

Background Information on the Historical Development of the PERA Privatization Chapter Minnesota Statutes, Chapter 353F

1. Legislative History Concerning PERA Membership for Public Hospital and Related Employees.

Prior to 1963, employees of public hospitals and related health facilities were covered by the Public Employees Retirement Association (PERA) on a mandatory basis. Legislation enacted in 1951 required every person who received compensation for services performed which was paid in whole or in part from governmental revenue to be a member of PERA as a condition of the acceptance of or the continuance in public employment, including public hospital, nursing home, and extended health care facility employees (Laws 1951, Ch. 22, Sec. 10). Only public employees who were elected public officials, or who attained the age of 60 years at the time of employment or who were required to contribute to a local public pension fund or who were employed by a governmental unit which was previously never covered by PERA, were excluded. For elected public officials and employees who had attained the age of 60 years at the time of employment, membership was optional at the election of the employee. For employees who were employed by a governmental unit which was never previously covered by PERA, membership was optional at the election of the governmental subdivision through the adoption of the appropriate resolution.

In 1963, legislation was enacted which made PERA membership optional for public hospital employees (Laws 1963, Ch. 793, Sec. 3, Subd. 5, now coded as Minn. Stat. Sec. 355.72, Subd. 5). In 1963, there was no PERA Coordinated Program and no PERA-covered employees had Social Security coverage by virtue of their public employment. The 1963 legislation made public hospital employees eligible for Social Security coverage, authorizing a separate Social Security employee referendum and Social Security agreement with the federal government. Each public hospital was treated as an individual unit for purposes of the referendum. Public hospital employees were given the option of having coverage by Social Security in lieu of PERA Basic Program coverage, or retaining the PERA Basic Program coverage, or having reduced PERA coverage (under a predecessor to the PERA Coordinated Program) and Social Security coverage. The Legislative Commission on Pensions and Retirement, then an interim commission entitled the “Interim Commission on Employee Retirement Systems,” was not reestablished by the 1961 Legislature, did not function during the 1961-1962 interim or the 1963 legislative session consequently, and did not study or recommend these changes applicable to public hospital employees.

In 1967, the authority for public hospital employees to retain or terminate PERA coverage at their option was revoked (Laws 1967, Ch. 687, Sec. 22). The Commission was reestablished on an interim basis by the 1963 and 1965 Legislatures and the Commission did study and recommend this change in the optional membership for public hospital employees.

The question of optional PERA membership for public hospital employees also arose in 1969 concerning a specific public hospital, the Duluth Miller Memorial Hospital. Special legislation adopted during the 1969 legislative session, redefining the powers and duties of the directors of the hospital, included a provision which was alleged by the hospital to have given its employees the option to be members of PERA or not (Laws 1969, Ch. 224, Subd. 1). The question was resolved by an opinion of the Attorney General, which held that the Duluth Miller Memorial Hospital employees did not have the right to terminate PERA membership by virtue of the special legislation because of constitutional defects related to the manner in which the legislation was enacted, and the general policy of the legislature towards public hospital employees expressed in the 1967 general legislation on the subject (Opinion of the Attorney General to PERA dated November 10, 1971).

In 1973, PERA law was amended to specifically provide that public hospital employees are included within the definition of “public employee” and are members of PERA (Laws 1973, Ch. 753, Sec. 4). In 1975, PERA law was amended to remove one additional exception to PERA membership applicable to hospital districts by providing that only public hospital districts which were organized or reorganized pursuant to Laws 1959, Chapter 570, prior to July 1, 1975, would be excluded from the definition of “governmental subdivision,” which determines PERA coverage in part (Laws 1975, Ch. 102, Sec. 1). The exclusion for public hospital districts which were organized or reorganized pursuant to the 1959 legislation was added to PERA in 1959 (Laws 1959, Ch. 650, Sec. 2). Employees of public hospital districts which were organized or reorganized pursuant to the 1959 hospital organization legislation had retirement coverage solely from Social Security (Laws 1959, Ch. 633).

