



PERA Police & Fire Disability Information and Discussion

**PERA Board of Trustees Remote
Planning Workshop
October 8, 2020**



Agenda

1. Welcome and Introductions
2. Police & Fire Plan Disability Experience (*Doug Anderson*)
3. History of Disability Benefit Changes (*Lance LaFrombois*)
4. Current Eligibility & Benefit Provisions & Examples (*Amy Strenge & Doug Anderson*)
5. Application and Appeal Process (*Amy Brandenburg & Julie Leppink*)
6. Stakeholder Interactions
 - a. Minnesota Professional Fire Firefighters (*Chris Parsons*)
 - b. Law Enforcement Labor Services (*Jim Mortenson*)
 - c. Teamsters 320 (*Gus Froemke*)
 - d. League of Minnesota Cities (*Anne Finn*)
 - e. Minnesota Inter-County Association (*Matt Massman*)
 - f. City of Minneapolis (*Lori Johnson*)
 - g. St. Paul Police Department (*Chief Todd Axtell*)
7. PERA Board Observations and Direction



Why is the Workshop Devoted to Police & Fire Disability?

- Disability rates are increasing
 - Is this a long-term trend, a surge, or new normal?
 - What are the Plan cost implications to members and employers?
- Plan adjustments could be considered
 - Are eligibility provisions defined appropriately?
 - Are benefits appropriate for all members?
 - Is the application and appeal process fair?
- PERA Stakeholders have concerns
 - Does PERA's Board share those concerns?
 - Should PERA help?
- What problems should PERA be trying to solve?

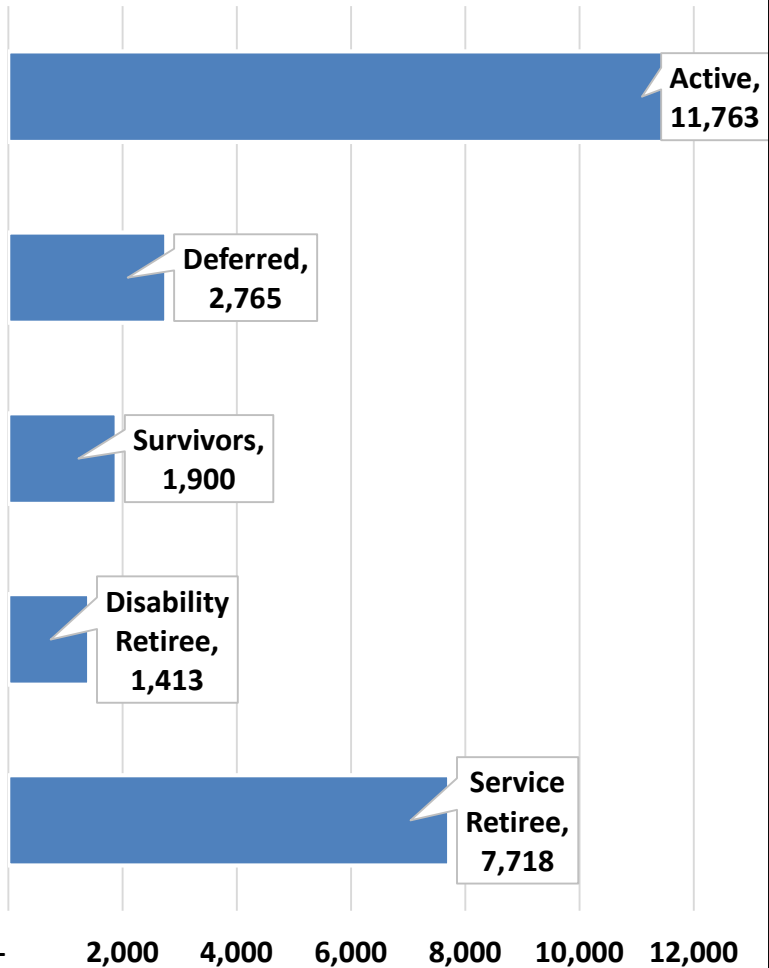


Police & Fire Plan
Disability Experience

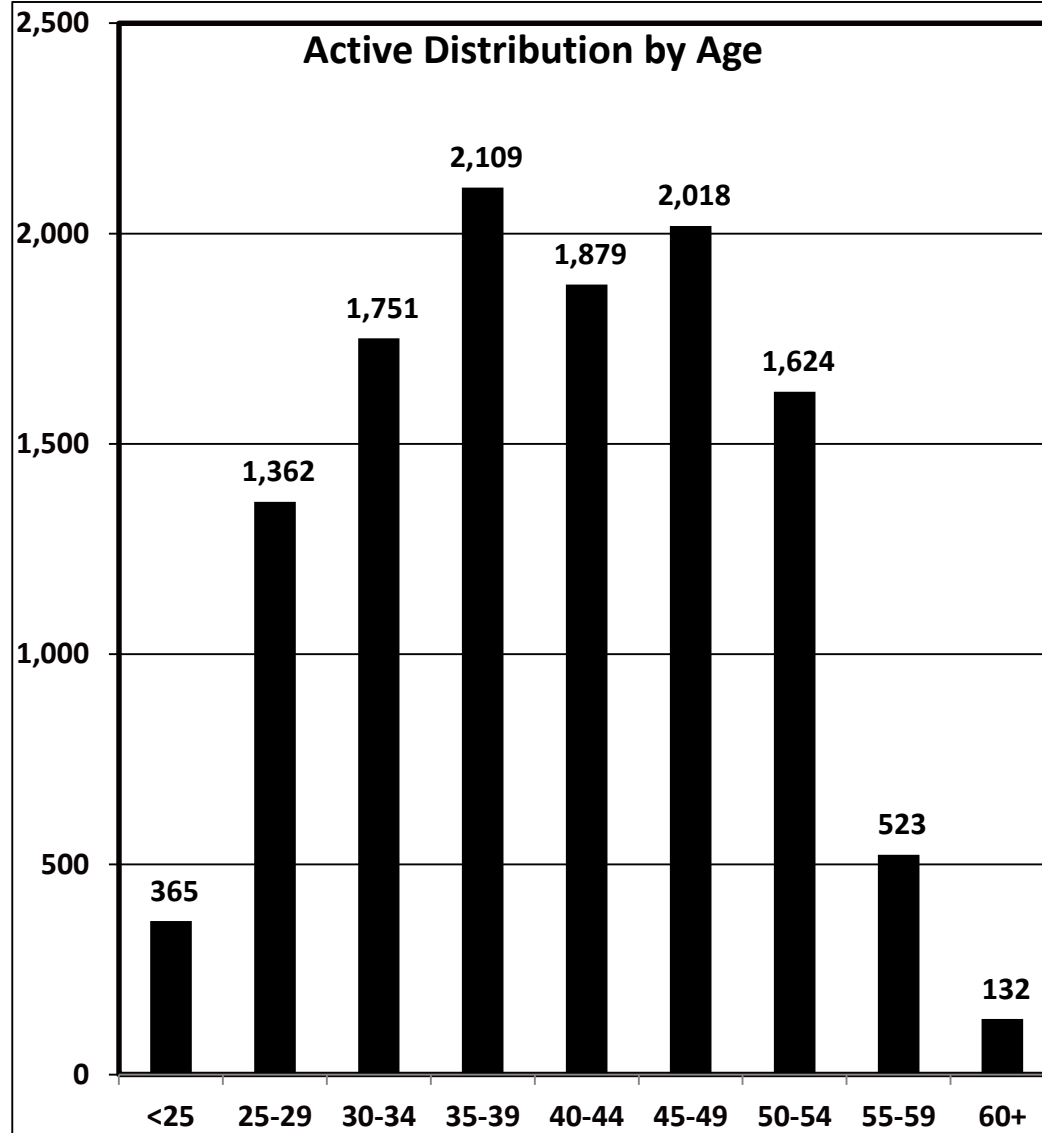


Police & Fire Plan Membership Data as of July 1, 2019

Membership Distribution



Active Distribution by Age

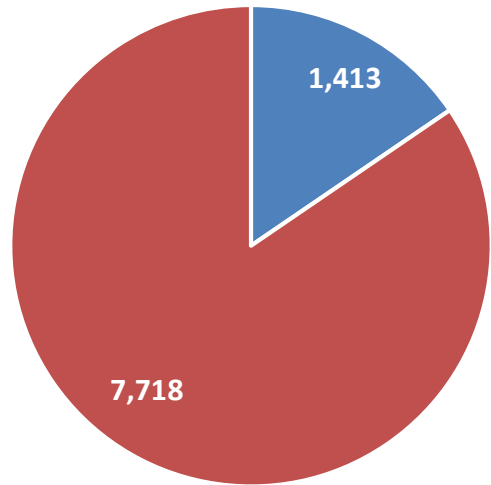


Source: July 1, 2019 Actuarial Valuation prepared by GRS Consulting



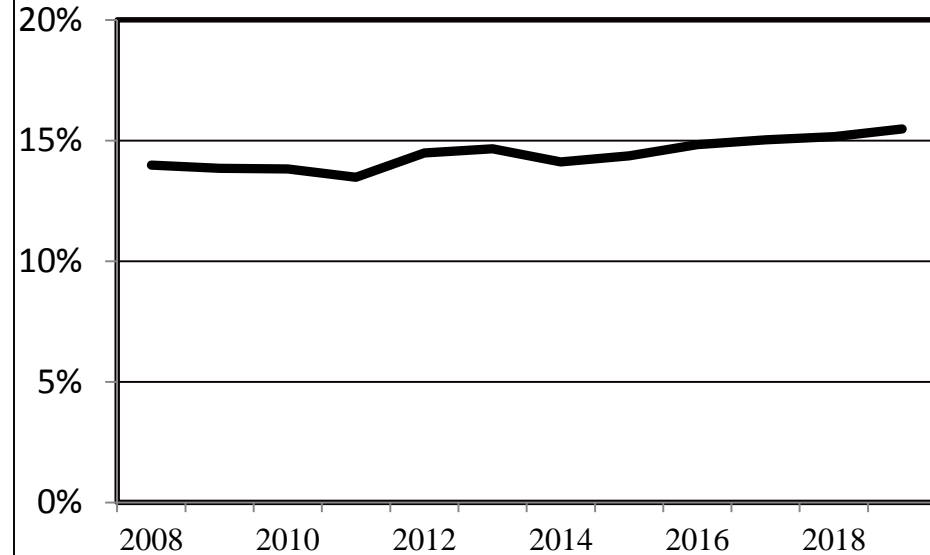
Police & Fire Plan Disability Retirement Rates and Costs

