S.F. 2379
(Pogemiller)

H.F. xxx

Executive Summary of Commission Staff Materials

Affected Pension Plan(s):	PERA
Relevant Provisions of Law:	Minnesota Statutes, Chapters 353, 353D, 353E; Laws 2004, Chapter 267, Article 8, Section 41
General Nature of Proposal:	PERA Administrative Provisions
Date of Summary:	February 10, 2006

Specific Proposed Changes

- Clarifies the coverage provisions for physicians and St. Paul Port Authority employees covered by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General);
- Adds an "indefinite layoff" definition with related changes in PERA termination-of-public service, termination-of-membership, and allowable service provisions;
- Reorganizes the board management/composition/election provision;
- Authorizes the board to adopt procedures for filling a vacant elected-member board position;
- Provides clear authority for the board to take legal action when necessary to properly administer its plans;
- Revises the PERA adjustments for erroneous receipts provision to prohibit a distribution to an employee if that would cause plan qualification problems;
- Clarifies and removes obsolete language from deductions transmitted in error, collection of unpaid amounts, and automatic deposit provisions;
- Establishes timelines for disabilitants to submit earnings reports for continued benefit eligibility;
- Removes obsolete language from PERA bounceback annuity provisions;
- Clarifies the living spouse optional annuity provision and removes obsolete crossreferences;
- Removes five-year, term-certain surviving spouse optional annuity authority;
- Removes obsolete crossreferences from disability benefit eligibility provision;
- Clarifies the disabilitant return to employment provision;
- Prohibits those who terminate PERA membership but not public employment from receiving a refund;
- Clarifies PERA-P&F disability benefit provision;
- Removes privately operated ambulance services that receive an operating subsidy from PERA Defined Contribution Plan eligibility;
- Authorizes counties to certify positions to be covered by the Local Government Correctional Employees Retirement Plan of the Public Employees Retirement Association (PERA-Correctional) providing that the positions are comparable to those included in the plan under statute;
- Includes applicable employees at county juvenile correctional facilities as eligible for PERA-Correctional coverage; and
- Makes the PERA returning disabilitant program a permanent rather than a temporary program.

Policy Issues Raised by the Proposed Legislation

1. Implications of the change
2. Scope and nature.
3. Secretary of State review and approval.
4. Inconsistencies across plans
5. Consistency with federal requirements
6. Responsibility for certification.
7. Implications for plan size and costs.
8. Clarification or coverage expansion.
9. Need to review program results.
10. MSRS issues.
11. Appropriateness of a single effective date.

Potential Amendments

S2379-A1 revises Section 9 by requiring PERA to obtain a Secretary of State review and approval of PERA board procedures for filling board vacancies.

S2379-A2 removes Section 11.

S2379-A3 is an alternative to S2379-A2, revises Section 11 to be consistent with the approach contained in TRA's similar provision.

S2379-A4 revises Section 12 (page 12), PERA's deductions-or-contributions-transmitted-in-error provision, by adding language to handle situations where an asset transfer to another pension plan may not be consistent with federal plan qualification requirements.

S2379-A5 expands the scope of the simplification in bounce-back annuity provision language (found in Sections 16 and 17 for PERA plans) by including other plans which have similar bounce-back language.

S2379-A6 can be used if the Commission concludes that the option to have a five-year term certain surviving spouse annuity option should remain in law.

S2379-A7 can be used if the Commission concludes that emergency medical service personnel, employed by privately operated ambulance services that receive a government subsidy, should remain eligible for inclusion in the PERA Defined Contribution Plan.

S2379-A8, an alternative to S2379-A9, can be used if the Commission decides that it is best to not revise the PERA Local Correctional Plan eligibility provision, as contained in Section 27 of the bill.

S2379-A9, an alternative to S2379-A8, would revise Section 27 of the bill by also having PERA review any proposed positions.

S2379-A10 can be used if the Commission is concerned that Section 28, which revises thee definition of "county correctional institution" by including in the definition "a juvenile correctional facility administered by a county or on behalf of multiple counties," could be interpreted as a coverage expansion rather than a clarification.

Amendments S2379-A11 to S2379-A13 are alternative revisions regarding the PERA and MSRS trial work period provisions:

S2379-A11 leaves the PERA trial work period provision a temporary provision rather than making PERA's provision permanent (as in Section 29 of the bill), to expire on a date to be set by the Commission or Legislature, while leaving the similar MSRS provision to expire, as stated in existing law, on July 1, 2006.

S2379-A12 would make both the MSRS and PERA trial work period provisions permanent rather than temporary.

S2379-A13 would make both the MSRS and PERA trial work period provisions permanent rather than temporary, and it would add to the MSRS trial work period provision a few additional requirements that currently are found in the similar PERA provision but do not appear in the MSRS provision.

S2379-A14 can be used to modify the effective date provision (Section 30) by stating that new interest treatments specified in Section 11 apply to errors that are first detected and corrected after the effective date (July 1, 2006).

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director EB

RE: S.F. 2379 (Pogemiller); H.F. xxx: PERA Administrative Provisions

DATE: February 9, 2006

General Summary of S.F. 2379 (Pogemiller); H.F. xxx

- Clarifies the coverage provisions for physicians and St. Paul Port Authority employees covered by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General);
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S.F. 2379 (Pogemiller); H.F. xxx Section-by-Section Summary and Policy Comments

Section 1 revises PERA's included employees provision by clarifying that public employee physicians who do not elect PERA Defined Contribution Plan coverage are members of PERA-General. (Page 1, line 25 to page 2, line 17)

Section 2 revises PERA's optional membership provision by clarifying coverage for individuals who were employees of the Port Authority of St. Paul on January 1, 2003, and who were at least 45 on that date, when PERA coverage was extended to various Port Authority employees. (Page 2, line 18, to page 3, line 30)

Section 3 revises PERA's termination of public service definition by stating that termination includes when the employee/employer relationship is severed due to expiration of an indefinite layoff, temporary layoff, or seasonal layoff, rather than when an individual is no longer considered to be on a temporary layoff. (Page 3, line 31, to page 4, line 6)

Section 4 revises PERA's termination of membership provision by stating that the provision is applicable when an individual has terminated membership but not public service, including when a city manager

elects to terminate from PERA coverage, and when a member transfers to a temporary position and becomes excluded from membership. (Page 4, lines 7 to 27)

Section 5 revises PERA's authorized temporary layoff provision by including seasonal layoffs and by defining authorized temporary or seasonal layoffs to mean a suspension of service for a limited period during a year for an individual who is expected to return to the same position at the end of the layoff, rather than for a period not to exceed three months in any calendar year. (Page 4, line 28, to page 5, line 2)

Section 6 adds a definition of "indefinite layoff," defined as a layoff which is not a temporary or a seasonal layoff, for which no date has been specified for the employee's return, and where the individual has not resigned or been dismissed. (Page 5, lines 3 to 8)

Section 7 revises PERA's allowable service provision to conform to the addition of a seasonal layoff in Section 5 above. (Page 5, line 9, to page 8, line 16)

> Comments on Sections 3 to 7. Existing PERA law, in language that appears on page 6, lines 27 to 32, allows up to three months of service credit during a "temporary layoff" period. The most likely reason that this language was initially added to PERA law was to accommodate school cafeteria workers and possibly school custodial staff who are laid off over the summer months.
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> The various revisions in Sections 3 to 7 attempt to better define the types of layoffs which are a form of temporary layoffs and which therefore are entitled to up to three months of service credit, and those which are not. PERA is proposing to now add seasonal layoff language to its law and, in effect, is declaring that a seasonal layoff is essentially a form of temporary layoff. Therefore, whether a leave is called a temporary layoff or a seasonal layoff, the individual would receive up to three months of service credit for the layoff period. PERA is also seeking, by the definition of indefinite layoff on page 5, lines 3 to 8, to define layoffs that are not temporary of seasonal and for which an individual is not entitled to three months of free service credit.
>
> Policy Issue Raised by Sections 3 to 7: Implications of the Change. The effort by PERA seems intended to clarify treatment of short and repetitive layoffs, and to help control plan costs by better differentiating between types of layoffs which are consistent with "temporary layoffs" as that term is used in current law (and thus are eligible for up to three months of plan service credit) and those types of layoffs which are not. By making the propose revisions, there will be some situations for which individuals have received a few months of free service credit, which will not be given that treatment in the future. The Commission and the Legislature may wish to determine through testimony that it is comfortable with these changes.

Section 8 revises PERA's board management, composition, and election provision by reorganizing the provision and by specifying that PERA must obtain Secretary of State review and approval for PERA procedures for conducting elections, rather than having the Secretary of State supervise those elections. (Page 8, line 17, to page 10, line 15)

> Policy Issue Raised by Section 8: Nature of Change. The issue is whether the revisions to this section substantively change the role of the Secretary of State in PERA elections and election procedures. While the statutory language would change from a role of "supervising elections" to "reviewing and approving" election procedures, PERA has stated that there is no change in practice. The Secretary of State's actual involvement in the past was to review and approve procedures, rather than to "supervise" elections. Therefore, PERA contends that the change better reflects the actual practice.

Section 9 revises PERA's provision for filling board vacancies by specifying that the board shall adopt policies and procedures governing how the vacancy of an elected trustee is to be filled. (Page 10, lines 9 to 15)

> Policy Issue Raised by Section 9: Secretary of State Review and Approval. The issue is whether language should be added, by an amendment, to ensure that PERA must obtain a review and approval by the Secretary of State for procedures that the board develops to fill vacancies. Language requiring approval of board procedures for the usual ongoing elections appears in a prior subdivision, but as drafted that language would not apply to the filling of unexpected vacancies, which is the substance of Section 9.

Section 10 creates a PERA board legal authority provision, stating that the board is authorized to take any legal actions necessary to properly and effectively administer its plans. (Page 10, lines 16 to 22)

Section 11 revises PERA's provision for adjustment for erroneous receipts or disbursements provision by providing interest on a refund to the individual only if the erroneous deduction began before January 1, 1990, and only after the individual terminates public service. In all other cases, the association will return

the employee contributions without interest to the individual, and the employer contributions to the employer, if these actions are deemed consistent with federal plan qualification requirements. If not, the employer will receive a credit against future contributions and the employer will be responsible for refunding the erroneous contribution amount to the employee. (Page 10, line 23, to page 12, line 3)

Comments on Section 11. The proposed changes in this section are to comply with PERA's understanding of federal requirements for plan qualification, and to avoid having PERA or the employing unit compute and pay interest when the interest amounts are likely to be trivial.

The changes from current law are, for the pre-1990 group, that the individual must first terminate from public employment before being eligible for the refund of employee contributions plus interest. The changes for the post-December 31, 1989, group are that any return of erroneous contributions will include no interest, and if the return of contributions is viewed as being inconsistent with federal plan qualification requirements, the plan will not return the contributions. Instead, the employer will be given a credit against future contributions equal to the sum of the erroneous employee and employer contributions, and the employer will be responsible for providing a refund to the employee.

As justification for the change for the pre-1990 group, PERA cites a 1974 ruling, Revenue Ruling 74-254 (copy attached). The specific situation discussed in the ruling was an employer who provided an employer-funded (no employee contribution) money purchase plan to the company's employees, but only in a portion of the geographic area in which that employer had employees. The plan document permitted participants, when they are transferred to job locations with the employer outside the area covered by the plan, to receive lump sum withdrawals from the plan although they continued to work for the same employer. The Revenue ruling stated that permitting these withdrawals is inconsistent with federal regulations and plan qualification requirements. Because there has been no severance of the employee/employer relationship, the Internal Revenue Service concluded that these distributions were comparable to payments for contingencies such as layoff, sickness, or accident, which do not qualify as permissible distributions from the corpus of the pension fund. The Internal Revenue Code, Section 401(a)(2), states that a pension plan is not a qualified plan if it allows assets of the plan to be used for any purpose other than for the exclusive benefit of the employees, and only for pension purposes. Any distribution to an active employee from the fund (or member account) could be viewed as contrary to the purpose of the plan, and inconsistent with plan qualification requirements.

Based on that Revenue ruling, PERA is concerned about situations with this pre-1990 group where the employee became a plan member due to erroneous contributions, and later decides to terminate from plan membership but has not severed the employee/employer relationship with the employer. Therefore, PERA is proposing the revision in this section which would prohibit a refund (which is a distribution of plan assets) to the individual until that individual terminates the employment situation. At that point, it is permissible to use plan assets to provide a benefit to the individual, the benefit being a refund of the employee contributions plus interest. This treatment is consistent with PERA's standard refund policy in its plan laws.

For the post-December 1989 group, under existing law these individuals are not permitted to become PERA members due to erroneous contributions. When the situation is discovered, all service credit due to those contributions is removed. The issue then focuses on if, and how, these contributions may be returned. The revised language allows PERA to refund these employee and employer amounts without interest, rather than with interest, and if the return of contributions is viewed as inconsistent with plan qualification requirements, a crediting procedure will be used so that plan assets are not directly used in correcting the past error. The employer would receive a credit equal to the sum of the erroneous employee and employer contributions, and the employer will be responsible for returning the employee contribution amount to the employee.

