



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *JAM*
RE: S.F. 235 (Betzold); H.F. 375 (Westerberg): PERA-P&F; Including Combined Blaine, Spring Lake Park, or Mounds View Civilian-Firefighter Employment Positions
DATE: April 4, 2005

Summary of S.F. 235 (Betzold); H.F. 375 (Westerberg)

S.F. 235 (Betzold); H.F. 375 (Westerberg) amends Minnesota Statutes, Section 353.64, the membership provision of the Public Employees Police and Fire Retirement Plan (PERA-P&F), by adding a subdivision that includes in PERA-P&F coverage civilian department employees of the cities of Blaine, Spring Lake Park, and Mounds View who are primarily assigned to perform firefighting, medical emergency, or hazardous material situation duties if the employee is trained as a firefighter, as a first responder, and as a hazardous materials specialist, are members of the Blaine, Spring Lake Park, and Mounds View independent non-profit firefighting corporation (BSLPMVFD), complies with BSLPMVFD rules, meets BSLPMVFD minimum training requirements, is not eligible for Social Security coverage for the municipal employment, and is certified for PERA-P&F membership by the applicable city. Any combined civilian-firefighter positions would also have a more stringent duty disability benefit qualification.

Background Information on PERA-P&F Membership

The Public Employees Police and Fire Retirement Plan (PERA-P&F) was created in 1959, replacing retirement coverage by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) for public safety employees who were not covered by a local police or paid firefighter relief association. Initially, county sheriff personnel and small town municipal police officers were PERA-P&F members, with few firefighters. At first, PERA-P&F coverage applied to any public employee in law enforcement or fire suppression, but the membership qualifications were refined as the licensing of police officers began in the 1970s. Coverage is governed by Minnesota Statutes, Section 353.64, Subdivisions 1 and 2.

Currently, PERA-P&F membership requires that the employees meet the following requirements to qualify as a police officer:

1. Police Employment. Employment must be as a police officer by a municipal police department of a county sheriff's office.
2. Primary Law Enforcement Function. Primary employment function must be to enforce the law.
3. POST Board Licensure. Peace officer must be licensed by the Peace Officers Standards and Training Board (POST Board).
4. Property and Safety Protection. Peace officer must be engaged in the hazards of protecting the property and safety of others.
5. Arrest with a Warrant. Peace officer must be empowered to arrest with a warrant.

For firefighters, the PERA-P&F membership provision requires that, to qualify as a firefighter, municipal employees must either be a full-time firefighter or a person in charge of a designated fire company and be engaged in the hazards of firefighting. For part-time employees engaged in police work or firefighting, PERA-P&F membership is available if the employing municipality, by governing body resolution, declares the part-time employee eligible and the employee meets the statutory police officer or firefighter requirements other than full-time employment. For full-time police officers or firefighters who are periodically assigned other duties, the other duties must be in the same department and the other duties must be secondary services, with the police or firefighting services being primary.

Since 1959, all newly employed county deputy sheriffs have pension coverage by PERA-P&F and since 1980, all newly employed municipal police officers and all newly employed municipal paid firefighters have pension coverage by PERA-P&F.

As a public safety employer pension plan, PERA-P&F pays larger retirement annuities, disability benefits, and survivor benefits than a general employee retirement plan and has an earlier normal retirement age for the retirement annuity. Because of these benefit plan differences, the plan typically has a greater actuarial cost and greater member and employer contributions than a general employee retirement plan. As law enforcement officers, members of PERA-P&F are not covered by Social Security under both state and federal law for their state law enforcement employment.

The policy reason for having a more lucrative benefit program for public safety employee retirement plans is that public safety employment (police officer or firefighter service) is particularly hazardous, that it requires the maintenance of a particularly vigorous and robust workforce to meet the strenuous requirements of the employment position, and that the normally expected working career of a public safety employee will be significantly curtailed as a consequence of the hazards and strenuous requirements of that type of employment when compared to a general public employee. Public employee pension plans are intended to assist the governmental personnel system by encouraging the recruitment of qualified and motivated new employers, the retention of able and valued existing employees, and the orderly and predictable out-transitioning of employees at the expected end or normal conclusion of their working career. For public safety employees, public safety employee retirement plans provide more lucrative benefits to assist in the recruitment and retention of new and existing personnel, but most clearly emphasize the out-transitioning function.

PERA-P&F currently has 9,948 active members, 4,381 retirees, 614 disability retirements, 1,213 survivors, and 758 deferred retirees. PERA-P&F assets slightly exceed \$4.7 billion, and accrued liabilities are slightly less than \$4.4 billion, creating a 106.65 percent funding ratio. PERA-P&F has a deficiency in current contributions, when compared to the plan's total actuarial funding requirements, of 6.55 percent of payroll, a result of recent actuarial assumption changes proposed by the PERA Board of Trustees and approved by the Legislative Commission on Pensions and Retirement and of recent investment declines.

Background Information on Independent Nonprofit Firefighting Corporations and Municipal Fire Departments

Although most Minnesota fire departments are part of municipal government, several fire departments are organized as independent nonprofit firefighting corporations. A nonprofit firefighting corporation provides fire protection and fire suppression services to one or more municipalities under contract.

Independent nonprofit firefighting corporations have been formed in a variety of circumstances. Most, but not all, independent nonprofit firefighting corporations furnish fire protection to the local community in which they are situated and also serve nearby municipalities and townships that do not have their own local departments. In some cases, the independent nonprofit firefighting corporations are subsidiary to a parent municipal fire department and membership is concurrent. In some cases, it appears that independent nonprofit firefighting corporations were formed instead of municipal fire departments either at an earlier time when township tax levy limits made it difficult for some townships to build, staff, and equip a municipal fire department and before the general availability of joint powers arrangements or in order to remove the burden of administrative duties from local officials.

In becoming eligible or in retaining eligibility for the receipt of fire state aid, independent nonprofit firefighting corporations have been treated like municipal fire departments and volunteer firefighter relief associations since at least 1961. In 1961 (Laws 1961, Chapter 360), independent nonprofit firefighting corporations organized before 1961 were authorized to receive fire state aid if they have retirement plans and if they comply with all of the statutory provisions applicable to municipal fire departments and volunteer firefighter relief associations. In 1965 (Laws 1965, Chapter 671), the 1961 legislation was amended to extend the fire state aid receipt eligibility to independent nonprofit firefighting corporations organized before May 23, 1965. In 1967 (Laws 1967, Chapter 370), the fire state aid receipt eligibility of independent nonprofit firefighting corporations was extended to corporations organized before July 1, 1967. In 1969 (Laws 1969, Chapter 1001), independent nonprofit firefighting corporations were made eligible to receive fire state aid irrespective of the date on which the corporation was organized. The 1961-1967 legislation grandparented in those independent nonprofit firefighting corporations which had been previously established, but functioned as an eligibility cut-off date to discourage the establishment of new independent nonprofit firefighting corporations. In 1969, that potential discouragement of the creation of new independent nonprofit firefighting corporations was dropped. In 1979 (Laws 1979, Chapter 201), the volunteer firefighter relief association laws were recodified and volunteer firefighter relief associations subsidiary to or attached to independent nonprofit firefighting corporations were included in the same regulations as volunteer firefighter relief association related to municipal fire departments.

The number of identified independent nonprofit firefighting corporations appears to have grown over time, although there appears to be some self-reporting confusion, as follows:

1969 (18)	1982 (44)	2002 (63)
		Alaska (Beltrami Co.)
	Albertville (Wright Co.)	
	Alden (Freeborn Co.)	
Almelund (Chisago Co.)		
	Askov (Pine Co.)	
	Beaver Bay (Lake Co.)	
	Bemidji Pioneer (Beltrami Co.)	
		Boyd (Lac Qui Parle Co.)
		Brimson (St. Louis Co.)
	Browerville (Todd Co.)	
	Callaway (Becker Co.)	Canton (Fillmore Co.)
		Clinton (St. Louis Co.)
	Ceylon (Martin Co.)	
	Clearwater (Wright Co.)	
Clifton (St. Louis Co.)		
	Columbia Heights-Vol. Div. (Anoka Co.)	
		Colvin (St. Louis Co.)
		Cotton (St. Louis Co.)
		Crane Lake (St. Louis Co.)
Crookston (Polk Co.)		Crookston (Polk Co.)
	Cuyuna (Crow Wing Co.)	
		Dakota (Winona Co.)
		Dalbo (Isanti Co.)
	Darfur (Watonwan Co.)	
	Dawson (Lac Qui Parle Co.)	
East Co. Line (Ramsey Co.)		
	East Grand Forks (Polk Co.)	
		Eastern Hubbard (Hubbard Co.)
		Eitzen (Houston Co.)
		Elbow-Tulaby Lk (Becker Co.)
		Ellsburg (St. Louis Co.)
	Embarrass Region (St. Louis Co.)	
		Federal Dam (Cass Co.)
		Finland (Lake Co.)
		Fredenberg (St. Louis Co.)
		Garrison (Crow Wing Co.)
Gladstone (Ramsey Co.)		
	Gnesen (St. Louis Co.)	Gnesen (St. Louis Co.)
	Granada (Martin Co.)	
		Grand Lake Twp (St. Louis Co.)
	Granite Falls (Yellow Medicine Co.)	
		Gunflint Trail (Cook Co.)
		Hackensack (Cass Co.)
Hamel (Hennepin Co.)	Hamel (Hennepin Co.)	Hamel (Hennepin Co.)
	Hendrum (Norman Co.)	
	Hermantown (St. Louis Co.)	Hermantown (St. Louis Co.)
		Hovland (Cook Co.)
	Industrial (St. Louis Co.)	Industrial (St. Louis Co.)
	Iona (Murray Co.)	
		Jacobson (Aitkin Co.)
	Kasota (Le Sueur Co.)	
		Keewatin (Itasca Co.)
	Kensington (Douglas Co.)	
		Kinney (St. Louis Co.)
	Lake George (Hubbard Co.)	Lake George (Hubbard Co.)
Lake Johanna (Ramsey Co.)	Lake Johanna (Ramsey Co.)	Lake Johanna (Ramsey Co.)
		Lake Kabetogama (St. Louis Co.)
		Lakeland (St. Louis Co.)
Lakewood (St. Louis Co.)		Lakewood (St. Louis Co.)
		Le Center (Le Sueur Co.)
		Lewisville (Watonwan Co.)
Little Canada (Ramsey Co.)	Little Canada (Ramsey Co.)	Little Canada (Ramsey Co.)
		Littlefork (Koochiching Co.)
		London (Freeborn Co.)
	Longville (Cass Co.)	Longville (Cass Co.)
	Loretto (Hennepin Co.)	Loretto (Hennepin Co.)
		Lower St. Croix Val (Washington Co.)
		Makinen (St. Louis Co.)
		Maple Hill (Cook Co.)
	Maplewood (Ramsey Co.)	
	McDavitt (St. Louis Co.)	McDavitt (St. Louis Co.)
		Meadowlands (St. Louis Co.)
	Miltona (Douglas Co.)	
		Moose Lake (Carleton Co.)
		Nassau (Lac Qui Parle Co.)
Northdale		
		Northland (St. Louis Co.)
Odessa Farm (Big Stone Co.)		
	Ostrander (Fillmore Co.)	
Parkside (Ramsey Co.)		
		Pennock (Kandiyohi Co.)
		Pequaywan (St. Louis Co.)
	Pike-Sandy-Britt (St. Louis Co.)	Pike-Sandy-Britt (St. Louis Co.)
Pillager (Cass Co.)	Pillager (Cass Co.)	Pillager (Cass Co.)
Rural Fire Protection Assn. (Beltrami Co.)		
	Ruthon (Pipestone Co.)	

