



H.F. 3415

(Pelowski)

S.F. 3531

(Larson, D.)

Executive Summary of Commission Staff Materials

<i>Affected Pension Plan(s):</i>	TRA and First Class City Teacher Plans
<i>Relevant Provisions of Law:</i>	Minnesota Statutes, Sections 354.05, 354.44, 354A.31, and New Coding
<i>General Nature of Proposal:</i>	Increases TRA, DTRFA, and SPTRFA exempt reemployment income amounts to \$46,000; creates new TRA "phased retirement program"
<i>Date of Summary:</i>	March 10, 2008

Specific Proposed Changes

- Increases the Teachers Retirement Association (TRA), the Duluth Teachers Retirement Fund Association (DTRFA), and the St. Paul Teachers Retirement Fund Association (SPTRFA) exempt reemployment income amounts to \$46,000 rather than the maximum exempt income amounts for a given age as specified by the Social Security Administration.
- Creates a new TRA program, called the phased retirement program, permitting active teachers at least age 62 to enter into an agreement to continue providing teaching service after retirement, on any terms agreed to by the teacher and district.
- Changes TRA's definition of termination of teaching service, permitting in-service distribution to those at least age 62 despite a contract to return to employment, and to younger teachers if there is an oral rather than written contract to return to teaching service following submission of a resignation.

Policy Issues Raised by the Proposed Legislation

1. In-service distribution problem, those under age 62.
2. In-service distribution issues, those over age 62.
3. Inconsistency with the general policy against double-dipping.
4. Similar provision in other bills.
5. Lack of any phased retirement restrictions in proposed phased retirement program.
6. Issues raised by section 1, in conjunction with the section 3 phased retirement program.
7. Cost implications.
8. Issue of whether defined benefit pension plans should continue to be offered.
9. Need for new phased retirement program.
10. Unclear actual need for relaxation of limits; potential misunderstanding of current reemployed annuitant limits.
11. Willingness of legislature to make further changes.
12. Erosion of contribution base.
13. Loss of gain on account assets.
14. Scope.
15. Further design questions.
16. Study.

Potential Amendments

H3415-1A is a technical amendment.

H3415-2A deletes Section 1.

H3415-3A can be used if section 1 remains in the bill. It prohibits all pre-retirement return-to-employment contracts after retirement by those under age 62, not just those which are written, and removes reference to different treatment if individuals are age 62 or over.

H3415-4A deletes Sections 2, 4, and 5.

- H3415-5A** revises TRA and first class city teacher exempt income limit provisions from the proposed \$46,000 to an amount to be set by the Commission, either higher or lower than \$46,000.
- H3415-6A** can be used if the Commission retains the TRA and first class city teacher plan reemployed annuity provisions, either with the proposed \$46,000 exempt income limit or some other dollar limit. This amendment would provide similar changes to the MSRS and PERA reemployed annuitant provisions.
- H3415-7A** deletes Section 3.
- H3415-8A** adds additional qualification requirements similar to those applicable to the Minnesota State Colleges and Universities System (MnSCU) programs.
- H3415-9A** can be used if Sections 2, 4, and 5 remain in the bill and the Commission wishes to limit the reemployment exempt income limit for younger reemployed annuitants.
- H3415-10A** can be used to insert a section requiring TRA employing units to make employer contributions to the plan on behalf of reemployed annuitants.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: H.F. 3415 (Pelowski); S.F. 3531 (Larson, D.): TRA and First Class City Teacher Plans; Providing for Phased Retirement from Teaching

DATE: March 10, 2008

General Summary

H.F. 3415 (Pelowski); S.F. 3531 (Larson, D.) does the following:

- increases the Teachers Retirement Association (TRA), the Duluth Teachers Retirement Fund Association (DTRFA), and the St. Paul Teachers Retirement Fund Association (SPTRFA) exempt reemployment income amounts to \$46,000 rather than the maximum exempt income amounts for a given age as specified by the Social Security Administration;
- creates a new TRA program, called the phased retirement program, permitting active teachers at least age 62 to enter into an agreement to continue providing teaching service after retirement, on any terms agreed to by the teacher and district; and
- changes TRA's definition of termination of teaching service, permitting in-service distribution to those at least age 62 despite a contract to return to employment, and to younger teachers if there is an oral rather than written contract to return to teaching service following submission of a resignation.

Background Information

Background information is attached as follows:

- Reemployment earnings limitations as found in the Social Security System and various Minnesota public plans is found in **Attachment A**.
- The current bill establishes a new program that has some similarity to the existing State Employee Post Retirement Option Program. Background on that program is found in **Attachment B**.
- Background on the Minnesota State Colleges and Universities System (MnSCU) phased retirement program is found in **Attachment C**.

Discussion and Analysis

The Legislative Commission on Pensions and Retirement's Principles of Pension Policy states the following as the purpose of Minnesota public pension plans:

II.A. Purpose of Minnesota Public Pension Plans

1. Minnesota public pension plans exist to augment the Minnesota public employer's personnel and compensation system by assisting in the recruitment of new qualified public employees, the retention of existing qualified public employees, and the systematic out-transitioning of existing public employees at the normally expected conclusion of their working careers by providing, in combination with federal Social Security coverage, personal savings and other relevant financial sources, retirement income that is adequate and affordable.

Consistent with that principle, historically Minnesota public plans strongly discourage individuals to leave covered employment prior to the conclusion of their working careers by containing strong penalties if the individual became reemployed within the same retirement system and earned more than very modest income. In some cases, if a minimal reemployment income threshold was exceeded, the annuity for the year was forfeited, while in other plans a portion of the annuity was forfeited. Over time, the Legislature made some modification to these provisions, by either modestly increasing the exempt income thresholds

or by reducing the portion of the annuity forfeited. Although these changes reduced penalties, the provisions still could be viewed as strongly encouraging public employees to continue until the end of their productive years, rather than retiring but then returning as reemployed annuitants.

While the Commission has not substantively altered the policy statement quoted above, a fundamental shift in policy as reflected in law occurred in 2000 (Laws 2000, Chapter 461, Article 2). Due to strong pressure from teachers, in that chapter the Legislature passed provisions changing retirement plan reemployed annuitant laws for teachers and other public employees. The punitive forfeitures, of all or a portion of the annual annuity if substantial reemployment income occurred, was replaced with a requirement that these amounts, rather than being forfeited, would instead be deposited in a savings account for the individual payable with six percent interest. The account can be accessed at age 65 or approximately one year after ceasing the reemployment, whichever is later. This transformed the plan provisions from a punitive penalty for reemployment to a forced savings plan. Perhaps the deferral requirement has some impact in encouraging individuals nearing retirement age to remain in full employment and to not terminate from their employers. For those who do terminate, but who are not ready to fully withdraw from the labor force, the provisions at least serve to partially withhold retirement annuity payments until the individual has fully retired, so that assets intended to support the individual in retirement are actually used for that purpose.

The existing reemployed income limit laws can be questioned regarding their scope and design. Regarding scope, the provisions that appear in these plans apply, at most, to reemployment in a position covered by the same retirement system. Thus, a Teachers Retirement Association (TRA) retiree becoming reemployed in a position normally covered by TRA is subject to the TRA reemployed annuitant provision, while a similar TRA retired teacher who took a position in the private sector, or a position covered by a first class city teacher plan, or by any other public plan, would not be subject to the provision. The administrators for the various plans have long supported the combined service annuity provision (Minnesota Statutes, Section 356.30) which, for purposes of computing the annuity at the time of retirement, allows individuals who have service in more than one Minnesota public defined benefit plan or system to have that service treated as though it was provided within a single retirement system. However, the plan administrators have not supported any effort to amend reemployed annuitant laws to have a similar scope.

Part of the current proposal appears to be an effort to create, for all TRA and first class city teacher plan retirees, an exempt income limit which matches that found in provisions specific to Minnesota State Colleges and Universities System (MnSCU) retirees with Minnesota State Retirement System (MSRS), TRA, or first class city teacher plan annuities. Those provisions in current law are Minnesota Statutes, Sections 352.1155, 354.445 and 354A.31, Subdivision 3a, respectively.

While the current proposal would use the same exempt income limit as the MnSCU provisions, \$46,000, the proposal lacks many of the restrictions found in the MnSCU provisions. To be eligible for the MnSCU program, the individual must:

- (1) have ten years of service credit from a public pension plan in which MnSCU is a participating employer;
- (2) be employed prior to retirement on a full-time basis as a MnSCU faculty member or as a MnSCU administrator in the unclassified service;
- (3) retire from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), or from TRA, or from a first class city teacher plan; and
- (4) return to employment by MnSCU on at least one-third of full time and not more than two-thirds of full time under an agreement between the employee and employer under which the individual will not earn salary in excess of \$46,000 per calendar year.