As justification for this proposed process, PERA has provided Revenue Ruling 91-4 (copy attached). That ruling deals with the issue of when it is permissible to remove assets from a plan to correct a past contribution error, and how much can be removed. The document addresses Employee Retirement Income and Security Act (ERISA) plans. Under ERISA plans, employees typically do not make contributions; all contributions are from the employer. The document therefore specifies conditions under which it is permissible to return contributions to an employer. That 1991 ruling stated that Section 403(c)(2) of ERISA allows erroneous contributions to be returned within one year of the date the erroneous contribution was made. Regarding the amount returned, the document states that the amount may not exceed the amount of the erroneous contribution. Therefore, no investment earnings (or interest) on those assets may be included in the amount returned to the employer. A more recent version of ERISA Section 403(c)(2) (copy attached) has a revised timeline for returning contributions. Erroneous contributions may be returned within *six months of the date that the erroneous contribution is discovered.* This suggests that an erroneous contribution might be returnable years after it was made, provided that the return is within six months of the date the error is discovered.

Regarding the impact on individuals, due to the proposed revision of not paying interest on an erroneous deduction occurring after the end of 1989, PERA would note that nearly all these have been detected and addressed under the existing law. PERA claims that given the procedures it now has in place, erroneous deductions are likely to be discovered soon after they occur, and will be returned promptly. Prompt correction of the error minimizes any impact due to not providing interest. It is primarily, if not entirely, erroneous deductions discovered in the future that will be impacted by the policy change of not providing interest. Information provided by PERA on deductions in error (DIEs) in recent years and interest on these amounts suggests that the interest was generally under $10 per case.

A few observations:

- First, the revised policies PERA is proposing are reasonable. The pre-1990 group will be treated like any PERA active member. These individuals cannot draw a refund or retirement annuity until they are no longer an active member. To be eligible for these benefits, the individual must terminate from the employment that gave rise to the pension coverage. The proposed treatment for the post-1989 group will not cause measurable harm if errors are promptly detected.

- Second, the revised approach seems based on ERISA requirements. While following this approach is therefore unlikely to cause any plan qualification issue, it is unclear whether the proposed treatment is the only treatment that a governmental plan may follow, since governmental plans are not subject to ERISA.

- Third, PERA and the Teachers Retirement Association (TRA) have proposed slightly different solutions to the same problem. TRA provides interest, at least on returns of erroneous employee deductions "that were not refunded during the regular payroll cycle reporting process," while PERA is proposing to prohibit paying interest. In 2004, the Commission heard bills to address changes needed in pension fund law to comply with federal requirements. As part of those changes, the TRA erroneous salary deduction provision (Minnesota Statutes, Section 354.42, Subdivision 7) was amended. In that revised provision, TRA requires interest on any contribution refund to an employee. If the plan is unable to make a refund due to plan qualification concerns, the employing unit is required to provide that refund, with interest, through a contribution credit process similar to that which PERA is proposing. In contrast, PERA is proposing to prohibit paying interest. Comparing the recently enacted TRA treatment and the proposed PERA treatment, it is unclear whether one is fully consistent with plan qualification requirements while the other is not, or whether both are acceptable. What is clear is that they differ, and the Commission and the Legislature usually prescribe consistent treatment across comparable plans.

Policy Issues Raised by Section 11

1. Nature of Change. The issue is whether the PERA proposed change is appropriate and consistent with federal requirements. A good case can be made that the changes are fully compatible with ERISA requirements, but PERA's situation may not be fully comparable to that covered in the Revenue ruling and, as a governmental plan rather than an ERISA plan, there may be other ways to handle return of erroneous contributions which meet plan qualification requirements.

2. Inconsistencies Across Plans. The Commission generally tries to establish comparable treatment for similar plans. As noted above, the proposed PERA treatment differs from the TRA treatment in the handling of interest on the return of erroneous contributions. The TRA treatment was put in place in 2004 as part of federal compliance changes. It could be that the TRA treatment is incorrect, or the proposed PERA treatment may be incorrect, or perhaps both are acceptable alternatives which meet federal requirements. What is known is that they differ in the treatment of interest. It is unlikely that the Commission, in the time that it has available, will be able to reach a conclusion on this matter. The Commission might choose to delete this section, pending further review of the matter during the next interim, or the Commission might choose to leave it in the bill and make whatever further changes may be needed in this provision, or that of TRA and other plans, in a future year. It is possible that the Commission may need to revise laws in many plans, or create a single section in Chapter 356, Pension Plans Generally, to apply to all plans. As a practical matter, the two treatment approaches may not have a material impact. If errors are promptly found and addressed, the loss of interest on the erroneous PERA contributions will be immaterial.

Section 12 revises PERA's deductions or contributions transmitted by error provision to permit PERA to transmit assets to or from the PERA Defined Contribution Plan to correct an error. (Page 12, lines 4 to 13)

Comments on Section 12. Existing law language which remains in the provision may not be fully consistent with plan qualification requirements. In the 2004 federal compliance legislation, the Legislature amended TRA's similar provision, Section 354.42, Subdivision 7, paragraph (c), to include

language stating that if a transfer caused plan qualification problems, the transfer would not be made. Instead, the employer would be required to make the necessary contributions to the proper fund, and TRA would compensate the employer by providing a credit toward future contributions from that employer.

Policy Issue Raised by Section 12: Consistency with Federal Requirements. The issue is whether changes beyond those proposed in the draft are needed for federal compliance. As noted above, in 2004 TRA felt it was appropriate to add crediting procedure language to handle situations where a transfer would be inconsistent with plan qualification requirements. PERA is not proposing a similar change. The Commission may wish to consider an amendment, or if the issue requires more time than the Commission has available, revisit this issue more fully at a later time.

Section 13 clarifies PERA's overpayment to member's provision by explicitly including reference to retirees, beneficiaries, or other benefit recipients. (Page 12, lines 14 to 19)

Section 14 revises PERA's collection-of-unpaid-amounts-provision by clarifying that the Commissioner of Finance must transmit to PERA any amount the Department of Finance deducts from an organization's state aid or state appropriations to capture an amount due that is payable to PERA. (Page 12, line 20, to page 13, line 5)

Section 15 amends PERA's annuity payment provision to recognize that benefit payments may be automatically deposited in a bank, rather than by issuing a warrant (check), and language specifying obsolete procedures is stricken. (Page 13, lines 6 to 20)

Section 16 revises the PERA-General bounce-back joint and survivor annuity provision by simplifying the provision and making stylistic changes. (Page 13, line 21, to page 14, line 16)

Section 17 revises the Public Employees Police and Fire Retirement Plan (PERA-P&F) bounce-back joint and survivor annuity provision by simplifying the provision and making stylistic changes. (Page 14, line 17, to page 15, line 12)

Comments on Sections 16 and 17. Sections 16 and 17 are intended to simplify the PERA bounce-back annuity provisions, first placed in law in 1989, by removing language which is now obsolete and by simplifying the provisions.

Policy Issue Raised by Sections 16 and 17: Scope. The issue is whether the Commission should consider an amendment to address similar obsolete language found in bounce-back provisions applicable to other plans. Similar language is found in law for various MSRS, TRA, and first class city teacher plans, as well as the two PERA provisions addressed in the bill draft.

Section 18 revises PERA's death-while-active or deferred surviving spouse benefit provision by removing obsolete crossreferences; by making any residual amount of the contributions in excess of the benefits paid to the surviving spouse prior to his or her death payable to the surviving spouse's estate rather than to the last beneficiary of the deceased member; and by clarifying that if a surviving spouse waives receipt of benefits, that action does not make a dependent child eligible to receive monthly benefits as though there were no surviving spouse. (Page 15, line 13, to page 16, line 24)

Comments on Section 18. The changes proposed by PERA are limited largely to minor clarification and clean-up. A broader issue, not addressed here, is that death-while-active or deferred provisions in the various public plans are not consistent with other plan law in the treatment of post-1989 versus pre-1989 hires. The 1989 Omnibus Pension Bill addressed many benefit provisions across plans and generally provided subsidized early retirement provisions for then-existing employees, while those newly hired after the 1989 bill passed would have a full actuarial adjustment for early retirements. The death-while-active or deferred provisions in PERA and the various other plans where not amended in 1989 to be consistent with the rest of the 1989 benefit changes, and as a result they provide pre-1989 early retirement provisions to survivors of post-1989 hires. At some point the Commission may wish to address this issue, but it is probably beyond the scope of issues that the Commission can deal with in the short term.

Section 19 revises PERA's term-certain surviving spouse annuity provision by striking the five-year term certain option. (Page 16, line 25 to 34)

Comments on Section 19. PERA is proposing to strike the five-year term certain annuity option for death-while-active or deferred surviving spouses because the five-year term option is no longer given preferential treatment under tax law. Although PERA warns those who are considering this option that the choice may have undesirable tax consequences, some have chosen the option and later regretted it. Although the individuals freely chose this option, some complain to PERA when they are later faced with the tax consequences. PERA is seeking to eliminate the five-year options as an available option.

In the past, administrators from MSRS, and possibly TRA, have proposed eliminating the five-year option from their comparable plan provisions, but in some cases these provisions were removed before the administrative bills were introduced. At the current time, all the major plans continue to have a five-year option in their laws.

Policy Issues Raised by Section 19

1. Need for Change. The issue is whether it is appropriate to drop the five-year option. If the option is dropped, PERA will no longer have to counsel individuals on the implications of the option, and will not have to deal with complaints from some individuals who do elect it. However, removing the option limits choice, and perhaps there are valid reasons why some individuals might want that option. The Commission might wish to have brief testimony from PERA on this issue.

2. Scope. The issue is the proper scope. If the Commission concludes that it is appropriate to remove that option from PERA law, the Commission may wish to make similar changes in laws for other plans (MSRS and various teacher plans).

Section 20 clarifies PERA-General's disability eligibility provision and obsolete crossreferences are stricken. (Page 17, lines 1 to 14)

Section 21 amends PERA's disabilitant-returning-to-active-employment provision by clarifying that PERA contributions will be deducted from pay if the individual resumes PERA-covered employment, and if the employment is not covered by PERA, the individual will be treated as a deferred annuitant if the individual has sufficient service, or the individual may request a refund. (Page 17, lines 15 to 31)

Section 22 specifies that disabilitants must report all earnings from reemployment and workers' compensation income by May 15. If the information is not submitted, the benefit is suspended on June 1. If the information is later submitted, the benefit can be continued retroactive to June 1. (Page 17, line 32, to page 18, line 4)

Comments on Section 22. The new section is intended to let PERA more effectively monitor reemployment earnings of disabilitants from its various plans, to ensure that correct reductions to any disability payments are made.

Section 23 amends PERA's refund-or-deferred annuity provision to conform with PERA's proposed "seasonal layoff" language in Section 5, and by states that a refund will not be paid prior to termination of service, although an individual might terminate from plan coverage prior to that date. (Page 18, lines 5 to 22)

Section 24 revises PERA-P&F's disability benefit limit provision by clarifying that the limit also applies to any paramedics with PERA-P&F coverage; by correcting the provision to apply to combined earnings that exceed the permissible limits rather than are less than those limits; and by specifying that the limit is based on 125 percent of base salary, rather than 125 percent of salary. (Page 18, line 23, to page 19, line 7)

Comments on Section 24. The changes in this section are intended to correct and clarify the PERA-P&F disability benefit limitation provision, rather than to change the limitation amount.

Section 25 revises the PERA Defined Contribution Plan membership eligibility provision by eliminating eligibility for emergency medical service personnel employed by privately operated ambulance services that receive a government subsidy. (Page 19, line 8, to page 20, line 8)

Section 26 revises the PERA Defined Contribution Plan employer election to participate by eliminating privately operated ambulance services that receive a government subsidy. (Page 20, lines 9 to 17)

Comments on Sections 25 and 26. These changes will restrict PERA Defined Contribution Plan eligibility. Emergency medical service personnel, employed by a privately operated ambulance service that receives a government subsidy, will no longer be eligible for coverage by the plan. PERA indicates that it is seeking this change because in the years that this group has been included in the eligibility provisions, not one of these employers has sought coverage in the plan for its employees. PERA therefore feels that it is appropriate to revise the provisions to exclude these employers and employees, and that no harm will be caused by the change.

Section 27 revises the PERA-Correctional eligibility provision by extending plan coverage to individuals employed in a position identical to the positions explicitly authorized for coverage, which are correctional guard or officer, joint jailer/dispatcher, or a supervisor of individuals in these positions. The employing county will determine whether the position is identical to those currently included under coverage. (Page 20, line 18, to page 21, line 5)

Comments on Section 27. The PERA-Correctional Plan can cover county correctional guards or officers, joint jailer/dispatchers, and the individuals who supervise these positions. PERA's proposed revision to this section will permit counties to certify positions as being comparable to the positions listed in the statute. Given that certification, individuals in these comparable positions in that county can be included in PERA-Correctional membership, rather than having PERA-General coverage.

The proposal raises a few questions. First, if these positions are truly comparable to the positions that are listed, then a more straightforward approach would be to revise the position name used in the county to conform to the specific position names included in this coverage provision. That approach is a self-help remedy; no change in law is needed. Second, if counties are in charge of the certification, as in this proposal, then the results will be inconsistent. There are too many decision-makers. Some counties may use the certification process to include some of its employees, while other counties with similar employees would chose not to use the process at all, or would have a somewhat different notion of what is identical to the listed positions. Perhaps, however, the result may be no worse than the current situation. If a county wants to include its employees, it can make certain that it uses the position names listed in the statute in it own personnel system. If it wanted to exclude these employees, it could use different names for these positions.

