



H.F. 3436
(Nelson)

in the form of delete-all A08-1290

S.F. 3136
(Betzold)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS, PERA

Relevant Provisions of Law: Minnesota Statutes, Section 43A.346

General Nature of Proposal: Revise Postretirement Option Program for federal compliance

Date of Summary: April 3, 2008

Specific Proposed Changes

- Prohibiting, for those under age 62, any agreement to take part in program until after termination.
- Requiring a 30-day break in service to ensure true termination.

Policy Issues Raised by the Proposed Legislation

1. Proper current action; consideration of available courses of action, including study.
2. Lack of clarity regarding actions needed to ensure compliance with federal prohibitions against in-service distributions of retirement assets.
3. In-service distributions, whether to permit for those at least age 62.
4. Question of whether individuals will use the postretirement option program given proposed prohibition against discussing any offer of a position in the program until after the individual terminates from service.
5. Disagreement between MSRS, PERA, and the Department of Employee Relations about proper course of action; inconsistent proposals.
6. Interaction with other existing programs, and with proposals in other bills creating uncertainty about the need for this program and its proper design.
7. Need for further study.

Potential Amendments

H3436-1A causes the program to expire on July 1, 2009, which would give the Commission some time to study the program and its broader context.

H3436-2A incorporates the proposed changes to the program contained in delete-all amendment A08-1290 and also makes technical changes.

H3436-3A, an alternative to H3436-2A, restricts the program to those who are at least age 62, removes the 30-day separation requirements, and removes the prohibition against agreements prior to termination. This alternative is based on language suggested by PERA, but it is not supported by the Department of Employee Relations.

H3436-4A, an alternative to amendments H3436-2A and -3A, requires everyone in the program, including those who are age 62 or older, comply with a 30-day separation requirement, and prohibits all offers or agreements while the individual is employed. This approach is likely to be the least problematic by not permitting anyone to receive in-service distributions, including those age 62 or older.

H3436-5A adds a July 1, 2009, expiration date to the postretirement option program by adding an expiration provision to amendments H3436-2A, -3A, or -4A.

H3436-6A, an alternative to all of the previous amendments, terminates the postretirement option program on July 1, 2009, and creates a new program based on the voluntary hour reduction program. The new program expires on July 1, 2012.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: H.F. 3436 (Nelson); S.F. 3136 (Betzold), in the form of Delete-All Amendment A08-1290: MSRS/PERA: Modification of State Employee Postretirement Options Program

DATE: March 14, 2008

Summary H.F. 3436 (Nelson); S.F. 3136 (Betzold)

H.F. 3436 (Nelson); S.F. 3136 (Betzold), in the form of delete-all amendment A08-1290, revises Minnesota Statutes, Section 43A.346, Subdivisions 5 and 6, provisions of the state employee post-retirement option program, by requiring that if the individual is under age 62, no initial offer of employment under the postretirement option program and no offer of renewal of a postretirement option program position can be offered until at least 30 days after the termination of employment.

Discussion and Analysis

The postretirement option program (Laws 2005, Chapter 156, Article 3, Section 2) was enacted as one of a few programs intended to allow state employees to transition into full retirement while meeting employer workforce needs. It was based on provisions contained in 2005 Session H.F. 1953 (Cornish); S.F. 1845 (Larson) and was passed as part of an Omnibus State Government Finance Bill, which also contained a voluntary hour reduction provision and a voluntary unpaid leave of absence provision. At the present time, 70 individuals are in postretirement option program positions, 51 of whom are under age 62.

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 the Minnesota State Retirement System (MSRS) or the Public Employees Retirement Association (PERA), the Office of the Legislative Auditor, or the Metropolitan Council. PERA staff was added to this provision in 2007 (Laws 2007, Chapter 134, Article 11, Section 4).

Under the postretirement 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 postretirement 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).

As this program currently operates, the agreements between the individual and the state employer to enter the program 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 "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 postretirement option position must be made in writing by the appointing authority to the employee. Deferred retirement plan members and retirees are not employees.

MSRS and PERA plan administrators are concerned that the postretirement option program as currently operated is not compliant with federal requirements. In general, a qualified plan must prohibit in-service distributions. An in-service distribution is a distribution of plan assets to a plan member prior to true termination of service or retirement. Because under the postretirement option program active employees are entering into arrangements to return to employment with the employing unit following a "termination," the federal government may contend these are invalid, sham terminations. If the terminations are invalid, the retirement benefits these individuals are receiving are in-service distributions, causing the plan to be out of compliance with qualified plan requirements.

One way to address this problem is to limit the postretirement option program to individuals who are age 62 or older. The federal Pension Protection Act of 2006 amended the qualified plan provision, Section 401(a) of the Internal Revenue Code, effective for plan years after December 31, 2006,, by adding the following paragraph:

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.

Thus, the federal government has created an exception to its in-service distribution prohibition if the individual is at least age 62. A drawback to utilizing this option is that the Legislature has never knowingly permitted in-service distributions, and may wish to give careful study to this issue prior to permitting them on any basis.

A second approach to the in-service distribution problem is to revise the program to require a true separation from service, to eliminate or at least reduce the risk that the program could be viewed as violating federal in-service distribution prohibitions. Unfortunately, according to plan administrators the federal government has not defined what it considers to be a true separation. Given that absence, plan administrators, lawyers, and auditors have attempted develop reasonable standards to follow. An attachment, an article from GAP News published by the Institute of Internal Auditors, entitled "*The Retire and Rehire Controversy: What it Means for the Public Sector*," declares that "if the payment of a retirement benefit from a plan is not to be viewed as an in-service distribution, there must be a bona fide termination of employment in which the employer and employee relationship is completely severed." The document indicates that any arrangement in which the individual promptly returns to employment in the same position or for the same department would raise concerns. Particularly problematic is any agreement or understanding, oral or in writing, for the individual to return to work after terminating and commencing receipt of the annuity.

