

TO: Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: S.F. 995 (Betzold); H.F. 2109: Salary Credit for Retirement Purposes; Maximum Exception for Various Local Government Officials

S.F. 1206 (Betzold); H.F. 1250 (Smith): Salary Credit for Retirement Purposes; Maximum Exception for Elected Local Government Officials

DATE: March 29, 2005

Summary of S.F. 995 (Betzold); H.F. 2109

S.F. 995 (Betzold); H.F. 2109 amends Minnesota Statutes, Section 356.611, Subdivision 1, a maximum on the salary amount creditable for retirement contribution or benefit calculation purposes set at 95 percent of the Governor's salary, by adding exceptions for five additional individuals or groups:

- i) a Constitutional officer other than the governor;
- ii) the Anoka County attorney, the Dakota County attorney, the Ramsey County attorney, and the St. Louis County attorney;
- iii) four upper echelon positions at the Southern Minnesota Municipal Power Agency;
- iv) two upper echelon positions at the League of Minnesota Cities; and
- v) the manager of Utilities Plus.

Summary of S.F. 1206 (Betzold); H.F. 1250 (Smith)

S.F. 1206 (Betzold); H.F. 1250 (Smith) amends Minnesota Statutes, Section 356.611, Subdivision 1, a maximum on the salary amount creditable for retirement contribution or benefit calculation purposes set at 95 percent of the Governor's salary, by adding an exception for any elected official of a political subdivision.

Background Information on the Definition of Covered Salary for Minnesota Defined Benefit Plans

Background information on the function of covered salary in Minnesota defined benefit plans and the current definitions on covered salary are contained in Appendix A.

Background Information on Covered Salary Limitations in Minnesota

Minnesota has had two periods during which there have been limits on the salary amount covered by a statewide public retirement plan (the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), and the Teachers Retirement Association (TRA)), before 1967 and since 1994.

Before 1967, the salary limits were \$4,800 per year until 1965 and \$6,500 per year (MSRS-General and PERA-General) or \$7,200 per year (TRA) until 1967. The salary limits initially paralleled the Social Security covered salary limits (i.e., \$4,800 annual limit on the taxable wage base 1959-1965; \$6,600 annual limit 1966-1967; and \$7,800 annual limit 1968-1971). The salary limits also were a funding consideration, since the limit reduced the dollar amount of actuarial accrued liabilities.

In 1994 (Laws 1994, Chapter 528, Article 4, Section 11), in legislation recommended by the Commission that primarily put restrictions on the retirement coverage provided to former public employees who retain public pension plan coverage as collective bargaining organization officials or employees, two covered salary limits were implemented, with a limit set at 75 percent of the salary of the Governor for labor organization employees, and with a limit set at 95 percent of the salary of the Governor for members of the statewide and major local defined benefit public retirement plans and for the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) unless the person was excluded from the application of the limit. The provision is coded as Minnesota Statutes, Section 356.611. Three exceptions to the maximum are provided, which are the Governor, some political subdivision employees excluded under Minnesota Statutes, Sections 43A.17, Subdivision 9 (i.e., school

district employees and public hospital employees), and some State employees with a salary rate approved by the Commissioner of Employee Relations. The general salary limit appears to have been prompted as a mechanism for avoiding the problem encountered by PERA-General with John Allers, the former president of the Service Employees International Union Local 284, with respect to other quasi-public employee public pension plan members. The covered salary maximums was part of a 1994 set of provisions addressing a 1993 salary padding attempt by a quasi-public employee covered by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General). In that case, a former public school janitor who became the president of a Service Employees International Union local reported significantly increasing salary figures during the final five years of his PERA-General covered union employment. The salary figures were revised upon a subsequent PERA salary audit. PERA and the Commission were concerned about the potential for salary abuses in pension plan coverage where the salary setting process is not subject to the public salary setting procedures generally applicable to government. The provision that eventually became Minnesota Statutes, Section 356.611, in 1994, was derived from a suggestion forwarded to the Commission by PERA.

For apparently a variety of reasons, the various retirement systems either stopped enforcing the covered salary maximum of Minnesota Statutes, Section 356.611, in recent years, or never began enforcing the statutory covered salary maximum. As other public employee and quasi-public employee salary amounts have increased and the salary of the Governor has remained relatively flat, several defined benefit plan and MSRS-Unclassified Retirement Program members have been credited with covered salary amounts that exceeded the covered salary maximum of Minnesota Statutes, Section 356.611. The pension plans indicated that, in Spring 2004, there were 397 plan members with a salary greater than the covered salary maximum. The largest groups of members were judges (287) and Minnesota State Colleges and Universities System (MnSCU) employees (22 in MSRS-Unclassified, 2 in MSRS-General, and 36 in TRA). Laws 2004, Chapter 267, Article 2, Section 5, increased the number of exceptions to the covered salary maximum of Minnesota Statutes, Section 356.611, as follows:

- (1) Judges;
- (2) All state employees as defined in Minnesota Statutes, Section 43A.02, Subdivision 21;
- (3) Gillette Hospital employees covered by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General);
- (4) Employees of the Minnesota Crop Improvement Council; and
- (5) Employees of the Minnesota Historical Society.

50 State Review of Maximum Covered Retirement Salary Legislation

A review of the retirement laws governing state employees in the 50 states with respect to the maximum covered salary for retirement purposes was conducted by the Commission staff during the 2004-2005 Interim and is summarized in Appendix B.

Discussion and Analysis

S.F. 995 (Betzold); H.F. 2109 would add exceptions for at least 11 additional public pension plan members from the current 95 percent of the Governor's salary maximum on covered salaries for pension purposes of Minnesota Statutes, Section 356.611, which are other Constitutional officers, county attorneys in Anoka County, Dakota County, Ramsey County, and St. Louis County, four executives of the Southern Minnesota Municipal Power Agency, two executives with the League of Minnesota Cities, and the manager of Utilities Plus. S.F. 1206 (Betzold); H.F. 1250 (Smith) would add an exception from the Minnesota Statutes, Section 356.611, covered salary maximum for retirement purposes for elected officials of a political subdivision.