Approximately 1 out of 6 retirees are classified as disability retirees



■ # of Disability Retirements ■ # of Service Retirements

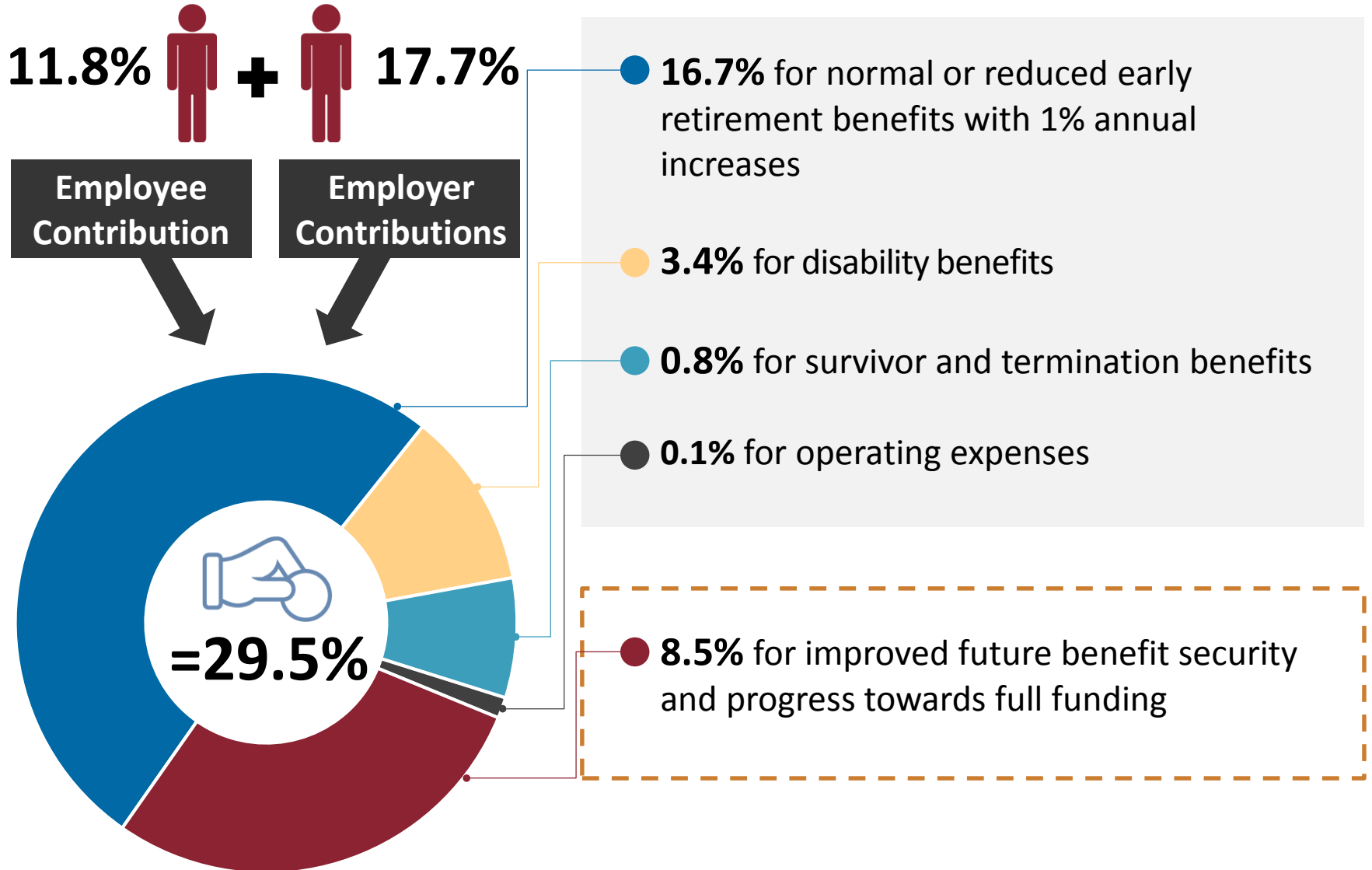
The % of retirees that are disability retirees has not significantly changed



- Approximately \$1 out of every \$6 required to fund future benefits for active members is needed to fund expected future disability retirement benefits (3.45% of payroll out of a total of 20.92%).
- An increase (or decrease) in disability retirements would transfer costs from one category of retirement to another, but would likely not significantly impact total pension costs.