2. Pre-1999 Retirement Plan Treatment for Public Employees Affected by Public Health Care Facility Privatizations. There has been a trend among health care facilities to convert from public sector ownership to private sector or quasi-public sector ownership. These conversions have involved

selling, leasing, or transferring the facility, and transferring the existing employees to that reorganized health care facility.

The privatization of health care facilities is occurring both among large and small hospitals, clinics, and related health care providers. The privatizations typically increase organizational flexibility and reduce various costs to remain financially competitive. One area of potential savings is that of retirement coverage by PERA, or other public pension plan, which may be eliminated by the privatization.

When a privatization occurs, the employees may no longer qualify as public employees for PERA pension purposes. When this occurs, membership in PERA terminates, and retirement benefit coverage problems may emerge.

Under current PERA law, three years of PERA coverage is required for vesting for employees hired before July 1, 2010, and five years is required for partial or total vesting for employees hired after June 30, 2010. For employees who terminate PERA membership without vesting, no deferred retirement annuity right typically is available. The member may elect a refund of accumulated member contributions with 6% interest, or the individual may leave the contributions at PERA, perhaps in the expectation that the individual will change employment in the future and again become a covered public employee. For a vested employee who terminates PERA membership with at least three years of service, there is a choice between a deferred retirement annuity right and a refund. The deferred retirement annuity is augmented by 3% per year under age 55 and 5% per year thereafter until retirement or 2.5% per year until retirement, depending on the date of hire, and no augmentation for members terminating after December 31, 2011.

When a privatization occurs and employees lose the right to continue coverage by the public plan, all of the employees are impacted. The employee may be terminated from employment at the time of the sale, transfer, or reorganization. Those employees will lose both continued employment and continued retirement coverage. For employees who remain employed after transfer to the newly organized health care facility, the privatization interrupts their benefit coverage. If there is no pension plan established by the privatized health care facility, the employees will suffer a loss of overall benefit coverage beyond Social Security. If a plan is provided by the new employer, portability problems between the old and new plan are likely.

Before 1999, the Legislature dealt with health care privatizations numerous times and has used several different treatments to address pension coverage issues. At times, in addition to any benefit that the employee may have been eligible for under a public pension plan, the individual was offered an alternative of an enhanced refund (employee plus employer contributions) plus interest. On at least one occasion, the individuals were permitted to remain in PERA, although that practice has not been favored in more recent years.

The following is a summary of treatments used since 1984 and before 1999.

- In 1984, relating to the privatization of the Owatonna City Hospital, legislation allowed the affected employees to receive a deferred retirement annuity with at least five years of service or to receive a refund of employee and employer contributions, plus interest at 6% compounded annually.
- In 1986, relating to the St. Paul Ramsey Medical Center reorganization, legislation allowed only a delayed right to withdraw from PERA and receipt of a refund of only member contributions plus interest at 5% compounded.
- In 1987, relating to the Albany Community Hospital and the Canby Community Hospital, legislation allowed the affected employees to receive a deferred retirement annuity with a five-year vesting period or to receive a refund of both employee and employer contributions, plus compound annual interest at 6%.
- In 1988, relating to the Gillette Children's Hospital employees, legislation continued the membership of the affected employees in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), but excluded new employees from public pension plan coverage.
- In 1994, relating to the St. Paul Ramsey Medical Center again, legislation continued the PERA membership of existing employees who were PERA members unless the employee elected to terminate PERA membership before July 1, 1995.

