



TO: Members of the Administrative Legislation Subcommittee of the
Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: Amendment LCPR03-220, Working Document For Subcommittee Hearing #1:
Various Membership, Reporting, and Service Credit Issues

DATE: July 18, 2003

Current Administrative Retirement Legislation

Due to time constraints during the 2003 Legislative Session, several retirement-related bills that are at least in part administrative in nature were either not considered during that Session or were tabled for further consideration. At the Legislative Commission on Pensions and Retirement (LCPR) interim meeting on July 14, 2003, the LCPR appointed an Administrative Legislation Subcommittee consisting of Representatives Smith and Lipman and Senators Betzold and Michel to consider the substance of these bills, and to recommend appropriate action to the full Commission. The administrative retirement bills referred to the Subcommittee for review are:

- H.F. 519 (Smith); S.F. 807 (Betzold): TRA; Administrative and Benefit Provisions
- H.F. 871 (Smith); S.F. 844 (Higgins): Various Plans; Disability Determinations by Licensed Psychologists
- H.F. 890 (Smith); S.F. 676 (Betzold): PERA; Administrative and Benefit Provisions
- H.F. 1086 (Smith); S.F. 806 (Betzold): Various Plans; USERRA and Internal Revenue Code Compliance
- H.F. 1430 (Smith); S.F. 1460 (Betzold): MSRS; Administrative Provisions
- H.F. 1474 (Erickson); S.F. 1420 (Pogemiller): MnSCU; Administrative and Plan Coverage Provisions

Potential Work Plan

The Commission staff believes that the Subcommittee can complete its consideration of the proposed retirement administrative legislation over three meetings. The Commission staff believes that the Subcommittee should recommend or reject proposed administrative provisions on a provision-by-provision basis after the Subcommittee hears the presentation on the provision and considers any Commission staff materials and other relevant information.

Because the various retirement administrative bills remaining from the 2003 Legislative Session often cover similar topics but for different plans, the Commission staff recommends that the administrative bills be considered by the Subcommittee in their component parts, based on the substantive area of change, rather than as individual bills. Therefore, Commission staff has prepared draft amendment LCPR03-220, containing provisions from several substantive areas that were contained in the six bills previously mentioned. Staff will prepare additional draft amendments for the second and third Subcommittee meetings. The intention is to cover with these three amendments all of the provisions that were included in the original six bills.

Amendment LCPR03-220, for the first Subcommittee meeting, covers the topic areas indicated below. Generally, each topic area is included in the draft as a separate article.

<u>LCPR03-220: Subcommittee Hearing #1</u>	<u>Source Bills</u>
Membership Inclusions:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 5, Section 1 H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Sections 8 and 11
Membership Exclusions and Restrictions:	H.F. 1086 (Smith); S.F. 806 (Betzold), Sections 2, 4, and 5 H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 8, Section 4 H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Sections 1 and 7
Plan Coverage Elections:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 8, Section 2
Covered Salary Definition and Limits	H.F. 890 (Smith); S.F. 676 (Betzold), Section 3 H.F. 1086 (Smith); S.F. 806 (Betzold), Sections 6 and 7 H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 2, Sections 2, 4 and 5 H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Section 2
Allowable Service Credit:	H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Section 4
Prior Military Service Credit Purchase:	H.F. 1086 (Smith); S.F. 806 (Betzold), Sections 3 and 5

LCPR03-220: Subcommittee Hearing #1Source Bills

Special Service Credit Purchase:	H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Section 5
Leave Provisions:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 1, Section 2 H.F. 1086 (Smith); S.F. 806 (Betzold), Sections 2 and 4
Contribution Rates:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 8, Section 3 H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Section 9
Employer Reporting to Plan:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 1, Sections 8 and 9 H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Section 6
Retirement Information Transmitted:	H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Section 3
Qualified Part-Time Teacher Requirements:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 2, Section 5

The issue areas and source bills to be covered in the second and third Subcommittee meetings are as follows:

Subcommittee Hearing #2Source Bills

Retirement Annuity Accrual Dates:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 1, Section 3
Retirement Annuity Portability:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 1, Sections 1 and 2
Reemployed Annuitant Limits:	H.F. 890 (Smith); S.F. 676 (Betzold), Sections 11 and 12
Early Retirement Eligibility:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 4, Sections 1 and 2
Early Retirement Reduction:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 4, Section 3
Disability Definitions:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 3, Sections 2, 3, and 4, Subdivisions 1 and 2
Disability Evidence:	H.F. 871 (Smith); S.F. 844 (Higgins), Sections 1-6 H.F. 890 (Smith); S.F. 676 (Betzold), Sections 6, 8 and 19 H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 3, Section 4, Subd. 4
Disability Benefit Amount:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 3, Section 6
Disability Benefit Recomputed as Retirement Annuity:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 3, Section 5
Coordination of Disability Benefits with Workers Comp:	H.F. 890 (Smith); S.F. 676 (Betzold), Section 7
Disability Temporary Employment:	H.F. 890 (Smith); S.F. 676 (Betzold), Section 9
Erroneous Deductions:	H.F. 1086 (Smith); S.F. 806 (Betzold), Section 1
Retirement Fund Transfers:	H.F. 1474 (Erickson); S.F. 1420 (Pogemiller), Section 10
Internal Revenue Compliance:	H.F. 1086 (Smith); S.F. 806 (Betzold), Section 8

Subcommittee Hearing #3Source Bills

Dependent Child Definition:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 2, Sections 1 and 2 H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 2, Sections 1 and 3
Designated Beneficiary Definition:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 1, Section 1
Dependent Child Benefit Entitlement:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 1, Section 4
Survivor Benefit Applicability:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 1, Section 6 H.F. 1086 (Smith); S.F. 806 (Betzold), Sections 1 and 3
Surviving Spouse Benefit:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 1, Section 5
Survivor Benefit Coverage and Amounts:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 7, Sections 2-10
Death While Eligible Survivor Coverage:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 2, Section 3
Term Certain Survivor Benefits:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 7, Section 1
Beneficiary Survivor Coverage:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 2, Section 4
Terminated Member Refunds:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 6, Sections 1 and 7; Article 8, Section 1
Death Refunds:	H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 6, Sections 2, 3, 4, 5, 6, 7, 8, and 10
Refund Repayments:	H.F. 519 (Smith); S.F. 807 (Betzold), Article 2, Sections 6 and 10 H.F. 1430 (Smith); S.F. 1460 (Betzold), Article 6, Section 9

Section-By-Section Summary of Amendment LCPR03-220 and Related Policy Issues

ARTICLE 1 PLAN MEMBERSHIP EXCLUSIONS

Summary of Article 1 (LCPR03-220, Pages 1 to 6)

- Section 1. Minnesota Statutes, Section 352.01, Subdivision 2b, the MSRS excluded employee provision, is amended by clarifying language and by stating that employees who are teachers and are covered by a teacher plan for their primary employment may be included in MSRS plans solely for incidental employment as a state employee that is not covered by one of the teacher plans.
- Section 2. Minnesota Statutes, Section 354B.20, Subdivision 6, the IRAP eligible unclassified administrative position definition, is amended to include administrators in general rather than "excluded" administrators.
- Section 3. Minnesota Statutes, Section 354C.11, the higher education supplemental plan eligibility provision is revised to include in the plan unclassified employees of the board, whether included in the professional/supervisory unit or excluded from that unit due to confidential status, rather than just those not in confidential status.
- Section 4. Effective Date. Sections 1 to 3 are effective on July 1, 2004.

Policy Issues Raised by Article 1

Section 2 revises the definition of "eligible unclassified administrative position." Since individuals in eligible unclassified administrative positions are to be covered by IRAP, this change in the definition may revise IRAP coverage. Similarly, Section 3 revises the eligibility provision for the higher education supplemental plan, which may have the impact of expanding eligibility for inclusion in that plan. The issues are:

1. Clarification or Coverage Expansion. The issue is whether these provisions provide clarification by removing obsolete employee classifications, or whether the changes represent a substantive change by actually altering the eligible groups for these programs. If the changes are substantive, that would raise the questions of whether these changes are justified and whether the changes may have budget implications for MnSCU.
2. Authority Issue. At least in part, the changes proposed in these two sections might reflect cases where MnSCU, without clear legal authority, has extended coverage to the various groups indicated in the drafting, and a revision of law is now being proposed to conform to the existing policy. The Commission may wish to inquire whether that is the case.

ARTICLE 2 PLAN MEMBERSHIP INCLUSIONS

Summary of Article 2 (LCPR03-220, Pages 6 to 13)

- Section 1. Minnesota Statutes, Section 353.01, Subdivision 2b, PERA's excluded employee definition, is revised by removing unnecessary language and by moving "temporary position" definition language to another provision.
- Section 2. Minnesota Statutes, Section 354.05, Subdivision 2, TRA's teacher definition, is amended by removing references to obsolete license requirements and removing obsolete references to technical colleges.
- Section 3. Minnesota Statutes, Section 354B.20, Subdivision 4, the IRAP covered employment definition provision, is amended by correcting an obsolete reference.
- Section 4. Repealer. Minnesota Statutes, Section 352D.02, Subdivision 5, a provision which excluded TRA Basic members from participating in MSRS-Unclassified, is repealed.
- Section 5. Effective Date. Sections 1 to 4 are effective on July 1, 2004.