The two bills raise several pension and related public policy issues for possible Commission consideration and discussion, as follows:

1. Appropriateness of the Proposed Other Constitutional Officer Exception. The policy issue is the appropriateness of the proposed exception from the maximum covered salary for retirement purposes provision in S.F. 995 (Betzold); H.F. 2109, for Constitutional officers other than the Governor. This exception was part of the Senate version of the 2004 Omnibus Retirement Bill, the Third Engrossment of 2004 S.F. 676 (Betzold), Article 2, Section 6, from an amendment in the Senate State and Local Governmental Operations Committee. Currently, the highest paid Constitutional officer is the Attorney General, with a salary that is 95 percent of the Governor's salary under First Special Session Laws 2001, Chapter 10, Article 1, Section 2. The 2005 Compensation Council, on March 10, 2005, recommended that the Governor's salary be increased to \$137,869 in January 2007, and noted that the

Attorney General's salary would be set at 95 percent of that salary under the current law. If the Legislature retains the current policy on Constitutional officer salaries, the Attorney General would not exceed the maximum and no exception would be needed currently. If the Legislature changes its policy on Constitutional officer salaries and sets them at larger dollar amounts or resets them based on the Supreme Court Chief Justice's salary or on another salary, the exception would accommodate that shift. The obvious purpose for Minnesota Statutes, Section 356.611, was to limit covered salaries for pension purposes in circumstances when the salary-setting authority is outside of the Legislature or is outside of the public scrutiny and constraints of public salary setting and policymaking. Any change in Constitutional officer salaries would require legislative action, which withdraws the salary from this unease about some public and quasi-public sector salary setting processes.

2. Appropriateness of the Proposed County Attorney Exception. The policy issue is the appropriateness of the proposed exception from the maximum covered salary for retirement purposes in S.F. 995 (Betzold); H.F. 2109, for the Anoka County attorney, the Dakota County attorney, the Ramsey County attorney, and the St. Louis County attorney. This exception was part of the Senate version of the 2004 Omnibus Retirement Bill, the Third Engrossment of 2004 S.F. 676 (Betzold), Article 2, Section 6, from an amendment in the Senate State and Local Governmental Operations Committee. In the view of the Attorney General, county attorneys are not considered public employees for purposes of the local government salary limit of Minnesota Statutes, Section 43A.17, Subdivision 9. In November 2002, Alan L. Mitchell, the St. Louis County Attorney, sought and obtained an Attorney General's opinion concluding that county attorneys are not public employees within the meaning of Minnesota Statutes, Section 43A.17, Subdivision 9, because the statutory provision does not reference "public officers" and, consequently, these local elected officials are not subject to the compensation limit for public employees. Four county attorneys, in the counties of Anoka, Dakota, Ramsey, and St. Louis, are currently compensated at a level in excess of 95 percent of the salary of the Governor of Minnesota. The issue of whether or not elected public officials, such as county attorneys, are exempt from the general statutory regulations of public employees has not apparently been reviewed or ratified by the Legislature. The Legislative Commission on Pensions and Retirement may not be the optimal legislative forum of this determination to be made and any action by the Commission on revising the general covered salary maximum should be done with care to avoid having that recommendation become the disposition of the broader issue.
3. Appropriateness of the Proposed Local Elected Official Exception. The policy issue is the appropriateness of the proposed exception from the maximum covered salary for retirement purposes provision in S.F. 1206 (Betzold); H.F. 1250 (Smith), for any elected official of a political subdivision. This exception was not part of any version of the 2004 Omnibus Retirement Bill. The exception would be a broadening of the potential exception discussed in issue #2. In addition to county attorneys, the exception would apply to county sheriffs. The Hennepin County sheriff, Patrick McGowan, an elected official, is approaching the salary maximum, based on 2004 information provided by the Public Employees Retirement Association (PERA).
4. Appropriateness of the Proposed Southern Minnesota Municipal Power Association Executive Exception. The policy issue is the appropriateness of the proposed exception from the maximum covered salary for retirement purposes provision in S.F. 995 (Betzold); H.F. 2109, for four executives of the Southern Minnesota Municipal Power Agency. This exception was part of the Senate version of the Omnibus Retirement Bill, the Third Engrossment of 2004 S.F. 676 (Betzold), Article 2, Section 6, from an amendment in the Senate State and Local Governmental Operations Committee. The Southern Minnesota Municipal Power Agency was founded in 1977 as a joint-action municipal power agency supplying electricity and related services to 18 municipally owned utilities, located mostly in southeastern and south-central Minnesota. The 18 municipal utilities are Austin, Blooming Prairie, Fairmont, Grand Marais, Lake City, Litchfield, Mora, New Prague, North Branch, Owatonna, Preston, Princeton, Redwood Falls, Rochester, St. Peter, Spring Valley, Waseca, and Wells. The customer base is approximately 350,000 people. The main source of energy for the Southern Minnesota Municipal Power Agency is its 41 percent share in the 884-megawatt/Sherco 3 generating unit near Becker, Minnesota, owned in partnership with the plant's operator, Xcel Energy/Northern States Power Company. The plant burns low-sulfur, western coal supplied by Western Fuels Association and is the largest such unit in the state. Member city generation provides approximately 240 megawatts of baseload and diesel peaking capacity to Southern Minnesota Municipal Power Agency's energy mix. Southern Minnesota Municipal Power Agency also is an active marketer of wholesale energy to buyers outside its service area and has an alliance with the international diversified energy firm PacifiCorp of Portland, Oregon. The executive offices of the agency are located in Rochester, Minnesota. The seven-member board of directors of the Southern Minnesota Municipal Power Agency are the general manager of Austin Utilities, the public works director of the New Prague

Utilities Commission, the general manager of the Rochester Public Utilities, the public works director of St. Peter Municipal Utilities, the general manager of Blooming Prairie Public Utilities, the assistant finance officer of the Fairmont Public Utilities Commission, and the general manager of Owatonna Public Utilities, and that board presumably sets the salaries of all of the affected individuals.