Policy Issues Raised by Section 27

1. Need for Change. The issue is whether to adopt any change in the provision. The Commission may wish to hear from PERA about why it contends the changes are needed. As noted, there is a self-help remedy that requires no legislation. Any county can choose to use the position names used in the statute to ensure that individuals performing these applicable tasks are included in the plan.

2. Responsibility for Certification. If the Commission chooses to further consider this section, the issue is who should decide whether the certified positions should be included. Under the proposal, the county has full authority for making these determinations. Perhaps PERA should play a role in reviewing these certifications, with the certified positions not included in the plan unless PERA agrees with the county that the positions are comparable to the include positions. Another alternative is to have a system where these "comparable positions" are not included in the plan unless a proposal is presented to the Commission and the Commission concludes that the inclusion is appropriate.

3. Implications for Plan Size and Costs. The issue is the implication for plan size and added county costs. If the proposed certification process is used at all, some additional individuals will be added to this plan and removed from PERA-General. The Commission may wish to inquire about how many individuals PERA expects would be added to the PERA-Correctional Plan. There would be a cost change for the county, although it is one that the county chooses to freely accept by including the individuals. The employer contribution to PERA-General is 5.53 percent of pay currently, but it is scheduled to gradually increase to 7.0 percent in 2010. In contrast, the employer contribution to PERA-Correctional is 9.9 percent of pay.

Section 28 revises the PERA-Correctional definition of county correctional institution to include any juvenile correctional facility administered by a county or on behalf of multiple counties. (Page 21, lines 6 to 13)

Policy Issue Raised by Section 28: Clarification or Coverage Expansion. The Commission may wish to hear testimony from PERA regarding whether the proposal to add to the county correctional institution definition of eligible employing units "a juvenile correctional facility administered by a county or on behalf of multiple counties." One interpretation is that this is clarification of the existing definition rather than a coverage expansion since the current definition is a jail or correctional facility administered by one or more counties. Since the existing definition does not specify that this definition includes only adult facilities, the existing definition could be interpreted as including juvenile facilities. If this is not a mere clarification of the existing definition, PERA should provide the Commission with information about how the plan coverage may change and which counties might be impacted.

Section 29 is a revision of a repealer. Laws 2004, Chapter 267, Article 8, Section 41, is revised to make the PERA trial work period provision (Minnesota Statutes, Section 353.33, Subdivisions 7a) permanent rather than expiring on July 1, 2006. (Page 21, lines 14 to 20)

Comments on Section 29. This trial work period provision, enacted as a temporary provision in 2004, allows any PERA disabilitant who attempts to return to employment to receive up to six months of continued disability benefits without any reduction. No contributions are made to the retirement plan during this period unless the individual waives the disability benefit payments. An individual may use the provision only once.

The understanding at the time that this provision passed was that PERA would keep information about the program's success and costs in helping individuals leave the disability program and return to employment. If the program demonstrates that it is successful and cost effective, the Commission might decide to further extend to program, or make it permanent.

A similar but not identical program was placed in MSRS law at the same time. MSRS is not proposing to extend that program. The Commission may decide to also review the results of the MSRS program and take an action that it deems appropriate. If the Commission decides to extend the MSRS program or make it permanent, the Commission may also wish to consider revisions in the MSRS program language, and possibly also to the PERA provision. The MSRS program language, found in Section 352.113, Subdivision 7a, is more generous than PERA's provision. The MSRS provision allows payment of a full disability benefit during the six-month period even if the sum of the salary and disability benefits exceeds that of a comparable full-time position. In contrast, under PERA's provision the disability benefit would be adjusted so that the sum of salary plus disability benefits does not exceed a full-time equivalent salary. PERA's provision also allows a disabilitant to use the provision only once, while MSRS does not have that limitation. The one-time restriction was added to PERA's provision to avoid situations where an individual cycles between brief periods of employment, in order to obtain additional money resources, and then cycles back to full disability benefits.

An issue with these programs is that they may be masking weaknesses or other issues in the continuing-eligibility-for-disability procedures of these plans. The laws of these plans assume that disability is a medically determinable condition. The general plans use a definition of disability whereby an individual is disabled if the individual, based on examination by competent medical professionals and a decision by the executive director or pension plan board, is unable to perform gainful employment due to the individual's medical or psychological condition. Why individuals who no longer meet this requirement are allowed to continue receiving disability benefits deserves some discussion. Perhaps a program which induces them back to work by continuing the disability payment while employed is not the answer, or is only one tool of a set of tools that ought to be put in place.

Policy Issues Raised by Section 29

1. Need to Review Program Results. PERA is requesting that its disabilitant return-to-work program be made permanent. Before making that decision, the Commission may wish to have PERA present information about the results of that program, including information about the number of individuals who have used the program, the number that successfully transitioned from disability to gainful employment using the program, the cost to the fund, and why the program is an appropriately designed tool.

2. MSRS Issues. MSRS has a similar but not identical program, also enacted in 2004, and like the PERA program, it is set to expire on July 1, 2006. The Commission may wish to consider what to do with this MSRS program, although Commission staff is not aware of any request by MSRS to continue its program. If the Commission is interested in taking action on the similar MSRS program, the Commission may wish to consider the degree to which MSRS supports a program continuation, to ask information about the program results as outlined above for PERA, and to note any differences between the MSRS and PERA results. If this program is to continue, the Commission may wish to consider any changes deemed appropriate to strengthen the program, and to provide more consistency between the MSRS and PERA programs to the extent that that consistency is appropriate.

Section 30 makes Sections 1 to 29 effective on July 1, 2006.

Policy Issue Raised by Section 30: Appropriateness of a Single Effective Date. The issue is whether a July 1, 2006, effective date is appropriate for all of the sections, or whether there is a need for different dates or at least some clarification concerning some sections. In Section 11, for instance, which deals with adjustments for erroneous receipts and disbursements, it is unclear if the change in interest rate treatment is meant to apply to an error detected before the effective date but not corrected until after the effective date.

Potential Amendments for Commission Consideration

Amendment S2379-A1 revises Section 9 by requiring PERA to obtain a Secretary of State review and approval of PERA board procedures for filling board vacancies, consistent with PERA's proposed Secretary of State review procedure in Section 8 for all PERA Board elections.

Amendments S2379-A2 and S2379-A3 are alternative amendments regarding Section 11, PERA's revisions to its adjustments-for-erroneous-receipts-or-disbursements provision:

Amendment S2379-A2 removes Section 11 (pages 10 to 12) from the bill. A justification for removing it is that the proposal differs from TRA's similar provision that was revised in 2004 and there is not sufficient time to determine whether the change is mandated by federal law, rules, or regulations. This section revises PERA's adjustments-for-erroneous-receipts-or-disbursements provision, in part by prohibiting payment of interest on any return of erroneous contributions that began after December 31, 1989. As noted in previous discussion, this treatment is not fully consistent with TRA's similar provision, which was revised in 2004, presumably for federal compliance.

Amendment S2379-A3 is an alternative to S2379-A2, and would revise Section 11 to be consistent with the approach contained in TRA's similar provision. Argument against using S2379-A3 is that PERA expressed some concern, in discussions with staff, whether some PERA employing units are likely to correctly compute interest on an erroneous employee deduction amount, and PERA may also question the cost effectiveness of requiring interest when computed interest amounts may be trivial. If the Commission wishes to consider this amendment, it may wish to hear brief testimony from PERA.

Amendment S2379-A4 revises Section 12 (page 12), PERA's deductions-or-contributions-transmitted-in-error provision, by adding language to handle situations where an asset transfer to another pension plan may not be consistent with federal plan qualification requirements. The amendment language is based on language that was newly added to TRA law in 2004 to address plan qualification concerns. If the plan cannot make the transfer, the employer would send the necessary amount to the proper pension fund, and PERA would provide a credit to the employer for the amount of those contributions.

Amendment S2379-A5 expands the scope of the simplification in bounce-back annuity provision language (found in Sections 16 and 17 for PERA plans) by including other plans which have similar bounce-back language. All these bounce-back sections are revised to simplify and remove obsolete language. The amendment groups all these similar provisions, including those for PERA, into a new article. The plans covered in the amendment are MSRS-General (Section 1), MSRS-Correctional and MSRS-State Patrol (Section 2), PERA-General (Section 3), PERA-P&F (Section 4), TRA (Section 5), and the first class city teacher plans (Section 6). A final uncoded section is included specifying that the revisions in bounce-back provisions are not intended to revise benefit entitlements. If the changes do revise entitlements, the applicable executive director is required to notify the Commission and the Commission's executive director and to propose corrective legislation.

Amendment S2379-A6 can be used if the Commission concludes that the option to have a five-year term certain surviving spouse annuity option should remain in law. The amendment removes Section 19 from the bill, the section that would have removed that option.

Amendment S2379-A7 can be used if the Commission concludes that emergency medical service personnel, employed by privately operated ambulance services that receive a government subsidy, should remain eligible for inclusion in the PERA Defined Contribution Plan. The amendment removes the two sections of the bill draft that would remove that eligibility.

Amendments S2379-A8 and S2379-A9 are alternative ways to address issues raised by Section 27 of the bill, which would allow PERA local employing units to include additional county positions for coverage by PERA- Correctional by certifying that the county's job classifications are identical to the positions listed in the provision for coverage (correctional guard or officer, or joint jailer/dispatchers):

Amendment S2379-A8, an alternative to S2379-A9, can be used if the Commission decides that it is best to not revise the PERA Local Correctional Plan eligibility provision, as contained in Section 27 of the bill. This amendment removes section 27. This is consistent with the conclusion that this issue does not need a legislative remedy. If a local government employer has a position that is equivalent to a correctional guard or officer, or a jailer/dispatcher, then the county can revise the names of its job classifications to conform to those used in the statute, allowing these individuals to be eligible for the Local Correctional Plan without a need to further revise law.

Amendment S2379-A9, an alternative to S2379-A8, would revise Section 27 of the bill by also having PERA review any proposed positions. If the PERA executive director agrees with the employing units certification that these positions are comparable, the position may be covered by the PERA-Correctional Plan if other eligibility conditions in existing law are satisfied.

Amendment S2379-A10 can be used if the Commission is concerned that Section 28, which revises thee definition of "county correctional institution" by including in the definition "a juvenile correctional facility administered by a county or on behalf of multiple counties," could be interpreted as a coverage expansion rather than a clarification. The amendment removes the applicable section, Section 28.

Amendments S2379-A11 to S2379-A13 are alternative revisions regarding the PERA and MSRS trial work period provisions:

Amendment S2379-A11 leaves the PERA trial work period provision a temporary provision rather than making PERA's provision permanent (as in Section 29 of the bill), to expire on a date to be set by the Commission or Legislature, while leaving the similar MSRS provision to expire, as stated in existing law, on July 1, 2006.

Amendment S2379-A12 would make both the MSRS and PERA trial work period provisions permanent rather than temporary.

Amendment S2379-A13 would make both the MSRS and PERA trial work period provisions permanent rather than temporary, and it would add to the MSRS trial work period provision a few additional requirements that currently are found in the similar PERA provision but do not appear in the MSRS provision. The requirements that would be added are that no retirement plan deductions may be taken from pay (and thus the individual will not earn service credit for this trial work period), unless the person waives any further disability benefits, and that a person can use this provision only once.

Amendment S2379-A14 can be used to modify the effective date provision (Section 30) by stating that new interest treatments specified in Section 11 apply to errors that are first detected and corrected after the effective date (July 1, 2006).

From: Mary.Vanek@state.mn.us
Sent: Tuesday, December 06, 2005 3:11 PM
To: Ed Burek
Subject: Revenue Ruling Finding List Master Frames Page

Ed,

Revenue Ruling 74-254 is the ruling to which we have been referred that states, in part, that a plan does not qualify as a pension plan under section 401(a) of the Code if it permits distributions to be made to participants prior to normal retirement and prior to their termination of employment or termination of the plan. This is the ruling to which Michigan referred us. I have been waiting for California PERS to get back to me, but haven't heard from them.

I did see in 401 (a)(2) that in the case of a multiemployer plan, contributions can be returned within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law; however, it is our understanding that this is in reference to employer contributions (because private sector plans are all employer contributory and our plans consider the employee contributions 'employer' contributions for purposes of tax deferred treatment) and therefore, the return would be to the employer. That is what we are adding to our language. We would return to the employer if that is the only way a refund could be made without jeopardizing the tax status of the plan.

I've been trying to come up with something more absolute for you, but haven't been successful. We have asked a number of funds if they are administering their "contributions in error" similarly to what we are proposing and they have said "yes," because a refund back to the employer is what the IRS requires, but no one has been able to come up with anything other than this revenue ruling (74-254) as the reason.

That's all I know for now.

Thank you,
Mary

http://www.taxlinks.com/rulings/findinglist/revrulmaster.htm

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Internal Revenue Service
Revenue Ruling

Rev. Rul. 74-254

1974-1 C.B. 91

Sec. 401

IRS Headnote

Distribution to employee on transfer of job location. A noncontributory money purchase pension plan that permits distribution to be made to participants when they are transferred to job locations outside the area covered by the plan, and for that reason become ineligible to participate in the plan, does not qualify under section 401(a) of the Code; Rev. Rul. 56-213 modified.

Full Text

Rev. Rul. 74-254

Advice has been requested whether a plan, containing the provision described below, qualifies as a pension plan under section 401(a) of the Internal Revenue Code of 1954.