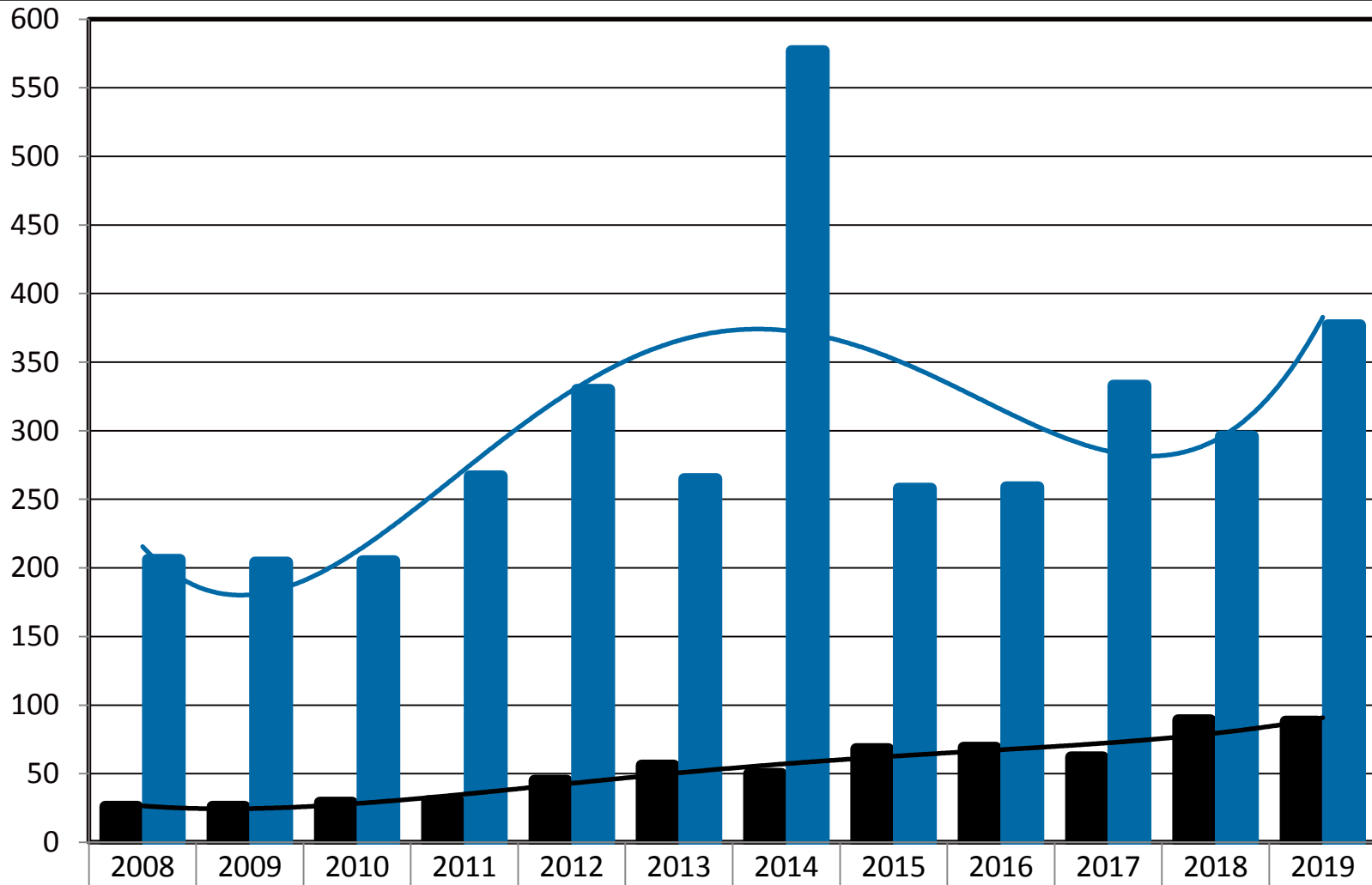


Police & Fire Plan Current Contribution Allocation





Police & Fire Plan Annual Disabilities & Service Retirements

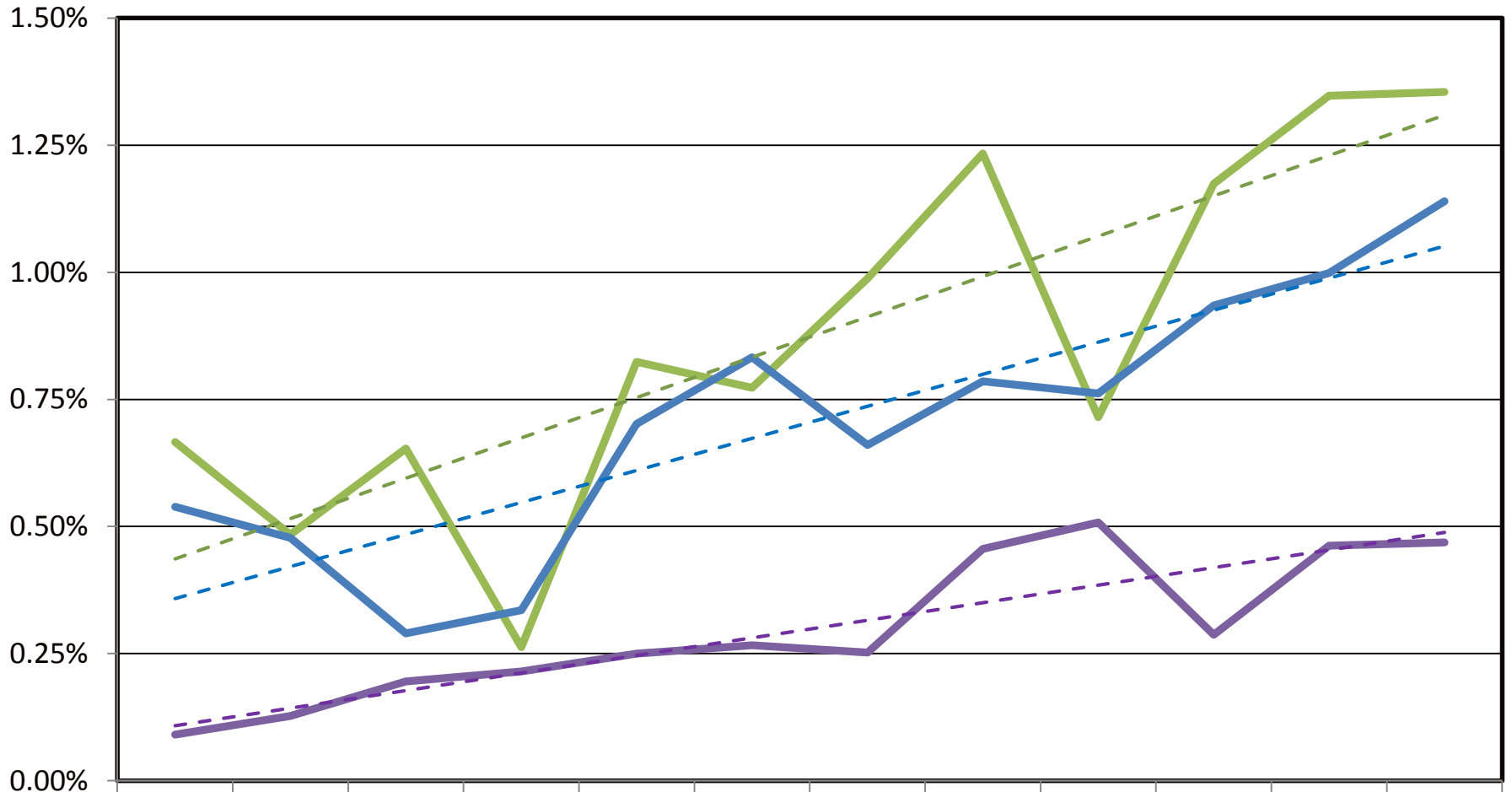


■ Disability Approvals	26	26	29	30	45	56	50	68	69	62	89	88
■ Service Retirements	206	204	205	267	330	265	577	258	259	333	296	377

Sources: Disability Approvals from PERA, Service Retirements from 2008 -2019 actuarial reports prepared by GRS Consulting & Segal.



Police & Fire Plan Disability Rate Trend by Age Group

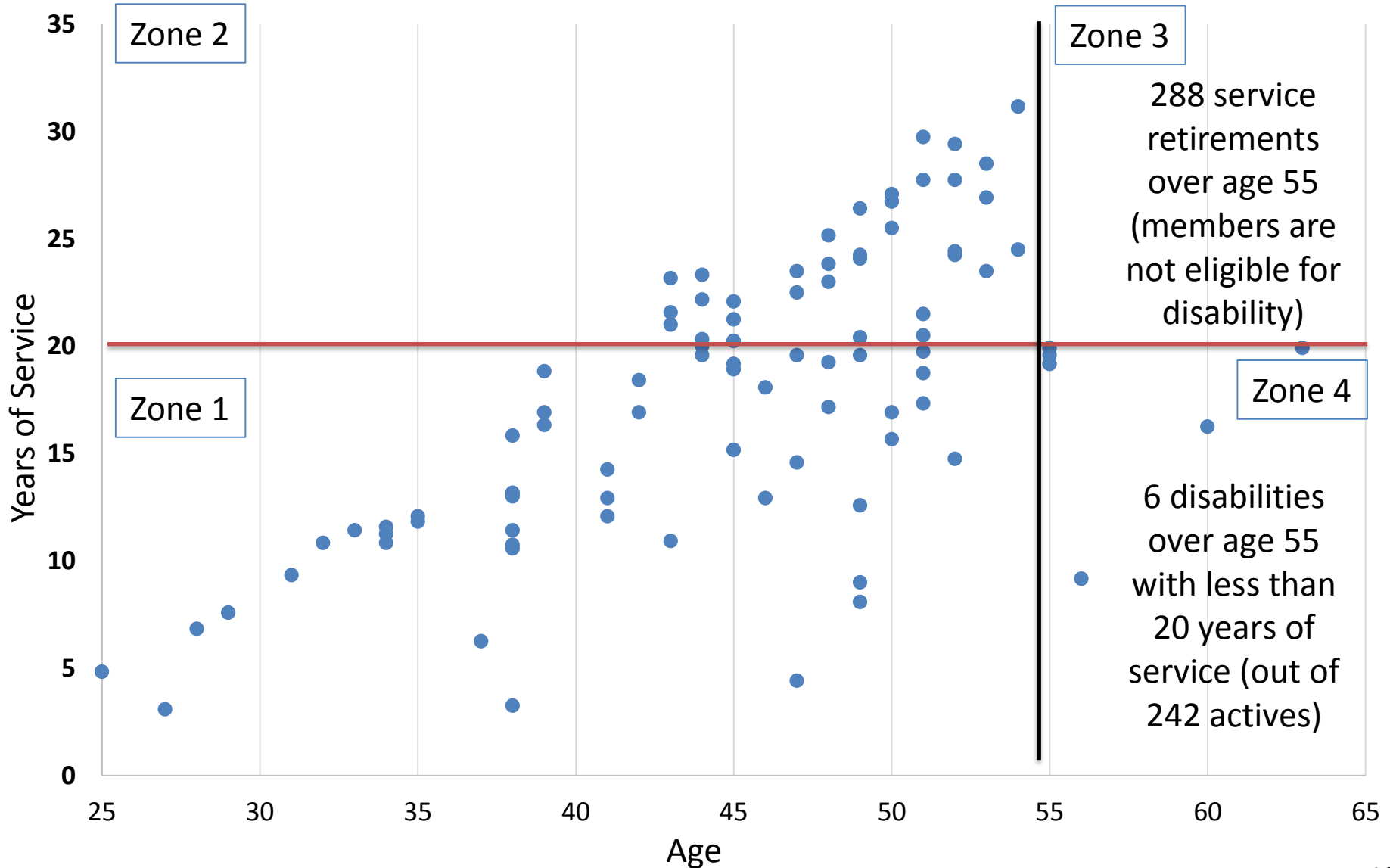


	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
50-54	0.7%	0.5%	0.7%	0.3%	0.8%	0.8%	1.0%	1.2%	0.7%	1.2%	1.3%	1.4%
45-49	0.5%	0.5%	0.3%	0.3%	0.7%	0.8%	0.7%	0.8%	0.8%	0.9%	1.0%	1.1%
<45	0.1%	0.1%	0.2%	0.2%	0.2%	0.3%	0.3%	0.5%	0.5%	0.3%	0.5%	0.5%

Sources: Disability Approvals from PERA, Service Retirements from 2008 -2019 actuarial reports prepared by GRS Consulting & Segal.



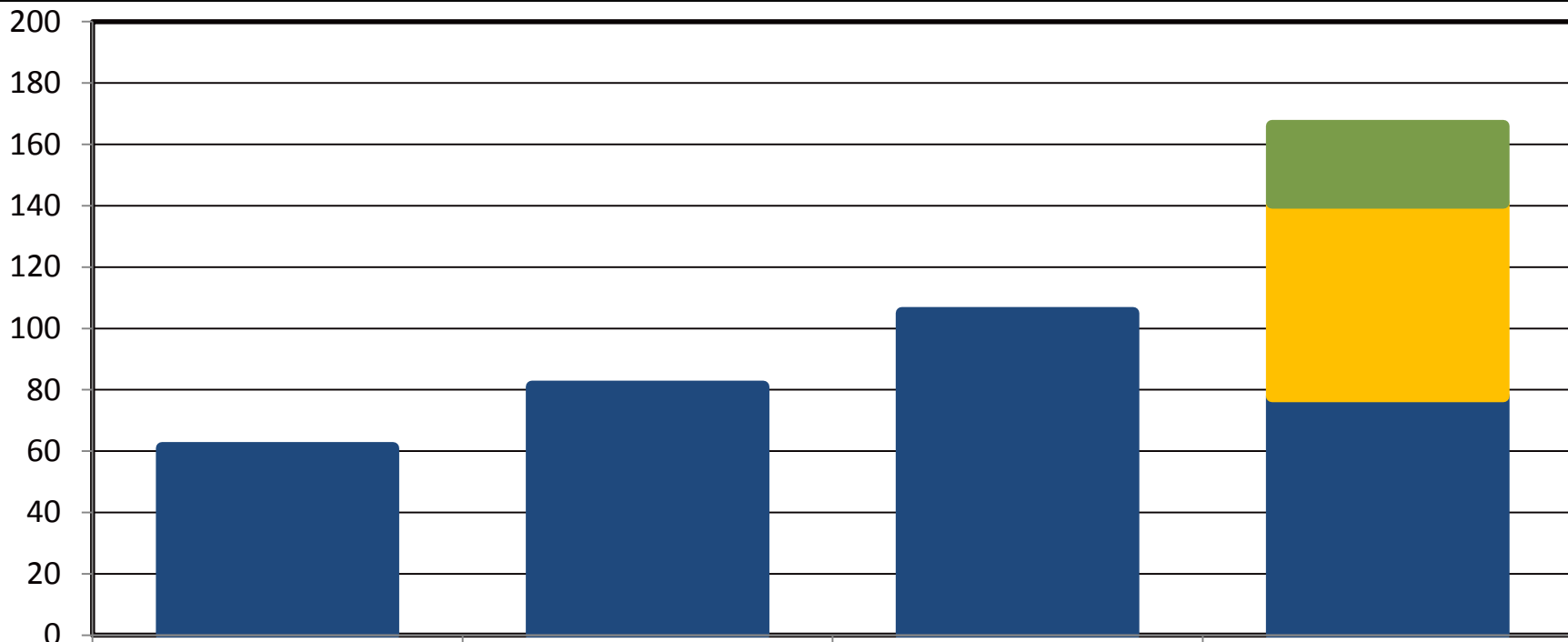
Police & Fire Plan Disability Approvals in FY19 by Age and Service