5. Appropriateness of the Proposed League of Minnesota Cities Executive Exception. The policy issue is the appropriateness of the proposed exception from the maximum covered salary for retirement purposes provision in S.F. 995 (Betzold); H.F. 2109, for two executives of the League of Minnesota Cities, the executive director of the League of Minnesota Cities and the League of Minnesota Cities Insurance Trust Administrator. The exception was part of the Senate version of the 2004 S.F. 676 (Betzold), Article 2, Section 6, from an amendment in the Senate State and Local Governmental Operations Committee. The League of Minnesota Cities was founded in 1913, under a special law. The League became an independent organization in 1974. Until 1974, the League was actually part of the University of Minnesota. The League’s membership includes cities and their elected and appointed officials, special districts and townships across Minnesota. The League of Minnesota Cities provides advocacy for cities before state government as well as training, expert analysis, guidance, and collective action for cities. The League is governed by the Board of Directors, comprised of the mayor of the City of Plymouth, the mayor of the City of Austin, the mayor of the City of Independence, a council member of the City of St. Paul, a council member of the City of Minneapolis, the mayor of the City of St. Cloud, the mayor of the City of Apple Valley, a council member of the City of Chatfield, the mayor of the City of New Brighton, the mayor of the City of Nevis, a council member of the City of St. Paul Park, the clerk-treasurer of the City of Zimmerman, the city manager of the City of White Bear Lake, the administrator of the City of Redwood Falls, and the chief administrative officer of the City of Duluth. Daily administration is directed by the League’s executive director. The League’s organization at the staff level is broken down into a number of departments, which are Intergovernmental Relations, Finance, Member Services, Technology Services, General Counsel, Human Resources, League of Minnesota Cities Insurance Trust, and Communications & Strategic Initiatives. The League of Minnesota Cities Insurance Trust is a cooperative joint-powers organization formed by Minnesota cities in 1980 and was one of the first municipal self-insurance pools in the country. Cities contribute premiums into a jointly owned fund rather than paying premiums to buy insurance from an insurance company and the money in that fund is then used to pay for member cities’ claims, losses, and expenses. Property/casualty and workers’ compensation programs cover over 750 member cities and city organizations. The League of Minnesota Cities Insurance Trust has a separate seven-member board, comprised of the mayor of the City of Willmar, a council member of the City of Eden Prairie, the city administrator of the City of Little Canada, a council member of the City of Chatfield, the League of Minnesota Cities executive director, the city administrator of the City of St. Peter, and the executive director of the Albert Lea Port Authority. The board of the League of Minnesota Cities presumably sets the salary of the executive director of the League of Minnesota Cities. It is unclear which board sets the salary of the League of Minnesota Cities Insurance Trust administrator.
6. Appropriateness of the Proposed Utilities Plus Executive Exception. The policy issue is the appropriateness of the proposed exception from the maximum covered salary for retirement purposes provision in S.F. 995 (Betzold); H.F. 2109, for the manager of Utilities Plus. The exception was part of the senate version of the 2004 Omnibus Retirement Bill, the Third Engrossment of 2004 S.F. 676 (Betzold), Article 2, Section 6, from an amendment in the Senate State and Local Governmental Operations Committee. Utilities Plus is the former Blue Earth Light and Water, formed in 2000 by eight public utilities, Blue Earth Light and Water and Central Minnesota Municipal Power Agency members Delano, Glencoe, Janesville, Kenyon, Lake Crystal, Mountain Lake, and Truman. The utility currently has 14 member utilities and serves over 30 municipal electrical utilities in the region. No information is likely available about the composition of the board of Utilities Plus, which presumably sets the salary for its manager.
7. Appropriateness of Additional Potential Exceptions. The policy issue is the appropriateness of any additional exceptions to the maximum covered salary for retirement purposes provision. According to information provided by the various retirement plans at the close of the 2004 Legislative Session, there are several additional potential exceptions, for individuals who currently (2004) exceed the maximum or for individuals who are approaching the maximum, as follows:

Positions With Salaries Exceeding the Maximum	
Governmental Unit	Position

Minneapolis Teachers Retirement Fund Association (MTRFA)	Executive Director
City of Rochester	Engineer
Dakota County	Assistant County Attorney
City of Mendota Heights	Engineer
Olmsted County	Public Works Director
Hennepin County	Director-Health Policy
Dakota County	Assistant County Attorney
Ramsey County	Director of Budget & Accounting
City of Inver Grove Heights	City Administrator
City of Minneapolis	Community Action Director
City of St. Paul	Deputy Mayor
League of Minnesota Cities	Insurance Trust Administrator
Ramsey County	Public Works Director
City of Lakeville	City Administrator
Ramsey County	County Manager

Positions With Salaries Approaching the Maximum	
Governmental Unit	Position
Hennepin County	Taxpayer Services Director
Hennepin County	Library Director
Hennepin County	Human Resources Director
Hennepin County	Engineer
Three Rivers Park District	Director of Parks & Recreation
City of Minneapolis	Director of Labor Relations
Metropolitan Airports Commission	Attorney
City of Minneapolis	Finance Director
City of Minneapolis	Chief Information Officer
Ramsey County	Community Health Service Director
Ramsey County	Director of Parks & Recreation
Washington County	Social Services Director

If the salary maximum for retirement purposes was added because of a concern over and a distrust of the salary-setting processes in quasi-governmental entities, where the process may be less than transparent, or in governmental entities that have limited public scrutiny and exposure, that concern or distrust may not appropriately apply in some or all of these instances. In the public sector, most public employee salaries are set by law, by a large group collective bargaining process, or by a compensation plan that is adopted by a public body or is set through a public process. With the inclusion of quasi-public employer and privatized entities in public employee pension coverage, other potential salary setting processes are included as a result in the operation of the public pension plan. The introduction of these employing entities could increase the potential for salary manipulation and understandably create mistrust for policy makers and pension plan administrators. That distrust can result in the establishment of salary limits, greater regulation of the salary setting or reporting process, or increased auditing of quasi-public employee salary amounts over time. The mistrust of the quasi-public or privatized sector salary setting process in 1994 by Public Employees Retirement Association (PERA) employing units clearly led to the enactment of Minnesota Statutes, Section 356.611.