Policy Issues Raised by Article 2

Section 352D.02, Subdivision 5, a provision that prohibits basic TRA members from participating in MSRS-Unclassified unless there is a break in service of more than 30 days, is repealed (Section 4.) The issue is:

- Timing of Repeal. The question is whether this provision is obsolete and therefore should be repealed. If it is not obsolete, the proposed repeal would raise the question of whether the repeal could create inappropriate double coverage for some active TRA basic members. The July 1, 2002, TRA actuarial valuation indicates that only five TRA Basic members remained as active TRA members, and all were over age 65. The next actuarial valuation, when complete, is likely to reveal a decline in active TRA basic members, and it may be the case that no active TRA basic members remain. If the Subcommittee or Commission are concerned that the repeal could cause inappropriate double coverage, the Subcommittee or Commission could remove this provision, or delay its effective date a few more years, or make the repeal effective following a finding in the most recent official TRA actuarial valuation that no TRA active basic members remain in the plan.

ARTICLE 3 PLAN COVERAGE ELECTIONS

Summary of Article 3 (LCPR03-220, Pages 13 to 14)

Section 1. Minnesota Statutes, Section 352D.02, Subdivision 3, the MSRS-Unclassified reversion to a General Plan annuity provision, is revised to permit elections as late as one month after termination of service, rather than prior to termination; and by clarifying language.

Section 2. Effective Date. Section 1 is effective on July 1, 2004.

Policy Issues Raised by Article 3

The MSRS-Unclassified reversion to a General Plan annuity provision is revised to permit coverage transfer elections as late as one month after termination of service, rather than prior to termination, and by clarifying language (Section 1). The issues are:

1. Need for Change/Nature of Change. To date, MSRS-Unclassified law requires individuals who wish to exercise a transfer right to the General Plan to do so prior to terminating covered service. The proposal is to extend the eligibility period to include the first month following termination of covered service. Assuming there is sufficient justification to change the provision, the question is whether one month is the proper period.
2. MSRS-General Cost Issue. MSRS has long contended that these transfers to MSRS-General impose losses on MSRS-General. Indeed, the MSRS bills include a provision, discussed in a later article, to require an additional 1.5 percent employer contribution to be used to cover the cost imposed by these transfers. It is unclear why MSRS is proposing to expand transfer authority if these transfers harm MSRS-General. The current proposal may add a few more transfers made by terminated individuals who under existing law would have the transfer request disallowed. Thus, there will be some slight cost impact on MSRS-General due to this proposed change.

ARTICLE 4 COVERED SALARY DEFINITION AND LIMITS

Summary of Article 4 (LCPR03-220, Pages 14 to 19)

Section 1. Minnesota Statutes, Section 352.01, Subdivision 13, the MSRS definition of salary, is amended by specifying that a grievance or legal settlement is not considered salary unless approved by the Executive Director.

Section 2. Minnesota Statutes, Section 352B.01, Subdivision 11, the State Patrol Plan average monthly salary definition, is revised by stating that salary refers to the salary upon which contributions were deducted from pay, or the salary upon which contributions or payments were made to the fund to receive service credit as provided by law, and by removing authority to make contributions to the fund during a leave while receiving temporary workers' compensation payments.

- Section 3. The PERA salary definition for pension purposes (Section 353.01, Subdivision 10) is amended by stating that salary in excess of limits found in Section 356.611 is not salary for benefit or contribution purposes. (Section 356.611 is a statement of applicable salary caps in state and federal law.)
- Section 4. Minnesota Statutes, Section 354.05, Subdivision 35, TRA's definition of salary for pension purposes, is revised by excluding from salary for pension purposes any compensation received by a MnSCU employee in an initial appointment where the employment is for less than 25 percent time.
- Section 5. Section 356.611, Subdivision 2, a federal compensation limits provision applicable to many covered pension plans, is amended by revising the Internal Revenue Code (IRC) reference and by stating that the limits include adjustments over time for cost of living.
- Section 6. Minnesota Statutes, Section 356.611, a section placing limitations on public employee salaries for pension purposes, is amended by adding a subdivision which states that annual benefits based on calendar years or fiscal years, whichever is applicable, will be reduced if necessary to comply with IRC Section 415, subsection (b), as adjusted over time. Beginning in calendar year 2000, no adjustments due to IRA Section 415, subsection (e) are to be made.
- Section 7. Repealer. Minnesota Statutes, Section 352.01, Subdivision 13a, a provision which permitted employees who are on a leave of absence and who are receiving temporary workers' compensation payments and receiving reduced salary or no salary to make contributions to the applicable MSRS fund based on full unreduced salary, is repealed.
- Section 8. Effective Date. Sections 1 to 7 are effective on July 1, 2004.

Policy Issues Raised by Article 4

General Issue

This article deals with pension plan covered salary definitions and limits. A general concern raised by the article is the lack of consistency across plans regarding the definition of salary for pension purposes. The MSRS State Patrol Plan lacks any useful definition of salary for pension purposes, and the revision contained in section 2 of this article does little to add clarity. In effect, under the new proposed wording for the State Patrol Plan, salary for pension purposes is whatever amount was used to determine the contributions to the pension fund. Definitions of salary as found in law for other Minnesota public pension funds appear in Attachment A. The differences that exist between similar plans or between plans all funded by the same employer, whether that employer is the state or some other local public employer, may have little justification. At some point the Commission may wish to further explore this issue.

Section-Specific Issues

Minnesota Statutes, Section 352.01, Subdivision 13, the MSRS definition of salary, is amended by specifying that a grievance or legal settlement is not considered salary unless approved by the Executive Director or the Executive Director's designee (Section 1). The issue is:

- Broad Nature of Grievance/Legal Settlement Language, and Authority Issues. Under the proposed language, amounts received due to a grievance or legal settlement are not salary for pension purposes unless approved by the MSRS Executive Director. MSRS is requesting this change due to concern that grievance settlements are being offered to employees, which has the effect of increasing the high-five average salary if individuals are nearing retirement. In turn, this increases the ultimate pension amount. MSRS further contends that some of these settlements are not specifically related to salary replacement, and therefore should not be included in salary for pension purposes.

It is unclear why these situations can not be adequately addressed under existing law. Salary is currently defined as "wages, or other periodic compensation, paid to an employee before deductions" for deferred compensation and other voluntary reductions. It is difficult to see how a grievance or other legal settlement, which is not the equivalent of salary replacement, could qualify as "wages or other periodic compensation." Thus, the Subcommittee may decide that the section of this article should be deleted.

Alternatively, if the Subcommittee concludes some action is needed, the Subcommittee may wish to consider, as an alternative to the draft language, adding a statement in the portion of the definition

which currently lists types of payments which are *not* salary, that payments received through a grievance or legal settlement which do not reflect salary replacement are not salary for pension purposes.

A problem with the approach taken in the draft is that the Executive Director is given broad discretion to decide what is salary and what is not, without any clearly specified criteria. This authority, in the hands of individuals with less ability and less integrity than the current Executive Director and his staff, could lead to abuses.

Minnesota Statutes, Section 352B.01, Subdivision 11, the State Patrol Plan average monthly salary definition, is revised by stating that salary refers to the salary upon which contributions were deducted from pay, or the salary upon which contributions or payments were made to the fund to receive service credit as provided by law, and by removing authority to make contributions to the fund during a leave while receiving temporary workers' compensation payments (Section 2). Issues are:

1. Lack of Salary Definition. The issue is the lack of any usable definition in the State Patrol Plan chapter (Chapter 352B) regarding salary for pension purposes. The particular section being amended here is an "average monthly salary" definition, more commonly referred to as a high-five average salary definition. However, the new wording has little meaningful effect without a useful definition of salary for pension purposes. The Subcommittee may wish to consider recommending that staff prepare an amendment to define salary for pension purposes. One approach, which would create increased consistency across state plans, is to specify that the MSRS General salary definition applies.
2. Removal of Authority to Make Contributions During Workers' Compensation Period Creates Inconsistencies Across Funds. The question is whether this removal is appropriate. This type of workers' compensation provision is currently found in MSRS State Patrol, MSRS-General, PERA, and DTRFA plan law, and possibly other plans. The DTRFA provision was added quite recently, in 2001 (Laws 2001, First Special Session, Chapter 10, Article 3, Section 21). The DTRFA sought this provision to avoid harming the high-five salary of the member when injuries occur close to retirement. MSRS is proposing to move in the opposite direction, which requires an explanation. Given the change in this section and elsewhere in the draft, the MSRS State Patrol and MSRS General provisions will be removed, while the PERA and DTRFA provisions remain. The Subcommittee may wish to hear brief testimony to ensure that the proposed change is well justified and will not cause harm to members. If removal of this authority is appropriate, the Subcommittee or Commission may wish to consider whether the DTRFA and PERA provision should remain in law. Neither PERA nor the DTRFA have recommended repeal of their provisions.