In contrast, under the TRA proposal that would apply to all K-12 teachers and administrators, there is no length of prior service requirement, no requirement that the individual work full time prior to termination and rehire, and no requirement that the reemployment be a reduction from prior employment. Individuals will be permitted to commence receipt of full retirement benefits while remaining fully employed.

The proposed program also does not prohibit entering into reemployment agreements while the individual remains an active employee. In general, this would raise the issue of whether the federal government would view these as sham terminations, creating a distribution of retirement plan assets to the applicable individual (an in-service distribution) without a true separation from service. The current bill seeks to avoid that federal compliance problem by restricting the proposed program to those who are at least age

62, an exemption from in-service distribution prohibitions provided in recent 2006 federal legislation. However, this is uncharted ground for Minnesota public plans. The Legislature has never knowingly permitted in-service distributions. The Commission may wish to carefully consider the implications of permitting these distributions. If they are permitted under any circumstances, it may not be possible to restrict them to one or two specific programs, and may have unforeseen cost implications for the plans.

Policy Issues

H.F. 3415 (Pelowski); S.F. 3531 (Larson, D.) does the following:

- increases the Teachers Retirement Association (TRA), the Duluth Teachers Retirement Fund Association (DTRFA), and the St. Paul Teachers Retirement Fund Association (SPTRFA) exempt reemployment income amounts to \$46,000 rather than the maximum exempt income amounts for a given age as specified by the Social Security Administration;
- creates a new TRA program, called the phased retirement program, permitting teachers at least age 62 to enter into an agreement while still active teachers to continue providing teaching service after retirement, on any terms agreed to by the teacher and district; and,
- changes TRA's definition of termination of teaching service, permitting in-service distribution to those at least age 62 despite a contract to return to employment, and to younger teachers if there is an oral rather than written contract to return to teaching service following submission of a resignation.

The bill raises numerous policy issues for Commission consideration, as follows:

1. In-Service Distribution Problem, Those Under Age 62. The issue is whether section 1 as drafted is consistent with federal law in-service distribution requirements applicable for those under age 62. By adding "written" on page 1, line 12, the implication is that oral contracts to return to work are permissible, since the termination of service is only invalid under this revision if the contract is written. TRA may have wanted to add "written" because of TRA's limited ability to be aware of any oral contract. However, the addition of "written" validates, for purposes of this Minnesota law, use of oral contracts between the employee and employer to return to employment following commencement of retirement. That increases the chance that Minnesota law could be found to violate the federal prohibition against in-service distributions. In contrast, PERA in its administrative provisions is proposing to add "written or oral" to its termination of service provision. The suggested PERA wording is a stronger effort to be consistent with federal in-service distribution prohibitions.
2. In-Service Distribution Issues, Those Over Age 62. The issue is whether the Commission and Legislature want to knowingly permit in-service distributions to those who are at least age 62. Although in-service distributions may be permitted under federal law for the age 62 and older age group, the Commission may wish to address the question of whether this reflects good pension policy. This is not a subject that the Commission has previously addressed. Permitting in-service distributions is contrary to a core concept that retirement plan benefits should be used to support individuals who are truly retired. Permitting in-service distributions to any individuals in any plan is likely to create pressure to permit this treatment for similar individuals in all Minnesota public pension plans. Over the longer term this policy is likely to lead to more costly pension plans and more administrative burden. Retirees who are providing service comparable to their younger, active member follow employees will eventually push for some form of additional pension coverage for this service. There may also be lawsuits arguing that the lack of further retirement plan accrual for this additional service violates equal protection requirements or constitutes age discrimination. Eventually, the plans may need to recompute annuities each year, revising the annuity being paid each year to reflect the additional service, similar to the current treatment of Social Security benefits, which can be increased if the individual continues to provide employment following commencement of the original benefit.
3. Inconsistency with the General Policy Against Double-Dipping. The proposal is inconsistent with the generalized public policy against individuals receiving both a full retirement annuity and a full active member salary at the same time, frequently referred to as "double-dipping." In a well constructed retirement plan, where retirement benefits are not accessible until the generally expected conclusion of a public employee's working lifetime is reached and the person's termination of regular gainful employment occurred, meaning that few, if any, retirees should be receiving an income from substantial regular employment while also receiving a retirement annuity. Allowing some modest post-retirement employment can be handled by imposing some reemployed earnings limitation at an amount that is greater than zero. Double-dipping can occur when retirement is permitted or

encouraged at ages earlier than normal employability limits and when the reemployed annuitant earnings exempt income limitations are set at a very high level. Based on a 50-state teacher retirement system survey conducted by the Commission staff, as specified in current law Minnesota teacher retirement plans are among the least restrictive in limiting post-retirement employment with the continued receipt of unaffected retirement benefits. The proposed loosening of restrictions on reemployment by retired teachers permits, and may encourage, further “double-dipping” practices.

4. Similar Provision in Other Bills. The Commission may choose to be aware that sections 1 and 2 of this bill is also found in H.F. xxxx; S.F. 3324 (Betzold), (MSRS, TRA, and PERA administrative provisions), although these proposed changes are not administrative. The first class city teacher plan reemployed annuitant exempt earnings provision, which is revised in Section 4 of this bill, is also treated in H.F. 2194 (Kahn); S.F. 2006 (Pappas) (various plans; reemployed annuitant earnings limits; actuarial services; state aid). In that bill, the first class city teacher reemployed annuitant earnings limit provision would be repealed.
5. Lack of Any Phased Retirement Restrictions in Proposed Phased Retirement Program. The issue is that Section 3, as drafted, claims to be a new TRA phased retirement program, but lacks any provisions requiring the program to be used to phase into retirement, other than the requirement that the individual must be at least age 62. The basic requirements typically found in a transition-to-retirement program are missing. There is no requirement that the employee be a full-time employee prior to entering the program, that reemployment under the program be restricted to part-time or less-than-full year employment, that the employment under this program represents a reduction from the level of service provided prior to entering the program, or that the reemployment be for a limited period rather than an unspecified, indefinite period. As drafted, this program can be used to allow individuals to simply continue in full-time employment without any break in service while simultaneously drawing their full retirement annuity. If enacted as specified, the program will be abused, particularly by those with power and influence.
6. Issues Raised by Section 1, in Conjunction with the Section 3 Phased Retirement Program. The issue is that Section 1 basically permits in-service distributions to any TRA teacher who is at least age 62. Given this section, it is unclear why the so-called phased retirement program in Section 3 is included in the bill. If any teacher age 62 or older can commence receipt of an annuity while, in effect, continuing in the same employment, there is reason to consider the “phase retirement program” under Section 3.
7. Cost Implications. The issue is the cost implications of the changes proposed by this bill. The Commission may wish to have some testimony on this, and may choose to consider that any claimed cost, or any claim of no cost, is based on assumptions about the willingness of retirees to provide service, and how those who are currently active will respond to changed incentives. Assumptions may not prove to be reliable over time.
8. Issue of Whether Defined Benefit Pension Plans Should Continue to be Offered. The issue is whether defined benefit pension plans for teachers should continue, if programs such as that being proposed become TRA law. The justification for defined benefit programs was that the pension program was a tool of the employer. The defined benefit pension plan served to attract and retain capable employees, and to outtransition those employees at the end of their productive working careers. The level of benefits provided was intended to allow long-service retirees with sufficient retirement income, when coupled with personal savings and Social Security benefits, to maintain the individual in retirement without a noticeable decline in the standard of living. The Commission may wish to consider that the design of these plans has drifted over time, with the plan being less a personnel tool of the employer and more an unrestricted asset of the employee, to be used at the discretion of the employee, either during true retirement or before. For many individuals, early termination is encouraged by providing subsidized early retirement benefits. More recently, after being subsidized to retire, these individuals are then offered programs to get them back to work by removing restrictions against reemployed retirees. The current proposal goes further by allowing the individual to commence receiving retirement benefits, including subsidized early retirement benefits, without any termination of service, or any change in the nature of the employment. At some point the Commission may need to consider whether sufficient justification remains for the employer to continue bearing the risk and liabilities of these pension programs, by guaranteeing a specified benefit for the individual based on length of service, salary, and age.
9. Need for New Phased Retirement Program. The issue is whether there is sufficient justification for this claimed phased retirement program given that TRA already has a program that can be used to transition into retirement. The Qualified Part-Time Teacher Program, Minnesota Statutes, Section

354.66, allows teachers to teach part-time for several years while making contributions to the pension fund based on full-time equivalent salary, to maintain their high-five average salary for pension purposes for computing the annuity when they retire.