8. Appropriateness of Any Covered Salary Maximum for Retirement Purposes. The policy issue is the appropriateness of continuing to have a covered salary maximum, since salary is the best standard of living for determining retirement benefits and a cap distorts benefit adequacy, the current maximum suffers from an entanglement with an Employee Relations Department statute, the various Minnesota public pension plans have shown a remarkable unwillingness or inability to implement the law, and there are better ways to reduce final salary manipulation.
 - a. Retirement Benefit Adequacy; Salary as a Reflection of the Pre-Retirement Standard of Living to be Replaced. As provided in the Commission’s Principles of Pension Policy, Minnesota public pension plans exist to augment the Minnesota public employer's personnel and compensation system by assisting in the recruitment of new qualified public employees, the retention of existing qualified public employees, and the systematic out-transitioning of existing public employees at

the normally expected conclusion of their working careers by providing, in combination with federal Social Security coverage, personal savings and other relevant financial sources, retirement income that is adequate and affordable. Adequacy of retirement income at retirement is dependent upon the replacement of the retiring pension plan member's standard of living by the pension plan in combination with any Social Security benefit attributable to Minnesota public employment. The way that Minnesota public pension plan measure the person's pre-retirement standard of living is through the definition of covered salary and of the final average salary averaging period. A covered salary limit that applies broadly and is discernibly smaller in amount than a public employee's actual compensation will not produce an adequate benefit for the public employee upon retirement as the concept is defined in the Commission's Principles, although the applicable plan member has access to other retirement savings programs (principally, the Minnesota Deferred Compensation Program) and resources to devote to that savings program in the form of the member contribution amount on the limited salary amount.

- b. Difficulty Inherent in Mixing Pension and Employee Relations Statutes. Minnesota Statutes 2002, Section 356.611, excluded political subdivision employees who were excluded from the general salary limit of Minnesota Statutes, Section 43A.17, Subdivision 9, an Employee Relations provision which has been modified upon the recommendation of other legislative committees and expanded without reference to the pension implications of those changes. When Minnesota Statutes, Section 356.611, was enacted in 1994, the general salary limit of Minnesota Statutes, Section 43A.17, Subdivision 9, applied to all cities, counties, towns, school districts, metropolitan agencies, regional agencies, political subdivision, or the Minneapolis Employees Retirement Fund (MERF) and the only statutory exceptions to the limit were medical and osteopathic doctors. All school district employees were exempted from the general salary limitation of Minnesota Statutes, Section 43A.17, Subdivision 9, in 1998 (Laws 1998, Chapter 398, Article 5, Section 1, an education bill). All employees of hospitals, medical clinics, and health maintenance organizations owned by a governmental unit were exempted from Minnesota Statutes, Section 43A.17, Subdivision 9, in 2003 (Laws 2003, Chapter 1, Article 2, Section 60, the State government budget bill). The exclusions from Minnesota Statutes, Section 356.611, that accompanied the exclusion from Minnesota Statutes, Section 43A.17, Subdivision 9, in 1998 and 2003 may have been intended by the proponents, but was unlikely to have been understood or intended by the Legislature. To increase the likelihood of consideration by the Legislative Commission on Pensions and Retirement, the use of substantive cross-references to Employee Relations law in pension plan law probably should be avoided or minimized.
- c. Ability or Willingness of Minnesota Public Pension Plans to Implement the Law. Of broad concern is the failure of most or all of the major Minnesota public pension plans to enforce a general statutory provision that is little more than ten years old and that also was part of a general recodification and revision of Minnesota Statutes, Chapter 356, which occurred in 2002. Of the three major statewide retirement plans, MSRS and TRA appear not to have taken any efforts to enforce the provisions of Minnesota Statutes, Section 356.611, and PERA appears only to have warned affected plan members of its intent to enforce the provisions of Minnesota Statutes, Section 356.611, in the future, pending the receipt of additional information relating to the person involved. The 2004 Session changes to Minnesota Statutes, Section 356.611, appear to exempt all MSRS-General and TRA members from the salary limit. The 2004 Session changes leave the PERA-General and Minneapolis Teachers Retirement Fund Association (MTRFA) members with salaries in excess of the Minnesota Statutes, Section 356.611, salary maximum unaffected. The 2004 Session changes assisted various plan members, but the failure by the applicable retirement plans to better enforce the law was largely unexplained and unaddressed.
- d. Reducing the Potential for Final Salary Manipulation. A final average salary is only a good measure of a retiring Minnesota public employee's standard of living if the covered salaries during the final five successive years of public employment are not subject to manipulation. If the public employee can include additional compensation amounts in the final average salary figure that did not actually occur in the previous period through the inclusion in covered salary of severance payments, overtime compensation, a second part-time or full-time public sector employment, recharacterization of other compensation amounts, or misrepresentation, the overstated final average salary figure will cause an overstated retirement annuity and will require the public pension plan to absorb a disproportionately large additional actuarial liability. It was this type of salary manipulation by one PERA member employed by a quasi-public sector employer that prompted the 1994 legislation that included Minnesota Statutes, Section 356.611. Salary manipulation, however, can occur at any salary level, whether the level approaches that of the Governor's salary or is substantially less. As the elements of public employee compensation have