The PERA salary definition for pension purposes (Section 353.01, Subdivision 10) is amended by stating that salary in excess of limits found in Section 356.611 is not salary for benefit or contribution purposes (Section 3). (Section 356.611 is a statement of applicable salary caps in state and federal law.) The issue is:

- Need for Change. The issue is whether this clarification is necessary, although adding the language is unlikely to cause any harm. Section 356.611 is a statement of salary maximums for pension purposes in state law. All pension plans covered by the combined service annuity provision, which includes the PERA-General and PERA-P&F plans, are subject to Section 356.611. Thus, adding this cross-reference to Section 356.611 in PERA's salary definition has no impact on any requirements. PERA must abide by applicable state and federal laws capping salary for pension purposes, regardless of whether this cross-reference is added.

Section 4 can be viewed as part of a package including the provision appearing in Article 9. It will be discussed under that article.

Section 356.611, Subdivision 2, a federal compensation limits provision applicable to many covered pension plans, is amended by revising the IRC reference and by stating that the limits include adjustments over time for the cost of living (Section 5).

This provision originally appeared in H.F. 1086 (Smith); S.F. 806 (Betzold): Various Plans, USERRA and Internal Revenue Code Compliance. TRA and SPTRFA requested those bills. The contention for those bills was that the proposed changes are required for compliance with Internal Revenue Code or other federal agency requirements, and that failure to make these changes could result in plan qualification problems or other penalties. Although TRA and SPTRFA have been on the forefront on these issues, many of the proposed changes would impact nearly all Minnesota plans. Thus, there is a need to ensure

that all the proposed changes are in fact necessary, and that the provisions are properly crafted to avoid unintended consequences and unnecessary harm.

1. Need for Change. The issue is whether there is need to revise Minnesota law, and whether the specific proposed change correctly captures the proper scope of all necessary changes. TRA or SPTRFA should be prepared to advise the Subcommittee and Commission on the need for including this section, and the specific federal laws, code, or regulation which require the provision to be amended, and information on the changes that other states have made to comply.
2. Scope, Nature of Change. Regarding scope, the provision applies only to plans that are included under the combined service annuity law, Minnesota Statutes, Section 356.30. The question is whether that captures all the plans to which this revised provision of law should apply.

Section 6 is another section from the USERRA, federal compliance bills. Minnesota Statutes, Section 356.611, a section placing limitations on public employee salaries for pension purposes, is amended by adding a subdivision which states that annual benefits based on calendar years or fiscal years, whichever is applicable, will be reduced if necessary to comply with IRC Section 415, subsection (b), as adjusted over time. Beginning in calendar year 2000, no adjustments due to IRA Section 415, subsection (e) are to be made.

1. Need for Change. The first issue is whether there is any need to adopt this provision. This provision is quite similar to a provision that previously existed in Minnesota law (Section 356.61) and which the 2000 Legislature repealed as being unnecessary. Now the Legislature is being asked to reestablish the law. TRA or SPTRFA should be prepared to advise the Subcommittee and Commission on the need for including this section, and the specific federal laws, code, or regulation which require the provision to be amended as proposed, and information on the changes that other states have made to comply.

The Legislature's decision to repeal the earlier Minnesota Statute, Section 356.61, resulted from the Commission's consideration during 2000 of H.F. 2979 (Abeler); S.F. 3042 (Scheid): Various Plans, Modifying Definition of Limits on Defined Benefit Plan Benefits. These bills would have amended Minnesota Statutes 2000, Section 356.61, to make the provisions consistent with federal limitations found in Section 415 of the Code. An individual who had access to a TRA money purchase annuity sought the legislation. His benefit would have been permissible under federal law but not under Minnesota law, because the Minnesota provision had not been revised to capture all the amendments that had occurred at the federal level. In discussing the bills, the Commission concluded that the probable purpose of Minnesota Statutes, Section 356.61, was to state in Minnesota law the applicable federal law limits, not to specify limitations beyond those found in federal law. The Commission decided that the most effective way to reflect that policy was to repeal Minnesota Statutes, Section 356.61. Minnesota public pension plans must comply with applicable federal law, and repealing the Minnesota law provision avoided any potential conflict due to any change in federal law that is not immediately reflected by amendment to the Minnesota law provision. Plan administrators from the Teachers Retirement Association (TRA), the Minnesota State Retirement System (MSRS), the Public Employees Retirement Association (PERA), and presumably from some or all of the first class city teacher fund associations were at the Commission meeting when the Commission recommended repeal of Section 356.61, and no plan administrator expressed discomfort with the Commission's decision.

The Legislature is now being asked to reverse itself, reinstating language indicating the applicable references to IRC Section 415 limitations. TRA and the SPTRFA should be prepared to convince the Subcommittee and Commission that this action is needed, by citing specific code, regulation, or ruling. The lawyers retained by those two organization contend that it is not sufficient for Minnesota public pension plans to act consistently with IRC Section 415(b) limits; Minnesota must go beyond compliance with federal law and include language in state law referencing the limitations in IRC Section 415(b).

2. Drafting, Inclusion of Obsolete Requirements in New Draft Law. The proposed language indicates that IRC Section 415(e) does not apply to Minnesota pension plans after Calendar Year 1999 (see LCPR03-220, page 19, lines 19 to 22). It is therefore unclear why there is any need to mention Section 415(e) in this section since it no longer has any application after calendar 1999, several years before this proposed amendment to Minnesota statutes would be enacted. The Commission may wish to consider deleting the sentence that mentions IRC Section 415(e) because that language is obsolete before it is enacted. The lawyers retained by TRA and SPTRFA have contended that federal reviewers will insist that the Section 415(e) requirement be added to state law, although it is obsolete before it is

added and could be repealed shortly thereafter. The Subcommittee may wish to hear testimony on this position. As a practical matter, adding obsolete provisions to new law is a senseless exercise.

Minnesota Statutes, Section 352.01, Subdivision 13a, a provision which permitted employees who are on a leave of absence and who are receiving temporary workers' compensation payments and receiving reduced salary or no salary to make contributions to the applicable MSRS fund based on full unreduced salary, is repealed (Section 7). The issue is:

- Appropriate Action. The issue is whether this repeal is appropriate. MSRS should be prepared to indicate why the removal is appropriate and why the repeal will not harm the membership. This issue was discussed above in the policy issues raised by Section 2 of this article. Section 2 removed this authority from the MSRS State Patrol Plan. Section 7 removes this authority from MSRS-General, and other plans (MSRS-Correctional is one) which uses that same authority.

ARTICLE 5 ALLOWABLE SERVICE CREDIT

Summary of Article 5 (LCPR03-220, Pages 19 to 21)

Section 1. Minnesota Statutes, Section 354.091, TRA's computation of service credit provision, is revised by adding paragraphs specific to MnSCU employees stating revised requirements for determination of full and fractional service credit. The determinations will be based on definitions of full-time and part-time service as defined in applicable collective bargaining agreements.

Section 2. Effective Date. Section 1 is effective on July 1, 2004.

ARTICLE 6 ON LEAVE MILITARY SERVICE CREDIT

Summary of Article 6 (LCPR03-220, Pages 21 to 25)

Section 1. Minnesota Statutes, Section 354.53, TRA's contribution provision for military leaves of absence, is amended by removing the requirement that the individual must be on a formal military leave to qualify to be eligible to use the provision; by removing the prohibition against service credit for any voluntary extension of military service; by making changes consistent with the Uniformed Services Employment and Reemployment Rights Act (USERRA) including revision of the salary to be used to determine contributions, the permitted time frame for making contributions, and the extent of service credit that may be purchased; and it shifts all interest requirements to the employer.

Section 2. Minnesota Statutes, Section 354A.093, the first class city teacher retirement fund association military leave of absence provision, is amended by removing the requirement that the individual must be on a formal military leave to qualify to be eligible to use the provision; by removing the prohibition against service credit for any voluntary extension of military service; by making changes consistent with USERRA including revision of the salary to be used to determine contributions, the permitted time frame for making contributions, and the extent of service credit that may be purchased; by shifting all interest requirements to the employer; and by prohibiting purchases of service credit under this provision by individuals who separate from the uniformed service with a less than an honorable discharge.

Section 3. Effective Date. Sections 1 and 2 are effective on July 1, 2004.

Policy Issues Raised by Article 6

TRA's military break-in-service provision and the comparable first class city teacher plan provision were extensively revised to make the provisions generally consistent with USERRA requirements. Federal requirements suggest that all qualified plans must comply with USERRA. Thus, one issue for the Subcommittee and Commission is to consider which other plans need to have their laws revised (this would include the MSRS and PERA Plans, and possibly other plans) and what specific revisions should be made for those plans.

When TRA and SPTRFA initially submitted their proposals, their recommendations were not identical in nature and neither proposal was fully consistent with USERRA requirements. Commission staff, TRA, SPTRFA, and their lawyers spent considerable time on the drafts to make TRA and first class city teacher plan military break-in-service provisions more consistent between the two funds, more compatible with USERRA requirements (38 USC Sections 4301 to 4333), and structured to minimize harm to the fund. However, some problem areas remain which deserve the Subcommittee's attention. While considerable progress was made during the discussions with TRA and SPTRFA, the TRA and first class city teacher proposals remain not fully consistent. The TRA proposal goes beyond USERRA requirements, creating a benefit improvement that is not mandated by the federal government. Also, the drafting includes a shift in burden to employers, who under the draft will be required to pay interest on both the employee and employer contributions, rather than just on the employer contributions as specified in existing state law.

