



## HF 4402 (Jordan): PERA General Plan; Special legislation authorizing purchase of service credit for periods of omitted service

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### Introduction

- Affected Plan:** Public Employees Retirement Association (PERA) General Employees Retirement Plan (General Plan)
- Laws Amended:** HF4402 (Jordan) would be uncodified session laws
- Brief Description:** Special legislation requiring the City of Minneapolis (the City) to pay contributions that should have been paid to PERA General but were not. These payments are to remedy missing service credit for a period of approximately 13 months that should have been credited to the former employee, but the former employee was not enrolled by the City. If the City pays the missed employee and employer contributions with interest, PERA will credit the service.

### Background

In 2016, public employees who were employed solely in a seasonal position were excluded from membership in a PERA pension plan if the duration of the employment was limited by the employer to 185 consecutive calendar days or less each year of employment. (See Minn. Stat § 353.01, subd. 2b, para. (a), clause (19) (2016).) In 2020, the statute was amended so that "185 consecutive calendar days" became "a period of six months." Section 353.01, subdivision 12b, defines a "seasonal position" as "a position where the nature of the work or its duration are related to a specific season or seasons of the year, regardless of whether or not the employing agency anticipates that the same employee will return to the position each season in which it becomes available." However, if an employee continues to work in the seasonal position for longer than six months the seasonal employee exclusion no longer applies and the employee must be reported for membership in a PERA plan immediately if no other exclusion applies under section 353.01, subdivision 2b. The Employer Manual published by PERA explains that "once a seasonal employee becomes a member of PERA, the coverage automatically resumes at the start of each season unless the employer substantiates that the employer-employee relationship has terminated." (PERA, [Employer Manual](#), page 3-19.)

A former employee of the City of Minneapolis began employment with the fleet services division of the public works department within the City on April 26, 2016. The former employee was hired for a seasonal position that was meant to last six months or less. The former employee returned to this position every year from 2016 through 2022. Each year the former employee's employment with the

City exceeded six months. Some years, the City did not enroll the former employee in the PERA General Plan at all. Other years, the City waited until the end of the six-month period to enroll the former employee in the PERA General Plan. Therefore, there were multiple periods between 2017 and 2022 when the City should have but did not deduct employee contributions from the former employee's pay and transmit the employee contributions along with employer contributions to PERA.

The former employee did not become aware of the omitted contributions and unreported service until the former employee terminated service in 2022. At that time, the former employee and the City were able to correct the service credit record for 2019 through 2022; however, PERA could not correct the service credit records for 2017 and 2018 because Minnesota statute prohibits PERA from commencing action to correct omissions in employee and employer contributions after three years have passed. (See Minn. Stat. §353.27, subd. 12, para. (e).) The former employee and the City agree that the first six-month period in 2016 was correctly claimed as an exemption from the PERA General Plan.

If enacted and approved by the Minneapolis City Council, this legislation would allow the former employee to receive credit in the PERA General Plan for two periods of service in 2017 and 2018 by requiring the City to pay the omitted employee and employer contributions plus interest. LCPR staff understands that the City has expressed a willingness to make the payment required by the bill. The Director, Intergovernmental Relations, for the City was involved in the bill drafting process and understands that the legislation will only be effective upon approval by the Minneapolis City Council and compliance with section 645.021.

Section 645.021 requires that laws applicable to a single local government unit be approved by the governing body of the local government unit and the chief clerical officer of the local government unit must file a certificate of approval with the secretary of state. (See Minn. Stat. § 645.021, subds. 2 and 3.) If the certificate of approval is not filed before the first day of the next regular session of the legislature, the law does not take effect. (See Minn. Stat. § 645.021, subd. 3.)

## Section- by- Section Summary

HF 4402 (Jordan) is a session law, which means it will not be included as a new section or chapter in Minnesota Statutes. The bill consists of one section with six subdivisions and an effective date provision that also sets forth requirements for local approval.

### Subdivision 1

Subdivision 1 ("Definitions") defines the following terms:

- "City" means the city of Minneapolis.
- "Executive director" means the executive director of the Public Employees Retirement Association.
- "Fund" means the general employees retirement fund administered by the Public Employees Retirement Association.
- "General plan" means the general employees retirement plan of the Public Employees Retirement Association.

## Subdivision 2

Subdivision 2 (“Authorization”) states that an eligible person is entitled to:

- have the City pay the amount required under subdivision 5, paragraph (a), which is the omitted employee contributions for 2017 and 2018 plus interest, on the eligible person's behalf; and
- upon the City making the payments required under subdivision 5, paragraphs (a) and (b), which are the omitted employee and employer contributions for 2017 and 2018 plus interest, receive credit for allowable service in the PERA General Plan for the periods of service described in subdivision 4.

Paragraph (b) requires the executive director of PERA to credit the eligible person with the service upon receipt of the payments.

## Subdivision 3

Subdivision 3 (“Eligible person”) defines an “eligible person” by reference to events rather than the former employee’s personal information, such as birth date or employee identification number, as has historically been the approach with pension-related bills for individuals.

## Subdivision 4

Subdivision 4 (“Periods of uncredited prior service”) defines the periods of uncredited prior service that may be purchased as:

- April 11, 2017, through October 10, 2017; and
- April 27, 2018, through November, 24, 2018.

## Subdivision 5

Subdivision 5 (“Payment by employer”) requires the executive director of PERA to determine and notify the City and the eligible person of the amount of the payment required. The actual payment amount is the amount that the former employee and the City would have contributed for the periods in 2017 and 2018, had the former employee been correctly reported, plus interest. The City must pay the amount determined by PERA in a lump sum within 60 days of the date on which the executive director notifies the City of the amount of the payment.

## Subdivision 6

Subdivision 6 (“Collection of unpaid amounts”) authorizes the executive director of PERA to take action to collect payment under section 353.28, subdivision 6, if the City fails to make the payment under subdivision 5. Section 353.28, subdivision 6, allows the executive director to seek collection by the county auditor or the commissioner of management and budget from property tax revenue or state aid payable to the City.

## Effective Date

The bill places an obligation on a single local government unit and is therefore a special law defined by the Minnesota Constitution, Article XII, Section 2. As a special law, the legislation must be approved by the City's governing body, and the City's chief clerical officer must file a certificate of approval with the secretary of state. (See Minn. Stat. § 645.021, subds. 2 and 3.) If the certificate of approval is not filed before the first day of the next regular session of the legislature, the law does not take effect. (See Minn. Stat. § 645.021, subd. 3.)

## Considerations

### **Additional service credit allows former employee to be vested in the PERA General Plan**

From the information provided by the former employee and the City, without credit for the 2017 and 2018 periods, the former employee does not have enough service credit to vest in the PERA General Plan. However, LCPR staff understands that if the former employee is able to get credit for the 2017 and 2018 periods of service, the former employee will be vested in the PERA General Plan and will, therefore, be entitled to an annuity from the PERA General Plan.

### **Cost to the City**

The City would be required to make a one-time payment equal to the employee and employer contributions missed during 2017 and 2018 plus interest. Based on available payroll data, LCPR staff estimates that the cost would be approximately \$7,191, plus interest.

### **Constitutionality**

The Minnesota Constitution prohibits special laws, i.e. laws that apply to one individual. The Minnesota Constitution, Article XII, Section 1, 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. . . .*

Not identifying the individual by name in the bill is intended to make special legislation look general, but an argument can be made that that is mere form over substance and cannot reasonably be expected to overcome a constitutional challenge. However, the Commission and the legislature have approved special legislation granting one individual or a small group of individuals a pension benefit for years and these session laws have not been challenged.