SF 1993 (Howe); HF 2163 (O'Driscoll): PERA; Extends the time period for purchasing service credit for periods of federally protected military service leave

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Introduction

Affected Plans: Pension plans administered by the Public Employees Retirement Association (PERA)

- General Employees Retirement Plan
- Local Government Correctional Plan
- Police and Fire Plan

Laws Amended: Minnesota Statutes, Section 353.014, Subdivision 4

Brief Description: The bill extends the time period during which a member can pay to purchase service credit for a period of military service. The payment amount is equal to the employee contributions that the member would have made to the applicable pension plan during the period of military service.

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 several requirements, including the following:

- The plan must permit payment of the missed employee contributions for a period that begins with the date of return to public employment and is the lesser of (i) three times the period of the military leave or (ii) five years.
- 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.
- The returning service member cannot be required to pay interest on the employee contributions.
- If the returning service member pays the missed employee contributions, the plan can require the employer to pay the missed employer contributions and interest on both the missed employee and employer contributions.

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

Service credit is used in determining a member's vesting percentage and in calculating the member's pension benefit. Without the protections afforded by USERRA and the corresponding state law, when a member temporarily leaves employment to perform military service, the member's service for PERA purposes is interrupted and the member loses service credit for the period of the leave taken to perform military service. USERRA and the corresponding state law provide a limited right to the member to pay the missed employee contributions and receive service credit for the period of military service.

In 2019, the provision regarding the purchase of service for periods of military service for the PERA plans in Section 353.01 was moved to a new section 353.014 and amended and a new section 353.0141 was added. New Section 353.0141 allows members to purchase service credit for periods of military leave that go beyond the federally protected service periods or where the member missed the payment deadlines. Service credit purchases under Section 353.0141 are more expensive than under the federally protected purchases permitted by Section 353.014.

Section by Section Summary

The bill affects only one subdivision of Section 353.014, which provides for the federally protected right of members to purchase service credit for periods of leave to perform military service.

Section 1 amends subdivision 4 which describes the period of time during which a member is permitted to pay the missed employee contributions for a period of military service. Under current law, a member can make the payment anytime during the period, which begins with the date the member returns to public employment from the military leave and is the lesser of the following:

- Three times the length of the military leave, or
- Five years from the date the member returned to public employment.

The amendment replaces "less" with "greater," so whichever of these two produces the longest period, that is the period during which the member can make the payment. This change means that the period will never be less than five years long, but could be as long as 15 years. If the period of military leave is five years, three times the length of that leave is 15 years.

Because the period under the "greater" of language can never be less than five years, the following sentence in subdivision 4 is deleted. That sentence would have allowed a member to have one year in which to make the payment of missed employee contributions, if the payment period would otherwise have been less than a year. This could occur under current law if the period of military service leave is, for example, three months. In that case the lesser of three times the length of the military leave (i.e., nine months) or five years, would have been nine months, which is less than a year.

Considerations

These considerations are based on comments Commission staff received from the executive director of PERA:

Consistency among Minnesota's public pension plans

If the bill becomes law, PERA's statute will no longer be consistent with the military leave statutes for MSRS and TRA. In the absence of a compelling reason for treating PERA differently, all the statewide plans should be treated similarly.

For MSRS, Section 352.27, paragraph (e), states:

> *(e) To receive service credit under this section, the contributions specified in this section must be transmitted to the Minnesota State Retirement System during the period which begins with the date on which the individual returns to state service and which has a duration of three times the length of the uniformed service period, but not to exceed five years. If the determined payment period is less than one year, the contributions required under this section to receive service credit may be made within one year of the discharge date.*

For TRA, Section 354.53, subdivision 3, states:

> *Subd. 3. Eligible payment period. (a) To receive service credit under this section, the contributions specified in this section must be transmitted to the Teachers Retirement Association during the period which begins with the date on which the individual returns to teaching service and which has a duration of three times the length of the uniformed service period, but not to exceed five years.*
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> *(b) Notwithstanding paragraph (a), if the payment period determined under paragraph (a) is less than one year, the contributions required under this section to receive service credit may be made within one year from the discharge date.*

Impact to employers

If a member elects to purchase service credit for the period of a military service leave, Section 353.014 requires the employer to pay, not only the missed employer contributions and interest on the employer contributions, but also the interest on the employee contributions. According to PERA, this could be very costly for public employers and is a cost that they cannot predict and budget for planning purposes. Having a potentially much longer period to pay missed employee contributions makes it more likely that a member returning from military service leave will take the opportunity to do so. Employers will have no way to predict when this potential liability will arise.

Deviation from federal law

If the bill becomes law, state law will now be more generous than federal law. That is permitted, as USERRA provides minimum requirements and plans are permitted to be more generous. However, it may cause confusion if there is a need to interpret the statutory requirement, as amended, relating to the time period during which the member's payment may be made. It is typical for plan documents to simply cite to the federal statute on topics such as this, to reduce any possibility that the plan document fails to comply with federal law by inaccurately reciting the federal requirements.

Legislative Commission on Pensions and Retirement

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