10. Unclear Actual Need for Relaxation of Limits; Potential Misunderstanding of Current Reemployed Annuitant Limits. The policy issue is the appropriateness of the proposed relaxation of the reemployed annuitant earnings limitations if the problem is largely one of misunderstanding of the nature of the current provisions. Many teachers seem to misunderstand the nature of the existing law provisions. Under existing law, no annuity amounts are forfeited, regardless of an individual's reemployment salary. Any benefit forfeitures that occurred under prior law have been replaced with benefit deferrals paid with interest, and after reaching full Social Security normal retirement age (age 65 to 67, depending upon an individual's date of birth) there no longer is any deferral requirement. There are no forfeitures.
11. Willingness of Legislature to Make Further Changes. The issue is whether the Legislature is willing to make further changes at this time, given that Legislature in recent years has already considerably revised reemployed annuitant policy. During this legislative session the Legislature may also be confronted with questions about in-service distributions and federal compliance, and requests for extension of early retirement provisions. The Commission and the Legislature may choose to move slowly and decide to study how programs interact, to better determine which programs should be modified to better achieve Minnesota education objectives.
12. Erosion of Contribution Base. The concern is that this bill, if enacted, will erode the plan contribution base, shifting added burden to active teachers who are not in this program. The bill and other programs or provisions of law encourage retirees to provide teaching service, service that otherwise would be provided by active teachers. This has a financial impact on the pension plan. Active plan members and the school districts that hire them make employee and employer contributions to the plan. No employee or employer contributions, however, are made if the hired individual is a retiree. TRA has recently expressed some concern about the extent to which retirees are providing services and displacing an individual who would be an active member of the plan. Displacement of active plan members by retirees shrinks the total covered salary base upon which contributions are made. All teacher plans have unfunded liability, and when the contribution base shrinks, the contribution rate used to pay off any given dollar level of unfunded must be increased proportionately. This puts a greater contribution burden on active teachers.

TRA has also noted that employers have a cost incentive to hire a retiree rather than an individual who would be an active plan member. By hiring the retiree, the employer avoids the cost of an employer contribution. TRA has discussed proposing a law change to require employers who hire retirees to make an employer contribution, to remove the financial incentive to hire a retiree rather than a younger teacher, and to keep the contribution base from eroding any further. No language is provided in the bill to require employers to make employer contributions related to reemployed annuitants.
13. Loss of Gain on Account Assets. The issue is the impact of increasing reemployed annuitant exempt earnings limits to \$46,000. Any money diverted to a reemployed annuitant savings account is eventually paid with six percent interest. However, the pension plans are expected to earn 8.5 percent on assets (the actuarial investment return assumption is 8.5 percent) and, over long-term periods, pension plan returns have exceeded this assumption. Therefore, the plan typically has a gain on these accounts, because it pays a six percent return but typically earns a return on those assets that exceeds six percent. The difference is a gain to the pension fund. The current proposal would cause less money to be diverted to the reemployed annuitant savings accounts, leaving less of a gain for the pension fund. Thus, compared to the current situation, the proposed change will harm the pension funds.
14. Scope. The issue is the proper scope. Non-teacher plans, such as those in the Minnesota State Retirement System (MSRS), which covers all executive branch employees, and the Public Employees Retirement Association (PERA), which covers local and county government employees, have reemployed annuitant provisions, all tied, as are the teacher plans, to the maximum exempt earnings permitted under the Social Security System. The current proposal which abandons those ties and uses a much higher \$46,000 limit instead, is likely to trigger a similar request by those non-teacher plans.
15. Further Design Questions. The proposal would apply a \$46,000 exempt income limit for teacher plan retirees, regardless of age (with no limit for those at or above the Social Security full retirement age). One question is whether \$46,000 is the proper limit, or whether some other amount should be used. Another question is whether one limit should apply for all teacher plan members under full retirement age, or whether different rates should be used at different ages. The current law has the effect of applying a considerably lower exempt limit for rehired annuitants at younger ages. Thus, current law

may encourage individuals to remain employed rather terminate. To not lose that incentive, perhaps some form of multi-tiered approach should remain.

16. Study. The issue is whether the best action might be to not take any action at the current time on this proposal, but rather take the time to study this matter in more detail, given the many plans that are involved or will soon be if this proposal were to pass for teacher plans, the policy implications of any change, and the interaction of these exempt income limit provisions with early retirement provisions the reemployed annuitant savings account provision in Chapter 356.

Amendments for Consideration

Amendment H3415-1A is a technical amendment which can be used if the Commission wishes to leave sections 4 and 5 in the bill. The amendment changes “age 70” on page 5, line 9, to “Social Security normal retirement age.” This amendment corrects an error in the bill. Due to changes in Social Security law which caused all penalties to end when an individual reaches Social Security normal retirement age, rather than at age 70, the reemployed annuitant provision in Minnesota law ceases to be applicable to an individual when that person reaches Social Security normal retirement age (between ages 65 and 67, depending upon the individual’s birth date).

Amendment H3415-2A deletes Section 1.

Amendment H3415-3A can be used if section 1 remains in the bill. It prohibits all pre-retirement return-to-employment contracts after retirement by those under age 62, not just those which are written, and removes reference to different treatment if individuals are age 62 or over. This reestablishes a general prohibition against in-service distributions. The reference to age 62 is not needed for those who might be in the program under Section 3, because of the statement on page 2, line 28, stating that individuals may participate in that phased retirement program, “notwithstanding other provisions of this chapter,” and the language in that section does permit pre-existing contracts for those in that program.

Amendment H3415-4A deletes Sections 2, 4, and 5, the Teachers Retirement Association (TRA) and first class city reemployed annuitant exempt earnings provisions. It can be used if the Commission concludes that no change in those programs should occur or if that provisions have been or will be addressed in another bill, or in other amendments.

Amendment H3415-5A can be used if **Amendment H3415-4A** is not used. It revises TRA and first class city teacher exempt income limit provisions from the proposed \$46,000 to an amount to be set by the Commission, either higher or lower than \$46,000.

Amendment H3415-6A can be used if the Commission retains the TRA and first class city teacher plan reemployed annuity provisions, either with the proposed \$46,000 exempt income limit or some other dollar limit. This amendment would provide similar changes to the MSRS and PERA reemployed annuitant provisions. If \$46,000 is not used, a verbal amendment to the amendment will be needed to insert the chosen amount.

Amendment H3415-7A deletes Section 3, the proposed TRA phased retirement program.

Amendment H3415-8A can be used if Section 3 remains in the bill. It adds additional qualification requirements similar to those applicable to the Minnesota State Colleges and Universities System (MnSCU) programs. The individual must have at least ten years of TRA service credit, be a full-time teacher prior to termination of service, and return to work on a one-third to two-thirds time basis. The amendment also adds a continuing rights subdivision, as found in the MnSCU provision.

Amendment H3415-9A can be used if Sections 2, 4, and 5 remain in the bill and the Commission wishes to limit the reemployment exempt income limit for younger reemployed annuitants. It would reinstate a restriction for those who have not yet reached age 62 (the earliest age for drawing Social Security benefits). For that group, the exempt earnings limit would remain at the maximum exempt income limit permissible under Social Security law for those age 62.

Amendment H3415-10A can be used to insert a section requiring TRA employing units to make employer contributions to the plan on behalf of reemployed annuitants.

Attachment A

Background Information on Reemployed Annuitant Earnings Limitations

- A. Reemployed Annuitant Earnings Limitations under Social Security. Since the creation of the Old Age and Survivors Insurance Program (Social Security) in the 1930s, Social Security benefits have been subject to an employment earnings limitation, known as the earnings test. The Social Security Administration (SSA) maximum salary earnings limitations for continued receipt of full benefit amounts under the federal Old Age, Survivors and Disability Insurance Program are used by the SSA to determine whether Social Security benefits must be reduced because the individual has salary or self-employment income in excess of the maximums permitted under federal law for continued full receipt of those benefits.