become more complex, with shift differentials, uniform allowances, cafeteria compensation plans, court appearance pay, pay for work on non-duty days, deferred compensation, single and family health insurance rate differential payments, and payments in lieu of employer-paid fringe benefits, the potential for salary manipulation grows. A percentage limit (perhaps 105 percent or 106 percent) on future covered salary increases rather than an upper-end salary amount limit based on the Governor's salary for all public pension plan members, as set forth in amendment LCPR05-155 could be substituted for the current maximum. Thus, each public pension plan member would not have covered salary in any year credited in an amount more than six percent greater than the prior year's covered salary, so a large salary increase from a promotion, manipulation, or otherwise (20, 30, or 40 percent) would be recognized over a period of time unless it occurred in the final year or two, when it largely would not be recognized at all. The primary arguments in favor of the option of a system-wide limit on the amount by which covered salary amounts can increase in any year are that the regulation actually addresses the potential or actual problem of final average salary manipulation directly and specifically in all cases where it may occur, which the current form of Minnesota Statutes, Section 356.611, Subdivision 1, does not, the regulation replicates or essentially matches similar regulation in several other states (Connecticut, Kansas, Louisiana, Maine, Mississippi, New Hampshire, New York, and Utah), the regulation is uniform in its application to all public pension plan members, and the regulation is readily open to pension plan administration. Anecdotal evidence since the 1973 replacement of the career average salary benefit formulas for the statewide retirement plans suggests that there is periodic manipulation of final average covered salary amounts to some degree and that the manipulation can occur in a variety of ways, including end-of-career overtime, end-of-career second employment, and end-of-career re-categorization of previously uncovered compensation items. A generally applicable limit as proposed in the option would address the potential problem however it arises. The primary arguments against the option of a percentage limit on the annual covered salary percentage increases are that similar regulation attempted in the late 1970s was enacted, but was never implemented, and was ultimately repealed, that the regulation would work a hardship on individuals who receive late-career promotions or in successfully challenged compensation discrimination situations, that the regulation may penalize valid compensation increases in attempting to prevent pension gains from improper compensation increases, and that the regulation could work administrative and financial hardships on the various pension plans. Minnesota Statutes 1976, Section 356.34, enacted in 1976, delayed in implementation in 1977, and repealed in 1978, would have limited covered salary increases to 15 percent annually for the various statewide retirement plans and was fashioned by the Commission in response to alleged salary manipulations that occurred in the Minnesota Department of Corrections in the mid-1970s, when covered salary definitions were less well-developed than they are currently.

Amendment LCPR05-156

Amendment LCPR05-156 adds appropriate crossreferences to the various public pension plan definitions of "salary" for the covered service pension maximum. Some of the retirement plan administrators argued that they forgot about Minnesota Statutes, Section 356.611, or lost track of it. The addition of cross-references to Minnesota Statutes, Section 356.611, will remind the plan administrators of the law and will provide better notification of the laws governing salary crediting to plan members.

Appendix A

Background Information on the Definition of Covered Salary for Minnesota Defined Benefit Plans

a. Defined Benefit Plans

Most Minnesota public pension plans are defined benefit plans. In defined benefit plans, the pension benefit amount that is ultimately payable is pre-determinable or fixed using a formula or comparable arrangement. The fixed element of the benefit amount leaves a variable element, which is the funding required to provide that benefit. The formula utilizes allowable service credit and salary credit in the calculation, averaging the salary amounts for the five successive years’ average salary period that produces the highest amount for use as the base to which is applied a total percentage amount determined by assigning a percentage amount to each year of allowable service credit.

b. Historical Shift to Salary-Based Plans and the Change in Salary Basis

Minnesota’s statewide retirement plans were not originally salary-related pension plans, with the predecessor to TRA established in 1915 as a money purchase (defined contribution) plan, with MSRS-General established in 1929 as a set dollar amount (\$200 per month) plan, and with PERA-General established in 1931 also as a set dollar amount (\$200 per month) plan. Conversion to salary-related pension plans occurred for MSRS-General and PERA-General in 1957, which was a recommendation of the initial interim predecessor to the Legislative Commission on Pensions and Retirement, and for TRA in 1969, which was a recommendation of the initial permanent predecessor to the Pension Commission. The first class city teacher retirement fund associations and Minneapolis Employees Retirement Fund (MERF) generally shifted to salary-related pension plans in the 1950s (the Duluth Teachers Retirement Fund Association (DTRFA) shifted in 1971).

When the statewide Minnesota retirement plans converted to salary-related pension plans, they initially utilized a “career average” salary base for determining benefits, moving to a “highest five years’ average” salary base in 1973. The career average salary utilized the salary portion of the retirement formula to account for plan members who worked in disparate compensation arrangements, either as seasonal or part-time employees or as employees with considerable overtime or extracurricular compensation, thereby not requiring sensitivity in the crediting of allowable service.

Covered salary for retirement purposes was limited for most or all public employees covered by a statewide retirement plan. In 1957, the maximum covered salary was \$4,800. In 1965, the maximum covered salary was increased to \$7,200. In 1967, covered salary was increased to a plan member’s total salary.

c. Benefit Impact of Various Employment Situations

The following demonstrates the impact of different employment situations for an MSRS-General employee (full-time employment, part-time or seasonal employment, early or late occurring mixes of part-time or seasonal employment, recurring overtime or extracurricular employment, and early or late occurring mixes of overtime or extracurricular employment), comparing career average salary and highest five years’ average salary results, including the portion of member contributions recovered by one year’s benefit amount:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Year	Salary Increase Rate	Regular Career	Part-Time/ Seasonal Career	Early Partial Part-Time/ Seasonal Employment	Late Partial Part-Time/ Seasonal Employment	Overtime/ Extra-Curricular Career	Early Partial Overtime/ Extra-Curricular Employment	Late Partial Overtime/ Extra-Curricular Employment
1972	6.00	7,700	3,850	3,850	7,700	9,625	9,625	7,700
1973	5.95	8,162	4,081	4,081	8,162	10,203	10,203	8,162
1974	5.90	8,648	4,324	4,324	8,648	10,810	10,810	8,648
1975	5.85	9,158	4,579	4,579	9,158	11,448	11,448	9,158
1976	5.80	9,693	4,847	4,847	9,693	12,116	12,116	9,693
1977	5.75	10,256	5,128	5,128	10,256	12,820	12,820	10,256
1978	5.70	10,846	5,423	5,423	10,846	13,558	13,558	10,846
1979	5.65	11,464	5,732	5,732	11,464	14,330	14,330	11,464
1980	5.60	12,112	6,056	6,056	12,112	15,140	15,140	12,112
1981	5.55	12,790	6,395	6,395	12,790	15,988	15,988	12,790
1982	5.50	13,500	6,750	6,750	13,500	16,875	16,875	13,500