Source: Data prepared by PERA staff



Police & Fire Plan Disability Approvals 2017 - 2020

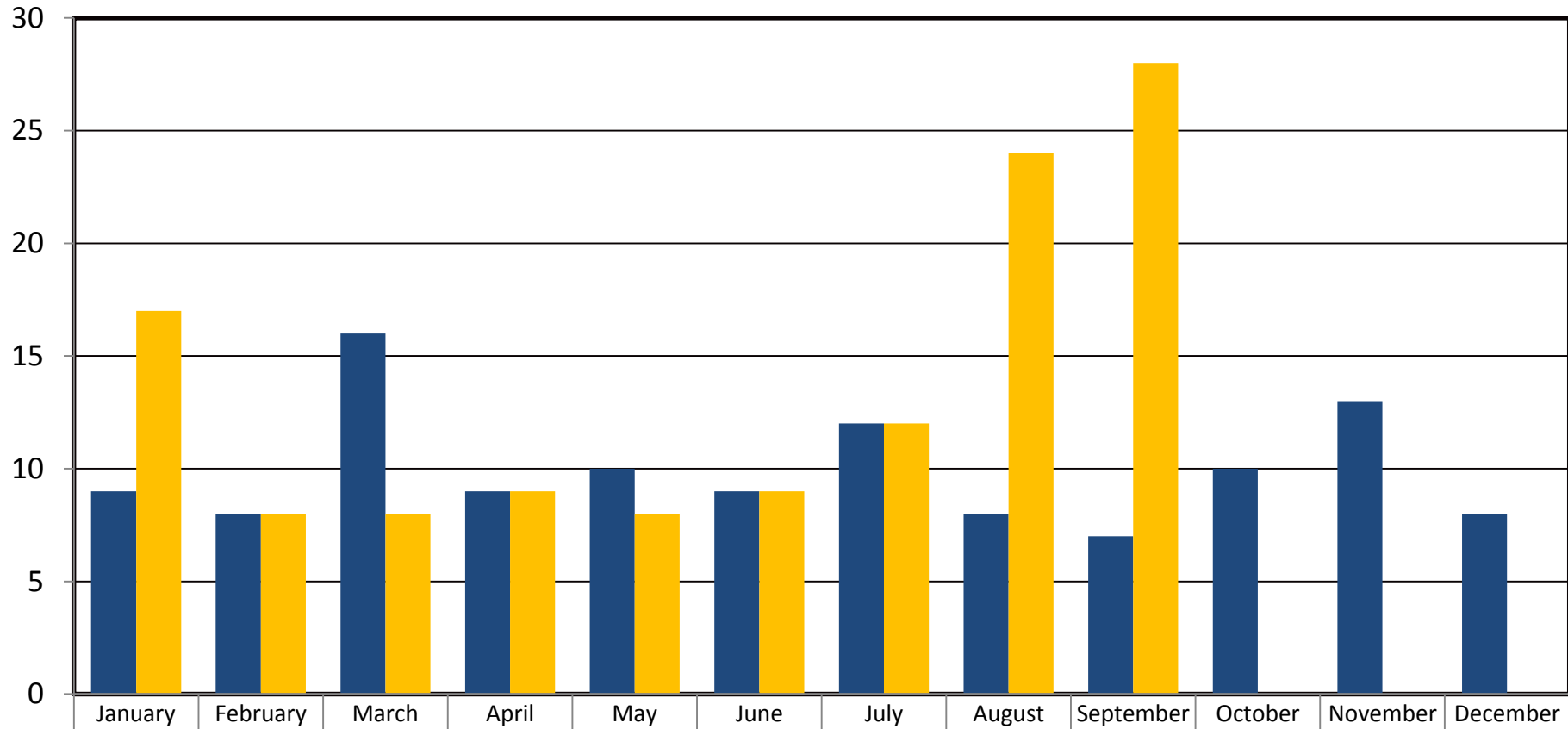


	2017	2018	2019	2020
Expected	0	0	0	25
Pending	0	0	0	63
Approved	61	81	105	78

2020 results include actual disabilities approved (78) and applications pending a decision (63) as of September 30th. The 25 “Expected” is an estimate of applications that will be received after September 30th **and** approved prior to December 31st.



Police & Fire Plan Disability Applications 2019 - 2020



	January	February	March	April	May	June	July	August	September	October	November	December
■ 2019	9	8	16	9	10	9	12	8	7	10	13	8
■ 2020	17	8	8	9	8	9	12	24	28			

There were 119 applications in 2019. There have been 123 applications received in 2020 as of September 30th. Applications are expected to continue at elevated rates through at least the end of the year. Typical lag time from application receipt to an approval is 2 to 3 months.

Source: Data prepared by PERA staff



Police & Fire Plan Disability Approvals in 2018, 2019, & 2020 (YTD)

		Calendar Year 2018	Calendar Year 2019	Calendar Year 2020 (Through 9/30)
Fire	Duty PTSD	4	12	2
	Duty Not PTSD	15	15	6
	Non Duty	0	1	2
Police	Duty PTSD	26	48	42
	Duty Not PTSD	27	9	24
	Non Duty	4	16	2
Totals		76	101	78



Police & Fire Plan PTSD Related Duty Disability Approvals 2018 – 2020 (YTD)

	< Age 40	Age 40 to 50	> Age 50	Total
Fire	2	5	11	18
Police	37	44	35	116
Totals	39	49	46	134
Total Active Members as of July 1, 2019	5,587	3,897	2,279	11,763
Total Annualized PTSD Rate	0.25%	0.46%	0.73%	0.41%



Police & Fire Plan Disability Rate Increase Impact on Sustainability

How will a duty disability application surge impact the PERA Police & Fire Plan?

- An estimated 250 duty disabilities is only about 1% of Plan membership
- There is no significant cost increase if the disability occurs at or near retirement
 - 20% of active members are over age 55
 - Disability rates are higher at ages near retirement
- Assumptions for disabilities are already built into plan cost estimates
- PERA Plan cost increases are shared by all members (40%) and employers (60%)
- Cost increases are spread over many years

A duty disability surge is unlikely to directly impact Plan benefits or costs at this time. A more likely scenario will be a further delay for any opportunity to either improve benefits (such as a higher retiree COLA) or reduce member or employer contribution rates.

Is this a disability incidence surge, or a more permanent expectation of future results?



History of Disability
Benefit Changes



1931

PERA established, no disability benefits, no Police and Fire Plan

1957

Disability benefits first provided for the General Plan

Definition of disability: “. . . the member is totally and likely to be permanently disabled for the further performance of the duties of any assigned position in the service of the employer, . . .”

Eligibility: must have 10 years of service under age 50, five years over 50

Benefit: annuity as if member had reached age 65

Laws of 1957, Ch. 935, sec. 13

1959

Police and Fire Plan created – membership was optional; police officers or firefighters required to be members of local relief associations could not be members of the Police and Fire Plan

Laws of 1959, Ch. 650, secs. 31-36

Retirement – age 58 with 10 yrs of service (2% for first 30 yrs, 1% for yrs over 30)

Laws of 1959, Ch. 650, sec. 34

Definition of disability: “Total and permanent disability” means a disability which results from some impairment of mind or body that substantially precludes a person from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that he would be competent to perform were it not for that impairment, and whose impairment is founded under conditions which render it reasonable certain that it will continue indefinitely. Minn. Stat. §353.01, subd. 19

Laws of 1959, Ch. 650, sec. 7



1959 Cont'd

No definitions of “duty” or “non-duty” disabilities, but different levels of benefits were paid for the two types of disability depending on whether the member was injured in the line of duty

Laws of 1959, Ch. 650, sec. 36

Non-duty disability benefit was annuity as if member had reached age 58 (full retirement) plus as supplemental monthly amount based on age (decreasing from \$50 at age 51 and under to \$6 at age 57)

Laws of 1959, Ch. 650, sec. 36

Duty disability benefit was 40% of highest 5-yr average regardless of age and yrs of service, plus a supplementary benefit of \$6-50/mo., depending on age (age 57 got \$6, 51 got \$50)

Laws of 1959, Ch. 650, sec. 36

1971

Duty disability benefit increased from 40 to 50% of high-5 plus 2% for each year over 20 yrs of service

Laws of 1971, Ch. 297, sec. 3; Minn. Stat. 353.656

Duty disability defined with an occupational standard for Police and Fire Plan

Laws of 1971, Ch. 297, sec. 3; Minn. Stat. 353.656, subd. 1

All disability benefits terminated at age 55, when full retirement benefits began

Laws of 1971, Ch. 297, sec. 3; Minn. Stat. 353.656, subd. 6

1989

Vesting for non-duty disability decreased from 5 years to 1 one year

Laws of 1989, Ch. 319, Art. 17, sec. 15



1990

Disabilities (duty and non-duty) were required to last for at least one year

Laws of 1990, Ch. 570, Art. 11, secs. 9, 10

Automatic survivor benefits for surviving spouses of disability benefit recipients enacted

Laws of 1990, Ch. 570, Art. 11, sec. 11

1992

Clarified that disability benefit payments would cease upon reinstatement to a position covered by the P&F Plan

Laws of 1992, Ch. 432, Art. 2, sec. 19

1993

Eliminated the requirement that disability (duty and non-duty) had to occur before age 55

Laws of 1993, Ch. 307, Art. 4, secs. 34, 36

Increased minimum duty disability from 50 to 53% of high five and increased the additional benefit for yrs over 20 from 2.5 to 2.65% per year

Laws of 1993, Ch. 352, sec. 5

1994

Disabilitant earnings limit increased from 100 to 125% of current pay for position and over the limit reduction decreased from dollar for dollar to one for every three dollars over the limit.