- In 1995 through 1997, two approaches have been used with respect to hospital privatizations:
 - a. Public Pension Plan Membership Discontinuation with Local Employer Option. In the first model, continuing PERA coverage ends for all employees as of the time of the transfer of the health care facility to the new ownership. The new health care entity may provide a “PERA-like” plan for individuals who are transferred with the facility and remain as employees of the new entity. For individuals who are terminated at the time of the transfer, and who were not vested in PERA, the city may match any refund with interest that the individual receives from PERA. This model was used with the Olmsted County Medical Center privatization (1995), the Itasca County Medical Center (1995 and 1996), and Jackson Medical Center, Melrose Hospital, Pine Villa Nursing Home, and the Tracy Municipal Hospital and Clinic (1997), and the Glencoe Area Health Center (1998).
 - b. Special Continuing Public Pension Plan Rights after Membership Discontinuation. In the second model, termination of coverage by the public plan occurs at the time of the privatization, but the employees who terminated coverage were permitted deferred annuities (even those that were not vested) from the public plan with an augmentation rate that exceeded that used under general law, and the employees were allowed to use service with the new organization to meet age/service requirements for qualifying for the Rule of 90 under the public plan. This approach was used in 1996 for the University of Minnesota Hospital-Fairview merger. The plan that had previously provided coverage to the transferred employees was the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General).
- 3. Precedent for the PERA Privatization Law. In 1996, the Fairview and University Hospitals merged and employees at University Hospital who had been covered members of the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) were not permitted to continue as active members of that public plan because the new employer was not a public entity. Special treatment was proposed and enacted for these former public employees (coded as Chapter 352F, University Hospital Employee Retirement), including deferred annuity augmentation rates in excess of that offered to other terminated employees. The Fairview/University Hospital model for treating privatizations was later used when some similar situations arose for General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) privatized employees. Enacted in 1999, Minnesota Statutes, Chapter 353F, has been used in recent years to deal with PERA-covered public employer privatizations, either due to a sale or lease to a private sector company or nonprofit corporation, or due to reorganization that changes a public employer into a 501(c)(3) nonprofit corporation.
- 4. Minnesota Statutes, Chapter 353F, the PERA Privatization Provision, as Enacted in 1999. In 1999, three pieces of proposed legislation were introduced relating to the privatization of public hospitals:
 - H.F. 551 (Mulder); S.F. 707 (Lesewski): PERA; Luverne Hospital privatization;
 - H.F. 1027 (Molnau); S.F. 912 (Robling): PERA; Ridgeview Medical Center privatization; and
 - H.F. 1842 (Swenson); S.F. 1694 (Frederickson): PERA; Glencoe Public Hospital privatization.

The bills were heard by the Legislative Commission on Pensions and Retirement on February 26, 1999, and March 25, 1999. The bills proposed replicating the 1996 Fairview-University of Minnesota Hospitals merger MSRS-General legislation. The Commission ultimately decided to create a single coded law rather than three special local laws from the three bills, which was Minnesota Statutes, Section 353F. PERA did testify on the initial two bills as neutral on the proposed legislation so long as the actuarial experience gain to PERA-General from the privatization and the removal of members from plan coverage was not exceeded by the actuarial accrued liability of the enhancements in the privatization legislation.

The PERA privatization chapter provisions passed as Laws 1999, Chapter 222, Article 1, and contained the following provisions:

- a. Section 353F.01, Purpose and Intent Section. This chapter addresses the needs of PERA-General covered employees who are terminated from that plan due to the privatization of their employing unit.
- b. Section 353F.02, Definitions. This section defines important terms and the employers and employees who are to be covered under this chapter, including:
 - (1) Effective Date. The treatment provided under this chapter begins on the “effective date,” defined as the date the employing unit is privatized.

