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HOUSE FILE No. 127

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

A bill for an act

relating to retirement; modifying procedures for determining eligibility for disability benefits; amending Minnesota Statutes 2006, sections 353.33, subdivisions 1, 2, 4, 6, 7a; 353.656, subdivision 8; 353B.08, subdivision 11; 353E.06, subdivisions 4, 8; proposing coding for new law in Minnesota Statutes, chapter 353; repealing Minnesota Statutes 2006, sections 353.33, subdivisions 6a, 6b, 8; 353.656, subdivisions 5, 9, 11, 12.

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

Section 1. ~~[353.031]~~ DISABILITY DETERMINATION PROCEDURES.

Subdivision 1. **Application.** This section shall apply to all disability determinations for the public employees general fund, the public employees police and fire fund, and the local government correctional service retirement plan and any other disability determination subject to approval by the board, except as otherwise specified in section 353.33, 353.656, or 353E.05. These requirements and the requirements of section 353.03, subdivision 3, are in addition to the specific requirements of each plan and govern in the event there is any conflict between these sections and the procedures specific to any of those plans under section 353.33, 353.656, or 353E.06.

Subd. 2. **Plan document policy statement.** Disability determinations for the public employees general fund shall be made subject to section 353.01, subdivision 19; and for the police and fire plan and the local government correctional service retirement plan shall be made consistent with the legislative policy and intent set forth in section 353.63.

Subd. 3. **Procedure to determine eligibility; generally.** (a) Every claim for a disability benefit must be initiated in writing on an application form and in the manner prescribed by the executive director and filed with the executive director. An application

2.1 for disability benefits must be made within 18 months next following termination of public
2.2 service as defined under section 353.01, subdivision 11a.

2.3 (b) All medical reports must support a finding that disability arose before the
2.4 employee was placed on any paid or unpaid leave of absence or terminated public service,
2.5 as defined under section 353.01, subdivision 11a.

2.6 (c) An applicant for disability shall provide a detailed report signed by a licensed
2.7 medical doctor and at least one additional report signed by a medical doctor, psychologist,
2.8 or chiropractor. The applicant must authorize the release of all medical and health care
2.9 evidence, including all medical records and relevant information from any source, to
2.10 support the application for initial, or the continuing payment of, disability benefits.

2.11 (d) All reports must contain an opinion regarding the claimant's prognosis, the
2.12 duration of the disability, and the expectations for improvement. Any report that does not
2.13 contain and support a finding that the disability will last for at least one year may not be
2.14 relied upon to support eligibility for benefits.

2.15 (e) Where the medical evidence supports the expectation that at some point in time
2.16 the claimant will no longer be disabled, any decision granting disability may provide
2.17 for a termination date upon which disability can be expected to no longer exist. In the
2.18 event a termination date is made part of the decision granting benefits, prior to the
2.19 actual termination of benefits, the claimant shall have the opportunity to show that the
2.20 disabling condition for which benefits were initially granted continues. In the event the
2.21 benefits terminate in accordance with the original decision, the claimant may petition for a
2.22 review by the board of trustees under section 353.03, subdivision 3, or may reapply for
2.23 disability in accordance with these procedures and section 353.33, 353.656, or 353E.06,
2.24 as applicable.

2.25 (f) Any claim to disability must be supported by a report from the employer
2.26 indicating that there is no available work that the employee can perform in the employee's
2.27 disabled condition and that all reasonable accommodations have been considered. Upon
2.28 request of the executive director, an employer shall provide evidence of the steps the
2.29 employer has taken to attempt to provide reasonable accommodations and continued
2.30 employment to the claimant. The employer shall also provide a certification of the
2.31 member's past public service; the dates of any paid sick leave, vacation, or any other
2.32 employer-paid salary continuation plan beyond the last working day; and whether or not
2.33 any sick or annual leave has been allowed.

2.34 (g) An employee who is placed on leave of absence without compensation because
2.35 of a disability is not barred from receiving a disability benefit.