An employer established a noncontributory money purchase plan that permits distributions to be made to participants, to the extent their rights have vested, when they are transferred to job locations outside the area covered by the plan and, for that reason, become ineligible to participate in the plan. These participants are not considered to have terminated their service upon transfer and have no control as to the time and place of transfer.

Section 401(a) of the Code prescribes the requirements which must be met for qualification of a pension, profit-sharing, or stock bonus plan.

Section 1.401-1(b)(1)(i) of the Income Tax Regulations provides that a pension plan, within the meaning of section 401(a) of the Code, is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement. The regulations provide further, however, that a plan is not a pension plan if it provides for the payment of benefits not customarily included in a pension plan such as layoff benefits or benefits for sickness, accident, hospitalization, or medical expenses, except as described in section 401(h).

Disability and death benefits, although incidental to the primary purpose of providing benefits after normal retirement, are essentially a form of "retirement" benefits, since they are payable upon severance or termination of employment. Contingencies such as layoff, sickness, and accident generally do not involve a termination of employment, and payments for such contingencies from a qualified pension plan are prohibited by section 1.401-1(b)(1)(i) of the regulations.

Revenue Ruling 56-693, 1956-2 C.B. 282, as modified by Rev. Rul. 60-323, 1960-2 C.B. 148, holds that a pension plan fails to meet the requirements for qualification under section 401(a) of the Code if it permits employees to withdraw prior to normal retirement any part of the funds accumulated on their behalf which consist of employer contributions or increments thereon prior to the severance of employment or the termination of the plan. That Revenue Ruling deals with a situation in which withdrawals are at the option of, or subject to the control of, the employee and does not deal with the case in which an employee is being dropped from participation in the plan under conditions beyond his control.

In Revenue Ruling 56-213, 1956-1 C.B. 194, employees were dropped from participation under a qualified employees' retirement plan if they no longer met the minimum work period requirements or if they terminated their employment, and their vested interests under the plan could then be paid as an immediate annuity or cash settlement. Furthermore, such employees were later reinstated as participants in the plan upon meeting the minimum work period requirements or being reemployed. The Revenue Ruling holds that the qualification of the plan will not be adversely affected provided the terms of the plan are uniformly applied and the full actuarial equivalent of the amount already vested in the participant is deducted from the amount of pension or other settlement to be paid under the plan as a result of the service rendered after the reinstatement of the participants.

The primary holding in Rev. Rul. 56-213 deals with the conditions under which employees may be reinstated as participants in a qualified plan where they have received a distribution under the plan. However, the circumstances that rendered the employee ineligible to continue his participation in the plan were similar to those in this case and, as in this case, were beyond his control.

In this case, as well as in the plan underlying Rev. Rul. 56-213, the payment of an annuity or lump-sum distribution from employer contributions or increments thereon when an employee ceases his plan participation but continues his employment, is analogous to payments for contingencies such as layoff, sickness, and accident and does not satisfy the requirements of section 1.401-1(b)(1)(i) of the regulations. Therefore, a pension plan does not qualify if it permits distributions prior to normal retirement and prior to termination of employment or termination of the plan, and this requirement does not depend on whether withdrawals of employer contributions are at the discretion of the employee.

Accordingly, this plan does not qualify as a pension plan under section 401(a) of the Code since it permits distributions to be made to participants prior to normal retirement and prior to their termination of employment or the termination of the plan.

Rev. Rul. 56-213, 1956-1 C.B. 194, is hereby modified to remove therefrom the holding that the qualification of a pension plan is not adversely affected where it provides that a participant may receive his vested account balance in the form of an immediate annuity or cash settlement upon becoming ineligible to participate in the plan prior to his terminating employment or the plan being terminated.

REVENUE RULE 91-4

1991-1 C.B. 57, 1991-3 I.R.B. 7.

Internal Revenue Service
Revenue Ruling

REVERSIONS; REMEDIAL AMENDMENTS

Published: January 22, 1991

Section 401. Qualified Pension, Profit-sharing and Stock Bonus Plans, 26 CFR 1.401-2: Impossibility of diversion under the trust instrument.

Reversions; remedial amendments. Circumstances under which revisions of employer contributions to a qualified plan are discussed. Rev. Rul. 77-200 superseded and Rev. Rul. 60-276 obsoleted.

PURPOSE

The purpose of this revenue ruling is to obsolete Rev. Rul. 60-276, 1960-1 C.B. 150, and to supersede Rev. Rul. 77-200, 1977-1 C.B. 98, for reversions occurring on or after December 22, 1987, the date of enactment of section 9343 of the Omnibus Budget Reconciliation Act of 1987. ("OBRA 87"), Pub. L. 100-203.

ISSUE

Under what circumstances may a qualified pension, profit-sharing or stock bonus plan permit reversion of employer contributions?

A plan permits reversion of employer contributions under the conditions described in section 403(c)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), Pub. L. 93-406, as amended by section 9343(c) of OBRA 87.

LAW AND ANALYSIS

Section 401(a)(2) of the Internal Revenue Code of 1986 generally requires a trust instrument forming part of a pension, profit-sharing or stock bonus plan to prohibit the diversion of corpus or income for purposes other than the exclusive benefit of the employees or their beneficiaries. Section 403(c)(1) of ERISA contains a similar prohibition against diversion of the assets of a plan.

Section 403(c)(2) of ERISA, for which there is no parallel provision in the Internal Revenue Code, generally provided, provided to its amendment by OBRA 87, that the general prohibition against diversion does not preclude the return of a contribution made by an employer to a plan if: (1) the contribution is made by reason of a mistake of fact (section 403(c)(2)(A); (2) the contribution is conditioned on qualification of the plan under the Internal Revenue Code and the plan does not so qualify (section 403(c)(2)(B); or (3) the contribution is conditioned on its deductibility under section 404 of the Code (section 403(c)(2)(C)). The return to the employer of the amount involved must generally be made within one year of the mistaken payment of the contribution, the date of denial of qualification, or disallowance of the deduction.

In Rev. Rul. 60-276, the Service held that a provision permitting the reversion of the entire assets of a plan on the failure of the plan to qualify initially under the Code would be allowed. In Rev. Rul. 77-200, the Service held that plan language providing for the return of employer contributions under the circumstances specified in section 403(c)(2)(A) and (C) of ERISA could also be included in a plan intended to qualify under the Internal Revenue Code.

The Tax Court, in Calfee, Halter, & Griswold v. Commissioner, 88 T.C. 641 (1987), held that a plan may qualify under section 401(a) of the Code if it permits reversions under pre-OBRA 87 section 403(c)(2)(B) of ERISA, even if such reversions are not limited to initial qualification of a plan. In reaching this conclusion, the Tax Court assumed that the standards and guidelines in Title I of ERISA were applicable in interpreting the Code.

In enacting section 9343 of OBRA 87, Congress legislatively overturned the holding in Calfee, Halter, & Griswold. It amended section 403(c)(2)(B) of ERISA to provide for the return of employer contributions under that section only if: (1) the return of the contribution is conditioned on initial qualification of the plan; (2) the plan received an adverse determination with respect to its initial qualification; and (3) the application for determination is made within the time prescribed by law for filing the employer's return for the taxable year in which such plan was adopted, or such later date as the Secretary of the Treasury may prescribe. Section 9343 also provided that, except to the extent provided by the Code or the Secretary of the Treasury, Titles I and IV of ERISA are not applicable to interpreting the Code. Both amendments were effective on the date of enactment of OBRA 87, December 22, 1987.

Section 1.401(b)-1 of the Income Tax Regulations provides a remedial amendment period for disqualifying provisions. Any such section 401(b) remedial amendment period is a later date as the Secretary may prescribe for filing the application for determination.

HOLDING

Pursuant to this revenue ruling, language providing for a return of contributions in the circumstances specified in section 403(c)(2)(A), (B) and (C) of ERISA, as amended by OBRA 87, may be included in a plan intended to qualify under the Internal Revenue Code. Thus, plans that are amended to include such language will not fail to satisfy section 401(a)(2) of the Code solely as the result of such an amendment. For example, a plan provision permitting the reversion of the entire assets of the plan on failure of the plan to qualify initially under the Internal Revenue Code will be allowed only under the circumstances described in section 403(c)(2)(B)of ERISA.

The determination of whether a reversion due to a mistake of fact or the disallowance of a deduction with respect to a contribution that was conditioned on its deductibility is made under circumstances specified in section 403(c)(2)(A) and (C) of ERISA, and therefore will not adversely affect the qualification of an existing plan, will continue to be made on a case by case basis. In general, such reversions will be permissible only if the surrounding facts and circumstances indicate that the contribution of the amount that subsequently reverts to the employer is attributable to a good faith mistake of fact, or in the case of the disallowance of the deduction, a good faith mistake in determining the deductibility of the contribution. A reversion under such circumstances will not be treated as a forfeiture in violation of section 411(a) of the Code, even if the resulting adjustment is made to the account of a participant that is partly or entirely nonforfeitable.

The maximum amount that may be returned to the employer in the case of a mistake of fact or the disallowance of a deduction is the excess of (1) the amount contributed, over, as relevant, (2) (A) the amount that would have been contributed had no mistake of fact occurred, or (B) the amount that would have been contributed had the contribution been limited to the amount that is deductible after any disallowance by the Service. Earnings attributable to the excess contribution may not be returned to the employer, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the mistaken or nondeductible contribution would cause the balance of the individual account of any participant to be reduced to less than the balance which would have been in the account had the mistaken or nondeductible amount not been contributed, then the amount to be returned to the employer must be limited so as to avoid such reduction. In the case of a reversion due to initial disqualification of a plan, the entire assets of the plan attributable to employer contributions may be returned to the employer.

EFFECTIVE DATE

Plans have until the end of the section 401(b) remedial amendment period to amended retroactively to conform with OBRA 87. Operation of a plan in a manner inconsistent with section 403(c)(2)(B) of ERISA, as amended by section 9343 of OBRA 87, on or after December 22, 1987, the effective date of section 9343, will cause the plan to fail to satisfy section 401(a) of the Code.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 60-276 is obsoleted. Rev. Rul. 77-200 is superseded for reversions of employer contributions occurring on or after the date of enactment of section 9343 of OBRA 87.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jane Kesten of the Employee Plans Technical and Actuarial Division. For further information concerning this revenue ruling, please contact the Employee Plans Technical and Actuarial Division's taxpayer assistance telephone service between the hours of 1:30 p.m. and 4:00 p.m., Eastern Time, Monday through Thursday on (202) 566-6783/6784 (not a toll-free number). Ms. Kesten's telephone number is (202) 343-0729 (also not a toll-free number).

Rev. Rul. 91-4, 1991-1 C.B. 57, 1991-3 I.R.B. 7.

TITLE 29--LABOR

CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle B--Regulatory Provisions

part 4--fiduciary responsibility

Sec. 1103. Establishment of trust

(a) Benefit plan assets to be held in trust; authority of trustees

Except as provided in subsection (b) of this section, all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 1102(a) of this title or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that--

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this chapter, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 1102(c)(3) of this title.

(b) Exceptions

The requirements of subsection (a) of this section shall not apply--

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) to a plan--

(A) some or all of the participants of which are employees described in section 401(c)(1) of title 26; or

(B) which consists of one or more individual retirement accounts described in section 408 of title 26;

to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of title 26, whichever is applicable.

(4) to a plan which the Secretary exempts from the requirement of subsection (a) of this section and which is not subject to any of the following provisions of this chapter--

(A) part 2 of this subtitle,

(B) part 3 of this subtitle, or

(C) subchapter III of this chapter; or

(5) to a contract established and maintained under section 403(b) of title 26 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of title 26.

(6) Any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

(c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets

(1) Except as provided in paragraph (2), (3), or (4) or subsection (d) of this section, or under sections 1342 and 1344 of this title (relating to termination of insured plans), or under section 420 of title 26 (as in effect on December 17, 1999), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

* (2)(A) In the case of a contribution, or a payment of withdrawal liability under part 1 of subtitle E of subchapter III of this chapter--

(i) if such contribution or payment is made by an employer to a plan (other than a multiemployer plan) by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution, and

(ii) if such contribution or payment is made by an employer to a multiemployer plan by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) of title 26 or the trust which is part of such plan is exempt from taxation under section 501(a) of title 26), paragraph (1) shall not prohibit the return of such contribution or payment to the employer within 6 months after the plan administrator determines that the contribution was made by such a mistake.

ERISA, Section 403(c)(2)

plan in a manner inconsistent with section 403(c)(2)(B) of ERISA, as amended . . . , will cause the plan to fail to satisfy section 401(a) of the Code." Since governmental plans are governed by 401(a), the connection between this ruling and governmental plans is drawn.

- Although not contained in either draft, PERA staff sees the value of putting the transfer of erroneous contributions language in chapter 356 rather than in the law of each plan on an ad hoc basis. We also agree that a broader consensus with the rest of the public pension plans on that point is important.