This proposed shift in interest payment policy deserves explanation. Under current state law, the TRA and first class city military leave of absence provisions require that the employee shall pay interest on the employee contribution to receive the service credit for the applicable military service period, and the employer will pay interest on the corresponding employer contribution. Those charges are intended to compensate the fund for the time value of money. The lawyers retained by TRA and SPTRFA interpret USERRA as prohibiting charging the employee interest on the employee contributions to receive service credit for a military service period, although the pension fund might receive that payment several months or possibly several years after the military service is rendered. If the individual is covered by a defined benefit plan, this would harm the pension fund. When the individual eventually retires, the pension fund must treat the individual as though there had been no break in service, as though the individual had been working for the Minnesota public employer during this period and had contributions deducted from pay. But in fact the contributions were not deducted from pay. Rather, they paid to the pension fund in a lump sum some years after the fact. The pension fund has the same liabilities for this individual as it would have if the individual had not provided military service, but the pension fund has less investment earnings because of the delay in receiving the contributions. The interest charges specified in current state law are intended compensate the fund for those lost investment earnings. If USERRA is best interpreted as not permitting employee interest charges, as the TRA and SPTRFA retained lawyers contend, then the fund (or more specifically, all other employers contributing to the fund) are harmed, unless that interest payment requirement is shifted to a specific party. What is suggested in the draft language is that the employee interest charge should be paid by the employing unit that employs the specific individual. This shift in the interest burden to the specific employer is *not* mandated by USERRA. USERRA provides no guidance on this matter. That drafting follows from an effort to not charge the employee interest while trying to avoid harming the pension fund.

The Subcommittee may wish to explore whether it is comfortable with that solution. The Subcommittee may also wish to review federal law and hear brief testimony on this question of whether USERRA should be interpreted as prohibiting employees from being charged interest.

Regarding the pension contribution issue, the most charitable appraisal one can make about USERRA is that it is vague. The employee pension benefit plan provision in USERRA is 38 USC Section 4318, and is included in Attachment B, along with various other USERRA provisions. The USERRA pension plan provision reads in part:

A person reemployed (following the military service)...shall be entitled to accrued benefits...only to the extent the person makes payment to the plan with respect to such contributions or deferrals. *No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of (military) service...*

This can be read as a statement that the individual should be treated consistent with comparable individuals who did not provide military service.

USERRA does not include any section, paragraph, or clause specifically covering the matter of question of interest, stating whether interest is permitted. The only guidance, if any, is provided by the above statement. The question is whether this statement effectively prohibits an interest charge. Minnesota pension laws often refer to specific "payment" or "payments" to receive service credit, and interest has been charged which is in addition to the "payment;" the individual is required to make the payment plus interest. The issue is whether the above italicized statement can be interpreted in a similar manner – the statement defines the "payment" as the contribution the individual would have had deducted from pay – no more and no less – but is not intended to prohibit interest on that payment. The TRA and SPTRFA-retained legal staff take the position that the above italicized statement effectively prohibits any employee

interest charge. The Subcommittee may wish to hear brief testimony of this matter regarding the basis for the TRA/SPTRFA position. Commission staff is not aware of any case law on this issue.

If USERRA should be interpreted as prohibiting employee interest charges, then USERRA fails to recognize the time value of money and USERRA is best characterized as inconsistent, flawed legislation, rather than just vague legislation. Section 4301 of USERRA is titled "Purposes; Sense of Congress." The statements therein include the concepts of avoiding discrimination, and, in general, treating individuals fairly and consistently. If the time value of money is to be ignored, then the USERRA pension provisions are inconsistent with the claimed intent of USERRA. Individuals are treated inconsistently. Rather than promoting consistency and avoiding discrimination, individuals are divided into two camps, those who obtain a windfall and those who are harmed. Individuals in defined benefit plans receive a windfall, while those in defined contribution plans are harmed. If an individual in a defined benefit plan would have contributed \$1,000 if the military service had not occurred, and the individual is permitted to make a \$1,000 contribution months or years later to receive that same service credit, that individual receives a windfall. The individual pays the same in nominal terms, but pays considerably less in value terms. The opposite occurs for anyone in a defined contribution plan. This individual is harmed. If the individual would have contributed \$1,000 to the pension plan, that individual is restricted to a make-up contribution of \$1,000, despite the time delay. The individual is not permitted to add additional money to compensate for the lost investment earnings, the growth in the pension assets that would have occurred during the interval.

Staff draws the Subcommittee's attention to the following issues:

1. TRA: Less than Honorable Discharge Issue. A provision in USERRA, 38 USC Section 4304, Character of Service, states that rights under USERRA are forfeited if the separation from service is under less than honorable conditions. Therefore, USERRA does *not* require that TRA permit service credit to be received for uniformed service if the individual is less than honorably discharged. The drafting in this TRA section *does* allow individuals to use this highly favorable military service credit provision although they did not serve honorably. In contrast, the proposed first class city teacher plan language does not. The first class city teacher drafting is more consistent with USERRA, and these differences will cause inconsistencies between these teacher plans.

To be consistent with USERRA and to not provide a windfall to individuals who are less than honorably discharged, the Subcommittee may wish to direct staff to create language for TRA which removes that group from this revised provision. To avoid any benefit take-away from the less-than-honorably-discharged group and assuming they qualify under the TRA existing law version of the military service credit provision, the current law version of TRA's military service credit provision could be re-specified as a provision specifically applicable to this group.

2. Shifting Interest Burden. The issue is whether the Subcommittee is comfortable with the shift in interest burden to the employer. This issue was discussed extensively above. To reduce harm due to USERRA requirements, the draft before the Subcommittee shifts the employee contribution interest requirement to the employer, making the employer responsible for paying interest on both the employee and employer contributions. The two pension fund administrations involved in creating this bill language agree that this approach is compatible with USERRA and any other federal law, but it will shift some financial burden to the employer in an effort to avoid harm to the pension funds. If Subcommittee members are not comfortable with that change but seeks to avoid harm the funds, it may wish to consider amending the bills to have the employee pay interest on the employee contribution. Considering an amendment of that type would require the Subcommittee to address the question of whether an employee interest charge is permissible under USERRA.
3. Scope. Several other pension funds have current law military break-in-service provisions which are not consistent with USERRA. If the Subcommittee recommends any action on the TRA and first class city teacher fund provisions, these similar provisions in other funds will need amending. Staff will need direction regarding the less-than-honorable-discharge issue and the interest payment issue as they will be applied to these other pension funds. The Subcommittee will also need to decide whether any action is needed for pension funds that are closed to new members, since the age of the remaining active members makes it unlikely that a revised military service credit provision would ever be used. MERF and the Minneapolis fire and police relief associations will lose nearly all their active members in the next few years. While technically all pension plans must conform to USERRA, these changes are or soon will be irrelevant for these closed plans. It may not be necessary to bother making any changes in those plans.

4. Cost. Despite efforts to keep the pension fund as whole as possible, the proposed revisions may have an impact on plan costs. The salary base used to determine the required computation amount is changed to agree with USERRA. The salary that will be used under these bills may be less than under current law. USERRA requires basing contributions on salary prior to the leave or during the leave, while current TRA law bases the contribution on the salary upon returning to service. If salary tends to be higher at the return to service than would have been the case during or before the leave, then the contribution will be lower under the proposal. If the pension fund receives a lower payment for the service credit, there will be some cost impact on the fund.

ARTICLE 7 PRIOR MILITARY SERVICE CREDIT PURCHASE

Summary of Article 7 (LCPR03-220, Pages 25 to 26)

- Section 1. Minnesota Statutes, Section 354.533, Subdivision 1, TRA's temporary prior or uncredited military service credit purchase provision which requires payment at full actuarial value, is revised by stating that up to ten years of service may be purchased, by permitting the period being purchased to include periods of voluntary extension of military service, and by permitting purchases even if the period is covered by a military service pension plan, thus creating the potential for double coverage.
- Section 2. Minnesota Statutes, Section 354A.097, Subdivision 1, the first class city temporary prior or uncredited military service credit purchase full actuarial value service credit provision, is revised by stating that up to ten years of service may be purchased, by permit the period being purchased to include periods of voluntary extension of military service, and by permitting purchases even if the period is covered by a military service pension plan, thus creating the potential for double coverage.
- Section 3. Effective Date. Section 1 and 2 are effective on July 1, 2004.

Policy Issues Raised by Article 7

The sections in this article are from the USERRA/federal compliance bills. The Subcommittee may therefore wish to consider whether the proposed changes are truly needed for compliance with federal law, or whether the provisions are more accurately characterized as discretionary benefit improvements. Policy issues raised by the revisions to Minnesota Statutes, Section 354.533, Subdivision 1, TRA's temporary prior or uncredited military service credit purchase provision, and the similar first class city teacher plan provision, Section 354A.097, Subdivision 1, is as follows:

1. Sufficient Justification for Change. The issue is whether USERRA or any other federal law requires this provision to be revised as proposed. If the proposed change is not specifically required for federal law compliance, this section of the bills is inconsistent with the claimed reason for the initial bills. If the changes are not necessary, the Subcommittee may chose to recommend deleting these sections.