The following table summarizes the annual maximum earnings permissible by Social Security benefit recipients for each year from 1985 onward, which a benefit recipient may receive without incurring a reduction in Social Security benefits. In the table these maximums are referred to as exempt amounts, since they indicate the highest salary earnings, which are exempt from a penalty--a reduction in the Social Security benefits that otherwise would be received. Under Social Security law, the exempt amount differs with the age of the individual. If an individual is under the Social Security full retirement age, once 65 and now between age 65 and age 67, depending on the person's year of birth, but drawing Social Security Old Age Insurance benefits, the maximums are fairly low. The exempt amount for the year in which the Social Security full retirement age is reached is notably higher. The following table has three columns, which are the applicable year, the maximum (exempt) amount under age 65 (before 2000) or under the full normal retirement age (after 1999), and the maximum amount for age 65-69 (before 2000) or for the full normal retirement age year (after 1999):

Year	Under Age 65	Age 65-69	Year	Prior to Year of Full Retirement Age	Year of Full Retirement Age
1985	\$5,400	\$7,320	2000	\$10,080	\$17,000
1986	\$5,760	\$7,800	2001	\$10,680	\$25,000
1987	\$6,000	\$8,160	2002	\$11,280	\$30,000
1988	\$6,120	\$8,400	2003	\$11,520	\$30,720
1989	\$6,480	\$8,880	2004	\$11,640	\$31,080
1990	\$6,840	\$9,360	2005	\$12,000	\$31,800
1991	\$7,080	\$9,720	2006	\$12,480	\$33,240
1992	\$7,440	\$10,200	2007	\$12,960	\$34,440
1993	\$7,680	\$10,560	2008	\$13,560	\$36,120
1994	\$8,040	\$11,160			
1995	\$8,160	\$11,280			
1996	\$8,280	\$12,500			
1997	\$8,640	\$13,500			
1998	\$9,120	\$14,500			
1999	\$9,600	\$15,500			

If the Social Security benefit recipient is under the full retirement age, the reduction is one dollar of Social Security benefits for each two dollars of earnings in excess of the maximum amount earned. For the year in which the full retirement age is attained, the reduction is one dollar for each three dollars of earnings in excess of the maximum amount earned.

- B. Reemployed Annuitant Earnings Limitations under the Minnesota Public Pension Plans. Among Minnesota public pension plans, but unlike Social Security, the public employee must terminate from active public employment with the employing unit to initially qualify to receive the public employee retirement annuity. If the individual's public pension plan has a reemployed annuitant earnings limit provision, the individual often (but not always) will be subject to that reemployed earnings limit if the individual returns to public employment with pension coverage in the same public pension system.

These reemployed annuitant provisions in Minnesota public pension plans bear a great similarity to the Social Security System but are far less global in scope. Under Social Security, the benefit reductions would be applied to any Social Security benefit recipient under the full retirement age who exceeded the maximum permissible exempt salary earnings, regardless of the employer, applicable for the individual's age. In contrast, if a Minnesota public pension plan has a reemployed annuitant earnings provision, reductions or suspension of the annuity by the plan will occur for those with salary income in excess of exempt amounts only from employment covered by the same pension plan or system. An annuitant from the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) who becomes reemployed in a position covered by the Minnesota State

Retirement System (MSRS), the Teachers Retirement Association (TRA), or any other public pension system, would not be subject to the reemployed annuitant provisions in PERA law. Also, no Minnesota public pension plan benefit reductions would occur if the annuitant becomes employed by a governmental employer in another state, by the federal government, or in the private sector.

Even within the same public pension system, reemployed annuitant reductions may not apply if the individual becomes employed in a position covered by another plan within the system. Typically, the laws have been constructed or interpreted in a way that applies reemployed annuitant earnings provisions if an annuitant from one plan in a system becomes employed by another plan in that same system providing that both plans were originally created within that system. A Public Employees Police and Fire Retirement Plan (PERA-P&F) annuitant who becomes employed in PERA-General covered employment will be subject to PERA's reemployed annuitant provision because PERA-P&F was spun out of PERA-General in 1959. However, a retiree from the State Patrol Retirement Plan who becomes reemployed in an MSRS-General covered position faces no reemployed annuitant penalties because the State Patrol Plan was originally not administered by MSRS, but was moved into MSRS for administrative purposes in 1969. The State Patrol Retirement Plan has no reemployed annuitant earnings provision in the plan, and the provision in MSRS-General law has been interpreted as not applying to State Patrol annuitants.

Reemployed annuitant earnings limitations in Minnesota law support the requirement that a public employee must terminate the employment relationship in order to receive a retirement benefit. The limitations ensure that politically connected public employees cannot manipulate the personnel system and also maximize their income by drawing a full retirement benefit along with a full salary. In doing this, the reemployed annuitant earnings limitations follow one of the traditional purposes for a retirement plan, which is to assist the personnel system in producing an orderly and systematic out-transitioning of senior employees who have reached the end of their normal working lifetime.

However, when reemployed annuitant earnings limitations do not apply uniformly, when some plans have no limits, when the limitations impact differently when applicable, or when no limitations apply to most reemployed annuitant situations (i.e., a public plan annuitant employed by a private sector employer or by a public sector employer of a different level or branch of government), the basic fairness of the limitations can be questioned.

The following chart provides information on the reemployed annuitant earnings limitation laws in Minnesota's public plans:

Retirement Plan	Applicable Compensation	Limit Threshold	Effect After Threshold Exceeded	Reemployment Period Retirement Coverage	Exceptions
General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General)	Salary or wages from state or from employer of MSRS-General members	Social Security maximums (\$13,560 annually if under the Social Security normal retirement age; \$36,120 in year in which Social Security normal retirement age is reached; no limit thereafter)	Suspension of annuity for the balance of the calendar year or until reemployment termination, with the suspended annuity amounts deposited in a separate account, earning six percent compound annual interest, payable at the later of age 65 or one year after the reemployment ends	No retirement coverage	No application to service as temporary legislative employee. Suspension lifted during any sick leave
MSRS Correctional State Employees Retirement Plan (MSRS-Correctional)	Same as MSRS-General	Same as MSRS-General	Same as MSRS-General	Same as MSRS-General	Same as MSRS-General
State Patrol Retirement Plan	No provision	No provision	No provision	No provision	No provision
Legislators Retirement Plan*	No provision	No provision	No provision	No provision	No provision
Elective State Officers Retirement Plan	No provision	No provision	No provision	No provision	No provision
Judges Retirement Plan	No provision	No provision	No provision	No provision	No provision
MSRS Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified)	No provision	No provision	No provision	No provision	No provision

Retirement Plan	Applicable Compensation	Limit Threshold	Effect After Threshold Exceeded	Reemployment Period Retirement Coverage	Exceptions
Public Employees Retirement Association (PERA)	Salary from governmental subdivision employment or public employee labor union employment	Social Security maximums (\$13,560 annually if under the Social Security normal retirement age; \$36,120 in year in which Social Security normal retirement age is reached; no limit thereafter)	Suspension or reduction, whichever produces higher annual amount. Suspension of amount is for the balance of the calendar year or until reemployment termination. Reduction is one-half of the excess over the maximum if under the Social Security full retirement age and one-third of the excess over the maximum if at the Social Security full retirement age. The reduction or suspended amount is deposited in a separate account, earning six percent compound annual interest, payable at the later of age 65 or one year after the reemployment ends.	No retirement coverage	No application to service as a local government elected official
Public Employees Police & Fire Fund (PERA-P&F)	Same as PERA	Same as PERA	Same as PERA	Same as PERA	Same as PERA
Teachers Retirement Association (TRA)	Income from teaching for employing unit covered by TRA, income from consultant or independent contractor teaching services for employing unit covered by TRA, or income received by comparable position if greater than actual income received	Social Security maximums (\$13,560 annually if under the Social Security normal retirement age; \$36,120 in year in which Social Security normal retirement age is reached; no limit thereafter)	Reduction in following calendar year annuity of one-half of the excess over the maximum, with the annuity reduction amount deposited in a separate account earning six percent compound annual interest, payable at the later of age 65 or one year after the reemployment ends	No retirement coverage	No application to interim superintendents during a lifetime limit of three 90-day exemption periods or to reemployed retired Minnesota State Colleges and Universities faculty working between 33.3 and 66.7 percent of full time with salary under \$46,000 or application to higher education salary over \$46,000 if total higher education salary is greater than \$46,000
First Class City Teacher Retirement Fund Associations	Same as TRA, except for applicable employers	Same as TRA	Same as TRA, except reduction is one-third of excess over the maximum	Same as TRA	Same as TRA
Minneapolis Employees Retirement Fund (MERF)	No provision	No provision	No provision	No provision	No provision
Local Police or Salaried Firefighter Relief Associations	Typically no provision	Typically no provision	Typically no provision	Typically no provision	Typically no provision

- C. Example of Teachers Retirement Association (TRA) Reemployed Annuitant Earnings Limitation Provision. The current TRA limit, Minnesota Statutes, Section 354.44, Subdivision 5, provides for a reduction in the subsequent year's annuity of one dollar for every two dollars earned in excess of the Social Security limitation, which is \$13,560 annually (\$1,130 monthly on a 12-month basis or \$1,507 monthly on a nine-month basis) in 2008 for retirees before the year in which Social Security normal retirement age is reached (between age 65 and age 66 for retirees with birth years between 1937 and 1955) and is \$36,120 for the year of attaining the Social Security full retirement age.