2000
Total number of DIEs : 1639
Total $ in DIEs: $299,041
Total $ interest: $9,194
Ave. interest per DIE: $5.61

2001
Total number of DIEs : 1444
Total $ in DIEs: $412,472
Total $ interest: $10,194
Ave. interest per DIE: $7.06

2002
Total number of DIEs : 1191 / 1372
Total $ in DIEs: $434,077 / $356,477
Total $ interest: $28,100 / $13,756.
Ave. interest per DIE: $23.59 / $10.03
No. of DIEs under $10: 1209 (88%)

2003
Total number of DIEs : 2021 / 1390
Total $ in DIEs: $661,089 / $396,849
Total $ interest: $14,809 / $22,091
Ave. interest per DIE: $7.33 / $15.89
No. of DIEs under $10: 1212 (87%)

2004
Total number of DIEs: 1044 / 1868
Total $ in DIEs: $515,600 / $451,218
Total $ interest: $16,036 / $14,499
Ave. interest per DIE: $15.36 / $7.76
No. of DIEs under $10: 1702 (91%)

PERA Staff: Cheryl, Lance

If beyond ~~fix~~ one fiscal year, could require us to file as DIE + hold for payment until service is terminated.

TRA'S Erroneous Salary Deduction Provision

354.42 Contributions by employer and employee.

Subd. 7. **Erroneous salary deductions or direct payments.** (a) Deductions taken from the salary of an employee for the retirement fund in error must be refunded to the employee upon the discovery of the error and after the verification of the error by the employing unit making the deduction. The corresponding employer contribution and additional employer contribution amounts attributable to the erroneous salary deduction must be refunded to the employing unit.

(b) If salary deductions and employer contributions were erroneously transmitted to the retirement fund and should have been transmitted to another Minnesota public pension plan, the executive director must transfer these salary deductions and employer contributions to the appropriate public pension fund without interest. For purposes of this paragraph, a Minnesota public pension plan means a plan specified in section 356.30, subdivision 3, or the plan governed by chapter 354B.

(c) A potential transfer under paragraph (b) that would cause the plan to fail to be a qualified plan under section 401(a) of the Internal Revenue Code, as amended, must not be made by the executive director. Within 30 days after being notified by the Teachers Retirement Association of an unmade potential transfer under this paragraph, the employer of the affected person must transmit an amount representing the applicable salary deductions and employer contributions, without interest, to the retirement fund of the appropriate Minnesota public pension plan fund. The retirement association must provide a credit for the amount of the erroneous salary deductions and employer contributions against future contributions from the employer.

(d) If a salary warrant or check from which a deduction for the retirement fund was taken has been canceled or the amount of the warrant or if a check has been returned to the funds of the employing unit making the payment, a refund of the amount deducted, or any portion of it that is required to adjust the salary deductions, must be made to the employing unit.

(e) Erroneous direct payments of member-paid contributions or erroneous salary deductions that were not refunded during the regular payroll cycle processing must be refunded to the member, plus interest computed using the rate and method specified in section 354.49, subdivision 2.

(f) Any refund under this subdivision that would cause the plan to fail to be a qualified plan under section 401(a) of the Internal Revenue Code, as amended, may not be refunded and instead must be credited against future contributions payable by the employer. The employer is responsible for refunding to the applicable employee any amount that was erroneously deducted from the salary of the employee, with interest as specified in paragraph (e).

PERA'S Trial Work Period Provision

353.33 Total and permanent disability benefits.

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

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

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

MSRS Trial Work Period Provision

352.113 Permanent disability benefits.

Subd. 7a. **Temporary reemployment benefit reduction waiver.** A reduction in benefits under subdivision 7, or a termination of benefits due to the disabled employee resuming a gainful occupation from which earnings are equal to or more than the employee's salary at the date of disability or the salary currently paid for similar positions does not apply until six months after the individual returns to a gainful occupation.

..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

Page 10, line 6, after "(b)" insert ", and for filling board vacancies under subdivision 1a"

..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

Pages 10 to 12, delete section 11

Page 21, line 22, delete "29" and insert "28"

Renumber the sections in sequence and correct internal cross-references

Amend the title accordingly

..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

Page 11, line 26, delete "without" and insert "with" and after "interest" insert "as computed under section 353.34, subdivision 2,"

Page 12, line 3, after "salary" insert "with interest as computed under section 353.34, subdivision 2"

..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

Page 12, after line 13, insert:

"(c) A potential transfer under paragraph (a) that would cause the plan to fail to be a qualified plan under section 401(a) of the Internal Revenue Code, as amended, must not be made by the executive director of the association. Within 30 days after being notified by the Public Employees Retirement Association of an unmade potential transfer under this paragraph, the employer of the affected person must transmit an amount representing the applicable salary deductions and employer contributions, without interest, to the retirement fund of the appropriate Minnesota public pension plan, or to the individual account if the proper coverage is by a defined contribution plan. The association must provide a credit for the amount of the erroneous salary deductions and employer contributions against future contributions from the employer."

..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

Page 1, before line 26, insert:

" **ARTICLE 1**

VARIOUS PERA ADMINISTRATIVE CHANGES "

Pages 13 to 15, delete sections 16 and 17

Page 21, line 22, delete "29" and insert "27"

Page 21, after line 22, insert:

" **ARTICLE 2**

VARIOUS PLANS, ADMINISTRATIVE REVISIONS TO BOUNCE-BACK ANNUITY PROVISIONS

Section 1. Minnesota Statutes 2004, section 352.116, subdivision 3a, is amended to read:

Subd. 3a. **Bounce-back annuity.** (a) If a retired employee or disabilitant selects a joint and survivor annuity option under subdivision 3 after June 30, 1989, the retired employee or disabilitant must receive a normal single-life annuity if the designated optional annuity beneficiary dies before the retired employee or disabilitant. Under this option, no reduction may be made in the annuity to provide for restoration of the normal single-life annuity in the event of the death of the designated optional annuity beneficiary.

(b) ~~A retired employee or disabilitant who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single-life annuity is payable to the retired employee or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single-life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A retired employee or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single-life annuity after that date, but shall not~~

~~receive retroactive payments for periods before that date~~The annuity adjustment specified in paragraph (a) also applies to joint and survivor annuity options under subdivision 3 elected prior to July 1, 1989. The annuity adjustment under this paragraph occurs on July 1, 1989, or on the first day of the first month following the death of the designated optional annuity beneficiary, whichever is later. This paragraph should not be interpreted as authorizing retroactive payments.

~~(c) A retired employee or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the retired employee or disabilitant if the designated optional beneficiary died before July 1, 1989, shall have the annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.~~

Sec. 2. Minnesota Statutes 2004, section 352.116, subdivision 3b, is amended to read:

Subd. 3b. **Bounce-back annuity.** (a) The board of directors must provide a joint and survivor annuity option to members of the correctional employees and State Patrol retirement funds. Under this option, if a former member or disabilitant selects a joint and survivor annuity option after June 30, 1989, the former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) ~~A former member or disabilitant of the correctional or State Patrol fund who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date~~The annuity adjustment specified in paragraph (a) also applies to joint and survivor annuity options elected prior to July 1, 1989. The annuity adjustment under this paragraph occurs on July 1, 1989, or on the first day of the first month following the death of the

designated optional annuity beneficiary, whichever is later. This paragraph should not be interpreted as authorizing retroactive payments.

~~(c) A former member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary died before July 1, 1989, shall have their annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.~~

Sec. 3. Minnesota Statutes 2004, section 353.30, subdivision 3a, is amended to read:

Subd. 3a. **Bounce-back annuity.** (a) If a former member or disabilitant selects a joint and survivor annuity option under subdivision 3 after June 30, 1989, the former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) ~~A former member or disabilitant who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date~~The annuity adjustment specified in paragraph (a) also applies to joint and survivor annuity options under subdivision 3 elected prior to July 1, 1989. The annuity adjustment under this paragraph occurs on July 1, 1989, or on the first day of the first month following the death of the designated optional annuity beneficiary, whichever is later. This paragraph should not be interpreted as authorizing retroactive payments.

~~(c) A former member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary dies first but has not died before July 1, 1989, shall have their annuity increased as of July 1, 1989, to the~~

~~amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.~~

Sec. 4. Minnesota Statutes 2004, section 353.30, subdivision 3b, is amended to read:

Subd. 3b. **Bounce-back annuity.** (a) The board of trustees must provide a joint and survivor annuity option to members of the police and fire fund. ~~Under this option,~~ ~~a~~If a joint and survivor annuity is elected on or after July 1, 1989, the former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) ~~A former member or disabilitant of the police and fire fund who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date~~The annuity adjustment specified in paragraph (a) also applies to joint and survivor annuity options under subdivision 3 elected prior to July 1, 1989. The annuity adjustment under this paragraph occurs on July 1, 1989, or on the first day of the first month following the death of the designated optional annuity beneficiary, whichever is later. This paragraph should not be interpreted as authorizing retroactive payments.

~~(c) A former member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary dies first but has not died before July 1, 1989, shall have their annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.~~

Sec. 5. Minnesota Statutes 2004, section 354.45, subdivision 1a, is amended to read:

Subd. 1a. **Bounce-back annuity.** (a) If a former member or disabilitant selects a joint and survivor annuity option under subdivision 1 after June 30, 1989, the former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) ~~A former member or disabilitant who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date~~The annuity adjustment specified in paragraph (a) also applies to joint and survivor annuity options under subdivision 1 elected prior to July 1, 1989. The annuity adjustment under this paragraph occurs on July 1, 1989, or on the first day of the first month following the death of the designated optional annuity beneficiary, whichever is later. This paragraph should not be interpreted as authorizing retroactive payments.

~~(c) The restoration of the normal single life annuity under this subdivision will take effect on the first of the month following the date of death of the designated optional annuity beneficiary or on the first of the month following one year before the date on which a certified copy of the death record of the designated optional annuity beneficiary is received in the office of the Teachers Retirement Association, whichever date is later.~~

Sec. 6. Minnesota Statutes 2004, section 354A.32, subdivision 1a, is amended to read:

Subd. 1a. **Bounce-back annuity.** (a) If a former coordinated member or disabilitant has selected a joint and survivor annuity option under subdivision 1 after June 30, 1989, the former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) ~~A former coordinated member or disabilitant who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides~~

~~that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date~~The annuity adjustment specified in paragraph (a) also applies to joint and survivor annuity options under subdivision 3 elected prior to July 1, 1989. The annuity adjustment under this paragraph occurs on July 1, 1989, or on the first day of the first month following the death of the designated optional annuity beneficiary, whichever is later. This paragraph should not be interpreted as authorizing retroactive payments.

(c) ~~A former coordinated member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary dies first but has not died before July 1, 1989, shall have the annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.~~

~~(d)~~Unless otherwise specified in this subdivision, the restoration of the normal single life annuity under this subdivision will take effect on the first of the month following the date of death of the designated optional annuity beneficiary or on the first of the month following one year before the date on which a certified copy of the death record of the designated optional annuity beneficiary is received in the office of the appropriate teachers retirement fund association, whichever date is later.

Sec. 7. **EFFECTIVE DATE.**

(a) Sections 1 to 6 are effective the day following final enactment.

(b) Sections 1 to 6 are not intended to increase, modify, impair, or diminish the benefit entitlements specified in the sections of Minnesota Statutes being amended. If the executive director of the Minnesota State Retirement System, the Public Employees Retirement Association, the Teachers Retirement Association, or a first class city teacher retirement fund association, whichever is applicable, determines that any provision of those sections does increase, modify, impair, or diminish the benefit entitlements as

reflected in applicable law just prior to the effective date of this section, the applicable executive director shall certify that determination and a recommendation as to the required legislative correction to the chairs of the Legislative Commission on Pensions and Retirement, the house Governmental Operations Committee, the senate Governmental Operations Committee, and the executive director of the Legislative Commission on Pensions and Retirement."

Renumber the sections in sequence and correct internal cross-references

Amend the title accordingly

1.1 ..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

1.2 Page 16, delete section 19

1.3 Page 21, line 22, delete "29" and insert "28"

1.4 Renumber the sections in sequence and correct internal cross-references

1.5 Amend the title accordingly

1.1 ..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

1.2 Pages 19 and 20, delete sections 25 and 26

1.3 Page 21, line 22, delete "29" and insert "27"

1.4 Renumber the sections in sequence and correct internal cross-references

1.5 Amend the title accordingly

1.1 ..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

1.2 Pages 20 and 21, delete section 27

1.3 Page 21, line 22, delete "29" and insert "28"

1.4 Renumber the sections in sequence and correct internal cross-references

1.5 Amend the title accordingly

..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

Page 20, line 24, delete everything after "jailers/dispatchers"

Page 20, line 25, delete everything before the semicolon

Page 20, line 32, strike "certification" and insert "certifications" and delete " paragraph" and insert "paragraphs" and after "(a)" insert "and (d)"

Page 21, after line 5, insert:"

(d) A local employer may certify a position as being identical to a position listed in paragraph (a), clause (1). If, upon review, the executive director of the Public Employees Retirement Association agrees with the local employing unit determination, the certified position with that local employer is deemed to satisfy the requirements of paragraph (a), clause (1)."

1.1 ..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

1.2 Page 21, delete section 28

1.3 Page 21, line 22, delete "29" and insert "28"

1.4 Renumber the sections in sequence and correct internal cross-references

1.5 Amend the title accordingly

1.1 ..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

1.2 Page 21, line 20, after the period insert "Section 19 is repealed on July 1, ..."

1.1 ..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

1.2 Page 21, line 17, strike "(a)"

1.3 Page 21, line 20, delete the new language and strike the old language

..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

Page 1, before line 26, insert:

"Section 1. Minnesota Statutes 2004, section 352.113, subdivision 7a, is amended to read:

Subd. 7a. **Temporary reemployment benefit reduction waiver.** (a) A reduction in benefits under subdivision 7, or a termination of benefits due to the disabled employee resuming a gainful occupation from which earnings are equal to or more than the employee's salary at the date of disability or the salary currently paid for similar positions does not apply until six months after the individual returns to a gainful occupation.