1969 (18)	1982 (44)	2002 (63)
	Sacred Heart (Renville Co.)	
	Shakopee (Scott Co.)	
		Silica (St. Louis Co.)
		Solway Twp (St. Louis Co.)
South Bend Township (Blue Earth Co.)		
Spring Lake Park (Anoka Co.)	Spring Lake Park (Anoka Co.)	Spring Lake Park (Anoka Co.)
	St. Hilaire (Pennington Co.)	
	Starbuck (Pope Co.)	
	Stephen (Marshall Co.)	
		Swanville (Morrison Co.)
Thompson Grove (Washington Co.)		
		Toivola Twp (St. Louis Co.)
		Underwood (Otter Tail Co.)
		Watson (Chippewa Co.)
		Waverly (Wright Co.)
		Wilson (Winona Co.)
Woodbury (Washington Co.)		
	Wood Lake (Yellow Medicine Co.)	

Background Information on the Minnesota Fire Service Certification Board and Firefighter I Certification

The Minnesota Fire Service Certification Board was established in 1987 to meet the needs of Minnesota's fire service to recognize various levels of training competencies and proficiencies of the state's firefighting community. The organization offers certification on a voluntary basis to individuals that work or live in Minnesota and engage in the occupation of firefighting.

These certification levels are available to members of career and volunteer fire departments, as well as others working in the field. Levels of certification are:

- Firefighter I
- Firefighter II
- Fire Instructor I
- Fire Instructor II
- Fire Inspector I
- Fire Inspector II
- Fire Officer I
- Fire Officer II
- Airport Fire Fighter
- Fire Apparatus Operator
- NFPA 472 – HazMat Awareness
- NFPA 472 – HazMat Operations
- MFPA 472 – HazMat Technician
- Public Fire and Life Safety Educator I
- Public Fire and Life Safety Educator II

The members of the Minnesota Fire Service Certification Board are:

Name	Title/Region/Org.	Name	Title/Region/Org.
Daniel Brumm	Chairman, Region I	Pat Sheehan	Office of the State Fire Marshal
Greg Hayes	Vice Chairman	Dave Schliek	Region 5
James K. Heim	Secretary	Jay Bohan	Region 6
Dale Mashuga	Test Coordinator	Bernie Vrona	Region 8
Patrick Doheny	IAAI	Daniel Klein	Region 11
Jeff Schadegg	IAAI Alternate	Daryl Bartholomaus	Region 14
Woody Walters	MSFDA & FIRE/EMS Safety Center	Brian Staska	Region 15
Tom Pressler	MSFDA Alternate	Lee Cooper	At Large
Phillip Owens	FMAM	James Hansen	At Large
Jon Nisja	FMAM Alternate	Robert Leger	At Large
Doug Thies	FIAM	Paul Seleski	At Large

The Firefighter I certification is based on the National Fire Protection Association (NFPA) 1001 standard. The skill areas tested are Fire Hose, Appliances, and Fire Streams, Ladders, Carriers, Raises, Self Contained Breathing Apparatus, Search and Rescue, Forcible Entry, Ventilation, and Safety, Emergency Medical Care, Fire Prevention and Public Fire Education, Fire Control, Salvage and Overhaul, Fire Extinguishers, Ropes and Knots, Ladder and Hose Maintenance, and Fire Department Communications. The test has two parts, a 150 question multiple-choice written test and a practical exam to demonstrate proficiency in between four and six skills categories.

The National Fire Protection Association is a non-governmental fire and electrical standards setting entity that was organized by insurance and insurance underwriter concerns.

Discussion and Analysis

S.F. 235 (Betzold); H.F. 375 (Westerberg) would include in retirement coverage by the Public Employees Police and Fire Retirement Plan (PERA-P&F) employees of the city of Blaine, the city of Spring Lake Park, or the city of Mounds View who are employed outside of the police or fire departments of the city

but are combination position employees with the primary assignment of engaging in emergency response activities of firefighting, medical emergency, and hazardous materials situations if the employee meets various specific fire department-related occupational qualifications.

S.F. 235 (Betzold); H.F. 375 (Westerberg) raises several pension and related public policy issues for Commission consideration and discussion, as follows:

1. Appropriateness of Including Combination Firefighter-Civilian Employees in Public Safety Employee Pension Coverage. The policy issue is the appropriateness of including employees of civilian departments of a city who also are required to perform on-call firefighter duties in public safety employee retirement plan coverage. Currently, to be included in coverage by the Public Employees Police and Fire Retirement Plan (PERA-P&F), local government employees must be employees of either a police department or of a fire department. Although the individuals proposed for PERA-P&F coverage would be employees of a civilian or non-public safety department, the employees are required to be primarily assigned to engage in emergency response activities, meet the hiring and employment requirements of the Blaine-Spring Lake Park-Mounds View Fire Department, and meet minimum training requirements as a firefighter, a first responder, and a hazardous materials specialist. The legislation is being sought by the Blaine-Spring Lake Park-Mounds View Fire Department in an attempt to meet part of its recruitment needs. It is unclear whether or not this combination civilian-firefighter position will improve the provision of firefighting services in southern Anoka County. The inclusion of positions that are not dedicated public safety positions for persons employed in a public safety department in public safety pension coverage does represent something of a “watering-down” of eligibility for that special coverage. Public safety pension coverage functions like any pension coverage to recruit qualified new employees, to retain productive existing employees, and to produce a predictable and systematic out-transitioning of employees reaching the conclusion of their normal working lifetime and is adapted for the special hazards and physical demands of public safety employment. The proponents of the proposed legislation are likely to argue that recruitment needs are the primary rationale for the bill. If the affected employees are not regularly subjected to the physical hazards and demands that characterize public safety employment, the proposed inclusion of these combination civilian-firefighter positions in PERA-P&F coverage represents the provision of excessive benefit coverage than may be appropriate and the imposition of a higher cost to taxpayers than is necessary.
2. Appropriateness In Light of the Availability of Volunteer Firefighter Relief Association Coverage. The policy issue is the appropriateness of including Blaine, Spring Lake Park, or Mounds View combination civilian-firefighter employees in retirement coverage by the Public Employees Police and Fire Retirement Plan (PERA-P&F) when the option of volunteer firefighters with the Spring Lake Park Volunteer Firefighter Relief Association retirement coverage is available. The recruiting problem of the Blaine-Spring Lake Park-Mounds View Fire Department appears to be in gaining a sufficient number of daytime firefighters for the suburban communities the department services. Although the Blaine, Spring Lake Park, or Mounds View resident pool of potential volunteer firefighters during the daytime hours is reduced by those persons who commute and work outside of the three localities, the creation of a day shift for Blaine-Spring Lake Park-Mounds View Fire Department volunteer firefighters drawn from workers in the area who work a day shift and the provision of those volunteer firefighters with Spring Lake Park Volunteer Firefighter Relief Association retirement coverage could produce the necessary recruits.
3. Appropriateness of the Minimum Requirements for Combination Civilian-Firefighter Employment. The policy issue is the appropriateness of the ten specific requirements that a person needs to meet in order to gain the proposed special retirement coverage. The requirements are:
 - (1) Blaine, Spring Lake Park, or Mounds View City Employment – be an employee of the city of Blaine, or the city of Spring Lake Park, or the city of Mounds View;
 - (2) Primary Firefighter Assignment – have the primary employment assignment of engaging in emergency response activities for firefighting, medical emergencies, or hazardous materials situations;
 - (3) Blaine-Spring Lake Park-Mounds View Fire Department Membership – be retained by the Blaine-Spring Lake Park-Mounds View independent nonprofit firefighting corporation;
 - (4) Blaine-Spring Lake Park-Mounds View Fire Department Rules Compliance – comply with all rules, regulations and requirements of the Blaine-Spring Lake Park-Mounds View independent nonprofit firefighting corporation;

- (5) 60 Hours Annual Ongoing Continuing Firefighting Education – maintains a minimum of 60 hours of ongoing continuing firefighting education annually;
- (6) Firefighter I Minimum Certification – have the certification of Firefighter I or higher by the Minnesota Fire Certification Board;
- (7) Hazardous Materials Specialist Certification – have the certification as a hazardous materials specialist from an accredited institution;
- (8) First Responder Certification – have the certification as a first responder by the National Registration Board;
- (9) Firefighter or Emergency Responder Primary Employment Assignment – be employed primarily by the employing city as a firefighter or emergency responder; and
- (10) No Future Social Security Coverage – be determined to be ineligible for future Social Security coverage because of firefighter employment.