Year	Salary Increase Rate	Regular Career	Part-Time/ Seasonal Career	Early Partial Part-Time/ Seasonal Employment	Late Partial Part-Time/ Seasonal Employment	Overtime/ Extra-Curricular Career	Early Partial Overtime/ Extra-Curricular Employment	Late Partial Overtime/ Extra-Curricular Employment
1983	5.45	14,242	7,121	7,121	14,242	17,803	17,803	14,242
1984	5.40	15,018	7,509	7,509	15,018	18,773	18,773	15,018
1985	5.35	15,829	7,915	7,915	15,829	19,786	19,786	15,829
1986	5.30	16,676	8,338	8,338	16,676	20,845	20,845	16,676
1987	5.25	17,560	8,780	8,780	17,560	21,950	17,560	17,560
1988	5.20	18,482	9,241	9,241	18,482	23,103	18,482	18,482
1989	5.15	19,443	9,722	9,722	19,443	24,304	19,443	19,443
1990	5.10	20,444	10,222	10,222	20,444	25,555	20,444	20,444
1991	5.05	21,487	10,744	10,744	21,487	26,859	21,487	21,487
1992	5.00	22,561	11,281	11,281	22,561	28,201	22,561	22,561
1993	5.00	23,689	11,845	11,845	23,689	29,611	23,689	23,689
1994	5.00	24,874	12,437	12,437	24,874	31,093	24,874	24,874
1995	5.00	26,118	13,059	13,059	26,118	32,648	26,118	26,118
1996	5.00	27,423	13,712	13,712	27,423	34,279	27,423	27,423
1997	5.00	28,795	14,398	28,795	14,398	35,994	28,795	35,994
1998	5.00	30,234	15,117	30,234	15,117	37,793	30,234	37,793
1999	5.00	31,746	15,873	31,746	15,873	39,683	31,746	39,683
2000	5.00	33,333	16,667	33,333	16,667	41,666	33,333	41,666
2001	5.00	35,000	17,500	35,000	17,500	43,750	35,000	43,750
Total Member Contributions		\$22,291	\$11,146	\$14,328	\$19,109	\$27,864	\$24,052	\$23,882

	Regular Career	Part-time/ Seasonal Career	Early Partial Part-Time/ Seasonal Employment	Late Partial Part-Time/ Seasonal Employment	Overtime/ Extra-Curricular Career	Early Partial Overtime/ Extra-Curricular Employment	Late Partial Overtime/ Extra-Curricular Employment
Career Average Salary Benefit							
Career Avg. Salary	\$18,576	\$9,288	\$11,940	\$15,924	\$23,200	\$20,044	\$19,902
Benefit Accrual (0.51)	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>
Annual Ret. Benefit	\$9,474	\$4,737	\$6,089	\$8,121	\$11,842	\$10,222	\$10,150
Benefit/ Contribution Ratio	0.4250	0.4250	0.4250	0.4250	0.4250	0.4250	0.4250
High-Five Average Salary Benefit							
High-Five Avg. Salary	\$31,822	\$15,911	\$31,822	\$15,911	\$39,777	\$31,822	\$39,777
Benefit Accrual (0.51)	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>	<u>0.51</u>
Annual Ret. Benefit	\$16,229	\$8,115	\$16,229	\$8,115	\$20,286	\$16,229	\$20,286
Benefit/ Contribution Ratio	0.7281	0.7281	1.1327	0.4247	0.7280	0.6747	0.8494

d. The Purpose for Defining Covered Salary

For Minnesota defined benefit pension plans, the definition of covered salary is the measure of a plan member’s standard of living to be used in determining the appropriate replacement amount. Several decades ago, when employees received only one form of compensation as remuneration for their services, there was less question about the adequacy of using “salary” to measure a person’s standard of living. Now, with the advent of numerous employment-related compensation items, this may no longer be the case. For instance for police officers, their recurring compensation package can include a base salary, shift differential, uniform allowances, education incentive payments, court appearance amounts, dog handler compensation, tactical or special squad compensation, and overtime. There also may be additional compensation items like lump sum annual bonus or merit payments, tuition payments, and employer-paid flexible benefit account balances. Any definition or redefinition of covered salary should attempt to reasonably capture those items on which a public employee’s regular standard of living is based. Among the teacher plans, there have been recent complaints concerning the adequacy of the covered salary figure. Over the past several sessions, proposed legislation has been introduced to attempt to reflect early or mid-career extracurricular teaching compensation in the highest five successive years’ average salary figure. Also, in past legislative sessions, proposed legislation has been introduced to add an alternative highest five successive years’ average salary figure in TRA based on the average salary of all comparable TRA members, to adjust for lower salaries for some rural teachers. Similarly, the definition of covered salary should accurately reflect real compensation, so not to overstate a person’s standard of living. The late

Governor Rudy Perpich was once in the news regarding pension credit he had in the Public Employees Retirement Association (PERA) for a period of service as a Hibbing School Board member, when his salary was in dispute, when apparently there was an arrangement in Hibbing during the early and mid-1950s for school board members to rotate salaried board positions among the various members and to pair salaried and non-salaried board members in order to share the salary of one salaried position. PERA, historically, has also covered city attorneys and other professionals retained by local government units who bear a close resemblance to independent contractors and may be credited with covered salary amounts based on a gross retained fee that does not closely relate to the individual’s actual personal compensation.

e. A Comparison of Covered Salary Definitions

Over time, as compensation arrangements in public employment have become more varied and complicated, the definition of covered salary and the inclusions in it and the exclusions from it have grown. The following compares the definitions of covered salary for the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), the Teachers Retirement Association (TRA), the Duluth Teachers Retirement Fund Association (DTRFA), the Minneapolis Teachers Retirement Fund Association (MTRFA), the St. Paul Teachers Retirement Fund Association (SPTRFA), and the Minneapolis Employees Retirement Fund (MERF):