Staff is aware of no specific federal mandate requiring that a full actuarial value service credit purchase provision be included in a plan's benefit provisions, and we know of no law specifically requiring that that a full actuarial value military service purchase provision must permit purchasing up to ten years of service credit.

To the best of staff's knowledge, the proposed change is based on a general concern that ex-military personnel should not face discrimination. There are other full actuarial value service credit purchase provisions in TRA and first class city teacher law (the private or parochial school teaching provision, for example) which permit a purchase of up to ten years of service. The current law version of these full actuarial value military service credit purchase provisions allow only a purchase for the initial period of military service without any voluntary extension of service. This is almost always less than ten years. Therefore, the argument is that to avoid a claim of discrimination, the military service full actuarial value service credit purchase provision should be revised to allow up to ten years to be purchased, consistent with the most generous of the other non-military service credit purchase provisions.

The Subcommittee may wish to hear brief testimony on this matter from TRA or first class city teacher plan representatives to determine whether there is sufficient justification to revise these provisions as proposed.

2. Alternative Actions. If the Commission does conclude that some action is necessary, the Commission may wish to consider actions other than those contained in the bill. The Commission may wish to consider solving the problem by letting the various full actuarial value provisions expire. Like the various other full actuarial value service credit purchase provisions in teach plan law, these provisions are temporary. The provisions were set to expire in 2003, but the Commission during the 2003 Legislative Session recommended that they be extended to 2004. The Subcommittee may chose to recommend deleting these provisions from the draft. The effect of that action is that the current law versions of these provisions would expire in 2004, unless they are again extended. If the Commission concludes in the 2004 Legislative Session that the various full actuarial value provisions should be again extended, the full Commission could decide at that time what specific revisions, if any, are needed in these two full actuarial value military service credit provisions.
3. Scope. If the Commission wishes to address this matter by amending law, the Commission may wish to consider that plans other than TRA and the first class city teacher funds have full actuarial value military service credit provisions. Comparable provisions were added to law in 2000 for the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the State Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), the State Patrol Retirement Plan, the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and the Public Employees Police and Fire Retirement Plan (PERA-P&F). Currently, these are also set to expire in May 2004. If the Subcommittee recommends revision of the TRA and first class city teacher plan provisions at this time, the Subcommittee may wish to direct the staff to make comparable changes in these similar provisions. Alternatively, the Subcommittee could recommend dropping this article from the current draft document, pending possible full Commission action on these matters during 2004. The proposed changes in the draft document would take effect July 1, 2004. There is plenty of time for the full Commission to consider the general treatment of the full actuarial value service credit purchase provisions during the 2004 Legislative Session.

ARTICLE 8 TRA FAMILY LEAVE PROVISION

Summary of Article 8 (LCPR03-220, Pages 26 to 27)

Section 1. Minnesota Statutes, Section 354.096, Subdivision 1, TRA's family leave provision certification requirement, is revised by striking language requiring the leave to be reported to TRA before the end of the fiscal year in which the leave was granted.

Section 2. Effective Date. Section 1 is effective on July 1, 2004.

Policy Issue Raised by Article 8

- Impact of Proposed Change. Given staff's reading of TRA laws, the current reporting date in this provision is unnecessary and conflicts with requirements in TRA's employing unit member data reporting provision, Section 354.52. The proposed change therefore seems appropriate.

ARTICLE 9 SPECIAL SERVICE CREDIT PURCHASE

Summary of Article 9 (LCPR03-220, Pages 27 to 28)

Section 1. Minnesota Statutes, Section 354.51, a TRA provision dealing with treatment of contribution shortages and other contribution errors, is amended by adding a subdivision. The new subdivision would permit MnSCU employees, who are initially excluded from TRA coverage due to part-time initial employment, to receive service credit for the initial employment period if they later become TRA members. To receive that service credit, the covered employee would pay to TRA the employee contributions that would have occurred if the period were initially covered, plus 8.5 percent interest, and the employer will pay the corresponding employer contributions plus interest.

Section 2. Effective Date. Section 1 is effective on July 1, 2004.

Policy Issues Raised by Article 9 (and by Article 4, Section 4)

Article 4, Section 4, revises the TRA salary definition section. The new added language (LCPR03-220, page 18, lines 24 to 29) declares that salary earned by MnSCU employees who are initially employed at less than 25 percent time is not salary for pension purposes. Therefore, under the proposed language, contributions to TRA cannot be made, no TRA salary credit or service credit is earned, and the individuals are not TRA members. There are two issues with Article 4, Section 4:

1. Drafting Problem. Staff assumes that the intention was to exclude these members from TRA for only the period of initial employment. However, the drafting suggests that any individual who was initially employed by MnSCU at 25 percent or less time is permanently excluded from TRA coverage. When this section is read in conjunction with Article 9, Section 1, the intention seems to be to exclude these individuals only for the initial employment period, but it would be better to provide clarification in Article 4, Section 4, if the Subcommittee decides to retain that section.
2. Conflict with Standard Pension Policy/Equitable Treatment Issues. Excluding employees, whether they are part-time or full-time, from pension coverage is not consistent with general pension policy followed for teachers in defined benefit plans and for many other public employees. The preferred policy is to include employees under the applicable pension plan from the start of their public employment. This provides the fullest coverage, ensures a broad financial support base for the pension fund, and avoids later problems with service credit purchase requests. An initial part-time K-12 teacher would be immediately covered by TRA from the start of employment. Under this proposal, certain part-time MnSCU teachers would not be covered.

In general, MnSCU employees are covered by either the higher education IRAP or a K-12 teacher plan (TRA or a first class city teacher plan, as applicable). Employees generally have a right to elect either form of coverage – IRAP if defined contribution coverage is preferred, and TRA or first class city teacher plan coverage (depending upon location), if defined benefit coverage is preferred.

IRAP has a provision that excludes individuals from IRAP coverage for the duration of an initial appointment if the appointment is less than 25 percent of full time (Section 354B.20, Subdivision 4). When IRAP was being established by legislation in the late 1980s and early 1990s, LCPR staff advised state and community college administrators and other interested parties against including this type of membership exclusion in IRAP, given the conflict it would create with teacher plan policy and the related problems that exclusions create. MnSCU is now seeking a comparable provision in TRA for employees who may prefer TRA rather than IRAP coverage. MnSCU supports this change because it saves the employer money. The employer avoids making an employer contribution for the initial appointment of these part-time teachers. If these employees are permitted initial access to TRA, which they are under current law, MnSCU must make employer contributions to TRA on behalf of the part-time teachers who elect TRA coverage. If the employee later terminates service, he or she is then eligible for a TRA refund of employee contributions plus interest, but employer contributions are retained by the fund.

For those quarter-time-or-less employees who chose to become IRAP members after the initial period of employment, IRAP has a provision which allows these individuals to make contributions to the individual's IRAP account. The employee makes the employee contribution that would have occurred if the period had been covered at the time, and the employer makes a corresponding employer contribution (Section 354B.21, Subdivision 5). These contributions do not include interest.

The seemingly comparable purchase provision that MnSCU seeks to create in TRA is found in Article 9, Section 1. A new subdivision would permit MnSCU employees, who are initially excluded from TRA coverage due to part-time initial employment, to receive service credit for the initial employment period if they later become TRA members. To receive that service credit, the covered employee would pay the TRA the employee contributions that would have occurred if the period were initially covered, plus 8.5 percent interest, and the employer will pay the corresponding employer contributions plus interest. The payments must be made within one year of initially becoming a TRA member.

The initial exclusion and the related purchase provision (Article 9, Section 1) present several issues:

1. Problems Caused by Coverage Exclusions. The Commission has experience with comparable provisions that are found in MERF. In MERF's case, intermittent employees were excluded from coverage. If they later qualified for MERF coverage and became MERF members, they were given a year to purchase service credit in MERF for the previously excluded period. Being young employees at the time, many did not value the MERF coverage and did not take advantage of the one-year

window offered to them. As they approach retirement age, however, they are now interested in obtaining service credit for that period of time during which they were excluded from coverage and for which they did not take advantage of the earlier opportunity to obtain that service credit. They are now coming to the Legislature seeking to purchase that service credit at full actuarial value. The LCPR heard bills for two of these MERF employees in 2000. During the 2003 Legislative Session, the Commission heard similar additional bills for MERF employees. By creating exclusion/purchase of service credit provisions in TRA similar to the MERF provisions, the Commission would create a future problem for itself.

2. Problem of Harm to TRA. The proposed provisions do not necessarily hold TRA harmless. There will be times where the service credit being purchased may have far greater value than the contributions that TRA will receive for that service credit. In a defined benefit plan the pension fund (TRA in this case) must ultimately fund whatever liability is created by the service credit purchase. That will not be knowable until the individual's pension becomes payable.

TRA is not considerably harmed provided that the contributions are received soon after the service to which they relate. If an individual is excluded due to the "25 percent rule" in the first year, and in the next becomes a TRA member, contributions will be received soon thereafter, assuming that the individual takes advantage of the opportunity. The payment procedure is similar to that used in typical leave-of-absence situations.