TRA Annuitant Retiring at Age 63

Final Five Years' Salary

Year 1	48,430
Year 2	50,850
Year 3	53,390
Year 4	56,060
Year 5	58,858

Highest Five Successive Years Average Salary\$53,517.65

Benefit Accrual Percentage (30 Years x 1.7) x .51

\$27,294 (\$2,274.50/month) ¹

Situation 1		Situation 2		Situation 3		
TRA Annuitant without any Reemployment		TRA Annuitant with \$25,000 Reemployment, Current Law ²		TRA Annuitant with \$25,000 Reemployment, Reemployment Earning Limit of \$46,000		
Year 1	TRA Annuity	\$27,294	Reemployed Earnings	\$25,000	Reemployed Earnings	\$25,000
			TRA Annuity	27,294	TRA Annuity	27,294
	Total	\$27,294	Total	\$52,294	Total	\$52,294
Year 2	TRA Annuity	\$27,294	Reemployed Earnings	\$25,000	Reemployed Earnings	\$25,000
			TRA Annuity:		TRA Annuity:	
			Year 1 Earnings	\$25,000	Year 1 Earnings	\$25,000
			Earnings Limit	13,560	Earnings Limit	46,000
			Excess Amount	\$11,440	Excess Amount	\$0
			\$1 for \$2 Deferral ³	\$5,720	\$1 for \$2 Deferral ³	\$0
			TRA Base Annuity	\$27,294	TRA Base Annuity	\$27,294
			Deferred Amount	5,720	Deferred Amount	0
			Remaining Annuity	\$21,574	Remaining Annuity	\$27,294
	Total	\$27,294	Total	\$46,574	Total	\$54,794

¹ Does not include any reduction due to early receipt of the annuity

² Year 2 annuity amount assumes no Minnesota Post Retirement Investment Fund (Post Fund) post-retirement adjustments and assumes no increase in the Social Security earnings test amount, although both are likely.

³ Reduction amount is deposited in a separate account, credited with six percent compound interest annually, payable at the later of age 65 or one year after termination of the reemployment.

Attachment B

State Employee Post Retirement Option Program

The state employee post-retirement option program (Minnesota Statutes, Section 43A.346) was enacted in 2005 as one of several programs intended to allow state employees to transition into full retirement while meeting employer workforce needs. It is based upon provisions in 2005 Session H.F. 1953 (Cornish); S.F. 1845 (Larson), and was passed as part of an Omnibus State Government Finance Bill as Laws 2005, Chapter 156, Article 3, Section 2. That same omnibus bill contained a voluntary hour reduction provision and a voluntary unpaid leave of absence provision.

For purposes of this program, "state employee" means "a person currently occupying a civil service position in the executive or legislative branch," or the staff of MSRS or PERA, the Office of the Legislative Auditor, or the Metropolitan Council. PERA staff was added to this provision last year (Laws 2007, Chapter 134, Article 11, Section 4).

Under the state employee post-retirement option program, state employees who worked at least half-time during the prior five years, who terminate from state service and qualify for an unreduced annuity (including a "Rule of 90" annuity), can agree to accept a post-retirement option position with the same or different appointing authority under which the individual will reduce hours at least 25 percent or to half-time, whichever is the greater reduction. While in the program, reemployed annuitant maximum exempt earnings limitations do not apply. The appointments are for one year but can be renewed for up to five years. The appointing authority has sole discretion to determine whether positions under this program are to be offered. Any offer of a position in this program must be made in writing by the appointing authority to the employee, on a form provided by the Department of Employee Relations and MSRS or PERA (Minnesota Statutes, Section 43A.346, Subdivision 5).

A reading of the current statute strongly implies that these agreements between the individual and the state employer must be reached while the individual is an active employee, before termination of service and commencement of a retirement annuity. Eligible individuals are state employees, defined above as individuals "currently occupying" state employment positions. Any individual who has already terminated is not "currently occupying" the position. The provision further states that any offer of a post-retirement option position must be made in writing by the appointing authority to the employee. Deferred retirement plan members and retirees are not employees.

Based on a review of federal compliance requirements, PERA concluded that this program as stated in current law is not compliant with federal requirements. Because active employees are making arrangements to return to employment with the employing unit following a "termination," PERA is concerned that the federal government would not view these terminations as valid, and that the retirement benefits these individuals begin to draw would be viewed as in-service distributions. In general, allowing in-service distributions is inconsistent with remaining a qualified plan for tax purposes. However, a recent exemption from in-service distribution requirements was recently enacted in federal legislation, permitting in-service distributions to be made if the individual is at least age 62. A provision in the 2006 Pension Protection Act amended Section 401(a) of the Internal Revenue Code by adding a paragraph stating:

A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

That change was effective for plan years after December 31, 2006.

Attachment C

Background Information on MnSCU Phased Retirement Program

The Minnesota State Colleges and Universities (MnSCU) phased retirement program was initially established in 1994 by Laws 1994, Chapter 602, Section 2, and has been revised since then to apply to more plans and to increase the exempt income amount. The program was promoted in 1994 by the MnSCU faculty bargaining representative, the Inter-Faculty Organization (IFO).

The program was intended to permit MnSCU to retain key faculty members by allowing those faculty members to continue partial employment after retirement at the option of the system, without any reduction in their public retirement annuity.

Under current law, MnSCU faculty members are eligible to participate in the phased retirement program if the person:

- (1) has ten years of service credit from a public pension plan in which MnSCU is a participating employer;
- (2) was employed prior to retirement on a full-time basis as a MnSCU faculty member or as a MnSCU administrator in the unclassified service;
- (3) retires from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), or from the Teachers Retirement Association (TRA), or from a first class city teacher plan; and
- (4) returns to employment by MnSCU on at least one-third of full time and not more than two-thirds of full time under an agreement with a salary of no more than \$46,000 per calendar year.

Participation in the phased retirement program brings an exemption from the MSRS-General, TRA, or first class city teacher plan reemployed annuitant exempt earnings limit provision, which would otherwise apply whenever the applicable Social Security earnings limitation amount was reached, providing the reemployment income does not exceed \$46,000. Any income above that amount would be subject to treatment under the applicable plan reemployed annuitant exempt income provision.

The Retire and Rehire Controversy: What it Means for the Public Sector

Learn what facts organizations that rehire their retirees need to consider to balance the benefits with the costs of this growing practice.

W. ANDREW KNIGHT
ASSISTANT CITY AUDITOR, DALLAS, TEXAS

If you could retire from your organization and draw a pension only to be rehired later and earn a salary, would you do it? You'd probably consider the offer, especially because it would be like bringing in two salaries. However, besides giving up all of retirement's benefits like playing golf every day or traveling the world, why would you *not* consider the offer? For one thing, rehiring retired employees places an increased actuarial risk on the organization's retirement fund. It also places the organization at risk for noncompliance with Internal Revenue Service (IRS) rules. Since 1988, the IRS has increased its retirement plan audit activity. The IRS has new tools and programs to deal with the unique characteristics of retirement plans as audit targets. Considering this, plan sponsors should assess their level of audit risk because the IRS position, as stated in the Internal Revenue Manual, is that any deviation can result in disqualification.

If the retire and rehire practice is well-planned with appropriate controls in place, it can be a valuable tool for management to maintain institutional knowledge and fill critical skill needs. However, if the proper controls are not in place or are not working, the practice can be a crutch, a symptom, and a result of inadequate succession planning and training that increases actuarial risk and noncompliance risk to the retirement fund. Auditors need to be aware of whether or not an organization uses the practice of rehiring its retirees to assure the integrity of the retirement process and by extension, the organization, the fund, employees, and future benefit recipients. To gather insight into the organization, auditors also need to know how the process is implemented.

THE RETIRE AND REHIRE PRACTICE

What is it?

Retire and rehire is the practice of retired workers re-entering the workforce of their former employer as an employee — rather than as an independent contractor — which entitles them to employee benefits, including retirement benefits. This practice is becoming more commonplace and is happening in all levels of government — federal, state, city, and local. The only place where the retire and rehire process is not widespread is in the private sector, possibly because there aren't many defined benefit plans remaining. A defined benefit plan is a retirement plan in which the employer or organization guarantees the future benefits and as such, assumes the actuarial and investment liability. Contrast this with a defined contribution plan (e.g., 401(k), 457, and individual retirement accounts), in which there is no guarantee of future benefits, and the amount available at retirement is directly related to investment success.

Who is doing it?

More people than one might expect are participating in the retire and rehire practice. All levels of employees — from executive managers to scientists to teachers — are retiring and being rehired.

Why does it happen?