Laws of 1994, Ch. 463

1997

Duty disability benefit minimum increased from 53 to 60% of average salary and additional benefit for yrs over 20 increased from 2.65 to 3.0% per year.

Laws of 1997, Ch. 233, Art. 1, secs. 42, 55



2004

Old-injury provision added (if application is more than two yrs after injury, applicant must be unable to perform most recent duties) Laws of 2004, Ch. 267, Art. 8, sec. 21

2006

Members who are eligible for full retirement (age 55 with 20 yrs of service) may not apply for disability benefits Laws of 2006, Ch. 271, Art. 3, sec. 1

Clarification that current “base salary” rather than “salary” for similar position is used to determine earnings limit (eliminating OT) Laws of 2006, Ch. 271, Art. 3, sec. 29

Automatic survivor benefits for survivors of disability benefit recipients end at age 55 rather than 65 Laws of 2006, Ch. 271, Art. 4, sec. 3

2007

Definition of duty disability amended to require that the injury or illness be the result of the performance of duty that is inherently dangerous and specific to the positions covered by the Police and Fire Plan Laws of 2007, Ch. 134, Art. 4, sec. 2

Total and permanent duty and regular disability benefits added (lifetime benefits) Laws of 2007, Ch. 134, Art. 4, secs. 16, 19

Use of illegal drugs exclusion for all P&F disability benefits enacted Laws of 2007, Ch. 134, Art. 4, sec. 25

2020

Clarifies that it is only the age, vesting, and service (not termination) requirements for retirement that are considered when determining whether a member is eligible to apply for disability benefits. Laws of 2020, Ch. 108, Art. 6, sec. 14



Current Eligibility & Benefit
Provisions and Examples



Regular Disability and Regular Total and Permanent Disability

Eligibility Requirements for Regular Disability and Regular Total & Permanent Disability

- Must be employed in a PERA P&F plan covered position for one year.
- Disability is the result of a disease or an injury that arises from any activities ***while not at work, or while at work and performing those normal or less frequent duties that do not present inherent dangers*** that are specific to the occupations covered by the Police and Fire Plan.
- If the injury causing the illness or disability is within 2 years, the occupational standard is the position held at the time of injury. If the injury causing the illness or disability is outside of 2 years, the occupational standard is the position within the last 90 days.
- A member must apply for benefits within 18 months of termination. The disability must have occurred during PERA P&F plan covered public employment.

Benefit Requirements for Regular Disability and Regular Total & Permanent Disability

- Members are subject to workers compensation and earnings limitations restrictions as long as on disability.
 - If member receives earnings, member is eligible to make 125% of the current base salary of the position at time of disability.
 - If member does not receiving earnings, member is eligible to make 100% of current base salary of the position at time of disability.



Regular Disability

Regular Disability Eligibility:

- Either physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the Police & Fire Plan.
- Those over 55 with more than 15 years of service are ineligible.

Regular Disability Benefits:

- Disability benefit is a 15 year maximum benefit (45% of salary).
- Disability benefits convert to retirement annuities at Normal Retirement Age (55).



Regular Total and Permanent Disability

Regular Total and Permanent Disability Eligibility

- The inability to engage in any substantial gainful activity by reason of any medically determinable physical or psychological impairment which can be expected to be of long-continued and indefinite duration (at least one year).
- A member over 55 with more than 15 years of service is eligible to apply.

Regular Total and Permanent Disability Benefit

- Member receives a 15 year benefit (45% of salary).
 - If the member has service beyond 15 years, the member will receive 3% for each additional year of service.
- Disability benefits do not convert to retirement annuities at Normal Retirement Age (55).



Duty Disability and Duty Total and Permanent Disability

Eligibility Requirements for Duty Disability and Duty Total Permanent Disability:

- Members are eligible first day of employment in a PERA P&F covered position.
- The injury/illness is the ***direct result of an injury incurred during, or a disease arising from “the hazards of the job”*** that are specific to the positions covered by the Police and Fire Plan.
- If the injury causing the illness or disability is within 2 years, the occupational standard is the position held at the time of injury. If the injury causing the illness or disability is outside of 2 years, the occupational standard is the position within the last 90 days.
- A member must apply for benefits within 18 months of termination. The disability must have occurred during PERA P&F plan covered public employment.

Benefit Requirements for Duty Disability and Duty Total & Permanent Disability

- Members are subject to workers compensation and earnings limitations restrictions as long as on disability.
 - If member receives earnings, member is eligible to make 125% of the current base salary of the position at time of disability.
 - If member does not receiving earnings, member is eligible to make 100% of current base salary of the position at time of disability.



Duty Disability

Duty Disability Eligibility

- Either physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the Police & Fire Plan.
- Members over 55 with more than 20 years of service are not eligible to receive duty regular disability benefits.
- Members over 55 with less than 20 years of service receive a duty disability benefit for 5 years, which then converts to a retirement annuity.

Duty Disability Benefit

- Receives a 20 year minimum benefit, which is 60% of their salary. If the member has service beyond 20 years, the member will receive 3% for each additional year of service.
- The initial 20 year benefit is considered non-taxable until normal retirement age. Any additional years are considered taxable from the beginning of the disability benefit.
- Disability benefit converts to a retirement annuity at Normal Retirement Age (55).
- Members receiving a duty disability are eligible to receive continued healthcare (via 299A.465) paid by their employer until 65. Members over 55 with more than 20 years of service are able to apply for a duty determination in order to receive continued healthcare.



Duty Total and Permanent Disability

Duty Total and Permanent Disability Eligibility

- The inability to engage in any substantial gainful activity by reason of any medically determinable physical or psychological impairment which can be expected to be of long-continued and indefinite duration (at least one year).
- Members are eligible who have over 55 with more than 20 years of service.

Duty Total and Permanent Disability Benefits

- Receives a 20 year minimum benefit, which is 60% of their salary. If the member has service beyond 20 years, the member will receive 3% for each additional year of service.
- The initial 20 year benefit is considered non-taxable. Any additional years are considered taxable from the beginning of the disability benefit.
- Members receiving a duty total and permanent disability benefit are eligible for automatic survivor coverage until 55 or 5 years after the benefit effective date, whichever is later.
- Members' disability benefit does not convert to a retirement annuity.

PERA Police & Fire Plan Duty Disability Taxability Examples (Single Member)

Example #1			
Mid Career Duty Disability			
Average Age (40), Service (12yrs), and Pay (\$90,000)			
A	B		C
Active Status Pre-Disability	Post-Disability without Tax Relief		Post-Disability with Tax Relief
Salary	\$ 90,000	\$ 90,000	\$ 90,000
Applicable Percentage	N/A	60%	60%
Early Retirement Reduction	N/A	N/A	N/A
Salary or Pension Benefit	\$ 90,000	\$ 54,000	\$ 54,000
PERA Contribution (11.80%)	(10,620)	-	-
Standard Deduction	(12,400)	(12,400)	(12,400)
Health Insurance (EE Cost)	(600)	(600)	(600)
Workers' Comp Exemption	-	-	(54,000)
Taxable Income	\$ 66,380	\$ 41,000	\$ -
Salary or Pension Benefit	\$ 90,000	\$ 54,000	\$ 54,000
PERA Contribution (11.80%)	(10,620)	-	-
Health Insurance	(600)	(600)	(600)
Federal Tax	(10,394)	(4,810)	-
State Tax	(4,123)	(2,397)	-
Take Home Pay	\$ 64,263	\$ 46,193	\$ 53,400
Replacement Ratio	100%	72%	83%

Example #2			
Late Career Service Retirement or Duty Disability			
Age (52), Service (27 years), and Pay (\$100,000)			
D	E		F
Active Status Pre-Disability	Regular Retirement (no tax relief)		Duty Disability Benefit (with tax relief)
Salary	\$ 100,000	\$ 100,000	\$ 100,000
Applicable Percentage	N/A	81%	81%
Early Retirement Reduction	N/A	85%	N/A
Salary or Pension Benefit	\$ 100,000	\$ 68,850	\$ 81,000
PERA Contribution (11.80%)	(11,800)	-	-
Standard Deduction	(12,400)	(12,400)	(12,400)
Health Insurance (EE Cost)	(600)	(9,000)	(600)
Workers' Comp Exemption	-	-	(60,000)
Taxable Income	\$ 75,200	\$ 47,450	\$ 8,000
Salary or Pension Benefit	\$ 100,000	\$ 68,850	\$ 81,000
PERA Contribution (11.80%)	(11,800)	-	-
Health Insurance	(600)	(9,000)	(600)
Federal Tax	(12,334)	(6,229)	(763)
State Tax	(4,723)	(2,836)	(428)
Take Home Pay	\$ 70,543	\$ 50,785	\$ 79,210
Replacement Ratio	100%	72%	112%

Duty disability tax relief helps protect a member's standard of living during the period from disability to normal retirement age (age 55).

Duty disability tax relief does not appear to be necessary to protect a member's standard of living near or at retirement age.