Given the lack of specific criteria from the federal government regarding what constitutes a true separation from service, another alternative is to avoid the issue altogether by ending the existing postretirement option program and replacing it, if there is sufficient need, with a voluntary hours reduction program based on the 2005 voluntary hour reduction plan (Laws 2005, Chapter 156, Article 3, Section 3). That program, which expired on June 30, 2007, covered employment provided before, rather than after, termination and commencement of an annuity. Under that program the employee and employer could enter into agreements under which the employee would reduce hours, working no more than the equivalent of a half-time position, but contributions to the retirement plan could be made as though the individual was employed full-time. That protected the individual's high-five average salary for pension purposes, so that when the individual eventually terminated service and commenced drawing a benefit, the half-time employment at the end of the individual's career did not harm the pension.

The delete-all amendment attempts to address the in-service distribution concern of the postretirement option program by requiring a minimum 30-day break in service for all individuals under age 62, and by using the exemption provided in recent federal law regarding in-service distributions to those age 62 or older. Problems with this approach are the lack of full assurance that the 30-day break requirements are sufficient to qualify as a true and complete termination of service, and that the Legislature will be knowingly providing in-service distributions to those at least age 62 who are in the postretirement option program. Although such treatment for those persons age 62 or older is permitted under federal law, the Commission and Legislature have not considered the broad implications of the procedure, including, but not limited to, double-dipping concerns. There may not be adequate time to devote to these issues during the 2008 Legislative Session. If the practice becomes widespread, there may be unforeseen cost implications for the plans.

The proposed legislation raises several pension and related public policy issues for Commission consideration and potential discussion, as follows:

1. Proper Current Action. It would appear that the creation of this program in 2005 inadvertently created in-service distribution problems for the pension funds of the employees who take part in the program. The existing law appears to be out of compliance with federal requirements. The issue is what to do about that problem. Some alternatives the Commission could consider are:
 - a. Do nothing until there is a clear statement from the federal government regarding what constitutes a true termination of service;
 - b. Terminate the program completely, or phase out the program by not permitting any new entrants;
 - c. Keep the existing program, but limit it to those who are at least age 62;

- d. Modify the existing program to require all individuals in the program, including those at or over age 62, to have a minimum 30-day break in service and prohibit employees to be offered or enter into contracts prior to a minimum 30-day break;
- e. Terminate the program and replace it with a voluntary hour reduction program; or
- f. Take no action until there has been thorough study of the various transition-to-full-retirement programs including early-retirement programs, the implications of reemployed annuitant provisions, the interaction between these various programs, federal law, or rule that may impact program design, and public employer workforce needs.

In considering the alternatives, the Commission may wish to review the policy concerns that follow.

2. Federal Requirement Compliance. The issue is whether the program as revised by the proposal would be viewed as effectively satisfying federal requirements if reviewed by the Internal Revenue Service. It is hoped that requiring a 30-day break in service and prohibiting agreements while individuals remain employed (at least those under 62), will be sufficient to avoid a plan qualification problem, but there is no certainty given the lack of federal guidance in this matter. The explicit purpose of this program is to rehire employees who retired and commenced receipt of annuities, which immediately raises the possibility of sham terminations and resulting in-service distributions. Auditors might be concerned about the inability to effectively enforce the proposed prohibition against any oral agreements to return to employment. If any program is deemed necessary, a program allowing individuals to reduce employment hours prior to the termination of service (rather than after, through a termination-rehire agreement) may be less problematic.
3. In-Service Distribution Issues. The issue is whether the Commission and Legislature want to knowingly permit in-service distributions (to those who are at least age 62), at least on a limited basis to individuals who are in this particular program. Permitting in-service distributions to individuals in this program is likely to create pressure to permit this treatment for a much larger group, any members of our public pension plans who are at least age 62. While in-service distributions may be permitted under federal law for those who are age 62 and older, the Commission may wish to address the question of whether this reflects good pension policy. This is not a subject the Commission has previously addressed.

The Commission should be aware that the Teachers Retirement Association (TRA), in H.F. 3798 (Murphy, M., by request); S.F. 3324 (Betzold), a bill containing a mix of benefit provisions and administrative provisions, is proposing to permit in-service distributions to any TRA member who is at least age 62 if the individual submitted a termination notice, even individuals who immediately return to the same employment on a full-time basis. Permitting in-service distributions is contrary to the core concept that the purpose of retirement plan benefits is to support individuals who are truly retired. Double-dipping concerns are raised, which may lead Minnesotans to question why they are taxed to cover the salaries of public employees who are already drawing a public pension. Also, rehiring annuitants but not giving them further pension plan coverage for the reemployment may lead to pressure or a mandate from the courts that these individuals be provided with additional pension coverage, possibly leading to a requirement that the annual annuity amount these reemployed annuitants are receiving must be recomputed every year to incorporate additional earned service credit.

4. Employee Willingness to Participate in a Revised Program. The issue is the willingness of employees to take part in the revised postretirement option program under the terms in the proposal, given that no written or oral agreement can be offered until after the individual terminates from employment. The proposal creates considerable uncertainty for the employee. The risk to the individual is that he or she might terminate and then not be offered a postretirement option program position. Given that risk, individuals are likely to simply continue in full-time employment for a few more years; or, if they wish to move from full-time to part-time employment toward the end of their careers, make plans for a part-time job outside of state employment before terminating from state employment, which is a more certain outcome than terminating and hoping that a postretirement option program position is offered.
5. Lack of Consensus Regarding Appropriate Changes. Various legislative proposals have been introduced to address federal compliance concerns about the postretirement option program, and these proposals take different approaches, suggesting a lack of consensus regarding a solution. One approach is reflected in the current bill as introduced (requiring all individuals entering or in the program to have a 30-day separation of service), and the delete-all amendment, A08-1290 (requiring all individuals entering or in the program who are under age 62 to have a 30 day separation of service). Another alternative is found in H.F. 3798 (Murphy, M., by request); S.F. 3324 (Betzold), which restricts the program to those who are at least age 62.