Because of the number of requirements and because of the specificity of the requirements, there may be difficulties in actually gaining a sufficient number of potential recruits of the Blaine-Spring Lake Park-Mounds View Fire Department. Since the fire department covers three municipalities and fire department calls can occur anywhere in the service area, if most of the employee's fire department duties and activities take the person outside of the employing municipality, that municipality may not be willing to continue the experiment in the future. The requirements effectively require double employment, since the person must meet any municipal employment requirements as well as Blaine-Spring Lake Park-Mounds View Fire Department standards, and any inappropriate discretion allowed in the hiring procedures of either could subject both "employers" to subsequent litigation. Requiring certification in three specialties (firefighter, first responder, and hazardous materials specialist), each requiring a significant and somewhat costly training regimen, may dissuade individuals, especially if these actually are preconditions to the employment rather than actually being continuing or ultimate conditions. The specification of the Minnesota Fire Certification Board certification only, and not allowing a comparable firefighter certification, also may be problematic. Amendment LCPR05-105 would broaden this certification requirement to include comparable entities providing the same certification. The first responder National Registration Board certification lacks clarity, since a web search by the Commission staff produced no links to an organization with that certification, and the requirement also may be too specific and too limited. Amendment LCPR05-106 would replace the specific certification organization with a broader reference simply to an accredited institution. The second requirement, the primary firefighter assignment requirement, and the ninth requirement, the firefighter or emergency responder primary employment assignment requirement, appear to be either duplicative and unnecessary or potentially inconsistent. Amendment LCPR05-107 eliminates the potential duplicative or contradictory seventh requirement.

4. No Clear Disallowance of Spring Lake Park Volunteer Firefighter Relief Association Coverage. The policy issue is the appropriateness of potentially allowing a combined civilian position-firefighter employee of Blaine, Spring Lake Park, or Mounds View who renders essentially volunteer service with the Blaine-Spring Lake Park-Mounds View Fire Department with retirement coverage by the Public Employees Police and Fire Retirement Plan (PERA-P&F) to also have retirement coverage by the Spring Lake Park Volunteer Firefighter Relief Association. Because the combination employee is not technically an employee of the Blaine-Spring Lake Park-Mounds View Fire Department, the combination could "volunteer" firefighting services for purposes of coverage by the Spring Lake Park Volunteer Firefighter Relief Association under the federal Fair Labor Standards Act, resulting in a pension coverage situation akin to the arrangements by Edina firefighters and Coon Rapids firefighters. This double coverage for the same employment or for essentially the same employment is generally considered a retirement abuse. Amendment LCPR05-108 would prohibit the combination employee from concurrent retirement coverage by the Spring Lake Park Volunteer Firefighter Relief Association.
5. Appropriateness of New Restrictions on Duty Disability Coverage for Combination Employees. The policy issue is the appropriateness of the restrictions on duty disability coverage under the Public Employees Police and Fire Retirement Plan (PERA-P&F) proposed for these Blaine, Spring Lake Park, or Mounds View combination civilian-firefighter employees. A duty disability benefit for a combination civilian-firefighter employee of Blaine, Spring Lake Park, or Mounds View would be payable only if the person becomes unable to perform firefighter duties from an injury, illness or other disability while engaged in an emergency call for assistance response, or engaged in firefighting training, or while engaged in fire suppression or rescue activities at the scene of a fire or a rescue.

Although the proposed restrictions are intended to narrow the eligibility for a PERA-P&F duty disability benefit, the proposed provisions are not unambiguous. For instance, if the combination civilian position-firefighter employee is startled by a fire call pager while working at a city computer station or while investigating a municipal water or sewer line, then falls, and suffers a permanent loss of motion in a leg or arm joint, a question arises whether or not that injury occur while responding to an emergency call for assistance.

6. Current Lack of a Clear Definition of a Firefighter for PERA-P&F Coverage. The policy issue incidental to the proposed legislation is the lack of a clear operational definition of a firefighter currently in Minnesota Statutes, Section 353.64 comparable to the definition of a police officer. Minnesota Statutes, Section 353.64, Subdivision 1, Clause (2), does not require that a potential PERA-P&F member as a firefighter be certified or licensed in that position, be assigned to a municipal fire department or independent nonprofit firefighting corporation, or be required to have as a primary job assignment in fire suppression, emergency medical response, or hazardous materials response. Because PERA-P&F was primarily engaged in providing pension coverage to police officers and was historically very limited in its application to full-time firefighters, the requirements for PERA-P&F coverage for firefighters is vague, poorly developed, and has potential problems. Amendment LCPR05-109 suggests language to bolster the current PERA-P&F firefighter definition.
7. Need for Stricter PERA-P&F Duty and Non-Duty Disability Benefit Eligibility Requirements. The policy issue, related to the subject matter of the proposed legislation, is the need for additional revisions in the eligibility requirements for PERA-P&F duty and non-duty disability benefit coverage. In February 2004, PERA and news articles in the Minneapolis Star Tribune and the St. Paul Pioneer Press indicated that numerous Minnesota police officers and firefighters were using a loophole in state law to receive lucrative disability benefits, sometimes two years after the injury occurred and while engaging in subsequent public employment. The February 2004 concerns were only partially addressed in H.F. xxx; S.F. 1616 (Betzold), which was folded into the 2004 Omnibus Retirement Bill, which made the following changes in PERA-P&F disability procedures:
 - a. Requiring evidence that the applicant is unable to perform duties of the position held at the time of the disability if the application is filed within two years of the onset of the disabling injury or illness;
 - b. Requiring evidence that the applicant is unable to perform duties assigned within 90 days of the application date if the application is filed more than two years after of the onset of the disabling injury or illness;
 - c. Requiring first reports of injury in all duty-related applications;
 - d. Requiring in all cases that the employer must provide evidence that the applicant is unable to perform applicable duties;
 - e. Voiding the disability application if termination from service does not occur within 45 days after approval of a disability application;
 - f. Clarifying that individuals may simultaneously apply for disability and retirement benefits, although both may not be received at the same time; and
 - g. Permitting repayment of refunds no later than six months after the effective date of the disability benefit.

In testimony in 2004, PERA indicated that it had worked on the issue with interested parties and would continue to discuss additional disability benefit revisions and reforms with its constituency, but no additional revisions or reforms have been forthcoming in 2005. To potentially resolve some of the identified problems with the PERA-P&F disability benefit program, Amendment LCPR05-110 makes the following potential changes as a contribution to Commission consideration of potential PERA-P&F disability reforms based on the February 2004 identification of PERA-P&F disability program problems:

- i. Creates Hazardous Duty Disability Benefit. The current duty disability benefit is transformed into a hazardous duty disability benefit, without any minimum vesting requirement and with a minimum benefit amount (Sections 1, 4, and 6).
- ii. Creates Non-Hazardous Duty Disability Benefit. A non-hazardous duty disability benefit is created, without any minimum vesting requirement, but with a smaller minimum benefit amount than the duty disability benefit (Sections 2 and 8).

- iii. Requires Disability Determination Based on Person's Actual Police or Fire Duties. The determination of a hazardous duty disability, a non-hazardous duty disability, or a non-duty disability must be based on the actual duties of the person's police officer or firefighter position, so a detective's disability will be potentially based on different position requirements than a beat patrol officer (Sections 1, 2, and 3).
- iv. Reemployed Disabilitant Earnings Limitation Clarified. An earnings limitation on reemployed disabilitants is clarified to apply to any public sector, nonprofit sector, or private sector employment (Section 9).
- v. Termination on Account of Disability Required for Disability Benefit Receipt. As a condition to the receipt of a disability benefit, an application is required to have terminated active public safety employment on account of the disability (Section 10).
- vi. No Post-Termination Disability Benefit Application. No application for a PERA-P&F disability benefit may be filed after the person terminates active employment (Section 12).
- vii. No Post-Disability Refund Repayment. No refund repayment is permitted from a PERA-P&F disability benefit applicant after the date of the disability (Section 12).

Technical Amendment

Amendment LCPR05-104 clarifies the language of the proposed legislation without intentionally altering its substance and repositions the proposed disability eligibility restrictions in the PERA-P&F disability benefit section rather than in the membership section as proposed.

TwinCities.com

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MINNESOTA: Disability payouts rise for police, firefighters

BY ROBERT INGRASSIA
Pioneer Press

A growing number of cops and firefighters in St. Paul and throughout Minnesota are using loosely written laws to gain lucrative disability benefits, straining a taxpayer-supported pension fund and threatening local government budgets across the state.

Although some of the benefits are flowing to firefighters and officers who suffered severe injuries on the job, state and local officials point to a host of questionable cases in recent years that they say highlight the need for reform:

- Officers and firefighters in St. Paul and elsewhere who were injured playing racquetball, softball or other sports qualified for on-the-job disability benefits by contending that the activities were part of job-related fitness training.
- A St. Paul officer who injured herself lifting weights was found fit enough to continue working her desk job, but won disability benefits after a doctor stated she would be unable to chase a suspect if the need arose.
- Two St. Paul firefighter trainees received benefits for injuries they claimed they suffered during training. They are receiving 60 percent of their salary for the rest of their lives and subsidized health insurance until age 65.

St. Paul Mayor Randy Kelly sponsored one of the benefit laws in 1997 while he was a state senator. His top aide, Deputy Mayor Dennis Flaherty, championed Kelly's bill while serving as director of a statewide police group.

Now, as St. Paul and other cities are facing rising costs because of a spike in disability claims, Kelly and Flaherty are backing an effort to tighten the police and fire disability programs.

"The original intent was and still is to assist families when a loved one is killed or disabled with a career-ending injury in the line of duty," said Flaherty, former executive director of the Minnesota Peace and Police Officers Association. "We don't want to attack the benefit. We want to attack the abuse of it."

Representatives of police officers and firefighters said they agree with the need for changes. But they said officials in St. Paul and other cities are partly to blame for the rising number of disability pensions and insurance benefit claims.

Commanders and administrators sometimes pushed troublesome or aging workers into the disability programs, said Dick Leitner, president of the St. Paul Firefighters Local 21. He said St. Paul officials didn't begin raising concerns about the programs until the state slashed reimbursement payments to the city.