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

(c) A member only may return to employment and continue disability benefit payments under this subdivision only once while receiving disability benefits from a plan administered by the Minnesota State Retirement System."

Page 21, line 17, strike "(a)"

Page 21, line 20, delete the new language and strike the old language

Page 21, line 22, delete "29" and insert "30"

Renumber the sections in sequence and correct internal cross-references

Amend the title accordingly

..... moves to amend S.F. No. 2379; H.F. No. ...., as follows:

Page 21, line 22, after the period insert "Section 11 applies to errors first detected and corrected after the effective date."

A bill for an act

relating to retirement; Public Employees Retirement Association; modifications of an administrative nature; clarifying physician and St. Paul Port Authority employee coverage; clarifying termination of membership procedures; adding indefinite layoff definition; clarifying board management and election provisions; specifying board legal authority; revising various receipts, disbursements, and collection provisions for consistency with federal requirements; clarifying disability benefit termination procedures; simplifying and removing obsolete bounce-back annuity language; removing five-year term certain survivor coverage option; clarifying various disability and returning disability provisions; removing authority for privately operated ambulance services to contribute to the Public Employees Retirement Association defined contribution plan; authorizing counties to certify positions to be included in the local government correctional service plan as sufficiently similar to existing positions; making a temporary returning disabilitant provision permanent; amending Minnesota Statutes 2004, sections 353.01, subdivisions 2a, 11a, 11b, 12, 16, by adding a subdivision; 353.03, subdivisions 1, 1a, by adding a subdivision; 353.27, subdivisions 7, 7a, 7b; 353.29, subdivision 8; 353.30, subdivisions 3a, 3b; 353.32, subdivisions 1a, 1b; 353.33, subdivisions 1, 9; 353.34, subdivision 1; 353.656, subdivision 4; 353D.01, subdivision 2; 353D.02, subdivision 3; 353E.02, subdivisions 2, 3; Minnesota Statutes 2005 Supplement, sections 353.01, subdivision 2d; 353.28, subdivision 6; Laws 2004, chapter 267, article 8, section 41; proposing coding for new law in Minnesota Statutes, chapter 353.

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

Section 1. Minnesota Statutes 2004, section 353.01, subdivision 2a, is amended to read:

Subd. 2a. **Included employees.** (a) Public employees whose salary from one governmental subdivision exceeds $425 in any month shall participate as members of the association. If the salary is less than $425 in a subsequent month, the employee retains membership eligibility. Eligible public employees shall participate as members of the association with retirement coverage by the public employees retirement plan or the public employees police and fire retirement plan under this chapter, or the local government

correctional employees retirement plan under chapter 353E, whichever applies, as a condition of their employment on the first day of employment unless they:

(1) are specifically excluded under subdivision 2b;

(2) do not exercise their option to elect retirement coverage in the association as provided in subdivision 2d, paragraph (a); or

(3) are employees of the governmental subdivisions listed in subdivision 2d, paragraph (b), where the governmental subdivision has not elected to participate as a governmental subdivision covered by the association.

(b) A public employee who was a member of the association on June 30, 2002, based on employment that qualified for membership coverage by the public employees retirement plan or the public employees police and fire plan under this chapter, or the local government correctional employees retirement plan under chapter 353E as of June 30, 2002, retains that membership until the employee terminates public employment under subdivision 11a or terminates membership under subdivision 11b.

(c) Public employees under paragraph (a) includes physicians under section 353D.01, subdivision 2, who do not elect public employees defined contribution plan coverage under section 353D.02, subdivision 2.

Sec. 2. Minnesota Statutes 2005 Supplement, section 353.01, subdivision 2d, is amended to read:

Subd. 2d. **Optional membership.** (a) Membership in the association is optional by action of the individual employee for the following public employees who meet the conditions set forth in subdivision 2a:

(1) members of the coordinated plan who are also employees of labor organizations as defined in section 353.017, subdivision 1, for their employment by the labor organization only if they elect to have membership under section 353.017, subdivision 2;

(2) persons who are elected or persons who are appointed to elected positions other than local governing body elected positions who elect to participate by filing a written election for membership;

(3) members of the association who are appointed by the governor to be a state department head and who elect not to be covered by the general state employees retirement plan of the Minnesota State Retirement System under section 352.021;

(4) city managers as defined in section 353.028, subdivision 1, who do not elect to be excluded from membership in the association under section 353.028, subdivision 2; and

(5) employees of the Port Authority of the city of St. Paul ~~who were at least age 45~~ on January 1, 2003, who were at least age 45 on that date, and who elect to participate by filing a written election for membership.

(b) Membership in the association is optional by action of the governmental subdivision for the employees of the following governmental subdivisions under the conditions specified:

(1) the Minnesota Association of Townships if the board of the association, at its option, certifies to the executive director that its employees are to be included for purposes of retirement coverage, in which case the status of the association as a participating employer is permanent;

(2) a county historical society if the county in which the historical society is located, at its option, certifies to the executive director that the employees of the historical society are to be county employees for purposes of retirement coverage under this chapter. The status as a county employee must be accorded to all similarly situated county historical society employees and, once established, must continue as long as a person is an employee of the county historical society; and

(3) Hennepin Healthcare System, Inc., a public corporation, with respect to employees other than paramedics, emergency medical technicians, and protection officers, if the corporate board establishes alternative retirement plans for certain classes of employees of the corporation and certifies the employees to be excluded from future retirement coverage.

(c) For employees who are covered by paragraph (a), clause (1), (2), or (3), or covered by paragraph (b), clause (1) or (2), if the necessary membership election is not made, the employee is excluded from retirement coverage under this chapter. For employees who are covered by paragraph (a), clause (4), if the necessary election is not made, the employee must become a member and have retirement coverage under this chapter. For employees specified in paragraph (b), clause (3), membership continues until the exclusion option is exercised for the designated class of employee. The option to become a member, once exercised under this subdivision, may not be withdrawn until termination of public service as defined under subdivision 11a.

Sec. 3. Minnesota Statutes 2004, section 353.01, subdivision 11a, is amended to read:

Subd. 11a. **Termination of public service.** (a) "Termination of public service" occurs when a member resigns or is dismissed from public service by the employing governmental subdivision ~~or when a position ends and the member who held the position is not considered by the governmental subdivision to be on a temporary layoff,~~ and

the employee does not, within 30 days of the date the employment relationship ended, return to an employment position in the same governmental subdivision or when the employer-employee relationship is severed due to the expiration of a layoff under subdivision 12 or 12c.

(b) The termination of public service must be recorded in the association records upon receipt of an appropriate notice from the governmental subdivision.

Sec. 4. Minnesota Statutes 2004, section 353.01, subdivision 11b, is amended to read:

Subd. 11b. **Termination of membership.** (a) "Termination of membership" means the conclusion of membership in the association for a person who has not terminated public service under subdivision 11a and occurs:

(1) ~~upon termination of public service under subdivision 11a;~~

~~(2) when a member does not return to work within 30 days of the expiration of an authorized temporary layoff under subdivision 12 or an authorized leave of absence under subdivision 31 as evidenced by the appropriate record filed by the governmental subdivision; or~~

~~(3)~~ when a person files a written election with the association to discontinue employee deductions under section 353.27, subdivision 7, paragraph (a), clause (1);

(2) when a city manager files a written election with the association to discontinue employee deductions under section 353.028, subdivision 2; or

(3) when a member transfers to a temporary position and becomes excluded from membership under subdivision 2b, clause (4).

(b) The termination of membership under clause (3) must be reported to the association by the governmental subdivision.

~~(c) If the employee subsequently returns to a position in the same governmental subdivision, the employee shall not again be required to earn a salary in excess of $425 per month to qualify for membership, unless the employee has taken a refund of accumulated employee deduction plus interest under section 353.34, subdivision 1.~~

Sec. 5. Minnesota Statutes 2004, section 353.01, subdivision 12, is amended to read:

Subd. 12. **Authorized temporary or seasonal layoff.** "Authorized temporary or seasonal layoff," including seasonal leave of absence, means a suspension of public service for a limited period during a year authorized by the employing governmental subdivision for a ~~period not exceeding three months in any calendar year, as evidenced by appropriate record of the employer and promptly transmitted to the association~~ member

who is expected to return to the same position at the end of the layoff period and for which there has been no termination of public service under subdivision 11a.

Sec. 6. Minnesota Statutes 2004, section 353.01, is amended by adding a subdivision to read:

Subd. 12c. **Indefinite layoff.** "Indefinite layoff" occurs when a member is placed on a layoff that is not a temporary or seasonal layoff under subdivision 12, for which no date has been specified by the employing governmental subdivision for the employee's return to work, and there has been no termination of public service under subdivision 11a.

Sec. 7. Minnesota Statutes 2004, section 353.01, subdivision 16, is amended to read:

Subd. 16. **Allowable service; limits and computation.** (a) "Allowable service" means:

(1) service during years of actual membership in the course of which employee contributions were made, periods covered by payments in lieu of salary deductions under section 353.35;

(2) service in years during which the public employee was not a member but for which the member later elected, while a member, to obtain credit by making payments to the fund as permitted by any law then in effect;

(3) a period of authorized leave of absence with pay from which deductions for employee contributions are made, deposited, and credited to the fund;

(4) a period of authorized personal, parental, or medical leave of absence without pay, including a leave of absence covered under the federal Family Medical Leave Act, that does not exceed one year, and during or for which a member obtained service credit for each month in the leave period by payments to the fund made in place of salary deductions. The payments must be made in an amount or amounts based on the member's average salary on which deductions were paid for the last six months of public service, or for that portion of the last six months while the member was in public service, to apply to the period in either case that immediately precedes the commencement of the leave of absence. If the employee elects to pay the employee contributions for the period of any authorized personal, parental, or medical leave of absence without pay, or for any portion of the leave, the employee shall also, as a condition to the exercise of the election, pay to the fund an amount equivalent to the required employer and the additional employer contributions, if any, for the employee. The payment must be made within one year from the expiration of the leave of absence or within 20 days after termination of public service under subdivision 11a, whichever is earlier. The employer, by appropriate action of its

governing body which is made a part of its official records and which is adopted before the date of the first payment of the employee contribution, may certify to the association in writing its commitment to pay the employer and additional employer contributions from the proceeds of a tax levy made under section 353.28. Payments under this paragraph must include interest at an annual rate of 8.5 percent compounded annually from the date of the termination of the leave of absence to the date payment is made. An employee shall return to public service and render a minimum of three months of allowable service in order to be eligible to pay employee and employer contributions for a subsequent authorized leave of absence without pay. Upon payment, the employee must be granted allowable service credit for the purchased period;

(5) a periodic, repetitive leave that is offered to all employees of a governmental subdivision. The leave program may not exceed 208 hours per annual normal work cycle as certified to the association by the employer. A participating member obtains service credit by making employee contributions in an amount or amounts based on the member's average salary that would have been paid if the leave had not been taken. The employer shall pay the employer and additional employer contributions on behalf of the participating member. The employee and the employer are responsible to pay interest on their respective shares at the rate of 8.5 percent a year, compounded annually, from the end of the normal cycle until full payment is made. An employer shall also make the employer and additional employer contributions, plus 8.5 percent interest, compounded annually, on behalf of an employee who makes employee contributions but terminates public service. The employee contributions must be made within one year after the end of the annual normal working cycle or within 20 days after termination of public service, whichever is sooner. The association shall prescribe the manner and forms to be used by a governmental subdivision in administering a periodic, repetitive leave. Upon payment, the member must be granted allowable service credit for the purchased period;

(6) an authorized temporary or seasonal layoff under subdivision 12, limited to three months allowable service per authorized temporary or seasonal layoff in one calendar year. An employee who has received the maximum service credit allowed for an authorized temporary or seasonal layoff must return to public service and must obtain a minimum of three months of allowable service subsequent to the layoff in order to receive allowable service for a subsequent authorized temporary or seasonal layoff; or

(7) a period during which a member is absent from employment by a governmental subdivision by reason of service in the uniformed services, as defined in United States Code, title 38, section 4303(13), if the member returns to public service upon discharge from service in the uniformed service within the time frames required under United

States Code, title 38, section 4312(e), provided that the member did not separate from uniformed service with a dishonorable or bad conduct discharge or under other than honorable conditions. The service is credited if the member pays into the fund equivalent employee contributions based upon the contribution rate or rates in effect at the time that the uniformed service was performed multiplied by the full and fractional years being purchased and applied to the annual salary rate. The annual salary rate is the average annual salary during the purchase period that the member would have received if the member had continued to be employed in covered employment rather than to provide uniformed service, or, if the determination of that rate is not reasonably certain, the annual salary rate is the member's average salary rate during the 12-month period of covered employment rendered immediately preceding the period of the uniformed service. Payment of the member equivalent contributions must be made during a period which begins with the date on which the individual returns to public employment and that is three times the length of the military leave period, or within five years of the date of discharge from the military service, whichever is less. If the determined payment period is less than one year, the contributions required under this clause to receive service credit may be made within one year of the discharge date. Payment may not be accepted following 20 days after termination of public service under subdivision 11a. If the member equivalent contributions provided for in this clause are not paid in full, the member's allowable service credit must be prorated by multiplying the full and fractional number of years of uniformed service eligible for purchase by the ratio obtained by dividing the total member contributions received by the total member contributions otherwise required under this clause. The equivalent employer contribution, and, if applicable, the equivalent additional employer contribution must be paid by the governmental subdivision employing the member if the member makes the equivalent employee contributions. The employer payments must be made from funds available to the employing unit, using the employer and additional employer contribution rate or rates in effect at the time that the uniformed service was performed, applied to the same annual salary rate or rates used to compute the equivalent member contribution. The governmental subdivision involved may appropriate money for those payments. The amount of service credit obtainable under this section may not exceed five years unless a longer purchase period is required under United States Code, title 38, section 4312. The employing unit shall pay interest on all equivalent member and employer contribution amounts payable under this clause. Interest must be computed at a rate of 8.5 percent compounded annually from the end of each fiscal year of the leave or the break in service to the end of the month in which the payment is received. Upon payment, the employee must be granted allowable service credit for the purchased period.