3.1 (h) An applicant for disability benefits may file a retirement annuity application
3.2 under section 353.29, subdivision 4, simultaneously with an application for disability
3.3 benefits. If the application for disability benefits is approved, the retirement annuity
3.4 application is cancelled. If disability benefits are denied, the retirement annuity application
3.5 must be processed upon the request of the applicant. No member of the public employees
3.6 general plan, the public employees police and fire plan, or the local government
3.7 correctional service retirement plan may receive a disability benefit and a retirement
3.8 annuity simultaneously from the same plan.

3.9 **Subd. 4. Additional requirements to determine eligibility for police and fire or**
3.10 **local government correctional service plan disability benefits.** (a) If an application for
3.11 disability benefits is filed within two years of the date of the injury or the onset of the illness
3.12 that gave rise to the disability application, the application must be supported by evidence
3.13 that the applicant is unable to perform the duties of the position held by the applicant on
3.14 the date of the injury or the onset of the illness causing the disability. The employer must
3.15 provide evidence indicating whether the applicant is able or unable to perform the duties
3.16 of the position held on the date of the injury or onset of the illness causing the disability
3.17 and the specifications of any duties that the individual can or cannot perform.

3.18 (b) If an application for disability benefits is filed more than two years after the date
3.19 of injury or the onset of an illness causing the disability, the application must be supported
3.20 by evidence that the applicant is unable to perform the most recent duties that are expected
3.21 to be performed by the applicant during the 90 days before the filing of the application.
3.22 The employer must provide evidence of the duties that are expected to be performed by
3.23 the applicant during the 90 days before the filing of the application, whether the applicant
3.24 can or cannot perform those duties overall, and the specifications of any duties that the
3.25 applicant can or cannot perform.

3.26 (c) Any report supporting a claim to disability benefits pursuant to section 353.656
3.27 or 353E.06 shall specifically relate the disability to its cause; and for any claim to duty
3.28 disability from an injury or illness arising out of an act of duty, the report shall relate
3.29 the cause of disability to specific tasks or functions required to be performed by the
3.30 employee in fulfilling the employee's duty-related acts which must be specific to the
3.31 inherent dangers of the positions eligible for membership in the police and fire fund and
3.32 the local government correctional service retirement plan. Any report that does not relate
3.33 the cause of disability to specific acts or functions performed by the employee may not be
3.34 relied upon as evidence to support eligibility for benefits and may be disregarded in the
3.35 executive director's decision-making process.

4.1 (d) Any application for duty disability must be supported by a first report of injury as
4.2 defined in section 176.231.

4.3 (e) If a member who has applied for and been approved for disability benefits before
4.4 the termination of service does not terminate service or is not placed on an authorized
4.5 leave of absence as certified by the governmental subdivision within 45 days following
4.6 the date on which the application is approved, the application shall be canceled. If an
4.7 approved application for disability benefits has been canceled, a subsequent application
4.8 for disability benefits may not be filed on the basis of the same medical condition for a
4.9 minimum of one year from the date on which the previous application was canceled.

4.10 Subd. 5. **Medical adviser.** The executive director may contract with licensed
4.11 physicians or physicians on the staff of the state commissioner of health, as designated
4.12 by the commissioner, to be the medical adviser of the association. The medical adviser
4.13 shall review all medical reports submitted to the association, including the findings of
4.14 an independent medical examination requested under this section, and shall advise the
4.15 executive director.

4.16 Subd. 6. **Independent medical examination.** Any individual applying for
4.17 or receiving disability benefits must submit to an independent medical examination
4.18 if requested by the executive director. The medical examination must be paid for by
4.19 the association.

4.20 Subd. 7. **Refusal of examination or medical evidence.** If a person applying
4.21 for or receiving a disability benefit refuses to submit to a medical examination under
4.22 subdivision 6, or fails to provide or to authorize the release of medical evidence under
4.23 subdivision 3, the association shall cease the application process or shall discontinue the
4.24 payment of a disability benefit, whichever is applicable. Upon the receipt of the requested
4.25 medical evidence, the association shall resume the application process or the payment of a
4.26 disability benefit upon approval for the continuation, whichever is applicable.