	<u>From</u>	<u>To</u>	<u>Rate</u>
2020 Federal Tax Rates	\$ -	\$ 9,875	10.00%
	\$ 9,875	\$ 40,125	12.00%
	\$ 40,125	\$ 85,525	22.00%
	\$ 85,525	No Limit	32.00%
2020 MN State Tax Rates	\$ -	\$ 26,960	5.35%
	\$ 26,960	\$ 88,550	6.80%
	\$ 88,550	\$ 164,400	7.85%
	\$ 164,400	No Limit	9.85%

Notes:

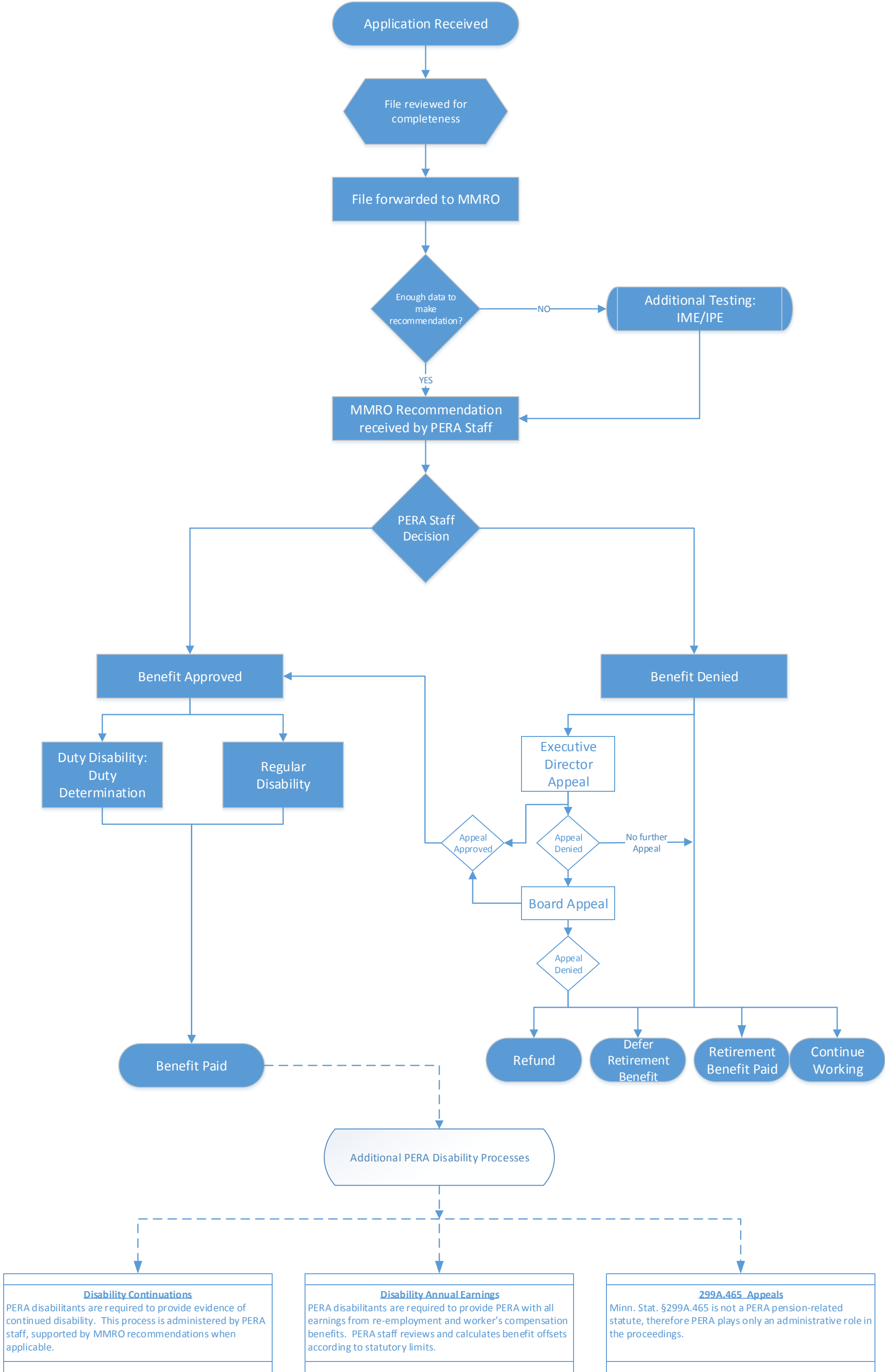
- 1) Final Average Salary (FAS) is assumed to equal final Salary
- 2) Minimum Duty Disability Benefit amount is 60% of FAS
- 3) Employee only health insurance cost is assumed to be \$50/mo. (\$600/yr)
- 4) Total health insurance cost is assumed to be \$750/mo. (\$9,000/yr)
- 5) Worker's Compensation exemption is capped at 60% of FAS
- 6) Medicare or postretirement insurance costs after NRA are not included
- 7) The standard deduction is assumed applicable in all situations

The examples above are meant to be sufficient to demonstrate the main impact of tax relief. The calculations do not reflect all the nuances of both Federal and State tax code or unique member situations.



Program Administration
Overview and Appeal
Process

PERA Police & Fire Disability Program Overview



Disability Continuations
PERA disabilitants are required to provide evidence of continued disability. This process is administered by PERA staff, supported by MMRO recommendations when applicable.

Disability Annual Earnings
PERA disabilitants are required to provide PERA with all earnings from re-employment and worker's compensation benefits. PERA staff reviews and calculates benefit offsets according to statutory limits.

299A.465 Appeals
Minn. Stat. §299A.465 is not a PERA pension-related statute, therefore PERA plays only an administrative role in the proceedings.

PERA APPEAL PROCEDURES

October 2020



The Pension Plan Appeal Procedures: Minn. Stat. § 356.96

- The Pension Plan Appeal Procedures in Minn. Stat. § 356.96 govern appeals to the Executive Director and the Board of Trustees.
- The appeal process, including hearing at the Office of Administrative Hearings, is free to petitioners.
- The PERA Board hears appeals after a participant, survivor, or employer claims a right, benefit, or eligibility status, which the Executive Director determines is not permitted by law and the participant chooses to appeal that determination to the Board.
- Common appeals pertain to eligibility for disability benefits, the amount or calculation of retirement annuities, and membership issues.

Appeals to the Executive Director

- A person (defined in statute to include an active, retired, deferred, or non-vested inactive participant; a beneficiary; an individual who has applied to be a participant; a survivor; or an employer) may appeal a PERA staff decision regarding eligibility, benefits, or other rights under the plan to the Executive Director.
- The appeal must be in writing and be received no later than 60 days after the date of the written notice of the staff decision.

Notice of Determination

The Executive Director, may overturn, modify or affirm the staff decision and must send notice of this decision to Petitioner. The notice must be in writing, sent by certified mail, and include the following:

- a. a statement of the reasons for the determination;
- b. a description of Petitioner's appeal rights;
- c. a statement that failure to appeal within 60 days precludes Petitioner from any further administrative or judicial review regarding the determination;
- d. an outline of the appeal procedures and required deadlines; and
- e. notification of the right to explain why a benefit should not be terminated if the Executive Director's determination would result in termination of a benefit.



Appeal to the PERA Board of Trustees

A person may petition the PERA Board for review of the Executive Director's determination.

- **Petition for Review.** Petitioner has 60 days from receipt of the Executive Director's notice of determination to deliver a written petition for review to PERA in person or by mail. If Petitioner fails to file a petition within 60 days, the Executive Director's determination is ***final and is not subject to further administrative or judicial review.***
- **Fact-finding Conference.** Upon receipt of a petition for review, the Executive Director develop the record for the Board by:
 - directing a fact-finding conference be conducted by an administrative law judge ("ALJ"); and/or
 - directing that a vocational assessment be conducted by a qualified rehabilitation counselor if the dispute involves a disability determination; or
 - requesting that the Board refer the petition to the Office of Administrative Hearings for a contested case hearing.

Notice of the PERA Board Hearing

Upon receipt of the ALJ's recommendation or, if no fact-finding was directed, upon receipt of the petition for review, the Executive Director must schedule a hearing before the Board to take place during a regular or special Board meeting.

- The Executive Director must notify Petitioner of the hearing at least 30 days before the Board meeting.
- At least 15 days prior to the hearing, Petitioner and PERA must provide the Board and the other party with their submissions regarding the ALJ's recommendation or, if there has been no fact-finding conference, with copies of any documentary evidence and a list of witnesses who will testify along with a summary of their testimony.
- If Petitioner makes a request to postpone the hearing at least 10 days before the hearing, the Board must grant a one-time postponement.

PERA Board Hearing

The PERA Board must hold a timely hearing on a petition for review. All participating Board members must be familiar with the record, which must be provided to them at least 5 days before the meeting.

- The PERA representative and the Petitioner may present their positions regarding the petition and answer questions.
- If no fact-finding conference was held, additional evidence may be submitted through witness testimony.
- The Executive Director may not otherwise participate in the decision-making process.
- If the Petitioner was notified of the Board hearing but fails to request a postponement and fails to appear, the Board may hear the petition and issue a decision.
- Disability appeals: a reversal or modification of the Executive Director's determination must be based on medical evidence. If medical evidence is discussed or presented, the Board meeting must be closed to members of the public.

The Appeal Record

The Board must base its decision solely on the record and the proceedings of the Board hearing.

If there has been a **fact-finding conference**, the record consists of:

- the record from the Office of Administrative Hearings;
- seven-page submissions by the petitioner and commenting parties on the ALJ's recommendation; and
- any vocational assessment report ordered as part of the appeal process.

If there has been **no fact-finding conference**, the record consists of:

- the materials provided to the petitioner by PERA;
- the materials files by Petitioner with PERA;
- any vocational assessment report; and
- any testimony at the hearing before the Board.

The Board may allow further documentation to be placed in the record at the Board meeting only with the agreement of both the Executive Director and the Petitioner. The Executive Director may not otherwise participate in the Board's decision-making process.

The PERA Board Decision

The Board's decision must be made upon a motion by a Board member and approval by a majority of the Board.

The Board may reverse, modify, or affirm the Executive Director's decision or the ALJ's recommendation. The Board's practice has been to direct its counsel to draft an order consistent with the motion and the record.

The Board's decision must be issued within 30 days as an order containing findings of fact, conclusions of law, and the Board's decision.

Alternatively, the Board may choose to:

- refer a petition for review to a contested case hearing under Minnesota Statutes Section 14.57 to 14.69; or
- submit a disability-related petition to a medical advisor for consideration and to defer the decision until after receiving the advisor's report.