Harm to TRA is most likely to occur when there is a long delay between the end of excluded service and the start of covered service. In situations like that, the Commission generally favors a full actuarial value approach, to try to keep the pension fund whole, not a contribution-plus-interest approach. Individuals could leave a less-than-25-percent MnSCU employment situation and then return many years or even decades later to covered MnSCU service, and under this drafting, would be able to obtain service credit for the excluded period for contributions plus interest, rather than by paying the full actuarial value.

3. Comparable Treatment Requests. In the future, the Legislature may be pressured to hear bills on behalf of individuals who contend that their situation is sufficiently similar to justify that they should also be permitted to purchase service credit for contributions plus interest. The drafting of this section allows the purchase if the individuals became TRA members and are MnSCU employees. Individuals who had MnSCU excluded part-time employment and who later become TRA members due to K-12 employment rather than MnSCU employment, may request that they be permitted to receive service credit for the excluded MnSCU service by paying contributions plus interest.
4. Possible Extension to First Class City Teacher Plans. The issue is whether comparable language is needed in Chapter 354A, the first class city teacher plan chapter.

ARTICLE 10 QUALIFIED PART-TIME TEACHER PROVISIONS

Summary of Article 10 (LCPR03-220, Pages 28 to 29)

Section 1. Minnesota Statutes, Section 354.66, Subdivision 2, TRA's qualified part-time teacher program participation provision, is revised by providing alternative filing date requirements if the teacher is also a legislator. If the teacher is also a legislator, the part-time teacher program participation agreement between the teacher and school district may be signed by those parties as late as March 1 of the year for which the teacher requests to make retirement contributions under this program, rather than by October 1, and fines on the school district that would commence on October 1 for agreements filed with TRA after that date do not commence until after March 1.

Section 2. Effective Date. Section 1 is effective on July 1, 2004.

Policy Issues Raised by Article 10

1. Need for Change. The question is whether there is any need to change the existing program. The apparent intention is to provide more time for a teacher who is also a legislator to enter this program and file this form. It is unclear why any serving legislator would need the revised provision. These individuals should have a reasonable expectation of the time needed for the legislative session and

other legislative duties, and should seek access into this part-time teacher program on or before October 1. The Subcommittee may therefore recommend deleting this article.

Alternatively, the Subcommittee may conclude that the proposed change is justifiable in a more limited case, for an individual who did not recognize a need for the program before October 1 - perhaps someone running for the first time. The Subcommittee may wish to more narrowly focus the proposal to newly elected legislators. The Subcommittee may also consider whether a deadline other than the proposed March 1 deadline is more appropriate.

2. Cost. The issue is the cost, if any, imposed by this change on the plan.
3. Scope. The issue is whether comparable changes are needed in the corresponding part-time qualified teacher program provision in first class city teacher plan law. First class city teacher plan administrators have not asked for this change, suggesting there is little need to change the provision.

ARTICLE 11 CONTRIBUTION RATES

Summary of Article 11 (LCPR03-220, Pages 29 to 30)

Section 1. Minnesota Statutes, Section 352D.04, Subdivision 2, the MSRS-Unclassified contribution provision, is amended by clarifying language and by requiring an additional 1.5 percent employer contribution. This additional contribution is not credited to employee accounts; rather, it will be held in a separate reserve account and used to cover any MSRS-General losses that occur due to Unclassified Plan members reverting to the General Plan.

Section 2. Minnesota Statutes, Section 354B.23, Subdivision 1, an IRAP contribution rate provision, is revised for employees who would otherwise be covered by MSRS-Unclassified. The employee contribution rate for that group will be 4.5 percent, rather than 4.0 percent, making the employee contribution rate the same for all IRAP members.

Section 3. Effective Date. Section 1 and 2 are effective on July 1, 2004.

Policy Issues Raised by Article 11

Policy issues raised by the proposed change in employer contribution rates to MSRS-Unclassified (Section 1) are:

1. Need for Change/Nature of Change. The issue is whether any change is appropriate or feasible, given the state budget situation. If the transfers do harm MSRS-General, an issue is whether to consider some solution other than that covered in the draft language. If transfers harm MSRS-General, the Subcommittee or Commission may wish to consider prohibiting transfers, at least for new employees.
2. Proper Amount of Increase. If money is to be provided to MSRS to offset the harm to MSRS-General, the Subcommittee may want some assurance that that 1.5 percent of payroll is adequate and not overly generous to address the harm. MSRS should provide the Subcommittee with the study that produced this estimate. It may be necessary to have Commission staff or the actuary retained by the Commission provide an estimate, or at least review the work that was done by MSRS or the MSRS actuary.
3. State Budget Impact. An additional employer contribution requirement to this plan will impact the state budget. MSRS should provide a dollar estimate of the additional amount.
4. Drafting Issue. We know from discussion with MSRS that MSRS intends that the employer contribution would be increased from 6.0 percent of pay to 7.5 percent of pay, with the 1.5 percent increase in contribution to be set aside in a separate account. However, as drafted (page 29, lines 21 to 23) the language could be interpreted as taking 1.5 percent of pay from the current 6.0 percent contribution. If this provision remains, clarification would be appropriate.
5. Discretion Problems. The Subcommittee may wish to consider whether the MSRS Executive Director is given too much discretion under this proposal. A vaguely specified fund would be created in MSRS, to be used by the Executive Director to offset costs incurred by the General Plan when an Unclassified Plan member reverts to that plan, and any "related" costs. There is no reporting required to the Executive branch or to the Legislature, and no verification that the costs are accurately

determined. When LCPR staff first reviewed this proposal several months ago, we provided drafting to MSRS which would create a separate account in the state treasury (General Fund) to be administered by the Commissioner of Finance. The Executive Director could annually certify amounts needed to cover the claimed costs to the Commissioner, who would then release amounts to the Executive Director. MSRS was not receptive to this suggestion.

6. Other Potential Administrative Costs. The Subcommittee may wish to consider whether the LCPR-retained actuary should periodically review the needs of this fund to determine whether the 1.5 percent contribution is sufficient or deficient. If this review is deemed necessary, presumably the cost of that service should be paid by MSRS.

Section 2 revises the IRAP employee contribution rate for employees who would otherwise be covered by MSRS-Unclassified. The employee contribution rate for that group will be 4.5 percent, rather than 4.0 percent, making the employee contribution rate the same for all IRAP members. While that adds more consistency, it raised the following issue:

- Reversal of Prior Policy. Presumably, the Legislature had a reason for tying the rate for certain MnSCU employees to the Unclassified Plan rate. The Commission may wish to explore why that occurred and whether it is reasonable to now reverse that policy.

ARTICLE 12 EMPLOYER REPORTING

Summary of Article 12 (LCPR03-220, Pages 30 to 32)

- Section 1. Section 354.52, Subdivision 4a, TRA's employing unit member data reporting provision, is revised by requiring information on gender and employment position code and by removing obsolete language.
- Section 2. Minnesota Statutes, Section 354.52, is amended by adding a subdivision specific to MnSCU reporting requirements for determining service credit for part-time employees. Rather than using payroll cycle reporting for this group, MnSCU will report once a year, on or before July 31 for the prior fiscal year, with service credit to be based on the employee's teaching assignments during that time period.
- Section 3. Minnesota Statutes, Section 354.52, Subdivision 6, a TRA provision applying a \$5 per day fine if an employing unit fails to comply with member data reporting requirements, is revised by applying this fine only for failure to timely provide the annual report on reemployed TRA annuitants (Subdivision 2a), member data reporting (Subdivision 4a), and payroll cycle reporting (Subdivision 4b) rather than applying the penalty for failures to comply with all requirements indicated in this section.
- Section 4. Effective Date. Sections 1 to 3 are effective on July 1, 2004.

Policy Issues Raised by Article 12

The proposed amendment to Section 3 raises the following issue:

- Implication of Proposed Change. The proposed changes provide clarity and eliminate a conflict within Section 354.52. Current law imposes at least one penalty (an interest requirement) on late or deficient contribution payments to TRA, and possibly two penalties. Imposing two penalties may not have been intended. We observe that existing law language in Section 356.52, Subdivision 6, of imposes a \$5 per day fine for any violation of the requirements of this section. However, within Subdivision 4, a contribution remittance requirement provision, is another penalty. Subdivision 4 specifies that if a school district fails to remit to TRA in a timely manner any employee, employer, or other required contributions, 8.5 percent interest must be assessed on the shortage until paid, and if any amounts remain unpaid after 60 days of TRA notification of the deficiency, the amounts due can be certified to the Commissioner of Finance who will deduct necessary amounts from any state aid the school district would otherwise receive. Thus, if the school district does not remit full required contributions in a timely manner, a literal reading of the law requires interest penalties under Subdivision 4, and presumably also the \$5 per day penalty in Subdivision 6. Under the proposed revision, the 8.5 percent interest penalty for delinquent or deficient contributions would be assessed,

but not the \$5 per day penalty. If the LCPR concludes that it is not necessary to apply two penalties in contribution remittance situations, then the proposed change is appropriate.

ARTICLE 13 TRANSMISSION OF RETIREMENT BOARD ELECTION INFORMATION

Summary of Article 13 (LCPR03-220, Page 32)

Section 1. Minnesota Statutes, Section 354.07, Subdivision 9, a TRA board powers provision requiring all school districts including MnSCU to distribute TRA board election ballots, is revised by correcting an obsolete reference.