4.27 Subd. 8. **Proof of continuing disability.** (a) A disability benefit payment must not
4.28 be made except upon adequate proof furnished to the executive director of the association
4.29 of the existence of a disability.

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

4.33 (c) Adequate proof of a disability must include a written expert report by a licensed
4.34 physician, a licensed chiropractor, or, with respect to a mental impairment, a licensed
4.35 psychologist.

5.1 Subd. 9. **Application approval or denial; decision of executive director.** Any
 5.2 decision of the executive director is final, except that a member whose application for
 5.3 disability benefits or whose continuation of disability benefits is denied may appeal the
 5.4 executive director's decision to the board of trustees within 60 days of receipt of a certified
 5.5 letter notifying the member of the decision to deny the application or continuation of
 5.6 benefits. In developing the record for review by the board when a decision is appealed,
 5.7 the executive director may direct that the applicant participate in a fact-finding session
 5.8 conducted by an administrative law judge assigned by the Office of Administrative
 5.9 Hearings, and, as applicable, a vocational assessment conducted by the qualified
 5.10 rehabilitation counselor on contract with the Public Employees Retirement Association.

5.11 Subd. 10. **Restoring forfeited service.** To restore forfeited service, a repayment of
 5.12 a refund must be made within six months after the effective date of disability benefits or
 5.13 within six months after the date of the filing of the disability application, whichever is
 5.14 later. No purchase of prior service or payment made in lieu of salary deductions otherwise
 5.15 authorized under section 353.01 may be made after the occurrence of the disability for
 5.16 which an application is filed under this section.

5.17 Sec. 2. Minnesota Statutes 2006, section 353.33, subdivision 1, is amended to read:

5.18 Subdivision 1. **Age, service, and salary requirements.** A coordinated member
 5.19 who has at least three years of allowable service and becomes totally and permanently
 5.20 disabled before normal retirement age, and a basic member who has at least three years of
 5.21 allowable service and who becomes totally and permanently disabled, upon application as
 5.22 defined under section 353.031, is entitled to a disability benefit in an amount determined
 5.23 under subdivision 3. If the disabled person's public service has terminated at any time,
 5.24 at least two of the required three years of allowable service must have been rendered
 5.25 after last becoming an active member. ~~A repayment of a refund must be made within six~~
 5.26 ~~months after the effective date of disability benefits under subdivision 2 or within six~~
 5.27 ~~months after the date of the filing of the disability application, whichever is later. No~~
 5.28 ~~purchase of prior service and no payment made in lieu of salary deductions otherwise~~
 5.29 ~~authorized under section 353.01, subdivision 16, may be made after the occurrence of the~~
 5.30 ~~disability for which an application under this section is filed.~~

5.31 Sec. 3. Minnesota Statutes 2006, section 353.33, subdivision 2, is amended to read:

5.32 Subd. 2. **Applications; Accrual of benefits.** ~~Every claim or demand for a total~~
 5.33 ~~and permanent disability benefit must be initiated by written application in the manner~~
 5.34 ~~and form prescribed by the executive director showing compliance with the statutory~~

6.1 ~~conditions qualifying the applicant for a total and permanent disability benefit and filed~~
 6.2 ~~with the executive director. A member or former member who became totally and~~
 6.3 ~~permanently disabled during a period of membership shall file application for total and~~
 6.4 ~~permanent disability benefits within three years next following termination of public~~
 6.5 ~~service. (a) This benefit begins to accrue the day following the commencement of~~
 6.6 ~~disability; when the applicant is no longer receiving any form of compensation, whether~~
 6.7 ~~salary or paid leave; 90 days preceding the filing of the application, or, if annual or sick~~
 6.8 ~~leave or any other employer-paid salary continuation plan is paid for more than the 90-day~~
 6.9 ~~period, from the date salary ceased, whichever is later. No member is entitled to receive a~~
 6.10 ~~disability benefit payment when there remains to the member's credit any unused annual~~
 6.11 ~~leave or, sick leave, or any other employer-paid salary continuation plan, or under any~~
 6.12 ~~other circumstances when, during the period of disability, there has been no impairment of~~
 6.13 ~~the person's salary.~~