Appeal of the PERA Board Decision

The PERA Board's decision is appealable to the Minnesota Court of Appeals within 60 days of the mailing of the Board's order. If Petitioner fails to do so, Petitioner cannot raise the same issues in any subsequent administrative or court proceeding.

The PERA Board's counsel from the Minnesota Attorney General's Office will represent PERA at the Court of Appeals.

An order of the Court of Appeals is appealable by either party to the Minnesota Supreme Court.

Duty disability

Continued Health Insurance Appeals

If PERA determines that a member of the Police & Fire Plan is eligible for duty disability benefits, the member and their dependents are also eligible for continued health insurance from their former employer pursuant to Minn. Stat. § 299A.465, a Department of Public Safety statute.

Upon granting a duty disability benefit, PERA informs the employer/former employer of the obligation to provide continued health insurance and of the right to appeal by requesting a contested case proceeding.

If a member would otherwise be eligible for disability benefits, but does not qualify because of age, length of service, membership in a relief association, or discontinuation of service, the member may request that PERA nonetheless make a duty determination for the purpose of continued health insurance.



Minn. Stat. §299A.465 Appeals

Minn. Stat. § 299A.465 provides that an employer may appeal the obligation to pay continued health insurance. The cost is shared by the employer and the employee.

The appeal process:

- The employer requests that PERA initiate a contested case at OAH within 60 days of a duty determination
- PERA's attorney contacts OAH and serves the Notice and Order for Hearing
- Discovery, including requests for production of documents and depositions
- Evidentiary hearing with an ALJ. The employer and employee litigate the case, but PERA staff may be called to testify.
- The ALJ's decision in the contested case is final regarding whether the employer must provide continued health insurance, but the outcome of the case does not affect payment of PERA's duty disability benefit.

Minn. Stat. §299A.465

Minn. Stat. § 299A.465 CONTINUED HEALTH INSURANCE COVERAGE.

Subdivision 1. Officer or firefighter disabled in line of duty.

(a) This subdivision applies to any peace officer or firefighter:

(1) who the Public Employees Retirement Association or the Minnesota State Retirement System determines is eligible to receive a duty disability benefit pursuant to section [353.656](#) or [352B.10, subdivision 1](#), respectively; or

(2) who (i) does not qualify to receive disability benefits by operation of the eligibility requirements set forth in section [353.656, subdivision 1](#), paragraph (b), (ii) retires pursuant to section [353.651, subdivision 4](#), or (iii) is a member of a local police or salaried firefighters relief association and qualifies for a duty disability benefit under the terms of plans of the relief associations, and the peace officer or firefighter described in item (i), (ii), or (iii) has discontinued public service as a peace officer or firefighter as a result of a disabling injury and has been determined, by the Public Employees Retirement Association, to have otherwise met the duty disability criteria set forth in section [353.01, subdivision 41](#).

(b) A determination made on behalf of a peace officer or firefighter described in paragraph (a), clause (2), must be at the request of the peace officer or firefighter made for the purposes of this section. Determinations made in accordance with paragraph (a) are binding on the peace officer or firefighter, employer, and state. The determination must be made by the executive director of the Public Employees Retirement Association or by the executive director of the Minnesota State Retirement System, whichever applies, and is not subject to section [356.96, subdivision 2](#). Upon making a determination, the executive director shall provide written notice to the peace officer or firefighter and the employer. This notice must include:

(1) a written statement of the reasons for the determination;

(2) a notice that the person may petition for a review of the determination by requesting that a contested case be initiated before the Office of Administrative Hearings, the cost of which must be borne by the peace officer or firefighter and the employer; and

(3) a statement that any person who does not petition for a review within 60 days is precluded from contesting issues determined by the executive director in any other administrative review or court procedure.

If, prior to the contested case hearing, additional information is provided to support the claim for duty disability as defined in section [352B.011, subdivision 7](#), or [353.01, subdivision 41](#), whichever applies, the executive director may reverse the determination without the requested hearing. If a hearing is held before the Office of Administrative Hearings, the determination rendered by the judge conducting the fact-finding hearing is a final decision and order under section [14.62, subdivision 2a](#), and is binding on the applicable executive director, the peace officer or firefighter, employer, and state. Review of a final determination made by the Office of Administrative Hearings under this section may only be obtained by writ of certiorari to the Minnesota Court of Appeals under sections [14.63](#) to [14.68](#). Only the peace officer or firefighter, employer, and state have standing to participate in a judicial review of the decision of the Office of Administrative Hearings.

(c) The officer's or firefighter's employer shall continue to provide health coverage for:

(1) the officer or firefighter; and

(2) the officer's or firefighter's dependents if the officer or firefighter was receiving dependent coverage at the time of the injury under the employer's group health plan.

(d) The employer is responsible for the continued payment of the employer's contribution for coverage of the officer or firefighter and, if applicable, the officer's or firefighter's dependents. Coverage must continue for the officer or firefighter and, if applicable, the officer's or firefighter's dependents until the officer or firefighter reaches or, if deceased, would have reached the age of 65. However, coverage for dependents does not have to be continued after the person is no longer a dependent.

Subd. 2. Officer or firefighter killed in line of duty.

(a) This subdivision applies when a peace officer, firefighter, or volunteer firefighter is killed while on duty and discharging the officer's, firefighter's, or volunteer firefighter's duties as a peace officer, firefighter, or volunteer firefighter.

(b) The officer's or firefighter's employer shall continue to cover the deceased officer's or firefighter's dependents, including the officer's or firefighter's spouse:

(1) if the officer, firefighter, or volunteer firefighter was receiving dependent coverage at the time of the officer's, firefighter's, or volunteer firefighter's death under the employer's group health plan; or

(2) if the officer's, firefighter's, or volunteer firefighter's spouse was not covered as a dependent at the time of the officer's, firefighter's, or volunteer firefighter's death, but at that time was eligible, or afterward becomes eligible, to be a dependent on the employer's group health plan.

(c) The employer is responsible for the employer's contribution for the coverage of the officer's, firefighter's, or volunteer firefighter's dependents. Subject to subdivision 5, paragraph (b), clause (2), coverage must continue for a dependent of the officer, firefighter, or volunteer firefighter as follows: (1) for a surviving spouse, until the surviving spouse reaches the age of 65; and (2) for each other dependent, until the dependent reaches the age of 26, except as otherwise provided in section [62L.02, subdivision 11](#).

Subd. 2a. Volunteer firefighter killed in line of duty.

(a) This subdivision applies when a volunteer firefighter is killed while on duty and discharging the volunteer firefighter's duties as a volunteer firefighter and the municipality or municipalities that operate the fire department did not offer a group health insurance policy to which a volunteer firefighter was eligible to subscribe.

(b) The municipality or municipalities that operate the fire department that the volunteer firefighter served with shall, until coverage terminates as provided under subdivision 2, paragraph (c), either: (1) provide health insurance coverage for the volunteer firefighter's dependents that is equivalent to the average benefit provided by the municipality or municipalities to dependents of its employees who are covered by the



Minn. Stat. §299A.465 (cont.)

plan; or (2) reimburse the dependents, if the municipality or municipalities do not offer a group health insurance plan for any employees, for a minimum of 50 percent of the cost of health insurance premiums for coverage selected by the dependents.

Subd. 3. **Coordination of benefits.**

Health insurance benefits payable to the officer or firefighter and the officer's or firefighter's dependents from any other source provide the primary coverage, and coverage available under this section is secondary.

Subd. 4. **Public employer reimbursement.**

A public employer subject to this section may annually apply by August 1 for the preceding fiscal year to the commissioner of public safety for reimbursement to help defray a portion of its costs of complying with this section. The commissioner shall provide an equal pro rata share to the public employer out of the public safety officer's benefit account based on the availability of funds for each eligible officer, firefighter, and qualifying dependents. Individual shares must not exceed the actual costs of providing coverage under this section by a public employer.

Subd. 5. **Definition.**

For purposes of this section:

- (a) "Peace officer" or "officer" has the meaning given in section [626.84, subdivision 1](#), paragraph (c).
- (b) "Dependent" means a person who: (1) meets the definition of dependent in section [62L.02, subdivision 11](#), at the time of the officer's or firefighter's injury or death, or at the time of the volunteer firefighter's death; and (2) is not covered under another group health plan. For purposes of this section, the term "eligible employee" as defined under section [62L.02, subdivision 13](#), includes a volunteer firefighter.
- (c) "Firefighter" has the meaning given in Minnesota Statutes 2000, section [424.03](#), but does not include volunteer firefighters.
- (d) "Volunteer firefighter" has the meaning given in section [299N.03, subdivision 7](#), and includes paid per call.
- (e) "Fire department" has the meaning given in section [299N.03, subdivision 4](#).
- (f) For purposes of subdivisions 2 to 5a, "employer" includes a municipality or municipalities that operate the fire department in which a volunteer firefighter serves.

Subd. 5a. **Minimum benefit.** Nothing in this section prohibits an employer from providing benefits to survivors of deceased volunteer firefighters that are greater than the benefits required under this section.

Subd. 6. MS 2006 [Expired, [2005 c 136 art 8 s 7](#)]

Subd. 7. MS 2006 [Expired, [2005 c 136 art 8 s 8](#)]

History:



Minn. Stat. §356.96

356.96 PENSION PLAN APPEAL PROCEDURES.

Subdivision 1. Definitions.

(a) Unless the language or context clearly indicates that a different meaning is intended, for the purpose of this section, the terms in this subdivision have the meanings given them.

(b) "Executive director" means the executive director of a covered pension plan or the executive director's designee or representative.

(c) "Covered pension plan" means a plan enumerated in section 356.20, subdivision 2, clauses (1) to (4), (8), and (11) to (14), but does not mean the deferred compensation plan administered under sections 352.965 and 352.97 or to the postretirement health care savings plan administered under section 352.98.

(d) "Governing board" means the Board of Trustees of the Public Employees Retirement Association, the Board of Trustees of the Teachers Retirement Association, or the Board of Directors of the Minnesota State Retirement System.