Section 2. Effective Date. Section 1 is effective on July 1, 2004.

Policy Issues Raised by Article 13

The proposed change removes an obsolete reference and raises no policy issues.

Section-By-Section Summary of Amendment LCPR03-222 and Related Policy Issues

After completing Amendment LCPR03-220, staff noted a few more items that should have been included in Amendment LCPR03-220. Amendment LCPR03-222 may be used to add those omitted provisions to LCPR03-220.

Summary of Amendment LCPR03-222

Section 1. PERA's temporary position definition (Minnesota Statutes, Section 353.01, Subdivision 12a) is amended by moving temporary position language from the excluded employee provision to temporary position definition. (The language declares that a probationary employment period leading to permanent employment is not to be considered a temporary position, and requires that an employee in a temporary position for more than six months must be reported for PERA coverage if the individual's salary is sufficient to meet PERA's salary threshold.)

Section 2. PERA's seasonal position definition (Section 353.01, Subdivision 12b) is revised by requiring that the entire period of employment in a year, rather than in a business year, must be used to determine whether a position may be excluded from PERA coverage as a seasonal position if there is less than a 30-day break between one seasonal position and another.

Section 3. Repealer. Minnesota Statutes, Section 353.01, Subdivision 38, the PERA definition of business year, is repealed.

Policy Issues Raised by LCPR03-222

Section 2, which revises a provision of PERA law, Minnesota Statutes, Section 353.01, Subdivision 12B, by requiring that seasonal position exclusions will be based on a "year" rather than a "business year." This is the only section of PERA law in which "business year" appeared, so in Section 3 PERA is proposing to repeal the definition of "business year." The policy issue is:

- Impact of the Proposed Change. The issue is what substantive change, if any, this change will have on the determination of who is excluded from PERA coverage due to seasonal work. The Subcommittee may wish to hear brief testimony to determine whether certain types of employees who might be considered to be seasonal are either harmed by this change or who may receive a windfall from this change.

Minnesota Public Pension Plans – Definition of Salary

Plan	MSRS-General	PERA-General	TRA	DTRFA	MTRFA	SPTRFA	MERF
Salary means:	<p>(1) wages paid to an employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reductions; or</p> <p>(2) other periodic compensation, paid to an employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reductions; and</p> <p>(3) during a period of receipt of worker's compensation while on a leave of absence, the differential between the salary that the employee would normally receive during the leave and the salary received, if any, on which the employee makes a member contribution equivalent amount.</p> <p>[352.01, Subds. 13 and 13a]</p>	<p>(1) periodic compensation before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs;</p> <p>(2) wages;</p> <p>(3) net income from fees;</p> <p>(4) for a member of a consolidated police or fire plan, the pre-consolidation salary rate upon which pre-consolidation member contributions were made; and</p> <p>(4) during a period of receipt of worker's compensation while on a leave of absence, the differential between the salary that the employee would normally receive during the leave and the salary received, if any, on which the employee makes a member contribution equivalent amount.</p> <p>[353.01, Subds. 10 and 40]</p>	<p>periodic compensation before deduction for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs.</p> <p>[354.05, Subd. 35, Paragraph (a)]</p>	<p>the entire compensation paid to a teacher before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs.</p> <p>During a period of receipt of worker's compensation while on a leave of absence, the differential between the salary that the employee would normally receive during the leave and the salary received, if any, on which the employee makes a member contribution equivalent amount.</p> <p>[354A.011, Subd. 24, Paragraph (a), and 354A.108]</p>	<p>the entire compensation paid to a teacher before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs.</p> <p>[354A.011, Subd. 24, Paragraph (a)]</p>	<p>the entire compensation paid to a teacher before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs.</p> <p>[354A.011, Subd. 24, Paragraph (a)]</p>	<p>the salary, wages, or compensation of the employee.</p> <p>[422A.15, Subd. 1]</p>
Salary does not mean:	<p>(1) lump sum sick leave payments;</p> <p>(2) severance payments;</p> <p>(3) lump sum annual leave payments;</p> <p>(4) overtime payments made at the time of separation from state service;</p> <p>(5) payments in lieu of employer-paid group insurance coverage, including the difference between single rates and family rates for an employee with single coverage;</p> <p>(6) employer contributions to</p>	<p>(1) fees paid to court reporters;</p> <p>(2) unused annual vacation or sick leave payments, paid either in lump sum or periodically;</p> <p>(3) severance payments;</p> <p>(4) expense reimbursements;</p> <p>(5) lump sum settlements not attached to a specific earnings period;</p> <p>(6) worker's compensation payments;</p> <p>(7) employer-paid amounts used by an employee toward the cost</p>	<p>(1) lump sum annual leave payments;</p> <p>(2) lump sum wellness and sick leave payments;</p> <p>(3) employer-paid amounts used by an employee toward the cost of insurance coverage;</p> <p>(4) employer-paid fringe benefits;</p> <p>(5) flexible spending accounts;</p> <p>(6) cafeteria plans;</p> <p>(7) health care expense accounts;</p>	<p>(1) lump sum annual leave payments;</p> <p>(2) lump sum wellness and sick leave payments;</p> <p>(3) employer-paid amounts used by an employee toward the cost of insurance coverage;</p> <p>(4) employer-paid fringe benefits;</p> <p>(5) flexible spending accounts;</p> <p>(6) cafeteria plans;</p> <p>7) health care expense accounts;</p>	<p>(1) lump sum annual leave payments;</p> <p>(2) lump sum wellness and sick leave payments;</p> <p>(3) employer-paid amounts used by an employee toward the cost of insurance coverage;</p> <p>(4) employer-paid fringe benefits;</p> <p>(5) flexible spending accounts;</p> <p>(6) cafeteria plans;</p> <p>7) health care expense accounts;</p>	<p>(1) lump sum annual leave payments;</p> <p>(2) lump sum wellness and sick leave payments;</p> <p>(3) employer-paid amounts used by an employee toward the cost of insurance coverage;</p> <p>(4) employer-paid fringe benefits;</p> <p>(5) flexible spending accounts;</p> <p>(6) cafeteria plans;</p> <p>7) health care expense accounts;</p>	

Minnesota Public Pension Plans – Definition of Salary

<u>Plan</u>	<u>MSRS-General</u>	<u>PERA-General</u>	<u>TRA</u>	<u>DTRFA</u>	<u>MTRFA</u>	<u>SPTRFA</u>	<u>MERF</u>
a deferred compensation or tax-sheltered annuity program; and (7) amounts contributed under a benevolent vacation or sick leave donation program. [352.01, Subd. 13]	of insurance coverage costs; (8) employer-paid fringe benefits; (9) flexible spending accounts; (10) cafeteria plans; (11) health care expense accounts; (12) daycare expenses; (13) any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates paid to a member with single coverage; (14) certain amounts determined by the executive director to be ineligible; (15) the amount which the employing unit would otherwise pay towards single or family insurance coverage where through contract or agreement with some, but not all, employees, the employer: (i) discontinues or does not provide for new hires payment toward the cost of the employee's selected insurance coverages under a group plan offered by the employer; (ii) makes the employee solely responsible for all contributions towards the cost of the employees selected insurance coverages under a group plan offered by the employer, including any amount the employer makes	(8) daycare expenses; (9) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage; (10) certain amounts determined by the executive director to be ineligible; (11) any form of payment made in lieu of any other employer-paid fringe benefit or expense; (12) any form of severance payments; (13) worker's compensation payments; (14) disability insurance payments, including self-insurance disability payments; (15) payments to school administrators for services in addition to the normal work year contract if these services are performed on an extended duty day, a weekend, a holiday, an annual leave day, a sick leave day, or any other non-duty day; (16) severance payments under Minnesota Statutes, Section 356.24, Subdivision 1, Clause (4); (17) payments made for a suspension or a leave of absence for health reasons other than accumulated sick leave under a uniform school district policy applicable	(8) daycare expenses; (9) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage; (10) certain amounts determined by the executive secretary to be ineligible; (11) any form of payment made in lieu of any other employer-paid fringe benefit or expense; (12) any form of severance payments; (13) worker's compensation payments; (14) disability insurance payments, including self-insurance disability payments; (15) payments to school administrators for services in addition to the normal work year contract if these services are performed on an extended duty day, a weekend, a holiday, an annual leave day, a sick leave day, or any other non-duty day; (16) severance payments under Minnesota Statutes, Section 356.24, Subdivision 1, Clause (4), Subclause (ii); and (17) payments made for a suspension or a leave of absence for health reasons other than accumulated sick leave under a uniform school	(8) daycare expenses; (9) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage; (10) certain amounts determined by the executive director to be ineligible; (11) any form of payment made in lieu of any other employer-paid fringe benefit or expense; (12) any form of severance payments; (13) worker's compensation payments; (14) disability insurance payments, including self-insurance disability payments; (15) payments to school administrators for services in addition to the normal work year contract if these services are performed on an extended duty day, a weekend, a holiday, an annual leave day, a sick leave day, or any other non-duty day; (16) severance payments under Minnesota Statutes, Section 356.24, Subdivision 1, Clause (4), Subclause (ii); and (17) payments made for a suspension or a leave of absence for health reasons other than accumulated sick leave under a uniform school	(8) daycare expenses; (9) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage; (10) certain amounts determined by the executive director to be ineligible; (11) any form of payment made in lieu of any other employer-paid fringe benefit or expense; (12) any form of severance payments; (13) worker's compensation payments; (14) disability insurance payments, including self-insurance disability payments; (15) payments to school administrators for services in addition to the normal work year contract if these services are performed on an extended duty day, a weekend, a holiday, an annual leave day, a sick leave day, or any other non-duty day; (16) severance payments under Minnesota Statutes, Section 356.24, Subdivision 1, Clause (4), Subclause (ii); and (17) payments made for a suspension or a leave of absence for health reasons other than accumulated sick leave under a uniform school	(8) daycare expenses; (9) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage; (10) certain amounts determined by the executive director to be ineligible; (11) any form of payment made in lieu of any other employer-paid fringe benefit or expense; (12) any form of severance payments; (13) worker's compensation payments; (14) disability insurance payments, including self-insurance disability payments; (15) payments to school administrators for services in addition to the normal work year contract if these services are performed on an extended duty day, a weekend, a holiday, an annual leave day, a sick leave day, or any other non-duty day; (16) severance payments under Minnesota Statutes, Section 356.24, Subdivision 1, Clause (4), Subclause (ii); and (17) payments made for a suspension or a leave of absence for health reasons other than accumulated sick leave under a uniform school	