6.14 ~~(b) Payment must not accrue beyond the end of the month in which entitlement has~~
 6.15 ~~terminated. If the disabilitant dies prior to negotiating the check for the month in which~~
 6.16 ~~death occurs, payment is made to the surviving spouse, or if none, to the designated~~
 6.17 ~~beneficiary, or if none, to the estate. An applicant for total and permanent disability~~
 6.18 ~~benefits may file a retirement annuity application under section 353.29, subdivision 4;~~
 6.19 ~~simultaneously with an application for total and permanent disability benefits. The~~
 6.20 ~~retirement annuity application is void upon the determination of the entitlement for~~
 6.21 ~~disability benefits by the executive director. If disability benefits are denied, the retirement~~
 6.22 ~~annuity application must be initiated and processed.~~

6.23 Sec. 4. Minnesota Statutes 2006, section 353.33, subdivision 4, is amended to read:

6.24 Subd. 4. **Procedure to determine eligibility.** (a) ~~The applicant shall provide~~
 6.25 ~~an expert report signed by a licensed physician, psychologist, or chiropractor and the~~
 6.26 ~~applicant must authorize the release of medical and health care evidence, including all~~
 6.27 ~~medical records and relevant information from any source, to support the application~~
 6.28 ~~for total and permanent disability benefits. Eligibility for disability benefits will be~~
 6.29 ~~determined following the procedures defined in section 353.031.~~

6.30 (b) ~~The medical adviser shall verify the medical evidence and, if necessary for~~
 6.31 ~~disability determination, suggest the referral of the applicant to specialized medical~~
 6.32 ~~consultants.~~

6.33 (c) ~~The association shall also obtain from the employer a certification of the~~
 6.34 ~~member's past public service, the dates of any paid sick leave and vacation beyond the last~~
 6.35 ~~working day and whether or not any sick leave or annual leave has been allowed.~~

7.1 ~~(d)~~ (b) If, after following the procedures for determining eligibility for benefits
 7.2 under section 353.031, and upon consideration of the medical evidence received and
 7.3 the recommendations of the medical adviser, it is determined by the executive director
 7.4 that the applicant is totally and permanently disabled within the meaning of the law, the
 7.5 association shall grant the person a disability benefit.

7.6 (e) ~~An employee who is placed on leave of absence without compensation because~~
 7.7 ~~of a disability is not barred from receiving a disability benefit.~~

7.8 Sec. 5. Minnesota Statutes 2006, section 353.33, subdivision 6, is amended to read:

7.9 Subd. 6. **Continuing eligibility for benefits.** ~~The association shall determine~~
 7.10 ~~eligibility for continuation of disability benefits and require periodic examinations and~~
 7.11 ~~evaluations of disabled members as frequently as deemed necessary. The association shall~~
 7.12 ~~require the disabled member to provide an expert report signed by a licensed physician,~~
 7.13 ~~psychologist, or chiropractor and the disabled member shall authorize the release of~~
 7.14 ~~medical and health care evidence, including all medical and health care records and~~
 7.15 ~~information from any source, relating to an application for continuation of disability~~
 7.16 ~~benefits. Disability benefits are contingent upon a disabled person's participation in a~~
 7.17 ~~vocational rehabilitation evaluation if the executive director determines that the disabled~~
 7.18 ~~person may be able to return to a gainful occupation. If, after a review by the executive~~
 7.19 ~~director under section 353.031, subdivision 8, a member is found to be no longer totally~~
 7.20 and permanently disabled, payments must cease the first of the month following the
 7.21 expiration of a 30-day period after the member receives a certified letter notifying the
 7.22 member that payments will cease.

