

**SF 3499 (Rarick); HF 3704 (Sundin):  
MSRS Correctional; A bill for an individual authorizing  
the transfer of service credit from the  
MSRS General Plan to the MSRS Correctional Plan**

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### Introduction

- Affected Plan:** Minnesota State Retirement System (MSRS) Correctional Plan
- Laws Affected:** Establishes an uncoded session law
- Brief Description:** This bill would allow Maerene Lewis to transfer service credit from the General State Employees Retirement Plan to the Correctional State Employees Retirement Plan of the Minnesota State Retirement System (MSRS). The bill requires payment by Ms. Lewis and payment by the Department of Corrections before the service credit is transferred.

### Background

Maerene Lewis is an employee of the Minnesota Department of Corrections (Department). On August 9, 2017, Ms. Lewis was promoted to the position of Corrections Transitions Program Coordinator, a position which made her eligible to participate in the Correctional State Employees Retirement Plan (Correctional Plan).<sup>1</sup> Due to a clerical error, the Department incorrectly reported to MSRS that Ms. Lewis was a member of the General State Employees Retirement Plan (General Plan) instead of the Correctional Plan. This misreporting continued from August 9, 2017, through December 22, 2020. The Department's human resources staff discovered the mistake and the Department changed Ms. Lewis' membership from the General Plan to the Correctional plan effective December 23, 2020.

The law permits a plan to correct an error in which an employee is covered by the wrong plan only if the error first occurred less than two years before the fiscal year in which the error was discovered.<sup>2</sup> Because, Ms. Lewis' plan coverage was first misreported more than two years before the fiscal year it was discovered, MSRS determined that it could not correct the plan coverage error. Ms. Lewis appealed the determination to the MSRS Board of Directors, which rejected the appeal after a fact-finding proceeding.

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<sup>1</sup> Minnesota Statutes, Section 352.91, subdivision 3d, paragraph (b), clause (12).

<sup>2</sup> Minnesota Statutes, Section 356.99, subdivision 4.

This bill would authorize Ms. Lewis to transfer service credit from the General plan to the Correctional Plan for the period of misreported plan coverage from August 9, 2017, through December 22, 2020. The transfer requires payments to MSRS from Ms. Lewis and from the Department. The payments are described in the Summary section, regarding subdivisions 4 and 5 of the bill.

## About the Correctional Plan

The MSRS Correctional Plan covers state correctional officers and their supervisors as well as other state correctional and department of human resources staff that have at least 75% contact with inmates in a state correctional facility or patients in certain state program facilities. The Correctional Plan provides greater benefits to vested employees than is provided by the MSRS General Plan but is also more expensive to employees and employers as shown in the comparison table below.

### Comparing Benefits and Contribution Rates of the MSRS General and Correctional Plans <sup>3</sup>

	MSRS General Plan	MSRS Correctional Plan
<b>Pension Formula</b>	1.7% of average salary per year	2.2% of average salary per year
<b>Normal Retirement Age</b>	66	55
<b>Early Retirement Age</b>	55	50
<b>Disability</b>	total and permanent disability	duty disability and total and permanent disability
<b>Vesting period</b>	5 years	partially vested at 5 years; fully vested at 10 years.
<b>Employee Contribution Rate</b>	6%	9.6%
<b>Employer Contribution Rate</b>	6.25%	18.85%

## Summary of the Bill

This bill permits an eligible person (Maerene Lewis) to transfer service credit from the MSRS General Plan to the MSRS Correctional Plan following payments by Ms. Lewis and the Department of Corrections. The bill is a single uncoded section that would appear in the 2022 session laws. The bill is organized into six subdivisions, as follow:

1. Subdivision 1 provides the definitions used in the section.
2. Subdivision 2 requires MSRS to transfer service credit from the General Plan to the Correctional Plan and requires the Department to pay its portion of the cost, upon payment by Ms. Lewis. Ms. Lewis would have up to 1 year after the effective date of this bill to make the payment.

<sup>3</sup> The table displays data for a new employee as of July 1, 2021.

3. Subdivision 3 defines “eligible person” so that it will apply only to Maerene Lewis.
4. Subdivision 4 describes the calculation of Ms. Lewis’ payment to MSRS. The payment is the difference in employee contributions between the General and Correctional plans plus interest. The payment must be made in a lump sum.
5. Subdivision 5 describes the calculation of the payment required by the Department. The Department must pay the difference in the actuarial present values of the General Plan benefit and Correctional Plan benefit, minus the payment made by Ms. Lewis.
6. Subdivision 6 describes the transfer of service credit and accompanying assets from General Plan to the Correctional Plan following the payments made under subdivisions 4 and 5.

The section is effective the day following final enactment.

## Analysis

### Cost

If Maerene Lewis makes the payment permitted under this bill, then the Department of Corrections is required to make a payment. The MSRS General and Correctional plans are not negatively financially affected by this bill. MSRS provided the following estimate of the costs based on a July 1, 2022, payment date:

1. The difference in present value between the General Plan benefit and Correctional Plan benefit: <sup>4</sup>	\$28,518
2. The employee contributions plus interest to be paid by Maerene Lewis:	\$8,126
3. Difference between 1 and 2 to be paid by Department of Corrections:	\$20,392

### Transfer of Service Credit Following Employer Error in Reporting Correctional Plan Coverage

The Department of Corrections and Department of Human Services are required to determine which employees are eligible for coverage by the MSRS Correctional Plan. Under current law, if the department makes a mistake in determining which plan an employee should be covered by, the employer has about 2 years to correct the mistake. After that, the employee can only be transferred prospectively from the General Plan to the Correctional Plan or *vice versa*.<sup>5</sup>

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<sup>4</sup> The present value calculation assumes a rate of return on investments of 7.5%, which is currently under consideration by the Commission. If the rate of return assumption changes, the present values may change.

<sup>5</sup> Minnesota Statutes, Section 356.99, subdivision 4.

This bill is the second in two years to rectify an employer error in determining plan coverage for the MSRS Correctional Plan.<sup>6</sup> The Commission may wish to consider whether the two-year look back limit to rectify a plan coverage error is appropriate. The Commission could:

1. Continue to address these issues on a case-by-case basis if or when they continue to arise.
2. Direct staff to prepare an amendment to exempt the MSRS Correctional plan coverage from the two-year limit.
3. Direct staff to prepare an amendment to remove or extend the two-year limit for all statewide pension plans.

### Preference for General Legislation

The Principles for Pension Policy includes a statement indicating a preference for general legislation.<sup>7</sup> In this case, it is unlikely that general legislation is the best approach for fixing the issue for Maerene Lewis because of the retroactive nature of this issue. However, as noted above, this is the second bill in two years permitting a transfer of service credit from the MSRS General to the MSRS Correctional plan to rectify an employer error. General legislation addressing the transfer of service credit due to a plan coverage error prospectively may be appropriate.

### Constitutionality of Special Legislation

The Minnesota Constitution states:

*The legislature shall pass no local or special law . . . granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever. . .8*

Whether a special law such as this is constitutional is an unsettled question of law because the issue, as it relates to public pensions, has never been litigated in a Minnesota court. It is possible that bills such as this one could be vulnerable to a legal challenge on constitutional grounds. The Commission has regularly approved similar bills in the past.

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<sup>6</sup> Laws Of Minnesota 2021, Chapter 22, Article 8, Section 2.

<sup>7</sup> Legislative Commission on Pensions and Retirement Principles of Pension Policy, section III, subsection B.

<sup>8</sup> Minnesota Constitution, Article XII, Section 1.