It happens because employers want to retain specific knowledge and experience, and many retirees are able to earn a salary while drawing a pension. But, there is a longer, more comprehensive answer. The retire and rehire process happens because:

- There sometimes are shortages of skill and knowledge, either real or perceived, be it school teachers in rural Alaska or scientists at Los Alamos National Laboratory.
- Organizations do not perform timely succession planning for the next generation of workers.
- Many government organizations encourage the practice through human resource programs with policies and procedures.

And it seems that the retire and rehire trend will continue to increase. According to the Harvard School of Public Health, approximately 77 million babies — now known as baby boomers — were born between 1946 and 1964. In 2006, the oldest of these boomers turned 60 and in some organizations became eligible to retire. In 2011, the oldest will turn 65, which is a common retirement age. These people can expect to live, on average, to be 83 years old and many will live well into their 90s. A survey by the Associated Press found that 66 percent of baby boomers expect to work for pay after retirement.

TWO MAJOR RISKS OF THE RETIRE AND REHIRE PRACTICE

Whether well-controlled or not, the retire and rehire practice presents two areas of risk to an organization's retirement fund: negative actuarial impact and noncompliance with IRS rules.

Risk One: Negative Actuarial Impact

Although the retire and rehire practice helps an organization retain specific knowledge and experience, it has a negative actuarial impact on the organization's retirement fund. Most defined-benefit retirement plans were not designed to have participants who do not contribute. Depending upon the plan's rules, rehired retirees may have the

choice to contribute and earn additional service credit or to not contribute and not earn additional service credit. Typical employees (i.e., not rehired retirees) don't have this choice — they are required to contribute.

Rehired retirees who do not contribute to — but receive a pension from — the retirement fund present a negative impact on the fund as demonstrated in Figure 1. The fiscal health of a retirement fund can be measured by its "funded ratio," which is the relationship of its assets (i.e., the numerator) to its liabilities (i.e., the denominator). A funded ratio of 100 percent means that for every dollar of actuarial accrued liability, there is a dollar of asset. This is a fiscally-sound position. Rehired retirees who do not contribute do not add to the numerator, and they receive the pension, which increases the denominator. Furthermore, the rehired retirees take the place of a typical employee who would be contributing and increasing the numerator. The overall effect is that assets are reduced relative to the liabilities, which is not a fiscally-sound direction.

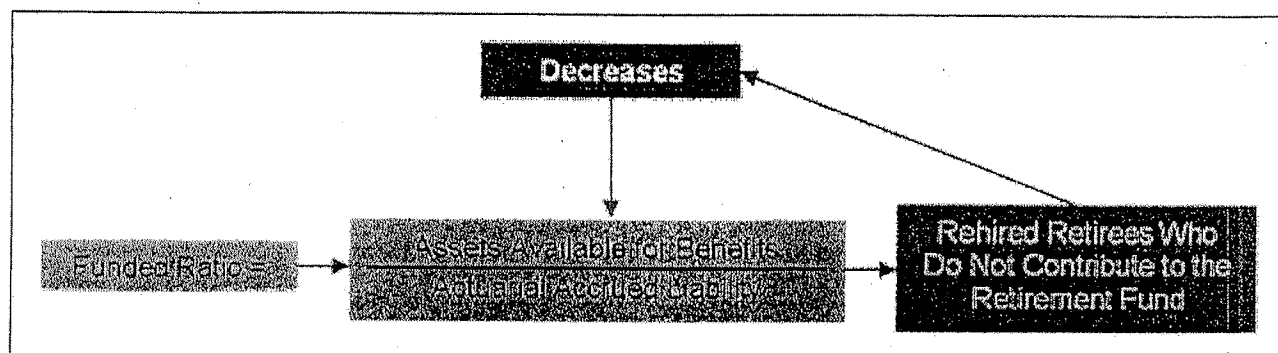


Figure 1: Measuring the Actuarial Risk Placed on the Fund

Actuarial analysis can approximate the point at which the practice quantifiably negatively impacts the fund. Many factors are involved, including assumptions regarding the salary levels, projected salary increases, and number of, and expected, tenures of retired rehires. As few as 100 rehired retirees in a workforce of 8,000 (1.25 percent) can make an actuarial impact. Employer or employee contribution rates may not be impacted immediately, but the additional liabilities imposed may shorten the amount of time before an increase is necessary or lengthen the amount of time before a contribution rate reduction is possible.

Avoiding In-service Distributions

Pension benefits paid to persons who are still in service or still employed, like many rehired retirees, are called in-service distributions.

In-service distributions are prohibited and must be avoided because they can cause a pension plan to be disqualified by the IRS, which means the plan will lose its tax exempt status.

Risk Two: Noncompliance With IRS Rules

Another risk of the retire and rehire practice is running afoul of IRS rules. Many of the governmental organizations that rehire their retirees participate in retirement plans whose contributions are exempt from federal income tax. The IRS has regulations that determine who is eligible to receive pension payments from these tax-exempt retirement funds.

To be eligible to receive a pension, a retiree must have a true separation from service. However, the term "true separation from service" is defined by neither the tax code nor regulations. Its meaning has been explained in revenue rulings and case law. The basic rule is that for a participant to receive a distribution from a plan due to a separation from service, he or she must have experienced a bona fide termination of employment in which the employer and employee relationship is completely severed.

So, how can auditors determine if rehired retirees have had a true separation from service and are not presenting noncompliance risk to the retirement fund? Although there appears to be no single litmus test, the legal counsel must define the organization's legal strategy regarding this issue. Some factors to be considered are:

- How soon a retiree returns to work for the former employer.
- Whether the retiree returns to work in the same department from which he or she retired.
- Whether the retiree returns to his or her former job.
- Whether the retiree received any training or education in the interim.
- Whether there was an agreement or plan, verbal or written, for the retiree to return to work after retiring.
- The period of time the retiree returns to work.
- Whether the retiree returns for a specific reason (e.g., to complete a project or to mentor a replacement).

However, the most important factor is why the retiree returns to work. The retiree's return must be for a reason unforeseeable at the time of retirement. An example of this would be a senior worker retiring after a long career as comptroller. His young successor takes office as comptroller the next day and there are no problems. However, the young successor dies unexpectedly the next week. The employer then asks the senior retiree to return until another successor can be found, so the retiree is rehired. Even though the senior worker returned to his former job, to his former employer, with little interim, and no education during the interim, he returned for a reason unforeseeable at the time of his retirement, for a specific reason, and for a defined period of time.

By examining each individual case, auditors can determine whether there has been a true separation from service. In the absence of a true separation from service, a person, whether having retired or not, is still in service to the organization, by definition.

AUDIT CONSIDERATIONS

In reviewing an organization's practice of rehiring its retirees, here are some things auditors need to consider:

- Is the practice proactively managed with a formal, documented program or process, or is it done ad hoc?
- Is the practice managed in such a way as to quantify and limit the impact on the retirement fund?
- What is the control environment?
 - What is the authorization and approval process?
 - What are the rules concerning pre-retirement and rehire salary administration?
 - Are there limits on rehire tenure?
 - Is there a defined waiting period between retirement and rehire?
 - What is the policy of the retirement fund management?
 - How is the retirement fund made aware when a pension recipient has been rehired?
 - Does the organization have rules that address concurrent receipt of a pension and a salary?
- Has legal counsel reviewed the process and have their concerns been addressed?
- Is the organization's practice in accord with IRS rules?
- Has the IRS issued a private letter ruling to the retirement fund regarding its practice?

Public Perception Issues of the Retire and Rehire Practice

Many government organizations have encountered public relations problems because many taxpayers see this practice as poor stewardship of public money. Some ask why an employee should receive both a pension and a salary. And the practice calls into question the definition of retirement and the true purpose of a retirement plan. Isn't the intended purpose to provide for people when they can no longer work?

BALANCING THE BENEFITS WITH THE COSTS

Having the discretion to rehire retired government employees is a valuable tool for management. At the same time, management must be aware of the cost of the use of such a tool as expressed in the actuarial impact on the retirement fund. The practice must be controlled by management and retirement fund administrators to be in compliance with IRS regulations so there is no risk of making a pension distribution to an ineligible person, thereby endangering the tax-exempt status.

W. Andrew Knight is an assistant city auditor in the Office of the City Auditor for the City of Dallas, Texas. He served as an assistant state auditor for the Texas State Legislature from 1991–1995. Knight holds a master's degree in business administration in international management and is in the process of earning his certified internal auditor designation.