"The city knew they had a problem for years," Leitner said. "But it wasn't considered abuse until it went unfunded."

St. Paul police officers and firefighters are garnering a disproportionate share of the benefits.

They obtained a quarter of a state pension fund's disability payments in 2002 — while making up 10 percent of the fund's membership. Of the 149 retirees currently receiving the insurance benefit statewide, a third are from St. Paul.

Pension officials and labor representatives were at a loss to explain the spike in St. Paul, other than to suggest that the city's officers and firefighters were simply more aware of the benefits than their peers across the state.

Under state law, public safety officers qualify for higher retirement pay and heavily subsidized health insurance if they can show that an injury suffered on the job prevents them from performing the most demanding of police or fire jobs.

Two programs are at issue. One is a disability retirement benefit paid out by the pension fund. The other is a health insurance program administered by the state. They are related because applicants who qualify for the disability pension are in most cases automatically granted the insurance aid.

The increasing number of disability applications is straining the Police and Fire Fund, a statewide pension fund that covers nearly 10,000 police officers, firefighters and sheriff's deputies. The fund is one of several public pensions managed by the Public Employees Retirement Association of Minnesota.

The pension fund's managers say the higher expenses could force them to ask the state to approve higher contributions from cops and firefighters and from the cities and counties that employ them.

The fund's financial health is in jeopardy. Just a few years ago, the pension was considered "overfunded," meaning it had plenty of assets and income to pay its current and future retirees.

But because investment returns have slumped in recent years and disability payments have increased, the fund's expenses have begun outpacing income.

"The fund is stressed," said Mary Most Vanek, the public pension association's executive director. "We're going to have to increase contributions, I'd expect within the next year, to get the fund back on track and meet our future obligations."

Increasing contributions is controversial on two fronts. Cities and counties would have to pay more for each public safety worker they employ. Plus, cops and firefighters would see more money disappear from each paycheck.

Lucrative pensions strain fire, police fund

Mark Brunswick and Tony Kennedy

Star Tribune

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Hundreds of Minnesota police officers and firefighters have used a loophole in state law to win lucrative disability pensions meant for those who get shot, fall through burning roofs or otherwise suffer career-ending injuries protecting the public.

Many had held down jobs in police and fire departments for years following their injuries, but were allowed to elect early retirement, sometimes going on to work similar jobs in the private sector, and still collect disability payments.

Officers and firefighters have cited everything from weak knees to bad backs to racquetball injuries in order to gain lifetime pensions and other costly benefits.

The trend is dramatically depleting a state pension fund and threatening to cost taxpayers millions.

Those collecting disability payments include a St. Paul City Council member, two fire department trainees who flunked out of the firefighters' academy, a state senator and his wife, and a former firefighter whose disability did not prevent his becoming a finalist to play the robust "Brawny Man" for a popular brand of paper towels.

Recently, a St. Paul officer under a felony indictment in connection with stolen property was awarded a disability pension he could collect even in prison.

St. Paul, by far, leads the way on expensive "in-the-line-of-duty" medical retirements. At least 54 St. Paul police and fire workers - some in high-ranking posts in their departments - have won lifetime disability pensions the past four years that come complete with free survivor benefits and subsidized health insurance until age 65.

The Public Employees Retirement Association (PERA), St. Paul city officials and the League of Minnesota Cities say that the pension rolls are becoming overburdened by police and firefighters exploiting a generous and flawed new retirement option created by the Legislature in 1997.

The way the law is written, PERA says, the new breed of applicants needs only a doctor to say they have a job-related malady that prevents them from doing 100 percent of a front-line job as a baton-swinging street officer or ladder-climbing firefighter.

As a result, the rush of applicants for the new, top-of-the-line retirement benefits has commonly included desk bound police and fire administrators with chronic ailments who might have otherwise waited for normal retirement at age 55. It also includes applicants with injuries suffered from such activities as working out at the gym, under the justification that part of the duty of police officers and firefighters is to stay fit.

"I believe the intent of the law is being violated, terribly," said Ron Guilfoile, director of St. Paul's risk management office.

Jeffrey Kane, 33, joined the St. Paul Police Department in 1999. He was indicted late last year on federal charges that he transported and concealed a stolen Bobcat loader. He has pleaded not guilty.

But when Kane left the police force on Feb. 9, it wasn't because federal prosecutors were trying to put him behind bars. Instead, Kane left with an in-the-line-of-duty disability pension that promises to pay him at least 60 percent of his officer's salary and city-subsidized health care until he is 65. Police Department spokesman Paul Schnell wouldn't comment on the case, but he said the disability pension was related to injuries that Kane suffered several years ago in a squad car accident. Neither Kane nor his lawyer could be reached for comment.

Schnell said Kane returned to work after his crash in a lighter-duty role as a graffiti investigator. After his indictment, Kane was assigned to the police impound lot pending an internal investigation.

A PERA spokeswoman said approving Kane's disability pension was an open-and-shut case. Even if Kane spends time in a federal prison camp, his monthly pension checks will keep coming, she said.

Statewide, the numbers of disability claims have skyrocketed in a few years under the new law. In 1998, the first full year of availability for the enhanced, duty-related pensions, PERA's police and fire plan paid out \$5.9 million to 314 disability benefit recipients. In the fiscal year ending June 30, 2003, it paid out more than four times as much to 614 recipients.

Officials have no clear explanation for why St. Paul has experienced a spike of more than 50 in-the-line-of-duty disability retirements in police and fire ranks since the law changed. In the same time period, only a handful of Minneapolis police and firefighters have taken the so-called "medical outs." Some believe word of the new disability provisions has spread unusually widely among St. Paul officers. Others contend an aging workforce nearing retirement age finds the benefits especially attractive.

St. Paul Mayor Randy Kelly and his deputy mayor, Dennis Flaherty, spearheaded the 1998 law change when Kelly was a state senator and Flaherty was chief lobbyist for the statewide police federation.

As the two men now question what went wrong, PERA is contemplating an across-the-board hike in the cash contributions from covered cities and individuals that fund pensions. In St. Paul, for instance, the city's cost to support police and fire pensions could jump 35 percent, from about \$6 million a year to \$8.1 million, Guilfoile said. Meanwhile, the duty-related medical retirements also have increased the city's annual health insurance obligations.

Mary Vanek, executive director of PERA, the agency that grants pensions from the \$4.7 billion Police and Fire Pension Fund, said the high number of St. Paul cases is "unbelievable" compared to other municipalities.

Retired St. Paul police officer Thomas Collins, once the department's designated security guard and driver for former Mayor Norm Coleman, now works under contract for the U.S. Marshals Service as a guard at the federal courthouse in St. Paul. Collins took a duty-related disability pension at age 46 and looked for a second job "because it wasn't a fat enough pension to sit home and do nothin'."

Collins, who receives a monthly disability payment of \$3,851, readily admits that he could have looked for a desk job in the police department following his mayoral assignment, but instead he exercised his legal rights to a duty-related disability because he had physical restrictions from a back injury suffered in a June 1995 road accident in the mayor's Crown Victoria.

Collins said he had a "very tenuous relationship" with Police Chief Bill Finney and didn't want to risk getting an undesirable new assignment. If it hadn't been for the availability of a duty-related medical pension that would also pay a portion of his health insurance, Collins said, he would have had to continue working in the department.

"I was 46 years old," Collins said. "I wouldn't have been able to leave otherwise."

System's generosity

No one has come forward with an example that breaks the law, but other cases further illustrate the system's generosity.

- Former St. Paul firefighter Doug Friberg was approved for a duty-related medical pension in May 2002 and left the department with a \$39,000-a-year pension and subsidized health care benefits. He resurfaced later that year as a contest finalist in a national promotion for "rugged, tough, dependable and strong" Brawny paper towels. In vouching for him as a worthy candidate to be Georgia-Pacific's new "Brawny Man," Friberg's neighbors in Oakdale raved about his volunteering to shovel their snow.

The 46-year-old Friberg, a former football nose guard for the University of Minnesota, said his involvement in the Brawny "publicity stunt" was all about physical appearance, not physical ability. He said he injured his back in 1993, lifting a stretcher in a narrow stairway. Because the injury was never properly treated, he said, it lingered until he could no longer perform all the duties of a firefighter and medic. The snow-shoveling testimonials were from days long ago when he was healthy, said Friberg, who said he now works in a job that doesn't require heavy lifting.

- Although neither Julie Tossey nor Kathleen O'Connor worked a single day in a St. Paul fire station, both have been collecting in-the-line-of-duty disability pensions since 2001. Their attorneys, Dan Boivin and Sandra Kensey, said the pensions are for injuries that Tossey and O'Connor suffered during six weeks of recruit training in the city's firefighter academy. The two were notified midway through the academy that they were unqualified, but they were technically employed as firefighters during the training period.

Boivin and Kensey said PERA contested Tossey's case, in which she reinjured her back during a firefighter training exercise. The original injury was from an off-the-job horseback-riding accident, but Tossey had recovered enough to pass the physical exam to qualify as a firefighter recruit, the lawyers said.

After Tossey prevailed, the lawyers said, PERA didn't contest O'Connor's claim that she suffered mental anguish and depression as a result of emotional abuse at the academy. According to state pension records, Tossey receives a monthly pension of \$2,738, while O'Connor receives \$1,626. Tossey and O'Connor are still pursuing a lawsuit against St. Paul for age and sex discrimination, claiming the training academy was rigged against them.

- State Sen. Mike McGinn and his wife, Lisa, were both with the St. Paul Police Department until they retired under disabilities. Together, they receive \$135,000 a year in disability checks.

Besides the disability payments and his Senate salary, Mike McGinn, who had a heart attack in 1991 and retired in 2000 with a nonduty related disability, also works part time as a law enforcement consultant. McGinn said the stresses are more manageable in his political career than they were in police work.

"In politics, there are winners and losers, but no one is losing their life," he said.