7.23 Sec. 6. Minnesota Statutes 2006, section 353.33, subdivision 7a, is amended to read:

7.24 Subd. 7a. **Trial work period.** (a) If, following a work or non-work-related injury or
 7.25 illness, a disabled member attempts to return to work for their previous public employer
 7.26 or attempts to return to a similar position with another public employer, on a full-time
 7.27 or less than full-time basis, the Public Employees Retirement Association shall continue
 7.28 paying the disability benefit for a period not to exceed six months. The disability benefit
 7.29 must continue in an amount that, when added to the subsequent employment earnings and
 7.30 workers' compensation benefit, does not exceed the salary at the date of disability or the
 7.31 salary currently paid for similar positions, whichever is higher.

7.32 (b) No deductions for the general employees retirement fund plan may be taken from
 7.33 the salary of a disabled person who is attempting to return to work under this provision
 7.34 unless the member waives further disability benefits.

8.1 (c) A member only may return to employment and continue disability benefit
8.2 payments once while receiving disability benefits from a the general employees retirement
8.3 plan administered by the Public Employees Retirement Association.

8.4 Sec. 7. Minnesota Statutes 2006, section 353.656, subdivision 8, is amended to read:

8.5 **Subd. 8. Application procedure to determine eligibility for police and fire plan**
8.6 **disability benefits.** ~~(a) An application for disability benefits must be made in writing on a~~
8.7 ~~form or forms prescribed by the executive director.~~

8.8 ~~(b) If an application for disability benefits is filed within two years of the date of the~~
8.9 ~~injury or the onset of the illness that gave rise to the disability application, the application~~
8.10 ~~must be supported by evidence that the applicant is unable to perform the duties of the~~
8.11 ~~position held by the applicant on the date of the injury or the onset of the illness causing~~
8.12 ~~the disability. The employer must provide evidence indicating whether the applicant is~~
8.13 ~~able or unable to perform the duties of the position held on the date of the injury or onset~~
8.14 ~~of illness causing the disability and the specifications of any duties that the individual can~~
8.15 ~~or cannot perform.~~

8.16 ~~(c) If an application for disability benefits is filed more than two years after the date~~
8.17 ~~of the injury or the onset of an illness causing the disability, the application must be~~
8.18 ~~supported by evidence that the applicant is unable to perform the most recent duties that~~
8.19 ~~are expected to be performed by the applicant during the 90 days before the filing of the~~
8.20 ~~application. The employer must provide evidence of the duties that are expected to be~~
8.21 ~~performed by the applicant during the 90 days before the filing of the application, whether~~
8.22 ~~the applicant can or cannot perform those duties overall, and the specifications of any~~
8.23 ~~duties that the applicant can or cannot perform.~~

8.24 ~~(d) Unless otherwise permitted by law, no application for disability benefits can be~~
8.25 ~~filed by a former member of the police and fire plan more than three years after the former~~
8.26 ~~member has terminated from Public Employees Retirement Association police and fire~~
8.27 ~~plan covered employment. If an application is filed within three years after the termination~~
8.28 ~~of public employment, the former member must provide evidence that the disability is the~~
8.29 ~~direct result of an injury or the contracting of an illness that occurred while the person was~~
8.30 ~~still actively employed and participating in the police and fire plan.~~

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

8.33 ~~(f) If a member who has applied for and been approved for disability benefits before~~
8.34 ~~the termination of service does not terminate service or is not placed on an authorized~~
8.35 ~~leave of absence as certified by the governmental subdivision within 45 days following~~

9.1 ~~the date on which the application is approved, the application shall be canceled. If an~~
 9.2 ~~approved application for disability benefits has been canceled, a subsequent application~~
 9.3 ~~for disability benefits may not be filed on the basis of the same medical condition for a~~
 9.4 ~~minimum of one year from the date on which the previous application was canceled.~~

9.5 ~~(g) An applicant may file a retirement application under section 353.29, subdivision~~
 9.6 ~~4, at the same time as the disability application is filed. If the disability application is~~
 9.7 ~~approved, the retirement application is canceled. If the disability application is denied, the~~
 9.8 ~~retirement application must be initiated and processed upon the request of the applicant. A~~
 9.9 ~~police and fire fund member may not receive a disability benefit and a retirement annuity~~
 9.10 ~~from the police and fire fund at the same time.~~