- (2) Covered Employers: “Medical Facility” and “Other Public Employing Unit.” A privatized entity is included under this chapter if the employing unit is listed in the definitions under “medical facility” or “other public employing unit.” The medical facilities or other public employing units included under the chapter when enacted in 1999 are Glencoe Area Health Center, Luverne Public Hospital, Waconia-Ridgeview Medical Center, and Metro II, a joint powers organization.
- (3) Eligible Employees: “Terminated Medical Facility or Other Public Employing Unit Employee.” “Terminated medical facility or other public employing unit employee” defines the employees of the privatized employing unit who are to receive the prescribed treatment. Eligible employees are those who were active PERA-General members immediately prior to the covered privatization.
- c. Enhanced Benefits. Certain benefits beyond those authorized for PERA terminated employees are extended to privatized employees who are included under the chapter. These enhanced benefits are:
- (1) Section 353F.03, Waiver of Vesting Requirements. The normal vesting period is waived, so any privatized employee would be entitled to eventually receive an annuity, notwithstanding general law regarding vesting requirements. (When enacted in 1999, the PERA-General vesting requirement that would otherwise have applied was three years of service.)
- (2) Section 353F.04, Increased Deferred Annuity Augmentation Rate. For the period between the date of privatization and the date of eventual retirement, the privatized employee’s deferred PERA retirement annuity will increase at the rate of 5.5% rather than 3% until January 1 of the year in which the individual turns age 55 and at the rate of 7.5% rather than 5% thereafter until retirement. However, some restrictions apply:
- a) These rates are no longer applicable for any time after the terminated medical facility or other public employing unit again becomes covered by any plan included in the combined service annuity provision; and
- b) these rates do not apply if the individual begins receipt of a PERA retirement annuity while remaining employed with the privatized employer.
- (3) Section 353F.05, Rule of 90 Eligibility with Post-Privatization Service. For purposes of qualifying for the Rule of 90 (combination of age and total service credit totals at least 90), privatized employees will be able to count future privatized service with the privatized entity for eligibility purposes, but not for benefit computation purposes.
- d. Application, Interpretation of PERA-General Law. The chapter included a few sections clarifying how certain provisions of PERA-General law apply to privatized employees, as follows:
- (1) Section 353F.06, Application of Reemployed Annuitant Earnings Limitations. For purposes of PERA law, the privatized medical facility will be treated as a PERA employing unit for purposes of application of PERA’s reemployed annuitant earnings limitation provision. (If the person leaves service with the privatized employer and commences receipt of a PERA annuity, and the employee becomes reemployed with that privatized medical facility, PERA’s reemployed annuitant earnings limitation provision will apply.)
- (2) Section 353F.07, Application of Refund Provision. In lieu of an eventual PERA annuity, an eligible privatized employee may take a refund (with 6% interest) any time after beginning employment under the privatized employing unit. The refund may not be repaid unless the person again begins PERA-covered employment or employment covered by any other plan included under the combined service annuity provision.
- e. Section 353F.08, Counseling Services. PERA and the privatized employer must provide counseling services to privatized employees regarding PERA benefit provisions within 90 days of the start of privatized employment. The effective date provision for the article reflected a policy which the Commission continued to follow in later years when new entities were proposed for addition to the privatization chapter. First, some entity other than PERA (either the old or new employing unit) had to pay for the actuarial work needed to determine the impact on PERA if the privatized entity was adding to the privatization chapter. Second, the actuarial work had to indicate that PERA would not suffer an actuarial loss if the privatization was added. The effective date provision stated that the addition of Metro II would be effective if these conditions were met. For the other three privatization included in the 1999 legislation, the actuarial work had been completed in time for the Commission to make the determination that the applicable standards were met.
5. Later Revisions of Minnesota Statutes, Chapter 353F. The following is a description of the changes that have occurred in the PERA privatization chapter since its 1999 enactment:

- a. 2000 Revision; Section 353F.02, Definitions. The St. Paul Civic Center privatization was added to the chapter, if the actuarial work indicated PERA would not suffer an actuarial loss. (Laws 2000, Ch. 461, Art. 9)
- b. 2001 Revision; New Section 353F.051, Continuation of Disability Coverage. Following a covered privatization, a privatized employee who suffers total and permanent disability can apply for PERA-General disability benefits if the person had a medically documented pre-existing condition prior to the privatization. The disability benefit will augment from the date of termination of PERA-General coverage due to the privatization until the accrual date of the disability benefit. A comparable provision was also added to the MSRS privatization chapter. (1st Spec. Sess. Laws 2001, Ch. 10, Art. 9, Sec. 2)
- c. 2002 Revision; Section 353F.02, Definitions. Kanabec Hospital was added to the chapter, if the actuarial work indicated PERA would not suffer an actuarial loss. Note: There were several efforts to privatize the Kanabec Hospital, but apparently privatization did not occur. The 2002 addition therefore became ineffective and Kanabec Hospital was dropped from the list. It was again added in 2004, but that privatization again failed to occur and it was dropped from the list in 2008. (Laws 2002, Ch. 392, Art. 5)
- d. 2003 Revision; Section 353F.02, Definitions. Renville County Hospital was added to the chapter, if the actuarial work indicated PERA would not suffer an actuarial loss. Note: Renville County Hospital was dropped from the list in 2008 because the privatization failed to occur) (Laws 2003, Ch. 12, Art. 5)
- e. 2004 Revisions
 - (1) Section 353F.02, Definitions. Fair Oaks Lodge (Wadena), Kanabec Hospital, RenVilla Nursing Home, and St. Peter Community Healthcare Center were added to the chapter if the actuarial work indicated PERA would not suffer an actuarial loss. (Laws 2004, Ch. 267, Art. 12, Sec. 1, 4)
 - (2) New Section 353F.052, Application of Surviving Spouse, Dependent Child Coverage. The provisions in PERA-General covering annuities and refunds applicable to surviving spouses and dependent children (Minn. Stat. Sec. 353.32) apply to the survivors of a terminated medical facility or other public employing unit employee. (Laws 2004, Ch. 267, Art. 9, Sec. 16)
- f. 2005 Revision; Section 353F.02, Definitions. Bridges Medical Services, Hutchinson Area Health Care, and Northfield Hospital were added to the chapter, if the actuarial work indicated PERA would not suffer an actuarial loss. (Note: Northfield Hospital was dropped from the list in 2008 because the privatization failed to occur.) (1st Spec. Sess. Laws 2005, Ch. 8, Art. 6, Sec. 1, 4)
- g. 2006 Revisions
 - (1) Section 353F.02, Definitions. City of Cannon Falls Hospital, Clearwater Health Services in Bagley, and Dassel Lakeside Bridges Medical Services were added to the chapter, if the actuarial work indicated PERA would not suffer an actuarial loss. (Laws 2006, Ch. 271, Art. 5, Sec. 2, 5)
 - (2) Section 353F.04, PERA Privatization Deferred Annuities Augmentation Provision (Laws 2006, Ch. 271, Art. 5, Sec. 3)
 - a) New Privatizations Reduced Deferred Augmentation Rates. For any privatizations occurring on or after January 1, 2007, the deferred annuity augmentation rate will be 4.0% (rather than 5.5%) through the year in which the individual attains age 55, and 6.0% (rather than 7.5%) thereafter until retirement.
 - b) Drafting Revision. The section was divided into subdivisions, one dealing with enhanced augmentation and the other covering exceptions.
 - c) Possible Revision in Treatment for Those Who Again Become Active Employees Covered by PERA or Another Combined Service Annuity Plan. Under the revision, the enhanced augmentation rates do not apply if the terminated medical facility or other public employing unit employee becomes an active member of any combined service annuity plan, rather than the enhanced augmentation rates are no longer applicable for any time after the terminated medical facility or other public employing unit employee becomes an active member of any combined service annuity plan.
- h. 2007 Revisions
 - (1) Section 353F.02, Definitions. The Lakefield Nursing Home, Lakeview Nursing Home in Gaylord, and the Oakland Park Nursing Home were added to the medical facility definition, if the actuarial work indicated PERA would not suffer an actuarial loss. (Laws 2007, Ch. 134, Art. 5, Sec. 1)