Lisa McGinn retired last year at 50 with an in-the-line-of-duty disability from injuries she received in several auto accidents. She has not found full-time employment. She said the injuries from the duty-related car crashes resulted in chronic pain that limited her ability to do police work. As a watch commander in her final year on the force, she said she was unable to qualify at the firing range because the recoil from a shotgun might injure her neck.

"There's no place I would rather be than still be working at the St. Paul Police Department," she said.

Trend spreads

While the trend started in St. Paul, it is spreading throughout the state.

"Others have figured it out. The word is out," PERA's Vanek said. "You can't ignore the actuaries. Contributions to the fund need to be increased or benefits decreased."

The potential for an increase in contributions to the pension fund has caught the eye of current police and fire members, whose own individual contributions to the retirement plan could go up \$250 to \$400 a year or more to make up for the reimbursements to the disabled retirees.

Bill Gillespie, executive director of the Minnesota Police and Peace Officers Association, said many of those filing for in-the-line-of-duty disabilities are using injuries that are not the kind for which the new benefit was intended. Active members, he says, are registering complaints.

"Their objection is primarily one of a sense of justice, what's right and fair," he said.

PERA officials say they are hamstrung by the law and they are pushing a bill at the Legislature that would restrict the availability of duty-related medical pensions. Other benefit plans for non-police and fire personnel often require a "total and permanent" disability that means the inability to perform any gainful activity for the same level of benefits.

Former St. Paul police commander Debbie Montgomery was elected to the St. Paul City Council last fall. She retired from the police department in 2003 with a \$63,000 a year in-the-line-of-duty medical pension that the city contested. According to state workers' compensation records, Montgomery's doctor said she developed injuries to both of her knees from years of getting in and out of squad cars, kneeling at the firing range and falling down on her kneecaps while a street officer.

Montgomery's injuries didn't prevent her from working her administrative job as a commander, but she said she deserved an in-the-line-of-duty disability pension because she could no longer do everything a uniformed officer might be called upon to do.

"Your job title says that you have to be able to perform all the duties of a police officer," she said. "It doesn't say 'commander.' It says 'police officer.'"

As long as they do not go back to working as licensed police officers or firefighters, those with in-the-line-of-duty disabilities are free to find other work, even in security-related fields.

Former St. Paul police officer David Mars is co-owner of Twin City Lawmen, Inc., an Oakdale private security firm. His back was injured in a squad car accident in the

late 1970s, he said. He missed months of work, but returned as a patrolman in the rough Frogtown area for many years, even though he was still troubled by a degenerating disc problem.

Mars said he was "fed up with the administration" of the police force at age 50 and also worried more about his back. But instead of taking normal early retirement, he received a richer, duty-related medical retirement that pays him a higher monthly pension and a subsidy on his health insurance.

"I'd be stupid if I didn't take it," said Mars, who adds that his role at Twin City Lawmen is primarily administrative.

Change in state law

Mayor Kelly and Deputy Mayor Flaherty pushed hard for the change in state law that opened up the flood of disability claims. They said at the time and continue to maintain that the intent of the legislation was to protect officers and firefighters facing increasing dangers.

Initially, the state was to reimburse cities for the additional costs, but those funds have been severely restricted under budget cuts.

Flaherty said it was never his intention for the new benefit to be used in this way. He testified before a House committee in 1997: "I don't want you to think that we're talking about a large number of people. Fortunately, it's a very finite group."

Others remember Flaherty's role differently. Dave Johnson was a state senator at the time of the law change. He is now the attorney for the union that represents St. Paul firefighters.

Johnson said that Flaherty could have acted in 1997 to narrow the availability of the new benefit he was proposing as a police lobbyist by using a "hot pursuit" standard instead of the broader "in the line of duty" language.

There is plenty of blame to go around. The police association's Gillespie and other police groups blame PERA for failing to enforce the law. So does St. Paul's Flaherty. PERA points to the courts, which have upheld the broad interpretation of the law.

PERA has no investigators in the field to determine if someone claiming a disability is still unable to work. It relies instead on reports sent in by the claimants themselves. Now it wants greater accountability from those making claims.

The Minnesota Department of Health has a retired doctor working a few days a week with part-time help to review disability claims. Of the 368 disability determinations the Department of Health has conducted with benefit effective dates after 1999, it has denied only one application.

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1 M moves to amend S.F. No. 235; H.F. No.
2 372, as follows:

3 Page 1, line 12, delete "An" and insert "A qualified" and
4 after "of" insert "the city of" and before "Spring" insert "the
5 city of" and after "or" insert "the city of"

6 Page 1, line 13, after "View" insert "is a member of the
7 public employees police and fire retirement plan governed by
8 sections 353.63 to 353.68, subject to the limitations set forth
9 in section 353.656, subdivision 1, paragraph (b).

10 (b) A qualified employee is a person"

11 Page 1, line 14, after "assigned" insert "by the applicable
12 city"

13 Page 1, line 16, after "situations" insert "within the
14 service area of the Blaine, Spring Lake Park and Mounds View
15 independent nonprofit firefighting corporation"

16 Page 1, line 17, delete "or" and insert "and"

17 Page 1, line 19, after "all" insert "applicable published"

18 Page 1, line 20, delete "or" and insert "and"

19 Page 1, line 21, after "independent" insert "nonprofit" and
20 delete "a" and insert "an annual"

21 Page 1, line 22, delete "per year"

22 Page 1, lines 23 and 25, after "as" insert "meeting the
23 requirements of"

24 Page 2, line 4, after the first "or" insert "as an"

25 Page 2, line 6, after "(8)" insert "determined by the
26 federal secretary of labor as being"

27 Page 2, line 11, before "position" insert "employment" and
28 after "excluded" insert "as that of a firefighter"

29 Page 2, line 13, delete the underscored semicolon and
30 insert an underscored period

31 Page 2, delete line 14

32 Page 2, line 15, delete "sections 353.63 to 353.68." and
33 insert "(c)" and delete "and" and insert "or"

34 Page 2, line 16, after "View" insert ", whichever applies,"
35 and after "shall" insert ": (1)"

36 Page 2, line 18, delete "shall" and insert "; (2)"

1 Page 2, line 19, delete "shall" and insert "; (3)"

2 Page 2, line 21, delete "shall" and insert "; and (4)"

3 Page 2, line 22, after "trustees" insert "of the Public
4 Employees Retirement Association" and after "specifying" insert "
5 that the city employment" and delete "to" and insert "are" and
6 delete "be"

7 Page 2, line 25 delete "(b) An" and insert:

8 "Sec. 2. Minnesota Statutes 2004, section 353.656,
9 subdivision 1, is amended to read:

10 Subdivision 1. [IN LINE OF DUTY; COMPUTATION OF
11 BENEFITS.] (a) A member of the police and fire plan who becomes
12 disabled and physically unfit to perform duties as a police
13 officer, firefighter, or paramedic as defined under section
14 353.64, subdivision 10, as a direct result of an injury,
15 sickness, or other disability incurred in or arising out of any
16 act of duty, which has or is expected to render the member
17 physically or mentally unable to perform the duties as a police
18 officer, firefighter, or paramedic as defined under section
19 353.64, subdivision 10, for a period of at least one year, shall
20 receive disability benefits during the period of such
21 disability. The benefits must be in an amount equal to 60
22 percent of the "average salary" as defined in section 353.651,
23 subdivision 2, plus an additional percent specified in section
24 356.315, subdivision 6, of that average salary for each year of
25 service in excess of 20 years. If the disability under this
26 subdivision occurs before the member has at least five years of
27 allowable service credit in the police and fire plan, the
28 disability benefit must be computed on the "average salary" from
29 which deductions were made for contribution to the police and
30 fire fund.

31 (b) A qualified" and delete "paragraph (a)" and insert
32 "section 353.64, subdivision 12, paragraph (b),"

33 Page 2, line 27, after "for" insert "a duty"

34 Page 2, line 28, delete "benefits" and insert "benefit" and
35 delete "fund" and insert "retirement plan"

36 Page 2, line 29, before "section" insert "this" and delete "

1 353.656, subdivision 1" and delete "member" and insert "person"

2 Page 2, line 30, after "perform" insert "future" and after "
3 duties" insert "for the Blaine, Spring Lake Park and Mounds View
4 independent nonprofit firefighting corporation"

5 Page 2, line 31, delete "an" and insert "a medically
6 determinable"

7 Page 2, line 34, after "assistance" insert "from the
8 Blaine, Spring Lake Park and Mounds View independent nonprofit
9 firefighting corporation"

10 Page 2, line 35, after "training" insert "provided by or
11 authorized by the Blaine, Spring Lake Park and Mounds View
12 independent nonprofit firefighting corporation"

13 Page 3, line 1, after "rescue" insert "involving the
14 Blaine, Spring Lake Park and Mounds View independent nonprofit
15 firefighting corporation"

16 Page 3, line 2, delete "An" and insert "A qualified"

17 Page 3, line 3, after "but" insert "who" and after "is"
18 insert "only"

19 Page 3, line 4, after "for" insert "a" and delete "benefits"
20 and insert "benefit"

21 Page 3, delete lines 5 and 6 and insert:

22 "Sec. 3. [EFFECTIVE DATE; LOCAL APPROVAL.]

23 Section 1 is effective on the day after which the last of
24 the governing bodies of the city of Blaine, the city of Spring
25 Lake Park, and the city of Mounds View and that city's chief
26 clerical officer timely complete their compliance with Minnesota
27 Statutes, section 345.021, subdivisions 2 and 3."

