of the DE Amendment S1712-1A

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Amendment S1712-5A replaces Section 3 of Article 2 of the 2021 omnibus pension and retirement bill in its entirety. Article 2, titled "Federal Compliance Affecting MSRS and PERA Eligibility for Certain Visa Holders," is the bill, SF 1454 (Pappas)/HF 1497 (Feist), approved by the Commission at its March 2 meeting. For more information on the bill, please see the Staff Summary of the bill, dated March 1, 2021.

Article 2 of the omnibus bill consists of the following:

Section 1 of Article 2 amends the eligibility provision for foreign citizens in the Minnesota State Retirement System (MSRS) plans to require immediate participation of H-1B, H-1B1, and E-3 visa holders, which revises current law that excludes such individuals for the first three years of employment. Federal law requires foreign citizens with H-1b, H-1b1, or E-3 visa status be treated the same as other employees with regard to compensation and benefits.

Section 2 of Article 2 clarifies eligibility for foreign citizens in the Public Employees Retirement Association (PERA) plans by incorporating some of the same language used in the new MSRS eligibility language.

Section 3 of Article 2, which is replaced by the language of Amendment S1712-5A, permits foreign citizens hired on or after October 1, 2020, who become MSRS-covered state employees under the new law to purchase credit for service dating back to the employee's hire date, if missed employee and employer contributions are paid to MSRS.

The opportunity to purchase service credit, included in the original bill, extended only to employees hired on or after October 1, 2020, because the constituent who brought the issue to the attention of Representative Feist is a non-faculty employee of the University of Minnesota hired during the month of October 2020. When the bill was considered by the Commission at its meeting on March 2, Senator Senjem and other members voiced concerns that there may be other University employees, hired before October 2020, who might similarly like to purchase past service credit for periods of employment during which they were excluded from participation in MSRS. Chair Rosen asked Commission staff to follow-up with the University to gather more information and prepare an amendment that expands the opportunity to purchase past service credit to employees hired before October 2020.

The University's Human Resources (HR) staff did more research to determine the number of employees in the protected visa categories who have been excluded from MSRS. They provided the following regarding the employees impacted by the proposed change in law:

The University has 383 employees as of mid-March in either an H1B or E3 visa status. Of the 383 visa holders, 275 are currently participating in a retirement plan (260 in the Faculty Retirement Plan and 15 in MSRS). There are 84 employees that are post doc employees. The University does not offer retirement benefits to any post doc employees; therefore, this group is not impacted.

There are 11 foreign national employees that are civil service employees and are not currently enrolled in MSRS. These 11 employees would be eligible once the amendment is passed. These 11 employees have a "Last Start Date" for their current positions as follows: 2 in 2015, 1 in 2017, 4 in 2018, 2 in 2019, and 2 in 2020. There are 13 employees with a H1B or E3 visa that have a code that needs further research; however, none of the employees are coded as civil service so it is likely that they will not be eligible for MSRS with the amendment. Therefore, the current employee population that would now be eligible is likely 11; however, there are an additional 13 that need additional research to confirm.

The University's HR staff also consulted with legal counsel to determine how far back correction was required under federal law. The University determined that a 12-month lookback, from the effective date of the change in law, for all active and terminated employees was appropriate. Any employee currently employed or who terminated employment during the prior 12 months would be offered the opportunity to purchase service credit for any prior period of employment during which the employee was excluded from MSRS when the employee should have been included under federal law.

The University provided this rationale for a 12-month lookback:

- *In order for an employee to start a complaint, the alleged violation must have occurred within 12 months of the complaint. Therefore, it is unlikely any terminated employee other than those within the last year would be able to pursue this complaint. Second, a credible source can file a complaint, however this is still subject to the alleged violation occurring within the past 12 months in order to trigger an investigation. Therefore, the University believes 12 months is the appropriate time period to review employees that may have not been included as eligible*

- *Going back 12 months (regardless of current status) to research any eligible issues is administratively possible and allows the University to correct the issue and administer appropriately going forward.*

- *Researching terminated employees further back than 12 months decreases the likelihood that the University will be able to even find a correct address for a former employee.*

- *The University was following the Minnesota statute regarding eligibility for these visa types.*

Commission staff also consulted with Erin Leonard, Executive Director at MSRS, about the University's proposal to review the status of employees who terminated employment over the prior 12-month period and offer them the opportunity to purchase service credit for excluded periods of employment. Because these excluded periods could result in the payment of missed contributions that date back many years, Ms. Leonard raised concern about whether interest would be paid. Under the bill as introduced, the employee or the University would pay the missed employee contributions and the University would pay the missed employer contributions for the one employee and any other employee hired after October 1, 2020. Typically, when missed contributions are paid to one of the pension funds, interest is required from the date the contribution should have been made to the date of payment. The bill as introduced did not require interest, and MSRS did not object to not receiving interest, because of the relatively small dollar amounts involved and the relatively short delay in receiving the missed contributions.

The University's proposal to look back 12 months and allow service credit purchases for any prior period of employment means that the contributions could relate back many years and amounts could be more substantial. In response to MSRS' concern, the University agreed to pay interest on both the missed employee and employer contributions.

The amendment substantially revises Section 3, as follows:

- Paragraphs (a) and (b) are replaced with subdivisions 1 and 2. Subdivision 2 consists of paragraphs (a) through (e).

- Subdivision 1 is a new definitional section. Definitions are provided for "effective date," "eligible person," "excluded employee," "executive director," and "lookback period." "Eligible person" is defined as a person who is currently employed or terminated during the "lookback period," who was excluded under the exclusion in MSRS' eligibility provisions and became eligible for coverage or became a state employee on or before the effective date of the new law. "Lookback period" is defined as the 12-month period ending on the effective date.

- Paragraph (a) of subdivision 2 is nearly identical to paragraph (a) of section 3 in the bill as introduced. It requires the executive director of MSRS to give service credit to an eligible person for a period of employment during which contributions were not made due to the foreign citizen exclusion in current law if the required payment under paragraph (b) is made.

- Paragraph (b) of subdivision 2 defines the payment that the eligible person is required to make as the missed employee contributions for a period of employment during which contributions were not made because the person was excluded under the foreign citizen exclusion.

- Paragraph (c) of subdivision 2 permits the eligible person to pay missed employee contributions for less than the entire period of employment during which contributions were not made and receive a proportionate amount of service credit. The University requested this provision out of concern that employees may not be able to afford to pay missed employee contributions for the entire period during which they were excluded from MSRS.

- Paragraph (d) of subdivision 2 requires the employer, if the missed employee contributions are paid, to pay the missed employer contributions plus interest (currently at 7.5%) on both the employee contributions and employer contributions from the end of the year in which these contributions should have been made.

- Paragraph (e) of subdivision 2 requires the executive director of MSRS to notify the employer regarding the amount required by paragraph (d) and directs MSRS to follow collection procedures in current law if the employer fails to make the payment.

- An effective date has been added, making Section 3 effective the day following enactment, which is the same effective date as sections 1 and 2.

Legislative Commission on Pensions and Retirement

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