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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 126

January 16, 2007

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The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

1.1 A bill for an act
1.2 relating to retirement; defining the procedures to appeal administrative decisions
1.3 made by the chief administrative officers; proposing coding for new law in
1.4 Minnesota Statutes, chapter 356; repealing Minnesota Statutes 2006, sections
1.5 352.031; 354.071.

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

1.7 Section 1. **[356.95] PENSION PLAN APPEAL PROCEDURES.**

1.8 Subdivision 1. **Definitions.** Unless the language or context clearly indicates that a
1.9 different meaning is intended, for the purpose of this section, the following terms have
1.10 the meanings given them.

1.11 (a) "Chief administrative officer" means, for purposes of the statewide pension plans
1.12 identified in section 356A.01, subdivision 24, the executive director or the executive
1.13 director's designee or representative.

1.14 (b) "Covered pension plan" means a plan enumerated in section 356.20, subdivision
1.15 2, clauses (1) to (4), (10), and (12) to (14). Nothing in this section applies to the deferred
1.16 compensation plan administered under sections 352.96 and 352.97 or to the postretirement
1.17 health care savings plan administered under section 352.98.

1.18 (c) "Governing board" means, for purposes of the statewide plans identified
1.19 in section 356A.01, subdivision 24, the Board of Trustees of the Public Employees
1.20 Retirement Association, the Board of Trustees of the Teachers Retirement Association,
1.21 and the Board of Directors of the Minnesota State Retirement System.

1.22 (d) "Person" includes any employee participating in a covered pension plan subject
1.23 to this section, or beneficiary of that employee, and also includes any state agency or
1.24 other governmental unit that employs persons participating in the covered plans subject
1.25 to this section.

2.1 Subd. 2. **Right to review.** A determination made by a covered pension plan
2.2 regarding a person's eligibility, benefits, or other rights under the plan, with which the
2.3 person does not agree, is subject to review under this section.

2.4 Subd. 3. **Notice of determination.** If a chief administrative officer denies
2.5 an application or a written request, or terminates a benefit of any person claiming a
2.6 right or potential rights under a covered pension plan defined in this section, the chief
2.7 administrative officer shall notify that person through a written notice containing:

2.8 (1) the reasons for the determination;

2.9 (2) notice that the person may petition the governing board of the covered plan for a
2.10 review of the determination and that the petition for review must be filed in the offices of
2.11 the covered plan within 60 days of the receipt of the written notice of the determination,
2.12 including a statement that failure to petition for review within 60 days will preclude the
2.13 person from contesting in any other court procedure or administrative review the issues
2.14 determined by the chief administrative officer;

2.15 (3) a statement that all relevant materials, documents, affidavits, and other records
2.16 that the person wishes to be reviewed in support of the petition must be filed and received
2.17 in the offices of the covered plan at least 30 days before the date of the hearing prescribed
2.18 in subdivision 10; and

2.19 (4) a copy of this section.

2.20 Subd. 4. **Termination of benefits.** If a covered plan proposes to terminate a benefit
2.21 that is being paid to any person, before terminating the benefit, the chief administrative
2.22 officer must, in addition to the other procedures prescribed herein, give the individual
2.23 written notice of the proposed termination by certified mail. The notice must explain
2.24 the reason for the proposed termination. The person must be given an opportunity to
2.25 explain, in writing, in person, by telephone, or by e-mail, why the benefit should not be
2.26 terminated. If the chief administrative officer is unable to contact the individual and
2.27 determines that a failure to terminate the benefit might result in unauthorized payment
2.28 by a covered plan, the chief administrative officer may terminate the benefit with only a
2.29 written notice containing the information required by subdivision 3, mailed to the address
2.30 to which the benefit was last sent and, if that address is a financial institution, to the
2.31 last known address of the person.