6. Scope of the Proposed Change. The issue is the appropriate scope of the proposed change, whether to limit change to this one program or whether similar changes are needed in other programs. For example, there are numerous provisions in law which permit Minnesota State Colleges and Universities System (MnSCU) employees to terminate service and return to work under an agreement under which they will not earn more than \$46,000 and will be employed on a one-third to two-thirds of full-time basis. These provisions can be construed as requiring, or certainly permitting, these employee/employer agreements to be reached prior to the individual terminating service for purposes of commencing the annuity. If the postretirement option program under Section 43A.346 has an in-service distribution problem worthy of addressing, it would seem that these MnSCU employee provisions share the same flaw. The MnSCU provisions are found in several different defined benefit plans which might provide coverage to some MnSCU employees: MSRS (Section 352.1155), TRA (Section 354.445), and the first class city teacher plans (Section 354A.31, Subdivision 3a).
7. Interaction with Other Provisions. There are other provisions of law that interact with this provision; changes in those provisions may impact the need for this program or alter how to best structure the program.
- MSRS, PERA, and TRA law contain provisions which subsidize early retirement, and there are several proposals to extend subsidized early retirement to post June 30, 1989, hires. One can question policies which subsidize individuals to retire at young ages, only to have other programs encouraging them to return to employment after commencing receipt of a retirement annuity. This combination can be deemed costly and counterproductive, and it has resulted in the present concern with the postretirement option program, that its operation conflicts with federal in-service distribution prohibitions.
 - There are also various bills proposing to revise the treatment of reemployed annuitant savings accounts, permitting a retiree to access those accounts far sooner following the end of the reemployment period. Other proposals alter maximum exempt earnings amounts before portions of the annuity are transferred to the savings account, while MSRS proposed eliminating the use of savings accounts and returning to the approach in law until several years ago, forfeiting all or part of annuity payments once the exempt income limit is reached. These proposals include the current bill as introduced (MSRS had proposed to return to a forfeiture of MSRS annuity amounts once the exempt income limit was reached); H.F. 3798 (Murphy, M., by request); S.F. 3324 (Betzold), which includes increasing the TRA exempt income limit to \$46,000, which might by amendment be extended to other plans; and H.F. 1001 (Carlson); S.F. 1238 (Rest), which would modify reemployment exempt income limits for substitute teachers.
 - The law establishing the postretirement option program includes a waiver exempting individuals in postretirement option program positions from being impacted by reemployed annuitant exempt income limit provisions. Another postretirement option program provision requires a cutback in service, with no individual in the program being permitted to work more than 50-percent time. If MSRS and PERA reemployed annuitant law were to be revised to use a \$46,000 exempt income limit, few, if any, state employees who are reemployed annuitants working part-time would earn as much as \$46,000, whether or not they were in the postretirement option program. Thus, the exemption in postretirement option program may not be needed, or the postretirement option program itself may not longer be needed.
8. Potential Need for Further Study. Whether or not the Commission feels a need to make some short-term changes in this program for federal compliance, the Commission may also wish to study the general issue of transitioning into full retirement. Currently, there are programs which require individuals to terminate service, commence benefits, and be rehired on a less than full-time basis. There are programs (qualified part-time teacher programs in teacher plans) which permit individuals to start part-time employment several years before they submit a resignation without negatively impacting their high-five average salary when they do terminate and commence benefits. There are reemployed annuitant exempt earnings provisions (which differ from plan to plan, and with some plans having no provision) which probably impact if and where retirees will seek at least partial employment. Finally, there are many provisions which encourage early retirement, at ages when individuals are still quite productive, at the same time that federal government policies are discouraging early withdrawal from the workforce. There may be overlap between programs, there may also be gaps in coverage, and there are inconsistent treatments between similar groups, and early retirement policy as reflected in Minnesota law is in conflict with federal retirement policy. Perhaps further study is needed about government labor force needs and how to best meet those needs while remaining in compliance with federal code requirements.

Potential Amendments for Commission Consideration

1. Amendment H3436-1A leaves the program unchanged from current law, except to add a subdivision causing the program to expire on July 1, 2009, which would give the Commission some time to study the program and the broad area of transitioning to full retirement. If the 2009 Legislature chose not to revise this program and remove the expiration provision, it would expire.
2. Amendment H3436-2A incorporates the proposed changes to the program contained in delete-all amendment A08-1290 and also makes technical changes. The amendment replaces references to "employee" with "terminated state employee," and makes related grammatical changes to be consistent with the proposed revised procedure that no agreement can be made while the employee is active. It also includes language requested by PERA for another bill dealing with this same program, clarifying that prohibitions found in PERA law requiring a 30-day separation and prohibiting pre-termination agreements to return to work are to be waived for purposes of this program for those who are at least age 62.
3. Amendment H3436-3A, an alternative to H3436-2A, makes the same technical changes but restricts the program to those who are at least age 62, removes the 30-day separation requirements, and removes the prohibition against agreements prior to termination. If individuals are at least age 62, these prohibitions presumably are not needed given the language added in 2006 to the federal qualified plan provision. This alternative is based on language suggested by PERA, but it is not supported by the Department of Employee Relations.
4. Amendment H3436-4A, an alternative to amendments H3436-2A and -3A, makes the same technical changes as amendment H3436-2A, requires that all individuals in the program, including those who are age 62 or older, comply with a 30-day separation requirement for all new postretirement option program positions and any postretirement option program position renewals, and prohibits offering or reaching agreements while the individual is employed for all individuals in the program. This approach is likely to be the least problematic by not permitting anyone to receive in-service distributions, including those age 62 or older.
5. Amendment H3436-5A adds a July 1, 2009, expiration date to the postretirement option program by adding an expiration provision to amendments H3436-2A, -3A, or -4A.
6. Amendment H3436-6A, an alternative to all of the previous amendments, terminates the postretirement option program on July 1, 2009, and creates a new program effective on that same date based on the voluntary hour reduction program which expired on July 1, 2007, and TRA's qualified part-time teacher provision, found in Minnesota Statutes, Section 354.66. Under this amendment, individuals are permitted to transition into retirement by cutting back on hours before termination of service, and without harming their high-five salary for pension purposes. By accessing part-time employment before termination of service, sham terminations questions and resulting in-service distribution problems are avoided. The proposed program would allow individuals who are at least 62, who have at least 20 years of service, and who worked full-time during the most recent five years, to cut back to on employment to between half-time and three-quarters time employment, if approved by the employer. The eligible employing units are the same as in the current postretirement option program. Individuals in the program would make retirement contributions based on full-time equivalent salary, and the employer would make corresponding employer contributions. Participation is for one year with renewal for no more than three in total. Individuals who are already receiving annuities from a Minnesota public plan are prohibited from participation. The program expires on July 1, 2012.