(b) For calculating benefits under sections 353.30, 353.31, 353.32, and 353.33 for state officers and employees displaced by the Community Corrections Act, chapter 401, and transferred into county service under section 401.04, "allowable service" means the combined years of allowable service as defined in paragraph (a), clauses (1) to (6), and section 352.01, subdivision 11.

(c) For a public employee who has prior service covered by a local police or firefighters relief association that has consolidated with the Public Employees Retirement Association or to which section 353.665 applies, and who has elected the type of benefit coverage provided by the public employees police and fire fund either under section 353A.08 following the consolidation or under section 353.665, subdivision 4, "applicable service" is a period of service credited by the local police or firefighters relief association as of the effective date of the consolidation based on law and on bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure.

(d) No member may receive more than 12 months of allowable service credit in a year either for vesting purposes or for benefit calculation purposes.

(e) MS 2002 (Expired)

Sec. 8. Minnesota Statutes 2004, section 353.03, subdivision 1, is amended to read:

Subdivision 1. **Management; composition; election.** (a) The management of the public employees retirement fund is vested in an 11-member board of trustees consisting of ten members and the state auditor ~~who~~. The state auditor may designate a deputy auditor with expertise in pension matters as the auditor's representative on the board. The governor shall appoint five trustees to four-year terms, one of whom shall be designated to represent school boards, one to represent cities, one to represent counties, one who is a retired annuitant, and one who is a public member knowledgeable in pension matters. The membership of the association, including recipients of retirement annuities and disability and survivor benefits, shall elect five trustees for terms of four years, one of whom must be a member of the police and fire fund and one of whom must be a former member who met the definition of public employee under section 353.01, subdivisions 2 and 2a, for at least five years prior to terminating membership or a member who receives a disability benefit~~, for terms of four years~~. Terms expire on January 31 of the fourth year, and positions are vacant until newly elected members are seated. Except as provided in this subdivision, trustees elected by the membership of the association must be public employees and members of the association.

(b) For seven days beginning October 1 of each year preceding a year in which an election is held, the association shall accept at its office filings in person or by mail

of candidates for the board of trustees. A candidate shall submit at the time of filing a nominating petition signed by 25 or more members of the ~~fund~~ association. No name may be withdrawn from nomination by the nominee after October 15. At the request of a candidate for an elected position on the board of trustees, the board shall mail a statement of up to 300 words prepared by the candidate to all persons eligible to vote in the election of the candidate. The board may adopt policies, subject to review and approval by the secretary of state under paragraph (e), to govern the form and length of these statements, timing of mailings, and deadlines for submitting materials to be mailed. ~~These policies must be approved by the secretary of state.~~ The secretary of state shall resolve disputes between the board and a candidate concerning application of these policies to a particular statement.

(c) By January 10 of each year in which elections are to be held, the board shall distribute by mail to the members ballots listing the candidates. No member may vote for more than one candidate for each board position to be filled. A ballot indicating a vote for more than one person for any position is void. No special marking may be used on the ballot to indicate incumbents. Ballots mailed to the association must be postmarked no later than January 31. The ballot envelopes must be so designated and the ballots counted in a manner that ensures that each vote is secret.

(d) A candidate who~~:~~

~~(1)~~ receives contributions or makes expenditures in excess of $100~~;~~, or

~~(2)~~ has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of $100 for the purpose of bringing about the candidate's election, shall file a report with the campaign finance and public disclosure board disclosing the source and amount of all contributions to the candidate's campaign. The campaign finance and public disclosure board shall prescribe forms governing these disclosures. Expenditures and contributions have the meaning defined in section 10A.01. These terms do not include the mailing made by the association board on behalf of the candidate. A candidate shall file a report within 30 days from the day that the results of the election are announced. The Campaign Finance and Public Disclosure Board shall maintain these reports and make them available for public inspection in the same manner as the board maintains and makes available other reports filed with it. ~~By January 10 of each year in which elections are to be held the board shall distribute by mail to the members ballots listing the candidates. No member may vote for more than one candidate for each board position to be filled. A ballot indicating a vote for more than one person for any position is void. No special marking may be used on the ballot to indicate incumbents. The last day for mailing ballots to the fund is January 31. Terms expire on January 31 of~~

~~the fourth year, and positions are vacant until newly elected members are qualified. The ballot envelopes must be so designed and the ballots counted in a manner that ensures that each vote is secret.~~

(e) The secretary of state shall ~~supervise~~ review and approve the procedures defined by the board of trustees for conducting the elections specified in this subdivision, including board policies adopted under paragraph (b).

(f) The board of trustees and the executive director shall undertake their activities consistent with chapter 356A.

Sec. 9. Minnesota Statutes 2004, section 353.03, subdivision 1a, is amended to read:

Subd. 1a. **Vacancy, how filled.** Any vacancy on the board caused by death, resignation, or removal of any trustee, or occurring because an elected trustee ceases to be a public employee and an active member of the association, must be filled by the board for trustees elected by members, and by the governor for other trustees, for the unexpired portion of the term in which the vacancy occurs. The board shall adopt policies and procedures governing how the vacancy of an elected trustee is to be filled.

Sec. 10. Minnesota Statutes 2004, section 353.03, is amended by adding a subdivision to read:

Subd. 2b. **Board legal authority.** The board is authorized to take legal action when necessary to effectively administer the various plans administered by the association, consistent with applicable articles of incorporation, bylaws, law, and rules, as applicable, and including but not limited to the recapture of overpaid annuities, benefits, or refunds, and the correction of omitted or deficient deductions.

Sec. 11. Minnesota Statutes 2004, section 353.27, subdivision 7, is amended to read:

Subd. 7. **Adjustment for erroneous receipts or disbursements.** (a) Except as provided in paragraph (b), erroneous employee deductions and erroneous employer contributions and additional employer contributions for a person, who otherwise does not qualify for membership under this chapter, are considered:

(1) valid if the initial erroneous deduction began before January 1, 1990. Upon determination of the error by the association, the person may continue membership in the association while employed in the same position for which erroneous deductions were taken, or file a written election to terminate membership and apply for a refund upon termination of public service or defer an annuity under section 353.34; or

(2) invalid, if the initial erroneous employee deduction began on or after January 1, 1990. Upon determination of the error, the association shall ~~require the employer to discontinue erroneous employee deductions and erroneous employer contributions and additional employer contributions. Upon discontinuance, the association shall~~ refund all erroneous employee deductions ~~to the person, with interest, under section 353.34, subdivision 2,~~ and all erroneous employer contributions ~~and additional employer contributions to the employer~~ as specified in paragraph (d). No person may claim a right to continued or past membership in the association based on erroneous deductions which began on or after January 1, 1990.

(b) Erroneous deductions taken from the salary of a person who did not qualify for membership in the association by virtue of concurrent employment before July 1, 1978, which required contributions to another retirement fund or relief association established for the benefit of officers and employees of a governmental subdivision, are invalid. Upon discovery of the error, the association shall remove all invalid service and upon termination of public service, the association shall refund all erroneous employee deductions to the person, with interest under section 353.34, subdivision 2, and all erroneous employer contributions to the employer. This paragraph has both retroactive and prospective application.

(c) Employer contributions and employee deductions taken in error from amounts which are not salary under section 353.01, subdivision 10, are invalid upon discovery by the association and ~~may~~ must be refunded ~~at any time~~ as specified in paragraph (d).

(d) Upon discovery of the receipt of erroneous deductions and contributions under paragraph (a), clause (2), or paragraph (c), the association must require the employer to discontinue the erroneous employee deductions and erroneous employer contributions. Upon discontinuation, the association must refund the invalid employee deductions to the person without interest and invalid employer contributions to the employer or provide a credit against future contributions payable by the employer for the amount of all erroneous deductions and contributions. In the event a retirement annuity or disability benefit had been computed using invalid service or salary, the association must adjust the annuity or benefit and recover the overpayment under subdivision 7b.

(e) In the event a salary warrant or check from which a deduction for the retirement fund was taken has been canceled or the amount of the warrant or check returned to the funds of the department making the payment, a refund of the sum deducted, or a portion of it that is required to adjust the deductions, must be made to the department or institution.

(f) Any refund to a member under this subdivision that would cause the plan to fail to be a qualified plan under section 401(a) of the Internal Revenue Code, as amended, may

not be refunded and instead must be credited against future contributions payable by the employer. The employer receiving the credit is responsible for refunding to the applicable employee any amount that had been erroneously deducted from the person's salary.

Sec. 12. Minnesota Statutes 2004, section 353.27, subdivision 7a, is amended to read:

Subd. 7a. **Deductions or contributions transmitted by error.** (a) If employee deductions and employer contributions were erroneously transmitted to the association, but should have been transmitted to another Minnesota public pension plan, the association shall transfer the erroneous employee deductions and employer contributions to the appropriate retirement fund or individual account, as applicable, without interest. The time limitations in subdivisions 7 and 12 do not apply.

(b) For purposes of this subdivision, a Minnesota public pension plan means a plan specified in section 356.30, subdivision 3, or the ~~plan~~ plans governed by ~~chapter~~ chapters 353D and 354B.

Sec. 13. Minnesota Statutes 2004, section 353.27, subdivision 7b, is amended to read:

Subd. 7b. **Overpayments to members.** In the event of an overpayment to a member, retiree, beneficiary, or other person, the executive director shall recover the overpayment by suspending or reducing the payment of a retirement annuity, refund, disability benefit, survivor benefit, or optional annuity under this chapter until all outstanding money has been recovered.

Sec. 14. Minnesota Statutes 2005 Supplement, section 353.28, subdivision 6, is amended to read:

Subd. 6. **Collection of unpaid amounts.** (a) If a governmental subdivision which receives the direct proceeds of property taxation fails to pay an amount due under chapter 353, 353A, 353B, 353C, or 353D, the executive director shall certify the amount to the governmental subdivision for payment. If the governmental subdivision fails to remit the sum so due in a timely fashion, the executive director shall certify the amount to the applicable county auditor for collection. The county auditor shall collect the amount out of the revenue of the governmental subdivision, or shall add the amount to the levy of the governmental subdivision and make payment directly to the association. This tax must be levied, collected, and apportioned in the manner that other taxes are levied, collected, and apportioned.

(b) If a governmental subdivision which is not funded directly from the proceeds of property taxation fails to pay an amount due under this chapter, the executive director

shall certify the amount to the governmental subdivision for payment. If the governmental subdivision fails to pay the amount for a period of 60 days after certification, the executive director shall certify the amount to the commissioner of finance, who shall deduct the amount from any subsequent state-aid payment or state appropriation amount applicable to the governmental subdivision and make payment directly to the association.

Sec. 15. Minnesota Statutes 2004, section 353.29, subdivision 8, is amended to read:

Subd. 8. **Annuities; payment; evidence of receipt.** Payment of any annuity or benefit for a given month shall be mailed by the association to the annuitant, recipient of a disability benefit, or survivor, or automatically deposited under section 356.401, subdivision 2, during the first week of that month. ~~Evidence of receipt of warrants issued by the association in payment of an annuity or benefit shall be submitted by the payee thereof to the association periodically at times specified by the board of trustees, together with a written declaration that the annuitant or recipient of a disability benefit has or has not returned to public service; that the surviving dependent spouse has or has not remarried; and shall be furnished on forms provided by the executive director thereof, before the association shall pay to the disability recipient or survivor for the next ensuing month, the benefit to which the person otherwise may be entitled. In lieu of the evidence of receipt of warrants for recipients of an annuity or a benefit,~~ The board may contract for professional services to identify deceased annuitants and benefit recipients through a review of nationally maintained death records.

Sec. 16. Minnesota Statutes 2004, section 353.30, subdivision 3a, is amended to read:

Subd. 3a. **Bounce-back annuity.** (a) If a former member or disabilitant selects a joint and survivor annuity option under subdivision 3 on or after July 1, 1989, the former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) ~~A former member or disabilitant who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died~~

~~before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date~~ The annuity adjustment specified in paragraph (a) also applies to joint and survivor annuity options under subdivision 3 elected prior to July 1, 1989. The annuity adjustment under this paragraph occurs on July 1, 1989, or on the first day of the first month following the death of the designated optional annuity beneficiary, whichever is later. This paragraph should not be interpreted as authorizing retroactive payments.