<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>
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>(5) 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, Para. (a)]</p>	<p>the entire compensation paid to a teacher before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs. 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, Para. (a), & 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, Para. (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, Para. (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 a deferred</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</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>(8) daycare expenses;</p> <p>(9) payments in lieu of any employer-paid</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>(8) daycare expenses;</p> <p>(9) payments in lieu</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>(8) daycare ex-</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>	

Plan	MSRS-General	PERA-General	TRA	DTRFA	MTRFA	SPTRFA	MERF
	compensation or tax-sheltered annuity program; and (7) amounts contributed under a benevolent vacation or sick leave donation program. [352.01, Subd. 13]	the cost 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 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]	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, Subd. 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 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]	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, Subd. 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 district policy applicable equally to all similarly situated persons in the district. [354A.011, Subd. 24]	penses; (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, Subd. 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 district policy applicable equally to all similarly situated persons in the district. [354A.011, Subd. 24]	(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, Subd. 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 district policy applicable equally to all similarly situated persons in the district. [354A.011, Subd. 24]	

Many Minnesota defined benefit public pension plans utilize a highest five successive years' average covered salary figure for benefit calculation purposes in order to lessen the potential for manipulation from career-end compensation amounts that would occur if a shorter period of service credit was used. However, manipulation apparently occurs. It has been reported that various public employees who receive hourly compensation work substantial overtime during the period prior to retirement, in order to "boost" their highest five successive years' average salary in plans where overtime payments are included in covered salary. Some school superintendents approaching retirement in the past have negotiated contracts that accelerated salary to the early years of the contract, during the period giving rise to the highest five successive years' average salary, in return for an agreement to perform the superintendent's duties for a reduced salary level (up to the Social Security earnings maximum) after retirement. The definition of covered salary must have sufficient safeguards against manipulation. In the past, there have been proposals to eliminate overtime compensation from covered salary or to set a maximum on the percentage increase in covered salary included in the highest five successive years' average salary.

With the Combined Service Annuity provision, Minnesota Statutes, Section 356.30, there is portability of pension credit between the various Minnesota public pension plans. Portability includes the use of a common highest five successive years' average salary for the benefit computation of all participating plans. This portability argues for consistency among the various pension plans in their definition of covered salary and the highest five successive years' average salary. While the retirement plan administrators have argued in the past that there is substantial consistency in the salary definitions among the various pension plans, that consistency is not as clear in reviewing the comparison of various statutory definitions.

Appendix B

50 State Maximum Covered Retirement Salary Review

1. Review Approach. To assist the Commission in considering modifications in the maximum set on covered salaries for retirement purposes, the Commission staff was requested to attempt to gain a sense of the regulations of covered salaries by the various other states.

The Commission staff conducted a review of the state laws that govern the public employee pension plan that covers state employees in each state, reviewing the definition of covered salary or the other relevant term, and by attempting to identify any other generally applicable covered salary maximum or limitation. The state statutes consulted were either the version of state law available in the Minnesota State Law Library or the version of state law available on the Internet. Additionally, the information was adapted or expanded based on information presented in the Internet site of the applicable plan and by the most recent (2002) comparison of major public retirement plan provisions prepared on behalf of the Wisconsin Retirement Research Committee.

2. Limitations of the Review. Although the Commission staff effort was an attempt to accurately capture the essence of the law governing the retirement plan covering state employees in each state, the review should be only considered as being broadly indicative of the trend regarding limitations on the salary amounts covered for retirement purposes because the review approach and the review effort have significant limitations apparent to the Commission staff. Some of these limitations are:
 - a. The Extent of State Statute Codifications and Code Organization Varies. States vary in the extent of their effort to produce a single code or related body of their statute law, and where codes exist, the visibility and clarity of the organization of the code differ. Some codes are prepared by the equivalent to the Office of the Revisor of Statutes in Minnesota, while other states rely on an outside vendor. Some states, such as Pennsylvania, only partially codify their laws. The structure of the available codes is primarily a matter of local history and custom, making it difficult for an outsider to a state to reliably identify the pertinent provisions. The varying time and money devoted to producing indices of the various state codes also limits their usefulness.
 - b. Code Updates Are Not Systematic. With some annual legislatures and some biennial legislatures and with some short-duration legislative sessions and some open-ended legislative sessions, the schedule and process for updating the statutory codifications varies among the 50 states.
 - c. Applicable General Law Provisions Frequently Not Cross-Referenced. The limitations on the salary covered for retirement purposes may reflect a general practice rather than a fund-specific practice, may appear in a portion of the applicable statutory codification other than the statutory provisions governing the particular retirement plan covering state employees, and may not be cross-referenced in the plan-specific statutes. In Minnesota, for instance, the salary limitation appears in a general retirement statute, without any cross-reference in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) definition of covered salary, Minnesota Statutes, Section 352.01, Subdivision 13. An outside observer attempting to do a 50-state review, including Minnesota, may not have found the current Minnesota covered salary limitation.
 - d. Some State Retirement Provisions Appear in Rules Rather than Statutes. Although not the case in Minnesota, where virtually no aspect of the public employee pension plan is governed by rule rather than by statute, other states leave various aspects of the governance of pension plans to rule or board regulation. The availability of those rules or regulations and their indexation varies.
 - e. Presence of Statutory Provisions does not Equate with Actual Practice. Although a statute may exist, such as Minnesota Statutes, Section 356.611, its existence does not necessarily mean that the provision is being enforced, since neither the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the Teachers Retirement Association (TRA), nor the Minneapolis Teachers Retirement Fund Association (MTRFA) appear to have taken any recent affirmative enforcement action under the pre-2004 limit and the actual enforcement activities of the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) have been delayed or are unclear.
 - f. A Salary Limit Rather than a Limit on Covered Salary Could Apply. For states without a limit on the salary covered for retirement purposes, a general limit on permissible public employee salaries could exist without being identified in a review of retirement statutes. The limit on local

government public employee salaries in Minnesota Statutes, Section 43A.17, Subdivision 9, is not referenced in any retirement statute other than the listing of an exception to the covered salary limit of Minnesota Statutes, Section 356.611, Subdivision 1, but functions as a limit for pension purposes in addition.