An issue is the impact this will have on the retirement plans. This approach may impact labor force behavior and the timing of retirements, which may impact plan cost positively or negatively. Other issues are whether there is sufficient need for this program given the maze of existing programs, how this program would interact with other programs, and whether the coverage group is properly defined.

The Commission may conclude that the MnSCU programs mentioned in the text also require change for federal compliance purposes. Because of the many directions the Commission could choose to take on the current proposal, amendments to make changes to the MnSCU program have not been attempted. If deemed necessary, the Commission could direct staff to prepare additional amendments addressing those programs. The Commission may wish to hear testimony from representatives of MnSCU, and from MSRS, PERA, or TRA on this matter.

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.

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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.

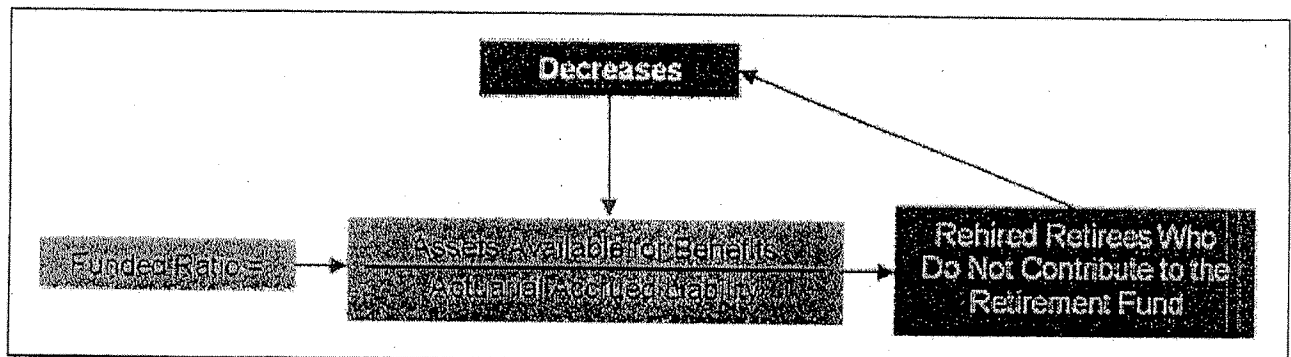


Figure 1: Measuring the Actuarial Risk Placed on the Fund

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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2007 Minnesota Statutes

43A.346 POSTRETIREMENT OPTION.

Subdivision 1. **Definition.** For purposes of this section, "state employee" means a person currently occupying a civil service position in the executive or legislative branch of state government, the Minnesota State Retirement System, the Public Employees Retirement Association, or the Office of the Legislative Auditor, or a person employed by the Metropolitan Council.

Subd. 2. **Eligibility.** (a) This section applies to a state or Metropolitan Council employee who:

(1) for at least the five years immediately preceding separation under clause (2), has been regularly scheduled to work 1,044 or more hours per year in a position covered by a pension plan administered by the Minnesota State Retirement System or the Public Employees Retirement Association;

(2) terminates state or Metropolitan Council employment;

(3) at the time of termination under clause (2), meets the age and service requirements necessary to receive an unreduced retirement annuity from the plan and satisfies requirements for the commencement of the retirement annuity or, for an employee under the unclassified employees retirement plan, meets the age and service requirements necessary to receive an unreduced retirement annuity from the plan and satisfies requirements for the commencement of the retirement annuity or elects a lump-sum payment; and

(4) agrees to accept a postretirement option position with the same or a different appointing authority, working a reduced schedule that is both (i) a reduction of at least 25 percent from the employee's number of regularly scheduled work hours; and (ii) 1,044 hours or less in state or Metropolitan Council service.

(b) For purposes of this section, an unreduced retirement annuity includes a retirement annuity computed under a provision of law which permits retirement, without application of an earlier retirement reduction factor, whenever age plus years of allowable service total at least 90.

Subd. 3. **Unclassified service.** Notwithstanding any law to the contrary, state postretirement option positions shall be in the unclassified service but shall not be covered by the Minnesota State Retirement System unclassified employees plan.

Subd. 4. **Annuity reduction not applicable.** Notwithstanding any law to the contrary, when an eligible state employee in a postretirement option position under this section commences receipt of the annuity, the provisions of section 352.115, subdivision 10, or 353.37 governing annuities of reemployed annuitants, shall not apply for the duration of employment in the position.

Subd. 5. **Appointing authority discretion.** The appointing authority has sole discretion to determine if and the extent to which a postretirement option position under this section is available to a state employee. Any offer of such a position must be made in writing to the employee by the appointing authority on a form prescribed by the Department of Employee Relations and the Minnesota State Retirement System or the Public Employees Retirement Association. The appointing authority may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

Subd. 6. **Duration.** Postretirement option employment shall be for an initial period not to exceed one year. During that period, the appointing authority may not modify the conditions specified in the written offer without the employee's agreement, except as required by law or by the collective bargaining agreement or compensation plan applicable to the employee. At the end of the initial period, the appointing authority has sole discretion to determine if the offer of a postretirement option position will be renewed, renewed with modifications, or terminated. Postretirement option employment may be renewed for periods of up to one year, not to exceed a total duration of five years. No person shall be employed in one or a combination of postretirement option positions under this section for a total of more than five years.