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- 1.1 moves to amend H.F. No. 3415; S.F. No. 3531, as follows:
- 1.2 Page 5, line 9, before "age" insert "Social Security normal retirement" and delete "
- 1.3 70"

- 1.1 moves to amend H.F. No. 3415; S.F. No. 3531, as follows:
- 1.2 Page 1, delete section 1
- 1.3 Renumber the sections in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3415; S.F. No. 3531, as follows:
- 1.2 Page 1, line 11, delete the new language
- 1.3 Page 1, line 13, before "contract" insert "or oral"

- 1.1 moves to amend H.F. No. 3415; S.F. No. 3531, as follows:
- 1.2 Page 1, delete section 2
- 1.3 Page 3, delete section 4
- 1.4 Page 4, delete section 5
- 1.5 Renumber the sections in sequence and correct the internal references
- 1.6 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3415; S.F. No. 3531, as follows:
- 1.2 Page 2, lines 3 and 5, delete "\$46,000" and insert "\$....."
- 1.3 Page 4, lines 4 and 6, delete "\$46,000" and insert "\$....."
- 1.4 Page 5, lines 8 and 9, delete "\$46,000" and insert "\$....."

..... moves to amend H.F. No. 3415; S.F. No. 3531, as follows:

Page 1, after line 6, insert:

"Section 1. Minnesota Statutes 2006, section 352.115, subdivision 10, is amended to read:

Subd. 10. **Reemployment of annuitant.** (a) If any retired employee again becomes entitled to receive salary or wages from the state, or any employer who employs state employees as that term is defined in section 352.01, subdivision 2, other than salary or wages received as a temporary employee of the legislature during a legislative session, the annuity or retirement allowance shall cease when the retired employee has earned an amount equal to ~~the annual maximum earnings allowable for that age for the continued receipt of full benefit amounts monthly under the federal old age, survivors, and disability insurance program as set by the secretary of health and human services under United States Code, title 42, section 403, \$46,000~~ in any calendar year. ~~If the retired employee has not yet reached the minimum age for the receipt of Social Security benefits, the maximum earnings for the retired employee shall be equal to the annual maximum earnings allowable for the minimum age for the receipt of Social Security benefits.~~ After a person has reached the Social Security normal retirement age, no annuity cessation is applicable regardless of the amount of salary.

(b) The balance of the annual retirement annuity after cessation must be handled or disposed of as provided in section 356.47.

(c) The annuity must be resumed when state service ends, or, if the retired employee is still employed at the beginning of the next calendar year, at the beginning of that calendar year, and payment must again end when the retired employee has earned the ~~applicable~~ reemployment earnings maximum specified in this subdivision. If the retired employee is granted a sick leave without pay, but not otherwise, the annuity or retirement allowance must be resumed during the period of sick leave.

(d) No payroll deductions for the retirement fund may be made from the earnings of a reemployed retired employee.

(e) No change shall be made in the monthly amount of an annuity or retirement allowance because of the reemployment of an annuitant.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 2. Minnesota Statutes 2006, section 353.37, subdivision 1, is amended to read:

Subdivision 1. **Salary maximums.** The annuity of a person otherwise eligible for an annuity under this chapter must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service as a nonelective employee of a governmental subdivision in a position covered by this chapter or returns to work as an employee of a labor organization that represents public employees who are association members under this chapter and salary for the reemployment service exceeds ~~the annual maximum earnings allowable for that age for the continued receipt of full benefit amounts monthly under the federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, \$46,000~~ in any calendar year. If ~~the person has not yet reached the minimum age for the receipt of Social Security benefits, the maximum salary for the person is equal to the annual maximum earnings allowable for the minimum age for the receipt of Social Security benefits.~~ After a person has reached retirement age as defined in subdivision 1b, no annuity suspension or reduction occurs.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 3. Minnesota Statutes 2006, section 353.37, subdivision 2, is amended to read:

Subd. 2. **Suspension of annuity.** The association ~~shall~~ must suspend the annuity on the first of the month after the month in which the salary of the reemployed annuitant exceeds ~~the maximums set~~ maximum stated in subdivision 1, based only on those months in which the annuitant is actually employed in nonelective public service in a position covered under this chapter or employment with a labor organization that represents public employees who are association members under this chapter. An annuitant who is elected to public office after retirement may hold office and receive an annuity otherwise payable from the association.

EFFECTIVE DATE. This section is effective July 1, 2008."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

- 1.1 moves to amend H.F. No. 3415; S.F. No. 3531, as follows:
- 1.2 Page 2, delete section 3
- 1.3 Renumber the sections in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3415; S.F. No. 3531, as follows:
- 1.2 Page 2, delete lines 34 and 35
- 1.3 Page 3, delete lines 1 and 2, and insert:
- 1.4 "(1) is at least age 62;
- 1.5 (2) is a teacher as defined by section 354.05, subdivision 2, with at least ten years of
- 1.6 allowable service;
- 1.7 (3) enters into a written agreement with the employing unit to return to work;
- 1.8 (4) retires under provisions of section 3354.44 and begins to draw an annuity from
- 1.9 the association;
- 1.10 (5) was employed on a full-time basis immediately preceding retirement; and
- 1.11 (6) returns to work on not less than a one-third-time basis and not more than
- 1.12 two-thirds-time basis with the employing unit."
- 1.13 Page 3, after line 24, insert:
- 1.14 "Subd. 8. **Continuing rights.** A person who returns to work under this section is a
- 1.15 member of the appropriate bargaining unit and is covered by the appropriate collective
- 1.16 bargaining contract. Except as provided in this section, the person's coverage is subject to
- 1.17 any part of the contract limiting rights of part-time employees."

1.1 moves to amend H.F. No. 3415; S.F. No. 3531, as follows:

1.2 Page 1, line 18, strike "retired" and insert "has reached the minimum age for receipt
1.3 of Social Security benefits and retires"

1.4 Page 2, lines 6 to 9, reinstate the stricken language

1.5 Page 2, line 8, after the first "maximum" insert "exempt"

1.6 Page 2, line 9, before the period insert ", rather than \$46,000"

1.7 Page 3, line 28, strike "retired" and insert "has reached the minimum age for receipt
1.8 of Social Security benefits and retires"

1.9 Page 3, line 29, strike "any person receiving"

1.10 Page 4, reinstate lines 7 to 10

1.11 Page 4, line 9, after the first "maximum" insert "exempt"

1.12 Page 4, line 10, before the period insert ", rather than \$46,000"

1.13 Page 5, line 1, before "Consistent" insert "(a)"

1.14 Page 5, line 9, delete "After a person has reached age 70,"

1.15 Page 5, line 10, delete "the deferral requirement no longer applies."

1.16 Page 5, after line 11, insert:

1.17 "(b) If the person has not yet reached the minimum age for receipt of Social Security
1.18 benefits, the maximum salary the reemployed teacher may earn before triggering the
1.19 deferral specified in paragraph (a) is the annual maximum earnings allowable for someone
1.20 at the minimum age for receipt of Social Security benefits.

1.21 (c) After a person has attained Social Security normal retirement age, the deferral
1.22 requirement no longer applies."

..... moves to amend H.F. No. 3415; S.F. No. 3531, as follows:

Page 1, after line 15, insert:

"Sec. 2. Minnesota Statutes 2006, section 354.42, subdivision 3, is amended to read:

Subd. 3. **Employer.** (a) The regular employer contribution to the fund by Special School District No. 1, Minneapolis, after July 1, 2006, and before July 1, 2007, is an amount equal to 5.0 percent of the salary of each of its teachers who is a coordinated member and 9.0 percent of the salary of each of its teachers who is a basic member. After July 1, 2007, the regular employer contribution to the fund by Special School District No. 1, Minneapolis, is an amount equal to 5.5 percent of salary of each coordinated member and 9.5 percent of salary of each basic member.

(b) The additional employer contribution to the fund by Special School District No. 1, Minneapolis, after July 1, 2006, is an amount equal to 3.64 percent of the salary of each teacher who is a coordinated member or is a basic member.

(b) The employer contribution to the fund for every other employer is an amount equal to 5.0 percent of the salary of each coordinated member and 9.0 percent of the salary of each basic member before July 1, 2007, and 5.5 percent of the salary of each coordinated member and 9.5 percent of the salary of each basic member after June 30, 2007.

(c) The contribution required under paragraph (a) and, where applicable, the contribution required under paragraph (b), must be paid on behalf of a teacher, as specified under section 354.05, including those who retire and resume teaching service."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE NO. **3415**

February 25, 2008

Authored by Pelowski

The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

1.1 A bill for an act
1.2 relating to retirement; Teachers Retirement Association and first class city teacher
1.3 plans; providing for phased retirement from teaching; amending Minnesota
1.4 Statutes 2006, sections 354.05, subdivision 37; 354.44, subdivision 5; 354A.31,
1.5 subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 354.