(2) Section 353F.04, PERA Privatization Deferred Annuities Augmentation Provision. The enhanced deferred annuities augmentation provision was revised by extending the rates generally applicable to pre-January 1, 2007, privatizations (deferred annuity augmentation of 5.5% through the year in which the individual attains age 55, and 7.5% thereafter until retirement), to Hutchinson Area Health Care, if that privatization occurred before January 1, 2008. (Laws 2007, Ch. 134, Art. 5, Sec. 2)

i. 2008 Revisions

(1) Section 353F.02, Definitions. Kanabec Hospital, Northfield Hospital, and Renville County Hospital in Olivia were removed from the privatization chapter because the privatizations failed to occur. The Department of Radiology and the Department of Radiation/Oncology in Rice Memorial Hospital in Willmar, and Worthington Regional Hospital were added to the privatization chapter if the actuarial work indicated PERA would not suffer an actuarial loss. (Laws 2008, Ch. 349, Art. 5, Sec. 26-27, and Art. 7)

(2) New Section 353F.025, Certification/Decertification Procedure. Rather than continuing with individual bills for each privatization and having the Commission determine whether the actuarial work for the given privatization indicates no expected loss to PERA, a new procedure was created which will have PERA determine whether these standards are met, and will have PERA submit a single bill covering all those privatizations which meet the standards. The submitted bill will also void any previously approved additions where the entity failed to privatize within one year. (Laws 2008, Ch. 349, Art. 5, Sec. 27)

j. 2009 Revision; Section 353F.02, Definitions. Using the certification process enacted in 2008, Weiner Memorial Medical Center was added to the privatization chapter. (Laws 2009, Ch. 169, Art. 4, Sec. 20)

k. 2010 Revisions

(1) Section 353F.02, Definitions. Using the certification process, Chris Jenson Health and Rehabilitation Center in St. Louis County, the Douglas County Hospital Mental Health Unit, and Wheaton Community Hospital were added to the privatization chapter. (Laws 2010, Ch. 359, Art. 5, Sec. 17)

(2) Section 353F.025, Certification/Decertification Procedure. (Laws 2010, Ch. 359, Art. 5, Sec. 18-19)

a) Procedure Revised to Permit Payment to Eliminate Expected Loss. The certification/decertification procedure enacted in 2008 was revised to permit inclusion in the chapter, despite actuarial work indicating an expected loss to PERA, if the employer makes a lump sum payment to PERA to eliminate the expected loss.

b) Inclusion in Administrative Legislation. PERA was authorized to include recommendations for inclusion/decertifying of privatizations in its administrative legislation.

6. Application of the PERA Privatization Law. To date, the PERA privatization chapter applies to the following privatizations:

- Bridges Medical Services
- City of Cannon Falls Hospital
- Chris Jenson Health and Rehabilitation Center in St. Louis County
- Clearwater County Memorial Hospital d/b/a Clearwater Health Services in Bagley
- Dassel Lakeside Community Home
- Douglas County Hospital, with respect to the Mental Health Unit
- Fair Oaks Lodge, Wadena
- Glencoe Area Health Center
- Hutchinson Area Health Care
- Lakefield Nursing Home
- Lakeview Nursing Home in Gaylord
- Luverne Public Hospital
- Oakland Park Nursing Home
- RenVilla Nursing Home
- Rice Memorial Hospital in Willmar, with respect to the Dept. of Radiology and Dept. of Radiation/ Oncology
- St. Peter Community Health Care Center
- Waconia-Ridgeview Medical Center
- Weiner Memorial Medical Center, Inc.
- Wheaton Community Hospital
- Worthington Regional Hospital
- Metro II, a joint powers organization formed under Minn. Stat. Sec. 471.59
- St. Paul Civic Center Authority

When a PERA privatization occurs, the privatized employees are excluded from continued PERA-General coverage as active employees because the employees are no longer public employees. For purposes of the pension plan they are considered to be terminated employees although many of them may continue in the same employment, but with a new privatized employer.