Subd. 7. **Copy to fund.** The appointing authority shall provide the Minnesota State Retirement System or the Public Employees Retirement Association with a copy of the offer, the employee's acceptance of the terms, and any subsequent renewal agreement.

Subd. 8. **No service credit.** Notwithstanding any law to the contrary, a person may not earn service credit in the Minnesota State Retirement System or the Public Employees Retirement Association for employment covered under this section, and employer contributions and payroll deductions for the retirement fund must not be made based on earnings of a person working under this section. No change shall be made to a monthly annuity or retirement allowance based on employment under this section.

Subd. 9. **Insurance contribution.** Notwithstanding any law to the contrary, the appointing authority must make an employer insurance contribution for a person who is employed in a postretirement option position under this section and who is not receiving any other state-paid or Metropolitan Council-paid employer insurance contribution. The amount of the contribution must be equal to the percent time worked in the postretirement option position (hours scheduled to be worked annually divided by 2,088) times 1.5 times the full employer contribution for employee-only health and dental coverage. The appointing authority must contribute that amount to a health reimbursement arrangement.

Subd. 10. **Subsequent employment.** If a person has been in a postretirement option position and accepts any other position in state or Metropolitan Council-paid service, in the subsequent state or Metropolitan Council-paid employment the person may not earn service credit in the Minnesota State Retirement System or Public Employees Retirement Association, no employer contributions or payroll deductions for the retirement fund shall be made, and the provisions of section 352.115, subdivision 10, or section 353.37, shall apply.

History: 2005 c 156 art 3 s 2; 2007 c 134 art 11 s 4,5; 2007 c 148 art 2 s 45

2007 Minnesota Statutes

354.66 QUALIFIED PART-TIME TEACHERS; MEMBERSHIP IN ASSOCIATION.

Subdivision 1. **Teachers, defined.** As used in this section, the term "teachers" shall have the meaning given it in section 122A.15, subdivision 1, except that the term shall not include superintendents. The term shall also have the meaning given it in section 136F.43, subdivision 1.

Subd. 1a. **Board, defined.** For purposes of this section, the term "board" means a school district board and the Board of Trustees of the Minnesota State Colleges and Universities.

Subd. 1b. **District, defined.** For purposes of this section, the term "district" means a school district or the Minnesota State Colleges and Universities system.

Subd. 1c. **Participation.** (a) Except as indicated in paragraph (b), participation in the part-time mobility program must be based on a full fiscal year and the employment pattern of the teacher during the most recent fiscal year.

(b) For a teacher in the Minnesota State Colleges and Universities system who teaches only during the first semester in an academic year and retires immediately after the first semester, participation in the part-time mobility program must be based on one-half of a full fiscal year and the employment pattern of the teacher during the most recent one-half of the most recent fiscal year.

Subd. 2. **Qualified part-time teacher program participation requirements.** (a) A teacher in a Minnesota public elementary school, a Minnesota secondary school, or the Minnesota State Colleges and Universities system who has three years or more of allowable service in the association or three years or more of full-time teaching service in Minnesota public elementary schools, Minnesota secondary schools, or the Minnesota State Colleges and Universities system, by agreement with the board of the employing district or with the authorized representative of the board, may be assigned to teaching service in a part-time teaching position under subdivision 3. The agreement must be executed before October 1 of the school year for which the teacher requests to make retirement contributions under subdivision 4. A copy of the executed agreement must be filed with the executive director of the association. If the copy of the executed agreement is filed with the association after October 1 of the school year for which the teacher requests to make retirement contributions under subdivision 4, the employing unit shall pay the fine specified in section 354.52, subdivision 6, for each calendar day that elapsed since the October 1 due date. The association may not accept an executed agreement that is received by the association more than 15 months late. The association may not waive the fine required by this section.

(b) Notwithstanding paragraph (a), if the teacher is also a legislator:

- (1) the agreement in paragraph (a) must be executed before March 1 of the school year for which the teacher requests to make retirement contributions under subdivision 4; and
- (2) the fines specified in paragraph (a) apply if the employing unit does not file the executed agreement with the executive director of the association by March 1.

Subd. 3. **Part-time teaching position, defined.** (a) For purposes of this section, the term "part-time teaching position" means a teaching position within the district in which the teacher is employed for at least 50 full days or a fractional equivalent thereof as prescribed in section 354.091, and for which the teacher is compensated in an amount not exceeding 80 percent of the compensation established by the board for a full-time teacher with identical education and experience with the employing unit.

(b) For a teacher to which subdivision 1c, paragraph (b), applies, the term "part-time teaching position" means a teaching position within the district in which the teacher is employed for at least 25 full days or a fractional equivalent thereof as prescribed in section 354.091, and for which the teacher is compensated in an amount not exceeding 40 percent of the compensation established by the board for a full-time teacher, with identical education and experience with the employing unit.

Subd. 4. **Retirement contributions.** Notwithstanding any provision to the contrary in this chapter relating to the salary figure to be used for the determination of contributions or the accrual of service credit, a teacher assigned to a part-time position under this section shall continue to make employee contributions to and to accrue allowable service credit in the retirement fund during the period of part-time employment on the same basis and in the same amounts as would have been paid and accrued if the teacher had been employed on a full-time basis provided that, prior to June 30 each year, or within 30 days after notification by the association of the amount due, whichever is later, the member and the employing board make that portion of the required employer contribution to the retirement fund, in any proportion which they may agree upon, that is based on the difference between the amount of compensation that would have been paid if the teacher had been employed on a full-time basis and the amount of compensation actually received by the teacher for the services rendered in the part-time assignment. The employing unit shall make that portion of the required employer contributions to the retirement fund on behalf of the teacher that is based on the amount of compensation actually received by the teacher for the services rendered in the part-time assignment. The employee and employer contributions shall be based upon the rates of contribution prescribed by section 354.42. Full accrual of allowable service credit and employee contributions for part-time teaching service pursuant to this section and section 354A.094 shall not continue for a period longer than ten years.