28 Amend the title as follows:

29 Page 1, line 2, after "retirement;" insert "public
30 employees police and fire retirement plan;"

31 Page 1, line 3, delete "and" and insert "or"

32 Page 1, line 4, after "the" delete the balance of the line
33 and insert "retirement plan"

34 Page 1, line 5, delete "police and fire fund"

35 Page 1, line 6, delete "section" and insert "sections" and
36 after "subdivision" insert "; and 353.656, subdivision 1"

1 M moves to amend S.F. No. 235; H.F. No.
2 372, as follows:

3 Page 1, line 23, after "Board" insert "or a comparable
4 certification organization recognized by the International Fire
5 Service Accreditation Congress"

6 Page 1, line 24, after "firefighter I" insert "under
7 National Fire Protection Association standard 1001"

1 M moves to amend S.F. No. 235; H.F. No.

2 372, as follows:

3 Page 1, delete lines 25 and 26 and insert "(5) certified as

4 a first responder by an accredited institution;"

- 1 M moves to amend S.F. No. 235; H.F. No.
- 2 372, as follows:
- 3 Page 2, line 3, after "(7)" delete the balance of the line
- 4 Page 2, delete line 4
- 5 Page 2, line 5, delete "the effective date of this act;"
- 6 Page 2, line 6, delete "(8)"

1 M moves to amend S.F. No. 235; H.F. No.
2 372, as follows:

3 Page 3, after line 6, insert:

4 "Sec. 2. [PROHIBITION ON CERTAIN VOLUNTEER FIREFIGHTER
5 RELIEF ASSOCIATION CONCURRENT COVERAGE.]

6 A qualified employee defined in Minnesota Statutes, section
7 353.64, subdivision 12, is not eligible to be a member of or
8 have coverage by the Spring Lake Park Volunteer Firefighters
9 Relief Association while so employed."

1 M moves to amend S.F. No. 235; H.F. No.
2 372, as follows:

3 Page 1, before line 8, insert:

4 "Section 1. Minnesota Statutes 2004, section 353.64,
5 subdivision 1, is amended to read:

6 Subdivision 1. [POLICE AND FIRE PLAN MEMBERSHIP;
7 MANDATORY.] A governmental subdivision must report a public
8 employee for membership in the police and fire plan if the
9 employee is employed full time as a police officer or a
10 firefighter as specified in clause (1), (2), or (3):

11 (1) a full-time police officer or a person in charge of a
12 designated police or sheriff's department, who by virtue of that
13 employment is required by the employing governmental subdivision
14 to be and is licensed by the Minnesota peace officer standards
15 and training board under sections 626.84 to 626.863, who is
16 charged with the prevention and detection of crime, who has the
17 full power of arrest, who is assigned to a designated police or
18 sheriff's department, and whose primary job is the enforcement
19 of the general criminal laws of the state;

20 (2) a full-time firefighter or a person in charge of a
21 designated fire company or companies who, by virtue of that
22 employment, is required by the employing governmental
23 subdivision to be certified and is certified as a firefighter I
24 under National Fire Protection Association standard 1001, who is
25 assigned to a fire department, and whose primary job is the
26 suppression of fire, responding to medical emergencies, or
27 responding to hazardous materials situations while is engaged in
28 the hazards of fire fighting; or

29 (3) a full-time police officer or firefighter meeting all
30 requirements of clause (1) or (2), as applicable, who as part of
31 the employment position is periodically assigned to employment
32 duties in the same department that are not within the scope of
33 this subdivision.

34 An individual to which clause (3) applies must contribute
35 as a member of the police and fire plan for both the primary and
36 secondary services that are provided to the employing

04/04/05 9:56 a.m.

[COM] LM/LD LCPR05-109

- 1 governmental subdivision."
- 2 Renumber the sections in sequence
- 3 Correct the internal references
- 4 Amend the title accordingly

1 M moves to amend S.F. No. 235; H.F. No.
2 372, as follows:

3 Page 1, after line 7, insert:

4 "Section 1. Minnesota Statutes 2004, section 353.01, is
5 amended by adding a subdivision to read:

6 Subd. 19a. [HAZARDOUS DUTY DISABILITY.] "Hazardous duty
7 disability" means the medically determinable inability to
8 perform the duties of the person's most recent position as a
9 police officer, firefighter, or paramedic as defined under
10 section 353.64, subdivision 10, as a direct result of an injury,
11 sickness, or other disability that incurred in or arose out of
12 any hazardous duty, which has rendered or is expected to render
13 the member physically or mentally unable to perform the duties
14 of the person's most recent position as a police officer,
15 firefighter, or paramedic as defined under section 353.64,
16 subdivision 10, for a period of at least one year.

17 Sec. 2. Minnesota Statutes 2004, section 353.01, is
18 amended by adding a subdivision to read:

19 Subd. 19b. [NONHAZARDOUS DUTY DISABILITY.] "Nonhazardous
20 duty disability" means the medically determinable inability to
21 perform the duties of the person's most recent position as a
22 police officer, firefighter, or paramedic as defined under
23 section 353.64, subdivision 10, because of an illness or an
24 injury occurring while on duty, but not while performing
25 hazardous duty, and by reason of that illness or injury the
26 member has been or is expected to be unable to perform the
27 duties of the person's most recent position as a police officer,
28 firefighter, or paramedic as defined under section 353.64,
29 subdivision 10, for a period of at least one year.

30 Sec. 3. Minnesota Statutes 2004, section 353.01, is
31 amended by adding a subdivision to read:

32 Subd. 19c. [NONDUTY DISABILITY.] "Nonduty disability"
33 means the medically determinable inability to perform the duties
34 of the person's most recent position as a police officer,
35 firefighter, or paramedic as defined in section 356.64,
36 subdivision 10, because of an illness or an injury occurring

1 while not on duty as a police officer, firefighter, or paramedic
 2 as defined under section 353.64, subdivision 10, and by reason
 3 of that illness or injury the member has been or is expected to
 4 be unable to perform the duties of the person's most recent
 5 position as a police officer, firefighter, or paramedic as
 6 defined under section 353.64, subdivision 10, for a period of at
 7 least one year.

8 Sec. 4. Minnesota Statutes 2004, section 353.01, is
 9 amended by adding a subdivision to read:

10 Subd. 19d. [HAZARDOUS DUTY.] (a) "Hazardous duty" means
 11 duty involving the employee operating police, firefighter, or
 12 paramedic equipment, the arrest, apprehension, or control of a
 13 suspect or prisoner, maintaining public order, responding to a
 14 911 call for police or fire services, administering emergency
 15 medical treatment, or transporting sick and injured persons to
 16 medical facilities.

17 (b) "Hazardous duty" does not mean attending or delivering
 18 training, home to work travel, routine patrol, physical fitness
 19 activities, caring for a police canine or police horse, fire or
 20 crime prevention activities that do not involve an actual
 21 response to an emergency situation, routine maintenance of any
 22 police or fire equipment or facility, or office work such as
 23 writing, filing reports, or computer work."

24 Page 3, after line 4, insert:

25 "Sec. 6. Minnesota Statutes 2004, section 353.656,
 26 subdivision 1, is amended to read:

27 Subdivision 1. [~~IN-LINE-OF~~ HAZARDOUS DUTY; COMPUTATION OF
 28 BENEFITS.] A member of the police and fire plan who becomes
 29 ~~disabled-and-physically-unfit-to-perform-duties-as-a-police~~
 30 ~~officer,-firefighter,-or-paramedic-as-defined-under-section~~
 31 ~~353.64,-subdivision-10,-as-a-direct-result-of-an-injury,~~
 32 ~~sickness,-or-other-disability-incurred-in-or-arising-out-of-any~~
 33 ~~act-of-duty,-which-has-or-is-expected-to-render-the-member~~
 34 ~~physically-or-mentally-unable-to-perform-the-duties-as-a-police~~
 35 ~~officer,-firefighter,-or-paramedic-as-defined-under-section~~
 36 ~~353.64,-subdivision-10,-for-a-period-of-at-least-one-year,-shall~~

1 suffers a hazardous duty disability is entitled to receive
2 disability benefits during the period of such the disability.
3 The-benefits-must-be in an amount equal to 60 percent of the
4 "average salary" as defined in section 353.651, subdivision 2,
5 plus an additional percent specified in section 356.315,
6 subdivision 6, of that average salary for each year of service
7 in excess of 20 years. If the hazardous duty disability under
8 this subdivision occurs before the member has at least five
9 years of allowable service credit in the police and fire plan,
10 the disability benefit must be computed on the "average salary"
11 from which deductions were made for contribution to the police
12 and fire fund.

13 Sec. 7. Minnesota Statutes 2004, section 353.656,
14 subdivision 2, is amended to read:

15 Subd. 2. [BENEFITS PAID UNDER WORKERS' COMPENSATION LAW.]
16 If a member, as described in subdivision 1 or 3, is injured
17 under circumstances which entitle the member to receive benefits
18 under the workers' compensation law, the member shall is
19 entitled to receive the same benefits as provided in subdivision
20 1 or 3, whichever applies, with the disability benefits to be
21 paid reimbursed and future benefits reduced by all periodic or
22 lump sum amounts paid to the member under the workers'
23 compensation law, after deduction of amount of attorney fees,
24 authorized under applicable workers' compensation laws, paid by
25 a disabilitant if the total of the single life annuity actuarial
26 equivalent disability benefit and the workers' compensation
27 benefit exceeds: (1) the salary the disabled member received as
28 of the date of the disability or (2) the salary currently
29 payable for the same employment position or an employment
30 position substantially similar to the one the person held as of
31 the date of the disability, whichever is greater. The
32 disability benefit must be reduced to that amount which, when
33 added to the workers' compensation benefits, does not exceed the
34 greater of the salaries described in clauses (1) and (2).

35 Sec. 8. Minnesota Statutes 2004, section 353.656,
36 subdivision 3, is amended to read:

1 Subd. 3. [NONHAZARDOUS DUTY OR NONDUTY DISABILITY
2 BENEFIT.] Any (a) A member of the police and fire plan who
3 becomes disabled on duty, but not while performing hazardous
4 duty, or becomes disabled after not less than one year of
5 allowable service ~~because-of-sickness-or-injury-occurring~~ while
6 not on duty as a police officer, firefighter, or paramedic as
7 defined under section 353.64, subdivision 10, ~~and-by-reason-of~~
8 ~~that-sickness-or-injury-the-member-has-been-or-is-expected-to-be~~
9 ~~unable-to-perform-the-duties-as-a-police-officer,-firefighter,~~
10 ~~or-paramedic-as-defined-under-section-353.64,-subdivision-10,~~
11 ~~for-a-period-of-at-least-one-year,~~ is entitled to receive a
12 disability benefit. The benefit must be paid in the same manner
13 as if the benefit were paid under section 353.651.