~~(c) A former member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary dies first but has not died before July 1, 1989, shall have their annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.~~

Sec. 17. Minnesota Statutes 2004, section 353.30, subdivision 3b, is amended to read:

Subd. 3b. **Bounce-back annuity.** (a) The board of trustees must provide a joint and survivor annuity option to members of the police and fire fund. ~~Under this option, a~~ If a joint and survivor annuity is elected on or after July 1, 1989, the former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) ~~A former member or disabilitant of the police and fire fund who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date~~ The annuity adjustment specified in paragraph (a) also applies to joint and survivor annuity options under subdivision 3 elected prior to July 1, 1989. The annuity adjustment

under this paragraph occurs on July 1, 1989, or on the first day of the first month following the death of the designated optional annuity beneficiary, whichever is later. This paragraph should not be interpreted as authorizing retroactive payments.

~~(c) A former member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary dies first but has not died before July 1, 1989, shall have their annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.~~

Sec. 18. Minnesota Statutes 2004, section 353.32, subdivision 1a, is amended to read:

Subd. 1a. **Surviving spouse optional annuity.** (a) If a member or former member who has credit for not less than three years of allowable service and dies before the annuity or disability benefit begins to accrue under section 353.29, subdivision 7, or 353.33, subdivision 2, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive, instead of a refund with interest under subdivision 1, or surviving spouse benefits otherwise payable under section 353.31, an annuity equal to the 100 percent joint and survivor annuity that the member could have qualified for had the member terminated service on the date of death.

(b) If the member was under age 55 and has credit for at least 30 years of allowable service on the date of death, the surviving spouse may elect to receive a 100 percent joint and survivor annuity based on the age of the member and surviving spouse on the date of death. The annuity is payable using the full early retirement reduction under section 353.30, subdivisions 1b and 1c, to age 55 and one-half of the early retirement reduction from age 55 to the age payment begins.

(c) If the member was under age 55 and has credit for at least three years of allowable service on the date of death but did not qualify for retirement, the surviving spouse may elect to receive the 100 percent joint and survivor annuity based on the age of the member and surviving spouse at the time of death. The annuity is payable using the full early retirement reduction under section 353.30, subdivision 1, 1b, 1c, or 5, to age 55 and one-half of the early retirement reduction from age 55 to the age payment begins.

(d) Notwithstanding the definition of surviving spouse in section 353.01, subdivision 20, a former spouse of the member, if any, is entitled to a portion of the monthly surviving

spouse optional annuity if stipulated under the terms of a marriage dissolution decree filed with the association. If there is no surviving spouse or child or children, a former spouse may be entitled to a lump-sum refund payment under subdivision 1, if provided for in a marriage dissolution decree but not a monthly surviving spouse optional annuity despite the terms of a marriage dissolution decree filed with the association.

(e) The surviving spouse eligible for surviving spouse benefits under paragraph (a) may apply for the annuity at any time after the date on which the deceased employee would have attained the required age for retirement based on the employee's allowable service. The surviving spouse eligible for surviving spouse benefits under paragraph (b) or (c) may apply for an annuity any time after the member's death. The annuity must be computed under sections 353.29, subdivisions 2 and 3; and 353.30, subdivisions 1, 1a, 1b, 1c, and 5~~; and 353.31, subdivision 3~~.

(f) Sections 353.34, subdivision 3, and 353.71, subdivision 2, apply to a deferred annuity or surviving spouse benefit payable under this subdivision. No payment may accrue beyond the end of the month in which entitlement to the annuity has terminated or upon expiration of the term certain benefit payment under subdivision 1b. An amount equal to any excess of the accumulated contributions that were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse must be paid to the ~~deceased member's last designated beneficiary or, if none, as specified under subdivision 1~~ surviving spouse's estate.

(g) A member may specify in writing that this subdivision does not apply and that payment may be made only to the designated beneficiary as otherwise provided by this chapter. The waiver of a surviving spouse annuity under this section does not make a dependent child eligible for benefits under subdivision 1c.

Sec. 19. Minnesota Statutes 2004, section 353.32, subdivision 1b, is amended to read:

Subd. 1b. **Survivor coverage term certain.** (a) In lieu of the 100 percent optional annuity under subdivision 1a, or a refund under subdivision 1, the surviving spouse of a deceased member may elect to receive survivor coverage for a term certain of ~~five,~~ ten, 15, or 20 years, but monthly payments must not exceed 75 percent of the average high-five monthly salary of the deceased member. The monthly term certain annuity must be actuarially equivalent to the 100 percent optional annuity under subdivision 1a.

(b) If a surviving spouse elects a term certain annuity and dies before the expiration of the specified term certain period, the commuted value of the remaining annuity payments must be paid in a lump sum to the survivor's estate.

Sec. 20. Minnesota Statutes 2004, section 353.33, subdivision 1, is amended to read:

Subdivision 1. **Age, service, and salary requirements.** A coordinated member who has at least three years of allowable service and becomes totally and permanently disabled before normal retirement age, and a basic member who has at least three years of allowable service and who becomes totally and permanently disabled is entitled to a disability benefit in an amount determined under subdivision 3. If the disabled person's public service has terminated at any time, at least two of the required three years of allowable service must have been rendered after last becoming ~~a~~ an active member. A repayment of a refund must be made within six months after the effective date of disability benefits under subdivision 2 or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service or payment made in lieu of salary deductions otherwise authorized under section 353.01, subdivision 16, ~~353.017, subdivision 4, or 353.36, subdivision 2,~~ may be made after the occurrence of the disability for which an application under this section is filed.

Sec. 21. Minnesota Statutes 2004, section 353.33, subdivision 9, is amended to read:

Subd. 9. **Return to ~~public service~~ employment.** (a) Any person receiving a disability benefit under this section who is restored to ~~active public service except persons receiving benefits as provided in~~ employment not covered by subdivision 7~~;~~ or 7a shall have the disability benefit discontinued on the first day of the month following the return to employment.

(b) If the person is employed by a governmental subdivision as defined under section 353.01, subdivision 6, deductions must be taken for the retirement fund and upon subsequent retirement have the retirement annuity payable based upon all allowable service including that upon which the disability benefits were based.

(c) If the employment is not through public service covered under this chapter, the account may be placed on a deferred status and the subsequent retirement annuity will be calculated as provided in section 353.34, subdivision 3, if the person meets the length of allowable service requirement stated in that subdivision; or the person may request a refund of any remaining employee deductions. The refund shall be in an amount equal to the accumulated employee deductions plus six percent interest compounded annually less the sum of the disability benefits paid to the member.

Sec. 22. **[353.335] DISABILITANT EARNINGS REPORTS.**

Disability benefit recipients must report all earnings from reemployment and income from workers' compensation to the association annually by May 15 in a format prescribed

by the executive director. If the form is not submitted by May 15, benefits will be suspended effective June 1. Upon receipt of the form, if the disability benefit recipient is deemed to be eligible for continued payment, benefits will be reinstated retroactive to June 1.

Sec. 23. Minnesota Statutes 2004, section 353.34, subdivision 1, is amended to read:

Subdivision 1. **Refund or deferred annuity.** (a) A former member is entitled to a refund of accumulated employee deductions under subdivision 2, or to a deferred annuity under subdivision 3. Application for a refund may not be made prior to the date of termination of public service ~~or the termination of membership, whichever is sooner~~. Except as specified in paragraph (b), a refund must be paid within 120 days following receipt of the application unless the applicant has again become a public employee required to be covered by the association.

(b) If an individual was ~~granted an authorized temporary~~ placed on layoff under subdivision 12 or 12c, a refund is not payable before termination of ~~membership~~ service under ~~section 353.01, subdivision 11b, clause (3)~~ subdivision 11a.

(c) An individual who terminates public service covered by the Public Employees Retirement Association general plan, the Public Employees Retirement Association police and fire plan, or the public employees local government corrections service retirement plan, and who is employed by a different employer and becomes an active member covered by one of the other two plans, may receive a refund of employee contributions plus six percent interest compounded annually from the plan in which the member terminated service.

Sec. 24. Minnesota Statutes 2004, section 353.656, subdivision 4, is amended to read:

Subd. 4. **Limitation on disability benefit payments.** (a) No member is entitled to receive a disability benefit payment when there remains to the member's credit unused annual leave or sick leave or under any other circumstances when, during the period of disability, there has been no impairment of the person's salary as a police officer ~~or~~, a firefighter, or a paramedic as defined in section 353.64, subdivision 10, whichever applies.

(b) If a disabled member resumes a gainful occupation with earnings ~~less than~~, that when added to the normal disability benefit, and workers' compensation benefit if applicable, exceed the disabilitant reemployment earnings limit, the amount of the disability benefit must be reduced as provided in this paragraph. The disabilitant reemployment earnings limit is the greater of:

(1) the salary earned at the date of disability; or

(2) 125 percent of the base salary currently paid by the employing governmental subdivision for similar positions.

The disability benefit must be reduced by one dollar for each three dollars by which the total amount of the current disability benefit, any workers' compensation benefits if applicable, and actual earnings exceed the greater disabilitant reemployment earnings limit. In no event may the disability benefit as adjusted under this subdivision exceed the disability benefit originally allowed.

Sec. 25. Minnesota Statutes 2004, section 353D.01, subdivision 2, is amended to read:

Subd. 2. **Eligibility.** (a) Eligibility to participate in the defined contribution plan is available to:

(1) elected local government officials of a governmental subdivision who elect to participate in the plan under section 353D.02, subdivision 1, and who, for the elected service rendered to a governmental subdivision, are not members of the Public Employees Retirement Association within the meaning of section 353.01, subdivision 7;

(2) physicians who, if they did not elect to participate in the plan under section 353D.02, subdivision 2, would meet the definition of member under section 353.01, subdivision 7;

(3) basic and advanced life support emergency medical service personnel employed by ~~or providing services for~~ any public ambulance service ~~or privately operated ambulance service that receives an operating subsidy from a governmental entity~~ that elects to participate under section 353D.02, subdivision 3;

(4) members of a municipal rescue squad associated with Litchfield in Meeker County, or of a county rescue squad associated with Kandiyohi County, if an independent nonprofit rescue squad corporation, incorporated under chapter 317A, performing emergency management services, and if not affiliated with a fire department or ambulance service and if its members are not eligible for membership in that fire department's or ambulance service's relief association or comparable pension plan; and

(5) employees of the Port Authority of the city of St. Paul who elect to participate in the plan under section 353D.02, subdivision 5, and who are not members of the Public Employees Retirement Association under section 353.01, subdivision 7.

(b) For purposes of this chapter, an elected local government official includes a person appointed to fill a vacancy in an elective office. Service as an elected local government official only includes service for the governmental subdivision for which the official was elected by the public-at-large. Service as an elected local government official

ceases and eligibility to participate terminates when the person ceases to be an elected official. An elected local government official does not include an elected county sheriff.

(c) Individuals otherwise eligible to participate in the plan under this subdivision who are currently covered by a public or private pension plan because of their employment or provision of services are not eligible to participate in the public employees defined contribution plan.

(d) A former participant is a person who has terminated eligible employment or service and has not withdrawn the value of the person's individual account.

Sec. 26. Minnesota Statutes 2004, section 353D.02, subdivision 3, is amended to read:

Subd. 3. **Eligible ambulance service personnel.** Each public ambulance service ~~or privately operated ambulance service~~ with eligible personnel ~~that receives an operating subsidy from a governmental entity~~ may elect to participate in the plan. If a service elects to participate, its eligible personnel may elect to participate or to decline to participate. An individual's election must be made within 30 days of the service's election to participate or 30 days of the date on which the individual was employed by the service or began to provide service for it, whichever date is later. An election by a service or an individual is revocable.

Sec. 27. Minnesota Statutes 2004, section 353E.02, subdivision 2, is amended to read:

Subd. 2. **Local government correctional service employee.** (a) A local government correctional service employee, for purposes of subdivision 1, is a person whom the employer certifies:

(1) is employed in a county correctional institution as a correctional guard or officer, a joint jailer/dispatcher, or as a supervisor of correctional guards or officers or of joint jailers/dispatchers or identical position to the positions listed in this clause as determined by the employing governmental unit;

(2) is directly responsible for the direct security, custody, and control of the county correctional institution and its inmates;

(3) is expected to respond to incidents within the county correctional institution as part of the person's regular employment duties and is trained to do so; and

(4) is a "public employee" as defined in section 353.01, but is not a member of the public employees police and fire fund.

(b) The certification required under paragraph (a) must be made in ~~writing on~~ a ~~form~~ format prescribed by the executive director of the Public Employees Retirement Association.

(c) A person who was a member of the local government correctional service retirement plan on May 15, 2000, remains a member of the plan after May 16, 2000, for the duration of the person's employment in that county correctional institution position, even if the person's subsequent service in this position does not meet the requirements set forth in paragraph (a).

Sec. 28. Minnesota Statutes 2004, section 353E.02, subdivision 3, is amended to read:

Subd. 3. **County correctional institution.** A county correctional institution is:

(1) a jail administered by a county;

(2) a correctional facility administered by a county; ~~or~~

(3) a regional correctional facility administered by or on behalf of multiple counties; or

(4) a juvenile correctional facility administered by a county or on behalf of multiple counties.

Sec. 29. Laws 2004, chapter 267, article 8, section 41, is amended to read:

Sec. 41. [REPEALER.]

(a) Minnesota Statutes 2002, sections 353.33, subdivision 5b; and 490.11, are repealed on July 1, 2004.

(b) ~~Sections~~ Section 3 ~~and 19 are~~ is repealed on July 1, 2006.

Sec. 30. **EFFECTIVE DATE.**

Sections 1 to 29 are effective July 1, 2006.