Subd. 4a. [Repealed, 1987 c 398 art 7 s 43]

Subd. 5. **Other membership precluded.** A teacher entitled to full accrual of allowable service credit and employee contributions for part-time teaching service pursuant to this section shall not be entitled during the same period of time to be a member of, accrue allowable service credit in or make employee contributions to any other Minnesota public employee pension plan, except the plan established in chapter 3A, the plan established in chapter 352D if the teacher also is a legislator, or a volunteer firefighters' relief association governed by sections 69.771 to 69.776.

Subd. 6. **Insurance.** A board of an employing district entering into an agreement authorized by this section shall take all steps necessary to assure continuance of any insurance programs

furnished or authorized a full-time teacher on an identical basis and with identical sharing of costs for a part-time teacher pursuant to this section, provided, however, that the requirements of this sentence may be modified by a collective bargaining agreement between a board and an exclusive representative pursuant to chapter 179. Teachers as defined in section 136F.43 employed on a less than 75 percent time basis pursuant to this section shall be eligible for state paid insurance benefits as if the teachers were employed full time.

Subd. 7. **Eligibility for credit.** Only teachers who are public employees as defined in section 179A.03, subdivision 14, during the school year preceding the period of part-time employment pursuant to this section shall qualify for full accrual of service credit from, and employee contributions to the retirement fund for part-time teaching service pursuant to subdivision 4. Notwithstanding the provisions of section 179A.03, subdivision 14, clauses (e) and (f), teachers who are employed on a part-time basis for purposes of this section and who would therefore be disqualified from the bargaining unit by one or both of those provisions, shall continue to be in the bargaining unit during the period of part-time employment pursuant to this section for purposes of compensation, fringe benefits and the grievance procedure.

Subd. 8. **Restrictions on accrual.** No teacher shall qualify for full accrual of service credit from and employee contributions to the retirement association or a teachers retirement fund association for part-time teaching service pursuant to subdivision 4 or section 354A.094, subdivision 4, in more than one district at the same time. No teacher shall qualify for full accrual of service credit from and employee contributions to the retirement association or a teachers retirement fund association for part-time teaching service during part-time employment in a district pursuant to this section in any year when the teacher also takes a full-time or part-time teaching position in another Minnesota school district.

Subd. 9. [Repealed, 1987 c 398 art 7 s 43]

Subd. 10. **Board power not restricted.** Nothing in this section shall be construed to limit the authority of a board to assign a teacher to a part-time teaching position which does not qualify for full accrual of service credit from and employee contributions to the retirement fund pursuant to this section.

Subd. 11. **Substitute teaching.** Neither subdivision 5 nor 8 shall be construed to prohibit a teacher who qualifies for full accrual of service credit from and employee contributions to the retirement fund pursuant to this section in any year from being employed as a substitute teacher by any school district during that year. Notwithstanding the provisions of sections 354.091 and 354.42, a teacher may not qualify for full accrual of service credit from and employee contributions to the retirement fund for other teaching service rendered for any part of any year for which the teacher qualifies for full accrual of service credit from and employee contributions to the retirement fund pursuant to this section or section 354A.094.

History: 1977 c 447 art 9 s 4; 1978 c 764 s 118,119; 1979 c 334 art 8 s 16-19; 1980 c 454 s 6-13; 1980 c 618 s 5; 1981 c 224 s 129; 1981 c 358 art 8 s 13; 1982 c 548 art 4 s 15; 1982 c 578 art 3 s 5; 1983 c 314 art 10 s 9-11; 1984 c 462 s 27; 1Sp1985 c 12 art 6 s 19; art 11 s 9; 1986 c 444; 1987 c 258 s 12; 1987 c 384 art 2 s 1; 1989 c 246 s 2; 1989 c 319 art 9 s 22; art 18 s 3; 1990 c 426 art 1 s 44; 1990 c 570 art 12 s 44; 1994 c 521 s 1,2; 1994 c 528 art 3 s 31-33; 1994 c 572 s 6; 1995 c 141 art 3 s 20; 1995 c 262 art 1 s 5; 1996 c 305 art 1 s 85,86; 1997 c 7 art 1 s 131; 1997 c 183 art 3 s 38; 1998 c 397 art 11 s 3; 1998 c 390 art 3 s 1,2; 1999 c 222 art 8 s 1; art 19 s 5-7; 2000 c 260 s 97; 2004 c 267 art 4 s 1

Laws 2005, Chapter 156, Article 3, Section 3

Sec. 3. VOLUNTARY HOUR REDUCTION PLAN.

(a) This section applies to a state employee who:

(1) on the effective date of this section is regularly scheduled to work 1,044 or more hours a year in a position covered by a pension plan administered by the Minnesota state retirement system; and

(2) enters into an agreement with the appointing authority to work a reduced schedule of 1,044 hours or less in the covered position.

(b) Notwithstanding any law to the contrary, for service under an agreement entered into under paragraph (a), contributions may be made to the applicable plan of the Minnesota state retirement system as if the employee had not reduced hours. The employee must pay the additional employee contributions and the employer must pay the additional employer contributions necessary to bring the service credit and salary up to the level prior to the voluntary reduction in hours. Contributions must be made in a time and manner prescribed by the executive director of the Minnesota state retirement system.

(c) The amount of hours worked, the work schedule, and the duration of the voluntary hour reduction must be mutually agreed to by the employee and the appointing authority. The appointing authority may not require a person to waive any rights under a collective bargaining agreement as a condition of participation under this section. The appointing authority has sole discretion to determine if and the extent to which voluntary hour reduction under this section is available to an employee.

(d) A person who works under this section is a member of the appropriate bargaining unit; is covered by the appropriate collective bargaining contract or compensation plan; and is eligible for health care coverage as provided in the collective bargaining contract or compensation plan.

(e) An agreement under this section may apply only to work through June 30, 2007.