2.32 Subd. 5. **Petition for review.** A person who claims a right under subdivision 2 may
2.33 petition for a review of that decision by the governing board of the covered plan. A petition
2.34 under this section must be served upon the chief administrative officer by mail postmarked
2.35 no later than 60 days after the person received the notice required by subdivision 3. The
2.36 petition must include the person's statement of the reasons the petitioner believes the

3.1 decision of the chief administrative officer should be reversed or modified and may
3.2 include all documentation and written materials the petitioner deems to be relevant. All
3.3 documents and materials the petitioner wishes to be part of the record for review must be
3.4 filed with the chief administrative officer and received in the offices of the covered plan at
3.5 least 30 days before the date of the meeting at which the petition is scheduled to be heard.

3.6 Subd. 6. **Failure to petition.** If a timely petition for review pursuant to subdivision
3.7 5 is not filed with the chief administrative officer, the covered plan's determination is final
3.8 and is not subject to further judicial or administrative review.

3.9 Subd. 7. **Notice of hearing.** (a) After receiving a petition, and no less than 30
3.10 calendar days from the date of the next regular board meeting, the chief administrative
3.11 officer must schedule a timely review of the petition before the governing board of the
3.12 covered plan. The review must be scheduled taking into consideration accommodations
3.13 for allowing the petitioner to participate in the governing board's review.

3.14 (b) No less than 15 calendar days before the scheduled hearing date, the chief
3.15 administrative officer must mail to the petitioner a follow-up notice of the time and place
3.16 of such meeting at which the governing board will consider the petition and a copy of
3.17 all relevant documents, evidence, summaries, and recommendations to be considered
3.18 by the governing board.

3.19 (c) A petitioner, within ten calendar days of the scheduled date of the board
3.20 meeting, may request a continuance on a petition that has already been scheduled. The
3.21 chief administrative officer must reschedule the review within 60 days of the date of the
3.22 withdrawal and only one continuance may be granted any petitioner.

3.23 Subd. 8. **Record for review.** (a) All evidence, including all records, documents, and
3.24 affidavits in the possession of the covered plan of which the covered plan desires to avail
3.25 itself and be considered by the governing board, and all evidence which the petitioner
3.26 wishes to present to the governing board including any evidence which would otherwise
3.27 be classified by law as "nonpublic" shall be made part of the hearing record.

3.28 (b) Not later than seven days before the scheduled hearing date, the chief
3.29 administrative officer must provide a copy of the record to each member of the governing
3.30 board.

3.31 (c) At least five days prior to the hearing the petitioner shall submit to the chief
3.32 administrative officer, for submission to the governing board, any additional documents,
3.33 affidavits, or other relevant information not initially submitted with the petition.

3.34 (d) Each board member who participates in the decision on the petition must be
3.35 familiar with the record. If a board member cannot personally attend the hearing, that
3.36 board member may participate in the hearing by way of telephone, provided that the

4.1 board member is able to hear all testimony and argument and provided that the board
4.2 member participating by telephone state for the record the board member's views and
4.3 vote on any motion.

4.4 Subd. 9. **Amended determination.** At any time prior to the hearing before the
4.5 governing board, for good cause shown, the chief administrative officer may reverse, alter,
4.6 amend, or modify the decision which is subject to review by issuing an amended decision
4.7 and may cancel the governing board's review of the person's petition.

4.8 Subd. 10. **Hearing.** (a) The governing board shall hold a timely hearing on a
4.9 petition for review as part of a regularly scheduled board meeting, or a special meeting if
4.10 so scheduled. All governing board members that will participate in the decision-making
4.11 process must be familiar with the record. The governing board shall make its decision on
4.12 a petition solely on the record as submitted and the proceedings of the hearing. At the
4.13 hearing, the petitioner, the petitioner's attorney, and the chief administrative officer or
4.14 representative may state and discuss with the governing board their positions with respect
4.15 to the petition. The governing board may allow further documentation to be placed in the
4.16 record at the board meeting with the agreement of both the chief administrative officer and
4.17 the petitioner. The chief administrative officer, or designee or representative thereof, may
4.18 not otherwise participate in the board's decision-making process.