9.11 ~~(h) A repayment of a refund must be made within six months after the effective date~~
 9.12 ~~of disability benefits or within six months after the date of the filing of the disability~~
 9.13 ~~application, whichever is later. No purchase of prior service or payment made in lieu~~
 9.14 ~~of salary deductions otherwise authorized under section 353.01 may be made after the~~
 9.15 ~~occurrence of the disability for which an application is filed under this section.~~

9.16 ~~The application procedures to determine eligibility for police and fire plan disability~~
 9.17 ~~benefits are defined under section 353.031.~~

9.18 Sec. 8. Minnesota Statutes 2006, section 353B.08, subdivision 11, is amended to read:

9.19 Subd. 11. **Subsequent medical reexaminations.** Periodically, upon the
 9.20 recommendation of the medical adviser appointed as provided in section 353.33;
 9.21 ~~subdivision 6a~~ 353.031, based on the medical nature of the initial qualifying disability and
 9.22 its potential for improvement or recovery, the executive director of the Public Employees
 9.23 Retirement Association shall have a former member of a consolidating relief association
 9.24 who is receiving a disability benefit reexamined and reevaluated for continued entitlement
 9.25 to a disability benefit. If, upon the recommendation of the medical adviser, the executive
 9.26 director determines that the person is no longer entitled to receive a disability benefit, the
 9.27 disability benefit shall be discontinued effective as of the first day of the second month
 9.28 following that determination and the person shall be considered for reemployment as
 9.29 a police officer or a firefighter, whichever applies, by the municipality in which the
 9.30 consolidating relief association was located.

9.31 Sec. 9. Minnesota Statutes 2006, section 353E.06, subdivision 4, is amended to read:

9.32 Subd. 4. **Disability benefit application; accrual of benefits.** ~~A claim or demand~~
 9.33 ~~for a disability benefit must be initiated by written application in the manner and form~~
 9.34 ~~prescribed by the executive director, filed in the office of the association, showing~~

10.1 ~~compliance with the statutory conditions qualifying the applicant for a disability benefit.~~
10.2 ~~A member or former member who became disabled during a period of membership may~~
10.3 ~~file an application for disability benefits within three years following termination of local~~
10.4 ~~government correctional service, but not after that time has elapsed. (a) Procedures for~~
10.5 ~~the application process and determining eligibility for disability benefits are defined in~~
10.6 ~~section 353.031.~~

10.7 (b) The disability benefit begins to accrue the day following the commencement of
10.8 disability, when the applicant is no longer receiving any form of compensation, whether
10.9 salary or paid leave; 90 days preceding the filing of the application, or, if annual or sick
10.10 leave, or any other employer-paid salary continuation plan is paid for more than the
10.11 90-day period, from the date salary ceased, whichever is latest. No member is entitled
10.12 to receive a disability benefit payment when there remains to the member's credit any
10.13 unused annual leave, sick leave, or any other employer-paid salary continuation benefits or
10.14 under any other circumstances when, during the period of disability, there has been no
10.15 impairment of the person's salary.

10.16 (c) No payment may accrue beyond the end of the month in which entitlement has
10.17 terminated. If the disabilitant dies before negotiating the check for the month in which
10.18 death occurs, payment must be made to the optional annuitant or beneficiary.

10.19 Sec. 10. Minnesota Statutes 2006, section 353E.06, subdivision 8, is amended to read:

10.20 Subd. 8. **Continuing benefit eligibility.** Continuing eligibility for a disability
10.21 benefit is subject to section ~~353.33, subdivision 6~~ 353.031, subdivision 8.

10.22 Sec. 11. **REPEALER.**

10.23 Minnesota Statutes 2006, sections 353.33, subdivisions 6a, 6b, and 8; and 353.656,
10.24 subdivisions 5, 9, 11, and 12, are repealed.

10.25 Sec. 12. **EFFECTIVE DATE.**

10.26 Sections 1 to 11 are effective July 1, 2007.