1.1 moves to amend H.F. No. 3436; S.F. No. 3136, as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2006, section 43A.346, is amended by adding a
1.4 subdivision to read:

1.5 Subd. 11. **Expiration.** This section expires July 1, 2009. No one may enter into or
1.6 be reappointed to a postretirement option position after June 30, 2008.

1.7 **EFFECTIVE DATE.** This section is effective the day following final enactment."

1.8 Amend the title accordingly

1.1 moves to amend H.F. No. 3436; S.F. No. 3136, as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2007 Supplement, section 43A.346, subdivision 1,
1.4 is amended to read:

1.5 Subdivision 1. **Definition.** For purposes of this section, "terminated state employee"
1.6 means a person ~~currently occupying~~ who occupied a civil service position in the executive
1.7 or legislative branch of state government, the Minnesota State Retirement System, the
1.8 Public Employees Retirement Association, ~~or~~ the Office of the Legislative Auditor, or a
1.9 person who was employed by the Metropolitan Council.

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

1.11 Sec. 2. Minnesota Statutes 2007 Supplement, section 43A.346, subdivision 2, is
1.12 amended to read:

1.13 Subd. 2. **Eligibility.** (a) This section applies to a terminated state ~~or Metropolitan~~
1.14 ~~Council~~ employee who:

1.15 (1) for at least the five years immediately preceding separation under clause (2), ~~has~~
1.16 ~~been~~ was regularly scheduled to work 1,044 or more hours per year in a position covered
1.17 by a pension plan administered by the Minnesota State Retirement System or the Public
1.18 Employees Retirement Association;

1.19 (2) ~~terminates~~ terminated state or Metropolitan Council employment;

1.20 (3) at the time of termination under clause (2), ~~meets~~ met the age and service
1.21 requirements necessary to receive an unreduced retirement annuity from the plan and
1.22 ~~satisfies~~ satisfied requirements for the commencement of the retirement annuity or, for
1.23 ~~an a~~ terminated employee under the unclassified employees retirement plan, ~~meets~~ met
1.24 the age and service requirements necessary to receive an unreduced retirement annuity
1.25 from the plan and ~~satisfies~~ satisfied requirements for the commencement of the retirement
1.26 annuity or ~~elects~~ elected a lump-sum payment; and

(4) agrees to accept a postretirement option position with the same or a different appointing authority, working a reduced schedule that is both (i) a reduction of at least 25 percent from the employee's number of previously regularly scheduled work hours; and (ii) 1,044 hours or less in state or Metropolitan Council service.

(b) For purposes of this section, an unreduced retirement annuity includes a retirement annuity computed under a provision of law which permits retirement, without application of an earlier retirement reduction factor, whenever age plus years of allowable service total at least 90.

(c) For purposes of this section, as it applies to staff of the Public Employees Retirement Association who are at least age 62, the length of separation requirement and termination of service requirement prohibiting return to work agreements under section 353.01, subdivisions 11a and 28, are not applicable.

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

Sec. 3. Minnesota Statutes 2006, section 43A.346, subdivision 4, is amended to read:

Subd. 4. **Annuity reduction not applicable.** Notwithstanding any law to the contrary, ~~when an eligible state employee in a postretirement option position under this section commences receipt of the annuity,~~ the provisions of section 352.115, subdivision 10, or 353.37 governing annuities of reemployed annuitants, shall not apply for the duration of a terminated state employee's employment in the a postretirement option position.

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

Sec. 4. Minnesota Statutes 2006, section 43A.346, subdivision 5, is amended to read:

Subd. 5. **Appointing authority discretion.** The appointing authority has sole discretion to determine if and the extent to which a postretirement option position under this section is available to a terminated state employee. Any offer of such a position must be made in writing to the employee person by the appointing authority on a form prescribed by the Department of Employee Relations and the Minnesota State Retirement System or the Public Employees Retirement Association. If the person is under age 62, an offer of a postretirement option position and any related verbal offer or agreement must not be made until at least 30 days after the person terminated employment. The appointing authority may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

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

3.1 Sec. 5. Minnesota Statutes 2006, section 43A.346, subdivision 6, is amended to read:

3.2 Subd. 6. **Duration.** Postretirement option employment shall be for an initial
3.3 period not to exceed one year. During that period, the appointing authority may not
3.4 modify the conditions specified in the written offer without the ~~employee's agreement~~
3.5 person's consent, except as required by law or by the collective bargaining agreement or
3.6 compensation plan applicable to the ~~employee person~~. At the end of the initial period,
3.7 the appointing authority has sole discretion to determine if the offer of a postretirement
3.8 option position will be renewed, renewed with modifications, or terminated. If the person
3.9 is under age 62, an offer of renewal and any related verbal offer or agreement must not
3.10 be made until at least 30 days after termination of the person's previous postretirement
3.11 option employment. Postretirement option employment may be renewed for periods of
3.12 up to one year, not to exceed a total duration of five years. No person shall be employed
3.13 in one or a combination of postretirement option positions under this section for a total
3.14 of more than five years.

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

3.16 Sec. 6. Minnesota Statutes 2006, section 43A.346, subdivision 7, is amended to read:

3.17 Subd. 7. **Copy to fund.** The appointing authority shall provide the Minnesota
3.18 State Retirement System or the Public Employees Retirement Association with a copy of
3.19 the offer, the terminated state employee's acceptance of the terms, and any subsequent
3.20 renewal agreement.

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

3.22 Amend the title accordingly

..... moves to amend H.F. No. 3436; S.F. No. 3136, as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2007 Supplement, section 43A.346, subdivision 1, is amended to read:

Subdivision 1. **Definition.** For purposes of this section, "terminated state employee" means a person ~~currently occupying~~ who occupied a civil service position in the executive or legislative branch of state government, the Minnesota State Retirement System, the Public Employees Retirement Association, ~~or~~ the Office of the Legislative Auditor, or a person who was employed by the Metropolitan Council.