4.19 (b) When a petition presents a contested issue of law, for purposes of the statewide
4.20 plans identified under section 356A.01, subdivision 24, an assistant attorney general may
4.21 participate and argue on behalf of the legal position taken by the chief administrative
4.22 officer provided that the assistant attorney general so participating does not also serve as
4.23 the governing board's legal advisor during the board's decision-making process.

4.24 (c) Motion to deny or approve.

4.25 (1) Any motion by a board member to affirm or reverse the chief administrative
4.26 officer's decision shall be accompanied by a summary of the relevant facts, conclusions,
4.27 and reasons supporting the motion.

4.28 (2) A motion, as properly amended and approved by a majority of the governing
4.29 board, constitutes the board's final decision. A verbatim statement of the motion shall be
4.30 served upon the petitioner notifying the person of the governing board's decision. If
4.31 the decision is contrary to the petitioner's desired outcome, the notice shall inform the
4.32 petitioner of the appeal rights set forth in subdivision 13.

4.33 (3) In the event that a petitioner having received timely notice of a scheduled hearing
4.34 fails to appear, the governing board may nevertheless hear the petition and issue a decision.

4.35 Subd. 11. **Disability medical issues.** (a) If a person asks the governing board
4.36 to reverse or modify a determination which found that there exists no medical data

5.1 supporting a claim to disability benefits, the board may reverse that determination only if
5.2 there is in fact medical evidence supporting the claim. The board has the discretion to
5.3 resubmit a claim at any time to a medical advisor for reconsideration, with or without
5.4 instruction to obtain further medical examinations.

5.5 (b) If a covered pension plan requires the use of a medical advisor, the governing
5.6 board may make a determination contrary to the recommendation of the medical advisor
5.7 only if there is expert medical evidence in the record to support its contrary decision.
5.8 If there is no medical evidence contrary to the opinion of the medical advisor in the
5.9 record and the medical advisor attests that the decision was made in accordance with the
5.10 applicable disability standard, the board must follow the decision of the medical advisor
5.11 regarding the cause of the disability.

5.12 (c) A governing board may make a determination different from the recommendation
5.13 of the medical advisor on issues that do not involve medical issues.

5.14 Subd. 12. **Referral for administrative hearing.** Notwithstanding sections 14.03,
5.15 14.06, and 14.57 to 14.69, a challenge to a determination of the chief administrative
5.16 officer of a covered plan must be conducted exclusively under the procedures in this
5.17 section. A governing board, in its sole discretion, may refer a petition brought under
5.18 this section to the Office of Administrative Hearings for a contested case hearing under
5.19 sections 14.57 to 14.69.

5.20 Subd. 13. **Appeal of the governing board's decision; judicial review.** Within 60
5.21 days of mailing of the notice of the governing board's decision, the petitioner may appeal
5.22 the decision by writ of certiorari to the Court of Appeals pursuant to section 606.01.
5.23 Failure to appeal to the Court of Appeals within 60 days precludes the person from
5.24 later raising, in any court proceeding or administrative hearing, those substantive and
5.25 procedural issues that reasonably should have been raised upon appeal.

5.26 Subd. 14. **Petitions without notice.** Notwithstanding the petition notice and
5.27 requirements under this section, persons who believe their rights have been affected by a
5.28 decision made by a covered pension plan may request a review under this section by the
5.29 appropriate board, but the petition must be made within 45 days of the time the individuals
5.30 knew or should have known of the disputed decision.

5.31 Subd. 15. **Governing board review panel.** Any covered plan subject to this
5.32 section, by motion duly made and adopted, may appoint a panel of governing board
5.33 members to hear and determine any or all petitions brought under this section, provided
5.34 the panel consists of what would otherwise constitute a quorum of board members under
5.35 the governing body's rules and procedures.

6.1 Sec. 2. **REPEALER.**

6.2 Minnesota Statutes 2006, sections 352.031; and 354.071, are repealed.

6.3 Sec. 3. **EFFECTIVE DATE.**

6.4 Sections 1 and 2 are effective the day following final enactment.