14 (b) If a disability under this subdivision occurs after one
15 year of allowable service but ~~in~~ with less than 15 years of
16 allowable service, the disability benefit must be the same as
17 though the member had at least 15 years service.

18 (c) For a member who is employed as a full-time firefighter
19 by the Department of Military Affairs of the state of Minnesota,
20 allowable service as a full-time state Military Affairs
21 Department firefighter credited by the Minnesota State
22 Retirement System may be used in meeting the minimum allowable
23 service requirement of this subdivision.

24 Sec. 9. Minnesota Statutes 2004, section 353.656,
25 subdivision 4, is amended to read:

26 Subd. 4. [LIMITATION ON DISABILITY BENEFIT PAYMENTS.] (a)
27 No member is entitled to receive a disability benefit payment
28 when there remains to the member's credit unused annual leave or
29 sick leave or under any other circumstances when, during the
30 period of disability, there has been no impairment of the
31 person's salary as a police officer or a firefighter, or a
32 paramedic as defined under section 353.64, subdivision 10,
33 whichever applies.

34 (b) If a disabled member resumes a gainful occupation with
35 ~~earnings-less-than-the-disabilitant-reemployment-earnings~~
36 limit in the public sector, the nonprofit sector, or the private

1 sector, the amount of the disability benefit must be reduced as
2 provided in this paragraph. The disabilitant reemployment
3 earnings limit is the greater of:

4 (1) the salary earned at the date of disability; or

5 (2) 125 percent of the salary currently paid by the
6 employing governmental subdivision for similar positions.

7 The disability benefit must be reduced by one dollar for
8 each three dollars by which the total amount of the current
9 disability benefit, any workers' compensation benefits, and
10 actual earnings from the gainful occupation exceed the greater
11 disabilitant reemployment earnings limit. In no event may the
12 disability benefit as adjusted under this subdivision exceed the
13 disability benefit originally allowed.

14 Sec. 10. Minnesota Statutes 2004, section 353.656,
15 subdivision 5, is amended to read:

16 Subd. 5. [PROOF OF DISABILITY.] (a) A disability benefit
17 payment must not be made except upon adequate proof of the
18 existence of a disability furnished to the executive director of
19 the association of the existence of a disability.

20 (b) During the time when disability benefits are being
21 paid, the executive director of the association has the right,
22 at reasonable times, to require the disabled member to submit
23 proof of the continuance of the disability claimed.

24 (c) Adequate proof of a disability must include a written
25 expert report by a licensed physician, by a licensed
26 chiropractor, or with respect to a mental impairment, by a
27 licensed psychologist.

28 (d) A person applying for a disability benefit must
29 terminate employment as a police officer, a firefighter, or a
30 paramedic as defined in section 353.64, subdivision 10,
31 whichever applies, on account of the disability. A person
32 applying for or receiving a disability benefit shall provide or
33 authorize release of medical evidence, including all medical
34 records and information from any source, relating to an
35 application for disability benefits or the continuation of those
36 benefits.

1 Sec. 11. Minnesota Statutes 2004, section 353.656,
2 subdivision 5a, is amended to read:

3 Subd. 5a. [CESSATION OF DISABILITY BENEFIT.] The
4 association shall cease the payment of an-in-line-of-duty
5 hazardous duty disability, nonhazardous duty disability, or
6 nonduty disability benefit the first of the month following the
7 reinstatement of a member to full time or less than full-time
8 service in a position covered by the police and fire fund.

9 Sec. 12. Minnesota Statutes 2004, section 353.656,
10 subdivision 8, is amended to read:

11 Subd. 8. [APPLICATION PROCEDURE TO DETERMINE ELIGIBILITY
12 FOR POLICE AND FIRE PLAN DISABILITY BENEFITS.] (a) An
13 application for disability benefits must be made in writing on a
14 form or forms prescribed by the executive director.

15 (b) If an application for disability benefits is filed
16 within two years of the date of the injury or the onset of the
17 illness that gave rise to the disability application, the
18 application must be supported by evidence that the applicant is
19 unable to perform the duties of the position held by the
20 applicant on the date of the injury or the onset of the illness
21 causing the disability. The employer must provide evidence
22 indicating whether the applicant is able or unable to perform
23 the duties of the position held on the date of the injury or
24 onset of illness causing the disability and the specifications
25 of any duties that the individual can or cannot perform.

26 (c) If an application for disability benefits is filed more
27 than two years after the date of the injury or the onset of an
28 illness causing the disability, the application must be
29 supported by evidence that the applicant is unable to perform
30 the most recent duties that are expected to be performed by the
31 applicant during the 90 days before the filing of the
32 application. The employer must provide evidence of the duties
33 that are expected to be performed by the applicant during the 90
34 days before the filing of the application, whether the applicant
35 can or cannot perform those duties overall, and the
36 specifications of any duties that the applicant can or cannot

1 perform.

2 (d) Unless otherwise permitted by law, no application for
3 disability benefits can may be filed by a former member of the
4 police and fire plan more-than-three-years after the former
5 member has terminated from Public-Employees-Retirement
6 Association police and fire plan covered employment. If-an
7 application-is-filed-within-three-years-after-the-termination-of
8 public-employment,-the-former-member-must-provide-evidence-that
9 the-disability-is-the-direct-result-of-an-injury-or-the
10 contracting-of-an-illness-that-occurred-while-the-person-was
11 still-actively-employed-and-participating-in-the-police-and-fire
12 plan.

13 (e) Any application for duty-related disability must be
14 supported by a first report of injury as defined in section
15 176.231.

16 (f) If a member who has applied for and been approved for
17 disability benefits before the termination of service does not
18 terminate service or is not placed on an authorized leave of
19 absence as certified by the governmental subdivision within 45
20 days following the date on which the application is approved,
21 the application shall be canceled. If an approved application
22 for disability benefits has been canceled, a subsequent
23 application for disability benefits may not be filed on the
24 basis of the same medical condition for a minimum of one year
25 from the date on which the previous application was canceled.

26 (g) An applicant may file a retirement application under
27 section 353.29, subdivision 4, at the same time as the
28 disability application is filed. If the disability application
29 is approved, the retirement application is canceled. If the
30 disability application is denied, the retirement application
31 must be initiated and processed upon the request of the
32 applicant. A police and fire fund member may not receive a
33 disability benefit and a retirement annuity from the police and
34 fire fund at the same time.

35 (h) A No repayment of a refund must-be-made-within-six
36 months-after-the-effective-date-of-disability-benefits or within

1 six-months-after-the-date-of-the-filing-of-the-disability
2 application, whichever is later. -- No purchase of prior service
3 or payment made in lieu of salary deductions otherwise
4 authorized under section 353.01 or 353.36, subdivision 2, may be
5 made after the occurrence of the disability for which an
6 application is filed under this section.

7 Sec. 13. [EFFECTIVE DATE.]

8 Sections 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, and 12 are
9 effective on the day following final enactment and apply in
10 cases where the disability benefit is first approved on or after
11 the effective date of these sections."

Senator Betzold introduced--

S.F. No. 235: Referred to the Committee on State and Local Government Operations.

1 A bill for an act

2 relating to retirement; permitting certain employees
3 of Blaine, Spring Lake Park, and Mounds View to become
4 members of the Public Employees Retirement Association
5 police and fire fund; amending Minnesota Statutes
6 2004, section 353.64, by adding a subdivision.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

8 Section 1. Minnesota Statutes 2004, section 353.64, is
9 amended by adding a subdivision to read:

10 Subd. 12. [PENSION AND DISABILITY COVERAGE FOR BLAINE,
11 SPRING LAKE PARK, AND MOUNDS VIEW FIREFIGHTERS AND EMERGENCY
12 RESPONDERS.] (a) An employee of Blaine, Spring Lake Park, or
13 Mounds View who is:

14 (1) assigned primarily to engage in emergency response
15 activities for firefighting, medical emergencies, and hazardous
16 materials situations;

17 (2) a member of the Blaine, Spring Lake Park, or Mounds
18 View independent nonprofit firefighting corporation;

19 (3) in compliance with all rules, regulations, and
20 requirements of the Blaine, Spring Lake Park, or Mounds View
21 independent firefighting corporation and maintains a minimum of
22 60 hours per year of ongoing continuing firefighting education;

23 (4) certified by the Minnesota Fire Certification Board as
24 a firefighter I or higher;

25 (5) certified by the National Registration Board as a first
26 responder;

1 (6) certified as a hazardous materials specialist by an
2 accredited institution;

3 (7) employed primarily by Blaine, Spring Lake Park, or
4 Mounds View as a firefighter or emergency responder on or after
5 the effective date of this act; and

6 (8) not eligible after the effective date of this act for
7 coverage under the agreement signed between the state and the
8 secretary of the federal Department of Health and Human Services
9 making the provisions of the federal Old Age, Survivors, and
10 Disability Insurance Act applicable because the person's
11 position is excluded after that date from application under
12 section 355.07 and United States Code, title 42, sections
13 418(d)(5)(A) and 418(d)(8)(D);

14 is a member of the public employees police and fire fund under
15 sections 353.63 to 353.68. Blaine, Spring Lake Park, and Mounds
16 View shall deduct the employee contribution from the salary of
17 each individual as required by section 353.65, subdivision 2;
18 shall make the employer contribution for each position as
19 required by section 353.65, subdivision 3; shall meet the
20 employer recording and reporting requirements in section 353.65,
21 subdivision 4; and shall file a resolution with the board of
22 trustees specifying the positions designated to primarily be
23 engaged in emergency response activities for firefighting,
24 medical emergencies, and hazardous materials situations.

25 (b) An employee who meets the requirements of paragraph (a)
26 and who becomes a member of the public employees police and fire
27 fund under sections 353.63 to 353.68 is eligible for disability
28 benefits under the public employees police and fire fund under
29 section 353.656, subdivision 1, only if the member becomes
30 disabled and physically unfit to perform duties as a firefighter
31 as a direct result of an injury, sickness, or other disability
32 which occurred while the member was:

33 (1) engaged in responding to an emergency call for
34 assistance;

35 (2) engaged in firefighting training; or

36 (3) engaged in fire suppression or rescue activities at the

1 scene of a fire or rescue.