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

1.7 Section 1. Minnesota Statutes 2006, section 354.05, subdivision 37, is amended to read:

1.8 Subd. 37. **Termination of teaching service.** "Termination of teaching service"
1.9 means the withdrawal of a member from active teaching service by resignation or the
1.10 termination of the member's teaching contract by the employer. A member is not
1.11 considered to have terminated teaching service, if before the age of 62, and before the
1.12 effective date of the termination or retirement, the member has entered into a written
1.13 contract to resume teaching service with an employing unit covered by the provisions
1.14 of this chapter.

1.15 **EFFECTIVE DATE.** This section is effective July 1, 2008.

1.16 Sec. 2. Minnesota Statutes 2006, section 354.44, subdivision 5, is amended to read:

1.17 Subd. 5. **Resumption of teaching service after retirement.** (a) Any person who
1.18 retired under the provisions of this chapter and has thereafter resumed teaching in any
1.19 employer unit to which this chapter applies is eligible to continue to receive payments in
1.20 accordance with the annuity except that all or a portion of the annuity payments must be
1.21 ~~reduced~~ deferred during the calendar year immediately following any calendar year in
1.22 which the person's ~~income~~ salary from the teaching service is in an amount greater than ~~the~~
1.23 ~~annual maximum earnings allowable for that age for the continued receipt of full benefit~~

amounts monthly under the federal old age, survivors and disability insurance program as set by the secretary of health and human services under United States Code, title 42, section 403 \$46,000. The amount of the ~~reduction must be~~ annuity deferral is one-half of the salary amount in excess of the applicable reemployment income maximum specified in this subdivision \$46,000 and must be deducted from the annuity payable for the calendar year immediately following the calendar year in which the excess amount was earned. If the person has not yet reached the minimum age for the receipt of Social Security benefits, the maximum earnings for the person must be equal to the annual maximum earnings allowable for the minimum age for the receipt of Social Security benefits.

(b) If the person is retired for only a fractional part of the calendar year during the initial year of retirement, the maximum reemployment ~~income~~ salary exempt from triggering a deferral as specified in this subdivision must be prorated for that calendar year.

(c) After a person has reached the Social Security ~~full~~ normal retirement age, no ~~reemployment income maximum~~ deferral requirement is applicable regardless of the amount of ~~income~~ salary.

(d) The amount of the retirement annuity ~~reduction~~ deferral must be handled or disposed of as provided in section 356.47.

(e) For the purpose of this subdivision, ~~income~~ salary from teaching service includes, but is not limited to:

(1) all income for services performed as a consultant or an independent contractor for an employer unit covered by the provisions of this chapter; and

(2) the greater of either the income received or an amount based on the rate paid with respect to an administrative position, consultant, or independent contractor in an employer unit with approximately the same number of pupils and at the same level as the position occupied by the person who resumes teaching service.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 3. **[354.444] PHASED RETIREMENT PROGRAM.**

Subdivision 1. Authorization. Notwithstanding any other provisions in this chapter, an eligible person as specified in subdivision 2 is authorized to commence receipt of a retirement annuity from the association and enter into an agreement to return to work. This provision must be administered in accordance with the federal Internal Revenue Code and applicable rulings.

Subd. 2. Eligibility. An eligible person is a person who:

(1) is a teacher as defined by section 354.05, subdivision 2, who is at least age 62;

(2) enters into a written agreement with the employing unit to return to work; and

(3) retires under the provisions of section 354.44 and begins to draw an annuity from the Teacher's Retirement Association.

Subd. 3. **Work agreement.** Participation, the amount of time worked, and the duration of participation under this section must be mutually agreed upon by the employing unit and the employee. The employing unit may require up to a one-year notice of intent to participate in the program as a condition of participation. The employing unit shall determine the time of year the employee shall work. Unless otherwise specified in this section, the employing unit may not require a person to waive any rights under a collective bargaining agreement as a condition of participation under this section.

Subd. 4. **Exclusion.** For purposes of this section, "employing unit" does not include the Minnesota State Colleges and Universities system.

Subd. 5. **No service credit or contribution.** Notwithstanding any law to the contrary, an eligible person under this section may not, based on employment to which this section applies, contribute to or earn further service credit in the Teachers Retirement Association.

Subd. 6. **Annuity application procedure.** A participant in the program specified in this section must apply for a retirement annuity under the application procedure specified in section 354.44, subdivisions 3 and 4. A copy of the written agreement with the employing unit must be included with the person's retirement annuity application. This written agreement must include the termination date and reemployment date. The filing of the initial executed agreement must occur before reemployment under the agreement commences. The reemployment date must be after the member's accrual date.

Subd. 7. **Annuity treatment.** For purposes of the annuity deferral under section 354.44, subdivision 5, an eligible person under this section is a reemployed annuitant.

EFFECTIVE DATE. This section is effective July 1, 2008.

Sec. 4. Minnesota Statutes 2006, section 354A.31, subdivision 3, is amended to read:

Subd. 3. Resumption of teaching after commencement of a retirement annuity.

(a) Any person who retired and is receiving a coordinated program retirement annuity under the provisions of sections 354A.31 to 354A.41 or any person receiving a basic program retirement annuity under the governing sections in the articles of incorporation or bylaws and who has resumed teaching service for the school district in which the teachers retirement fund association exists is entitled to continue to receive retirement annuity payments, except that all or a portion of the annuity payments must be reduced deferred during the calendar year immediately following the calendar year in which the person's ~~income~~ salary from the teaching service is in an amount greater than the ~~annual~~

4.1 ~~maximum earnings allowable for that age for the continued receipt of full benefit amounts~~
4.2 ~~monthly under the federal old age, survivors, and disability insurance program as set by~~
4.3 ~~the secretary of health and human services under United States Code, title 42, section 403~~
4.4 \$46,000. The amount of the ~~reduction must be~~ annuity deferral is one-third the salary
4.5 amount in excess of ~~the applicable reemployment income maximum specified in this~~
4.6 ~~subdivision~~ \$46,000 and must be deducted from the annuity payable for the calendar year
4.7 immediately following the calendar year in which the excess amount was earned. ~~If the~~
4.8 ~~person has not yet reached the minimum age for the receipt of Social Security benefits,~~
4.9 ~~the maximum earnings for the person must be equal to the annual maximum earnings~~
4.10 ~~allowable for the minimum age for the receipt of Social Security benefits.~~

4.11 (b) If the person is retired for only a fractional part of the calendar year during
4.12 the initial year of retirement, the maximum reemployment ~~income~~ salary exempt from
4.13 triggering a deferral as specified in this subdivision must be prorated for that calendar year.

4.14 (c) After a person has reached the Social Security normal retirement age of 70, no
4.15 ~~reemployment income maximum~~ deferral requirement is applicable regardless of the
4.16 amount of any compensation received for teaching service for the school district in which
4.17 the teachers retirement fund association exists.

4.18 (d) The amount of the retirement annuity ~~reduction~~ deferral must be handled or
4.19 disposed of as provided in section 356.47.

4.20 (e) For the purpose of this subdivision, ~~income~~ salary from teaching service
4.21 includes: (i) all income for services performed as a consultant or independent contractor;
4.22 or income resulting from working with the school district in any capacity; and (ii) the
4.23 greater of either the income received or an amount based on the rate paid with respect to
4.24 an administrative position, consultant, or independent contractor in the school district in
4.25 which the teachers retirement fund association exists and at the same level as the position
4.26 occupied by the person who resumes teaching service.

4.27 (f) On or before February 15 of each year, each applicable employing unit shall
4.28 report to the teachers retirement fund association the amount of postretirement ~~income~~
4.29 salary as defined in this subdivision, earned as a teacher, consultant, or independent
4.30 contractor during the previous calendar year by each retiree of the teachers retirement
4.31 fund association for teaching service performed after retirement. The report must be in
4.32 a format approved by the executive secretary or director.

4.33 **EFFECTIVE DATE.** This section is effective July 1, 2008.

4.34 Sec. 5. **BYLAW REVISION AUTHORIZATION.**

5.1 Consistent with section 4 and Minnesota Statutes, section 354A.12, subdivision 4,
5.2 the St. Paul Teachers Retirement Fund Association is authorized to revise its bylaws or
5.3 articles of incorporation to specify that a person receiving a basic program retirement
5.4 annuity under the governing sections in the articles of incorporation or bylaws who has
5.5 resumed teaching service for the school district is entitled to continue receiving retirement
5.6 annuity payments, except that all or a portion of the annuity payments must be deferred
5.7 during the calendar year immediately following the calendar year in which the person's
5.8 salary from the reemployment exceeds \$46,000. The amount of the annuity deferral is
5.9 one-third of the salary amount in excess of \$46,000. After a person has reached age 70,
5.10 the deferral requirement no longer applies. Any deferral amounts must be treated as
5.11 specified in Minnesota Statutes, section 356.47.

5.12 **EFFECTIVE DATE.** This section is effective July 1, 2008.