3. Review Results. From the review undertaken by Commission staff, it appears that Minnesota is part of a minority of states that specify a dollar amount limitation on the salary amount covered by the retirement plan for state employees. Only three other states currently have dollar amount limits on covered salary and the three other states have a higher dollar limit than Minnesota does. The three states are Arizona (limit of \$200,000), Mississippi (limit of \$150,000), and Oklahoma (limit of \$200,000).

Minnesota and 37 other states also recite or reference the limits of the federal Internal Revenue Code, either Section 401(a)(17) or Section 415.

Section 415 of the Internal Revenue Code provides for dollar limitations on benefits and contributions under qualified retirement plans. Internal Revenue Code, Section 415, also requires that the Commissioner annually adjust these limits for cost-of-living increases. Effective January 1, 2004, the limitation on the annual benefit under a defined benefit plan under Internal Revenue Code, Section 415(b)(1)(A), is increased from \$160,000 to \$165,000. The annual compensation limit under Internal Revenue Code, Section 401(a)(17), is increased from \$200,000 to \$205,000. The annual compensation limit under Internal Revenue Code, Section 401(a)(17), for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under Internal Revenue Code, Section 401(a)(17), to be taken into account, is increased for 2004 from \$300,000 to \$305,000.

Nine states, not including Minnesota, do utilize limits on the amount by which the final year's salary before retirement or the final several years of salary before retirement can increase. Connecticut limits the covered salary in any year to 130 percent of the average of the prior two years' covered salary. Illinois limits the salary of the final year before retirement to 125 percent of the final average salary. Kansas limits covered salary each year to 115 percent of the prior year's covered salary. Louisiana limits the covered salary for the final two years before retirement to 125 percent of the covered salary of the prior year. Maine limits the increase in covered salary to five percent annually or to ten percent in total over a three-year period. Mississippi limits the increase in covered salary to eight percent annually during the two years before retirement. New Hampshire limits the final year's covered salary to 150 percent of either the second year before retirement or the highest salary year before the year of retirement. New York limits covered salary in any year to 110 percent of the average of the two prior years of salary. Utah limits any increase in covered salary during the final five years of credited service to 10 percent plus the annual federal Consumer Price Index percentage increase.

The specific review results are available from the staff of the Legislative Commission on Pensions and Retirement upon request.

Table 1

Year/Date:	1992	1993	1994	1995	1996	1997 July 1	1998 Jan 1	1998 July 1	1999 Jan 4	1999 July 1	2000 Jan 1	2001 July 1	2002 Apr 1	2003 Jan 1	2003 Jan 6	2004 Jan 1	Compensation Council Recommendations			
																	2005	2006	2007	2008
A. Constitutional Officers																				
1. Governor	\$109,053			\$114,506		\$117,369	\$120,303												\$137,869	
Increase %				5.00%		2.50%	2.50%												14.60%	
Avg. Rate of Incr. 1992-2004																0.90%				
2. Attorney General	\$85,194			\$89,454		\$91,690	\$93,983								\$114,288				\$130,974	
3. Auditor	\$65,437			\$68,709		\$70,427	\$72,187								\$102,257				\$117,187	
4. Sec. of State	\$59,981			\$62,980		\$64,555	\$66,168								\$90,227				\$103,400	
5. Lt. Governor	\$59,981			\$62,980		\$64,555	\$66,168								\$78,197				\$89,614	
6. Treasurer	\$59,981			\$62,980		\$64,555	\$66,168													
Increase %				5.00%		2.50%	2.50%								21.60%	(AG)			14.60%	
Avg. Rate of Incr. 1992-2004																2.49%	(AG)			
B. Judges																				
1. Supreme Ct. Chief Justice	\$97,957			\$103,835		\$107,988	\$113,388	\$115,089		\$118,542	\$122,098	\$130,034	\$138,487	\$142,641		\$146,920	\$151,328	\$155,867		
2. Supreme Ct. Assoc. Justice	\$89,052			\$94,395		\$98,171	\$103,079	\$104,626		\$107,765	\$110,998	\$118,213	\$125,897	\$129,674		\$133,564	\$137,571	\$141,698		
3. Ct. of Appeals Chief Judge	\$88,106			\$93,392		\$97,128	\$101,984	\$103,514		\$106,619	\$109,818	\$116,956	\$124,558	\$128,295		\$132,144	\$136,108	\$140,191		
4. Ct. of Appeals Judge	\$83,910			\$88,945		\$92,503	\$97,128	\$98,585		\$101,543	\$104,589	\$111,387	\$118,627	\$122,186		\$125,852	\$129,628	\$133,517		
5. District Court Chief Judge	\$82,706			\$87,669		\$91,176	\$95,735	\$97,171		\$100,086	\$103,089	\$109,790	\$116,926	\$120,434		\$124,047	\$127,768	\$131,601		
6. District Court Judge	\$78,768			\$83,494		\$86,834	\$91,176	\$92,544		\$95,320	\$98,180	\$104,562	\$113,359	\$114,700		\$118,141	\$121,685	\$125,336		
Increase %				6.00%		4.00%	5.00%	1.50%		3.00%	3.00%	6.50%	6.50%	3.00%		3.00%	3.00%	3.00%	CPI-U increase	CPI-U increase
Avg. Rate of Incr. 1992-2004																3.38%				
C. Legislators	\$27,979		\$29,657						\$31,140										\$45,497	
Increase %			6.00%						5.00%										46.10%	
Avg. Rate of Incr. 1992-2004																1.125%				
D. Consumer Price Index																				
1. US Urban, All Items Incr. %		2.99%	2.56%	2.86%	2.95%	2.29%	1.56%		2.21%		3.36%	2.85%	1.58%		2.28%	2.77%				
Avg. Rate of Incr. 1992-2004																2.51%				
2. Mpls-St. Paul, All Items Incr %		3.11%	3.16%	2.67%	3.33%	2.30%	1.87%		3.16%		4.16%	3.76%	1.76%		1.73%	2.79%				
Avg. Rate of Incr. 1992-2004																2.80%				