(e) "Person" means an active, retired, deferred, or nonvested inactive participant in a covered pension plan or a beneficiary of a participant, or an individual who has applied to be a participant or who is or may be a survivor of a participant, or the representative of a state agency or other governmental unit that employs active participants in a covered pension plan.

(f) "Petitioner" means a person who has filed a petition for review of an executive director's determination under this section.

Subd. 2. Right to appeal to executive director; determination.

A person may appeal a decision by the staff of a covered pension plan regarding the person's eligibility, benefits, or other rights under the plan to the executive director of the plan. The appeal must be in writing and be delivered to the executive director no later than 60 days after the date of the written notice of the staff decision. The executive director may overturn, modify, or affirm the staff's decision. The executive director's determination is subject to review under this section.

Subd. 3. Notice of determination.

The executive director shall issue a written notice of determination to the person who files an appeal under subdivision 2. The notice of determination must be delivered by certified mail to the address to which the most recent benefit payment was sent or, if that address is that of a financial institution, to the last known address of the person. The notice of determination shall include the following:

- (1) a statement of the reasons for the determination;
- (2) a statement that the person may petition the governing board of the covered pension plan for a review of the determination and that a person's petition for review must be filed in the administrative office of the covered pension plan no later than 60 days after the date of the written notice of determination;
- (3) a statement indicating that a failure to petition for review within 60 days precludes the person from any further administrative or judicial review of the executive director's determination;

(4) a statement indicating that all relevant materials, documents, affidavits, and other records that the person wishes to be reviewed in support of the petition and a list of any witnesses who will testify before the governing board, along with a summary of the witness' testimony, must be filed with the administrative office of the covered pension plan at least 15 days before the date of the hearing under subdivision 10 or as directed by the administrative law judge who conducts a fact-finding conference under subdivision 7, paragraph (b), or a contested case hearing under subdivision 12, paragraph (b);

(5) a summary of this section, including all filing requirements and deadlines; and

(6) the statement required under subdivision 4, paragraph (a), if applicable.

Subd. 4. Termination of benefits.

(a) If the executive director's determination will terminate a benefit that is being paid to a person, the notice of determination must also state that the person has the opportunity to explain, in writing, in person, by telephone, or by e-mail, the reasons that the benefit should not be terminated.

(b) If the notice of determination is returned as undeliverable and the person cannot be reached by any other reasonable means of communication and the executive director determines that a failure to terminate the benefit will result in unauthorized payment by a covered pension plan, the executive director may terminate the benefit immediately.

Subd. 5. Petition for review.

(a) Upon receipt of the notice of determination required in subdivision 3, a person may petition the governing board of the covered pension plan for a review of the executive director's determination.

(b) The petitioner must file the petition for review with the administrative office of the covered pension plan no later than 60 days after the date of the notice of determination required by subdivision 3. Filing of the petition is effective upon mailing or personal delivery. The petition must include the petitioner's statement of the reason or reasons that the determination of the executive director should be reversed or modified.

Subd. 6. Failure to petition.

If a timely petition for review under subdivision 5 is not filed with the administrative office of the covered pension plan, the executive director's determination is final and is not subject to further administrative or judicial review.

Subd. 7. Notice of hearing; fact-finding; filing and timing requirements.

(a) After receiving a petition, the executive director must schedule a hearing to review the petition before the governing board of the covered pension plan or the executive director may defer the scheduling of a hearing until after a fact-finding conference under paragraph (b).

(b) The executive director may direct the petitioner to participate in a fact-finding conference conducted by an administrative law judge assigned by the Office of Administrative Hearings. The fact-finding conference is an informal proceeding not subject to Minnesota Rules, chapter 1400, except that Minnesota Rules, part 1400.7300, shall govern the admissibility of evidence and Minnesota Rules, part 1400.8603, shall



Minn. Stat. §356.96 (cont.)

govern how the fact-finding conference is conducted. The administrative law judge must issue a report and a recommendation to the governing board.

(c) If the petitioner's claim relates to disability benefits, the executive director may direct the petitioner to participate in a vocational assessment conducted by a qualified rehabilitation counselor under contract with the covered pension plan. The counselor must issue a report regarding the assessment to the governing board.

(d) Not less than 30 calendar days before the date scheduled for the hearing before the governing board, the executive director must notify the petitioner of the time and place of the meeting at which the governing board is scheduled to conduct the hearing. If there has been no fact-finding conference under paragraph (b), not less than 15 days before the date scheduled for the hearing, the petitioner and the executive director must provide to the governing board and the other party copies of all documentary evidence that will be presented and a list of witnesses who will testify, along with a summary of their testimony.

(e) The petitioner may request a postponement of the date scheduled for the hearing before the governing board within a reasonable time, but no later than ten calendar days before the scheduled hearing date. A petitioner shall be granted only one postponement unless the applicable covered pension plan agrees to additional postponements.

Subd. 8. Record for review.

(a) All evidence, including all records, documents, and affidavits in the possession of the covered pension plan of which the covered pension plan desires to avail itself and be considered by the governing board, and all evidence which the petitioner wishes to present to the governing board, including any evidence which would otherwise be classified by law as "private," must be made part of the hearing record.

(b) The executive director must provide a copy of the record to each member of the governing board at least five days before the scheduled hearing date.

(c) If a fact-finding conference under subdivision 7, paragraph (b), is not conducted, the record is limited to those materials provided to the petitioner in accordance with subdivision 7, paragraph (d), those filed by the petitioner with the covered pension plan in a timely manner in accordance with subdivision 7, paragraph (e), any vocational assessment report under subdivision 7, paragraph (c), and any testimony at the hearing before the governing board. Any additional evidence may be placed in the record pursuant to subdivision 10, paragraph (b).

(d) If a fact-finding conference under subdivision 7, paragraph (b), or a contested case hearing under subdivision 12, paragraph (b), is conducted, the record before the governing board must be limited to the following:

- (1) the record from the Office of Administrative Hearings;
- (2) seven-page submissions by the petitioner and a representative of the covered pension plan commenting on the administrative law judge's recommendation; and
- (3) any vocational assessment report under subdivision 7, paragraph (c).

Subd. 9. Amended determination.

Subd. 9. Amended determination.

At any time before the hearing before the governing board, for good cause shown and made part of the records of the plan, the executive director may reverse, alter, amend, or modify the prior decision which is subject to review under this section by issuing an amended determination to the petitioner. Upon doing so, the executive director may cancel the governing board's scheduled review of the person's petition and notify the petitioner.

Subd. 10. Board hearing.

(a) The governing board shall hold a timely hearing on a petition for review as part of a regularly scheduled board meeting, or as part of a special meeting if so scheduled. All governing board members who participate in the decision-making process must be familiar with the record. The governing board shall make its decision on a petition solely on the record as submitted and on the proceedings of the hearing.

(b) At the hearing, the petitioner, the petitioner's representative, if any, the executive director, and a representative of the covered pension plan who does not also serve as the governing board's legal advisor during the board's decision-making process may state and discuss with the governing board their positions with respect to the petition. If no fact-finding conference under subdivision 7, paragraph (b), or contested case hearing under subdivision 12, paragraph (b), was conducted, additional evidence may be received in the form of testimony from previously disclosed witnesses. The governing board may allow further documentation to be placed in the record at the board meeting only with the agreement of both the executive director and the petitioner. The executive director may not otherwise participate in the board's decision-making process.

(c) If a petitioner who received timely notice of a scheduled hearing fails to appear, the governing board may nevertheless hear the petition and issue a decision.

(d) The governing board's decision shall be made upon a motion by a board member and approval by a majority of the governing board. The governing board must issue its decision as a written order containing findings of fact, conclusions of law, and the board's decision no later than 30 days after the hearing. If the decision is contrary to the petitioner's desired outcome, the notice must inform the petitioner of the appeal rights set forth in subdivision 13.

Subd. 11. Disability medical issues.

If the petitioner seeks to reverse or modify a determination by the executive director that there was insufficient medical data to support an application for disability benefits, the governing board may reverse that determination only if there is medical evidence supporting the application. The governing board has the discretion to resubmit a disability benefit application at any time to a medical advisor for reconsideration, and the resubmission may include an instruction that further medical examinations be obtained.

Subd. 12. Referral for administrative hearing.

(a) A fact-finding conference under subdivision 7, paragraph (b), must be conducted exclusively under the procedures set forth in this section and not as a contested case under chapter 14.



Minn. Stat. §356.96 (cont.)

(b) A governing board, in its sole discretion, may refer a petition brought under this section to the Office of Administrative Hearings for a contested case hearing under sections 14.57 to 14.69.

Subd. 13. **Appeal of the governing board's decision; judicial review.**

No later than 60 days after the date of the mailing of the notice of the governing board's decision, the petitioner may appeal the decision by filing a writ of certiorari with the court of appeals under section 606.01 and Rule 115 of the Minnesota Rules of Civil Appellate Procedure. Failure by a person to appeal to the court of appeals within the 60-day period precludes the person from later raising, in any subsequent administrative hearing or court proceeding, those substantive and procedural issues that reasonably should have been raised upon a timely appeal.

Subd. 14. MS 2016 [Repealed, 2018 c 211 art 13 s 21]

Subd. 15. MS 2016 [Repealed, 2018 c 211 art 13 s 21]

History: 2007 c 134 art 6 s 2; 2008 c 349 art 10 s 16; art 11 s 7; 2009 c 169 art 4 s 47; art 9 s 28; 2010 c 359 art 5 s 20-24; art 12 s 38; 2014 c 275 art 2 s 25; 2018 c 211 art 13 s 8-20





Stakeholder Interaction



Agenda

- Minnesota Professional Fire Firefighters (*Chris Parsons*)
- Law Enforcement Labor Services (*Jim Mortenson*)
- Teamsters 320 (*Gus Froemke*)
- League of Minnesota Cities (*Anne Finn*)
- Minnesota Inter-County Association (*Matt Massman*)
- City of Minneapolis (*Lori Johnson*)
- St. Paul Police Department (*Chief Todd Axtell*)



PERA Board Observations
and Direction