Minnesota Public Pension Plans – Definition of Salary

<u>Plan</u>	<u>MSRS-General</u>	<u>PERA-General</u>	<u>TRA</u>	<u>DTRFA</u>	<u>MTRFA</u>	<u>SPTRFA</u>	<u>MERF</u>
		toward other employee's selected insurance coverage under the group plan offered by the employer; and (iii) provides increased salary rates for employees who do not have any employer-paid group insurance coverages; and (16) compensation paid to volunteer ambulance personnel or volunteer firefighters unless the ambulance personnel or firefighters are plan members for that service. [353.01, Subd. 10; 353.86; 353.87]	equally to all similarly situated persons in the district; (18) payments made to an employee to terminate employment; (19) payments that are not clearly for the performance of services by the employee for the employer; (20) Payments to a school administrator for service as an advisor or consultant to the employer under an agreement to terminate employment within two years of the execution of the agreement in an amount that is significantly different than the most recent contract salary; (21) Payments under a procedure that allows the employee to designate the time of the payment if paid during the person's formula service credit period; and (22) Lump sum payments made during the employee's highest five years salary averaging period for additional services rendered without pay during other years of salary. [354.05, Subds. 35 and 35a]	district policy applicable equally to all similarly situated persons in the district. [354A.011, Subd. 24]	district policy applicable equally to all similarly situated persons in the district. [354A.011, Subd. 24]	district policy applicable equally to all similarly situated persons in the district. [354A.011, Subd. 24]	

United States Code

TITLE 38--VETERANS' BENEFITS

PART III--READJUSTMENT AND RELATED BENEFITS

CHAPTER 43--EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

SUBCHAPTER I--GENERAL

Sec. 4301. Purposes; sense of Congress

(a) The purposes of this chapter are--

(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

(b) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

Sec. 4302. Relation to other law and plans or agreements

(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

(b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

Sec. 4303. Definitions

(16) The term ``uniformed services'' means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

Sec. 4304. Character of service

A person's entitlement to the benefits of this chapter by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

(2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.

(3) A dismissal of such person permitted under section 1161(a) of title 10.

(4) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

United States Code

TITLE 38--VETERANS' BENEFITS

PART III--READJUSTMENT AND RELATED BENEFITS

CHAPTER 43--EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

SUBCHAPTER II--EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

Sec. 4318. Employee pension benefit plans

(a) (1) (A) Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan (including those described in sections 3(2) and 3(33) of the Employee Retirement Income Security Act of 1974) or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(B) In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. The first sentence of this subparagraph shall not be construed to affect any other right or benefit under this chapter.

(2) (A) A person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

(B) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(b) (1) An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a) (2) (B), be liable to an employee pension benefit plan for funding any obligation of the plan to provide the benefits described in subsection (a) (2) and shall allocate the amount of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability of the plan described in this paragraph shall be allocated--

(A) by the plan in such manner as the sponsor maintaining the plan shall provide; or

(B) if the sponsor does not provide--

(i) to the last employer employing the person before the period served by the person in the uniformed services, or

(ii) if such last employer is no longer functional, to the plan.

(2) A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g) (3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a) (2) (B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the uniformed services, such payment period not to exceed five years.

(3) For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the

United States Code

employee's compensation during the period of service described in subsection (a)(2)(B) shall be computed--

(A) at the rate the employee would have received but for the period of service described in subsection (a)(2)(B), or

(B) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

(c) Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the administrator of such plan.

Section 352.01, Subd. 13a

(MSRS Workers' Compensation Provision, Proposed for Repeal)

Subd. 13a. **Reduced salary during period of workers' compensation.** An employee on leave of absence receiving temporary workers' compensation payments and a reduced salary or no salary from the employer who is entitled to allowable service credit for the period of absence, may make payment to the fund for the difference between salary received, if any, and the salary the employee would normally receive if not on leave of absence during the period. The employee shall pay an amount equal to the employee and employer contribution rate under section 352.04, subdivisions 2 and 3, on the differential salary amount for the period of the leave of absence.

The employing department, at its option, may pay the employer amount on behalf of its employees. Payment made under this subdivision must include interest at the rate of 8.5 percent per year, and must be completed within one year of the return from leave of absence.

Section 352D.02, Subd. 5

(Proposed for Repeal)

Subd. 5. **TRA restrictions.** An employee in a position with retirement coverage under the basic program in the teachers retirement association is not entitled to participate in the plan unless the employee leaves the position and begins employment more than 30 days later in a position with retirement coverage under the plan.

Section 354A.108

(DTRFA Workers' Compensation Salary Credit Provision, Not Proposed for Repeal)

354A.108 Payment by teachers collecting workers' compensation.

(a) A member of the Duluth teachers retirement fund association who is receiving temporary workers' compensation payments related to the member's teaching service and who either is receiving a reduced salary from the employer or is receiving no salary from the employer is entitled to receive allowable service credit for the period of time that the member is receiving the workers' compensation payments upon making the required payment amount.

(b) The required amount payable by the member must be calculated first by determining the differential salary amount, which is the difference between the salary received, if any, during the period of time that the member is collecting workers' compensation payments, and the salary that the member received for an identical length period immediately before collecting the workers' compensation payments. The member shall pay an amount equal to the employee contribution rate under section 354A.12, subdivision 1, multiplied by the differential salary amount.

(c) If the member makes the employee payment under this section, the employing unit shall make an employer payment to the Duluth teachers retirement fund association equal to the employer contribution rate under section 354A.12, subdivision 2a, multiplied by the differential salary amount.

(d) Payments made under this subdivision are payable without interest if paid by June 30 of the year during which the workers' compensation payments are received by the member. If paid after June 30, payments made under this subdivision must include interest at the rate of 8.5 percent per year. Payment under this section must be completed within one year of the termination of the workers' compensation payments to the member.

Section 353.01, Subd. 40

(PERA Workers' Compensation Salary Credit Provision, Not Proposed for Repeal)

Subd. 40. Reduced salary during period of workers' compensation. (a) A member who is receiving temporary workers' compensation payments related to the member's service to the public employer and who either is receiving a reduced salary from the employer during that period or is receiving no salary from the employer during that period is entitled to receive allowable service and salary credit for the period of time that the member is receiving the workers' compensation payments upon making the payments specified in this subdivision.

(b) The differential salary amount is the difference between the average rate of salary received by the member, if any, during the period of time that the member is collecting temporary workers' compensation payments and the average rate of salary of the member on which contributions to the applicable plan were made during the period of the last six months of covered employment occurring immediately before beginning to collect the temporary workers' compensation payments, applied to the member's normal employment period, measured in hours or otherwise, as applicable.

(c) To receive eligible service credit, the member shall pay an amount equal to the applicable employee contribution rate under section 353.27, subdivision 2; 353.65, subdivision 2; or 353E.03, subdivision 1, as applicable, multiplied by the differential salary amount; plus an employer equivalent payment equal to the applicable employer contribution rate in section 353.27, subdivision 3; 353.65, subdivision 3; or 353E.03, subdivision 2, as applicable, multiplied by the differential salary amount; plus, if applicable, an equivalent employer additional amount equal to the additional employer contribution rate in section 353.27, subdivision 3a, multiplied by the differential salary amount.

(d) The employer may, by appropriate action of its governing body and documented in its official records, pay the employer equivalent contributions and, as applicable, the equivalent employer additional contributions on behalf of the member.

(e) Payment under this subdivision must include interest on the contribution amount or amounts, whichever applies, at an 8.5 percent annual rate, prorated for applicable months from the date on which the temporary workers' compensation payments terminate to the date on which the payment or payments are received by the executive director. Payment under this subdivision must be completed within one year after the termination of the temporary workers' compensation payments to the member, or within 20 days after the termination of public service by the employee under subdivision 11a, whichever is earlier.