2 (c) An employee who meets the requirements of paragraph (a)
3 but does not meet the requirements of paragraph (b) is eligible
4 for disability benefits under subdivision 3.

5 [EFFECTIVE DATE.] This section is effective the day
6 following final enactment.

1 A bill for an act

2 relating to retirement; public employees police and
3 fire retirement plan; permitting certain employees of
4 Blaine, Spring Lake Park, or Mounds View to become
5 members of the retirement plan; amending Minnesota
6 Statutes 2004, sections 353.64, by adding a
7 subdivision; and 353.656, subdivision 1.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

9 Section 1. Minnesota Statutes 2004, section 353.64, is
10 amended by adding a subdivision to read:

11 Subd. 12. [PENSION AND DISABILITY COVERAGE FOR BLAINE,
12 SPRING LAKE PARK, AND MOUNDS VIEW FIREFIGHTERS AND EMERGENCY
13 RESPONDERS.] (a) A qualified employee of the city of Blaine, the
14 city of Spring Lake Park, or the city of Mounds View is a member
15 of the public employees police and fire retirement plan governed
16 by sections 353.63 to 353.68, subject to the limitations set
17 forth in section 353.656, subdivision 1, paragraph (b).

18 (b) A qualified employee is a person who is:

19 (1) assigned by the applicable city primarily to engage in
20 emergency response activities for firefighting, medical
21 emergencies, and hazardous materials situations within the
22 service area of the Blaine, Spring Lake Park and Mounds View
23 independent nonprofit firefighting corporation;

24 (2) a member of the Blaine, Spring Lake Park, and Mounds
25 View independent nonprofit firefighting corporation;

26 (3) in compliance with all applicable published rules,

1 regulations, and requirements of the Blaine, Spring Lake Park,
2 and Mounds View independent nonprofit firefighting corporation
3 and maintains an annual minimum of 60 hours of ongoing
4 continuing firefighting education;

5 (4) certified by the Minnesota Fire Certification Board or
6 a comparable certification organization recognized by the
7 International Fire Service Accreditation Congress as meeting the
8 requirements of a firefighter I under National Fire Protection
9 Association standard 1001 or higher;

10 (5) certified by the Minnesota Emergency Services
11 Regulatory Board as meeting the requirements of a first
12 responder;

13 (6) certified as a hazardous materials specialist by an
14 accredited institution; and

15 (7) not eligible after the effective date of this act for
16 coverage under the agreement signed between the state and the
17 secretary of the federal Department of Health and Human Services
18 making the provisions of the federal Old Age, Survivors, and
19 Disability Insurance Act applicable because the person's
20 employment position is excluded as that of a firefighter after
21 that date from application under section 355.07 and United
22 States Code, title 42, sections 418(d)(5)(A) and 418(d)(8)(D).

23 (c) Blaine, Spring Lake Park, or Mounds View, whichever
24 applies, shall: (1) deduct the employee contribution from the
25 salary of each individual as required by section 353.65,
26 subdivision 2; ; (2) make the employer contribution for each
27 position as required by section 353.65, subdivision 3;; (3) meet
28 the employer recording and reporting requirements in section
29 353.65, subdivision 4; and; and (4) file a resolution with the
30 board of trustees of the Public Employees Retirement Association
31 specifying that the city employment the positions designated are
32 primarily engaged in emergency response activities for
33 firefighting, medical emergencies, and hazardous materials
34 situations.

35

36 Sec. 2. Minnesota Statutes 2004, section 353.656,

1 subdivision 1, is amended to read:

2 Subdivision 1. [IN LINE OF DUTY; COMPUTATION OF
3 BENEFITS.] (a) A member of the police and fire plan who becomes
4 disabled and physically unfit to perform duties as a police
5 officer, firefighter, or paramedic as defined under section
6 353.64, subdivision 10, as a direct result of an injury,
7 sickness, or other disability incurred in or arising out of any
8 act of duty, which has or is expected to render the member
9 physically or mentally unable to perform the duties as a police
10 officer, firefighter, or paramedic as defined under section
11 353.64, subdivision 10, for a period of at least one year, shall
12 receive disability benefits during the period of such
13 disability. The benefits must be in an amount equal to 60
14 percent of the "average salary" as defined in section 353.651,
15 subdivision 2, plus an additional percent specified in section
16 356.315, subdivision 6, of that average salary for each year of
17 service in excess of 20 years. If the disability under this
18 subdivision occurs before the member has at least five years of
19 allowable service credit in the police and fire plan, the
20 disability benefit must be computed on the "average salary" from
21 which deductions were made for contribution to the police and
22 fire fund.

23 (b) A qualified employee who meets the requirements of
24 section 353.64, subdivision 12, paragraph (b), and who becomes a
25 member of the public employees police and fire fund under
26 sections 353.63 to 353.68 is eligible for a duty disability
27 benefit under the public employees police and fire retirement
28 plan under this section, only if the person becomes disabled and
29 physically unfit to perform future duties for the Blaine, Spring
30 Lake Park and Mounds View independent nonprofit firefighting
31 corporation as a firefighter as a direct result of a medically
32 determinable injury, sickness, or other disability which
33 occurred while the member was:

34 (1) engaged in responding to an emergency call for
35 assistance from the Blaine, Spring Lake Park and Mounds View
36 independent nonprofit firefighting corporation;

1 (2) engaged in firefighting training provided by or
2 authorized by the Blaine, Spring Lake Park and Mounds View
3 independent nonprofit firefighting corporation; or

4 (3) engaged in fire suppression or rescue activities at the
5 scene of a fire or rescue involving the Blaine, Spring Lake Park
6 and Mounds View independent nonprofit firefighting corporation.

7 (c) A qualified employee who meets the requirements of
8 paragraph (a) but who does not meet the requirements of
9 paragraph (b) is only eligible for a disability benefit under
10 subdivision 3.

11 Sec. 3. [EFFECTIVE DATE; LOCAL APPROVAL.]

12 Section 1 is effective on the day after which the last of
13 the governing bodies of the city of Blaine, the city of Spring
14 Lake Park, and the city of Mounds View and that city's chief
15 clerical officer timely complete their compliance with Minnesota
16 Statutes, section 345.021, subdivisions 2 and 3.

From: Mary.Vanek@state.mn.us
Sent: Wednesday, April 20, 2005 4:13 PM
To: sen.larry.pogemiller@senate.mn
Subject: Discussion with Senator Pogemiller

Senator,

I received a phone call from Nyle Zikmund and Brian Rice regarding Nyle's bill. If it is decided that the Blaine, Spring Lake Park, Mounds View firefighter pension coverage bill should move forward, at a minimum we need the attached amendment. Nyle and Brian have agreed with the suggested language in this amendment, but I asked that they have Pension Commission staff clean it up, because I am not proficient in drafting laws.

<<Nyle's.amendment.05.doc>>

However, the PERA Board of Trustees opposes the bill, and I don't think that any amendment will lessen the Board's opposition to the departure from policy they see in this bill. They see the Police and Fire Plan as providing benefits for those whose primary work is associated with the professions of law enforcement and firefighting, and that the volunteer relief associations are designed for those who have other primary occupations, but who are providing service to the public through volunteer fire departments.

The individuals for whom Nyle and Brian are trying to get Police and Fire coverage cannot get credit in the volunteer relief association for participation in these volunteer fire department activities during the same hours that they are covered by the Coordinated Plan on their regular jobs, because PERA law states that they cannot receive credit in PERA's Coordinated Plan if they are getting credit for the same period of service in a volunteer relief plan. Why can't the law be changed in instances like these to allow the dual coverage?

I fully understand and empathize with Nyle on what he is trying to achieve here, but I really struggle with providing Police and Fire benefit coverage to individuals employed primarily in other capacities. Nyle makes a strong case by referring to those firefighters employed as full-time professional firefighters who spend considerable time maintaining equipment and the fire station building, grounds, etc., who are covered by P&F. He has tried to convince me that the individuals for whom he seeks coverage are no different, and points out that we are limiting the special benefits that would be extended to his folks under P&F to be more in line with what we believe to be the intent of those benefits. That is true. However, we (PERA staff) are having a hard time now with restricting coverage for individuals who are assigned firefighting duties, but who are not specifically employed by a fire department (out-state municipal airports, for example). Approval of the approach in this bill only increases the lack of clarity as to who was intended to be covered by the Police and Fire Fund for the work of firefighting.

I have to leave the office for a family commitment, but you can reach me on my cell phone at (612) 965-4853. Do not hesitate to call me.

Mary Vanek

Page 3, (c) as amended by the pension commission reads:

“(c) A qualified employee who meets the requirements of paragraph (a) but who does not meet the requirements of paragraph (b) is eligible for a disability benefit under subdivision 3.”

PERA prefers it to read:

(c) A qualified employee who meets the requirements of paragraph (a) but who does not meet the requirements of paragraph (b) is only eligible for a disability benefit defined as total and permanent under section 353.01, subdivision 19.

(1) If the non-duty disability is determined to be total and permanent, the disability benefit payable must be paid in the same manner as if the benefit were paid under section 353.651, with a minimum benefit payable of 45 percent of the “average salary” as defined under section 353.651, subdivision 2, plus an additional percentage specified in section 356.315, subdivision 6 of that average salary for each year of service in excess of 15 years.

(2) If the employee is found not to qualify for a non-duty disability as defined under section 353.01, subdivision 19, the employee ceases to be a member of the public employees police and fire retirement fund under sections 353.63 to 353.68. *

(3) If the employee continues to be employed by Blaine, Spring Lake Park or Mounds View in a position other than that of firefighter, the employee is to be reported for coverage as a coordinated member in the general employees retirement plan of the Public Employees Retirement Association. Upon retirement, the employee is entitled to benefits determined under section 356.30. *

* We need to define when P&F coverage ceases, which should then define when coordinated plan coverage is to start, but I’m not sure how to define it – maybe the first pay period following notification that the person doesn’t qualify for the non-duty disability.