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

Sec. 2. Minnesota Statutes 2007 Supplement, section 43A.346, subdivision 2, is amended to read:

Subd. 2. **Eligibility.** (a) This section applies to a terminated state ~~or Metropolitan Council~~ employee who:

(1) for at least the five years immediately preceding separation under clause (2), ~~has been~~ was regularly scheduled to work 1,044 or more hours per year in a position covered by a pension plan administered by the Minnesota State Retirement System or the Public Employees Retirement Association;

(2) ~~terminates~~ terminated state or Metropolitan Council employment;

(3) at the time of termination under clause (2), ~~meets~~ met the age and service requirements necessary to receive an unreduced retirement annuity from the plan and ~~satisfies~~ satisfied requirements for the commencement of the retirement annuity or, for ~~an~~ a terminated employee under the unclassified employees retirement plan, ~~meets~~ met the age and service requirements necessary to receive an unreduced retirement annuity from the plan and ~~satisfies~~ satisfied requirements for the commencement of the retirement annuity or ~~elects~~ elected a lump-sum payment; ~~and~~

(4) agrees to accept a postretirement option position with the same or a different appointing authority, working a reduced schedule that is both (i) a reduction of at least 25 percent from the employee's number of previously regularly scheduled work hours; and (ii) 1,044 hours or less in state or Metropolitan Council service; and
(5) is at least age 62.

(b) For purposes of this section, an unreduced retirement annuity includes a retirement annuity computed under a provision of law which permits retirement, without application of an earlier retirement reduction factor, whenever age plus years of allowable service total at least 90.

(c) For purposes of this section, as it applies to staff of the Public Employees Retirement Association, the length of separation requirement and termination of service requirement prohibiting return to work agreements under section 353.01, subdivisions 11a and 28, are not applicable.

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

Sec. 3. Minnesota Statutes 2006, section 43A.346, subdivision 4, is amended to read:

Subd. 4. **Annuity reduction not applicable.** Notwithstanding any law to the contrary, ~~when an eligible state employee in a postretirement option position under this section commences receipt of the annuity,~~ the provisions of section 352.115, subdivision 10, or 353.37 governing annuities of reemployed annuitants, shall not apply for the duration of a terminated state employee's employment in the a postretirement option position.

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

Sec. 4. Minnesota Statutes 2006, section 43A.346, subdivision 5, is amended to read:

Subd. 5. **Appointing authority discretion.** The appointing authority has sole discretion to determine if and the extent to which a postretirement option position under this section is available to a terminated state employee. Any offer of such a position must be made in writing to the ~~employee~~ person by the appointing authority on a form prescribed by the Department of Employee Relations and the Minnesota State Retirement System or the Public Employees Retirement Association. The appointing authority may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

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

Sec. 5. Minnesota Statutes 2006, section 43A.346, subdivision 6, is amended to read:

3.1 Subd. 6. **Duration.** Postretirement option employment shall be for an initial
3.2 period not to exceed one year. During that period, the appointing authority may not
3.3 modify the conditions specified in the written offer without the ~~employee's agreement~~
3.4 person's consent, except as required by law or by the collective bargaining agreement or
3.5 compensation plan applicable to the ~~employee~~ person. At the end of the initial period, the
3.6 appointing authority has sole discretion to determine if the offer of a postretirement option
3.7 position will be renewed, renewed with modifications, or terminated. Postretirement
3.8 option employment may be renewed for periods of up to one year, not to exceed a
3.9 total duration of five years. No person shall be employed in one or a combination of
3.10 postretirement option positions under this section for a total of more than five years.

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

3.12 Sec. 6. Minnesota Statutes 2006, section 43A.346, subdivision 7, is amended to read:

3.13 Subd. 7. **Copy to fund.** The appointing authority shall provide the Minnesota
3.14 State Retirement System or the Public Employees Retirement Association with a copy of
3.15 the offer, the terminated state employee's acceptance of the terms, and any subsequent
3.16 renewal agreement.

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

3.18 Amend the title accordingly

1.1 moves to amend H.F. No. 3436; S.F. No. 3136, as follows:

1.2 Delete everything after the enacting clause and insert:

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1.6 means a person ~~currently occupying~~ who occupied a civil service position in the executive
1.7 or legislative branch of state government, the Minnesota State Retirement System, the
1.8 Public Employees Retirement Association, ~~or~~ the Office of the Legislative Auditor, or a
1.9 person who was employed by the Metropolitan Council.

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

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1.15 (1) for at least the five years immediately preceding separation under clause (2), ~~has~~
1.16 ~~been~~ was regularly scheduled to work 1,044 or more hours per year in a position covered
1.17 by a pension plan administered by the Minnesota State Retirement System or the Public
1.18 Employees Retirement Association;

1.19 (2) ~~terminates~~ terminated state or Metropolitan Council employment;

1.20 (3) at the time of termination under clause (2), ~~meets~~ met the age and service
1.21 requirements necessary to receive an unreduced retirement annuity from the plan and
1.22 ~~satisfies~~ satisfied requirements for the commencement of the retirement annuity or, for
1.23 ~~an~~ a terminated employee under the unclassified employees retirement plan, ~~meets~~ met
1.24 the age and service requirements necessary to receive an unreduced retirement annuity
1.25 from the plan and ~~satisfies~~ satisfied requirements for the commencement of the retirement
1.26 annuity or ~~elects~~ elected a lump-sum payment; and

(4) agrees to accept a postretirement option position with the same or a different appointing authority, working a reduced schedule that is both (i) a reduction of at least 25 percent from the employee's number of previously regularly scheduled work hours; and (ii) 1,044 hours or less in state or Metropolitan Council service.

(b) For purposes of this section, an unreduced retirement annuity includes a retirement annuity computed under a provision of law which permits retirement, without application of an earlier retirement reduction factor, whenever age plus years of allowable service total at least 90.

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

Sec. 3. Minnesota Statutes 2006, section 43A.346, subdivision 4, is amended to read:

Subd. 4. **Annuity reduction not applicable.** Notwithstanding any law to the contrary, ~~when an eligible state employee in a postretirement option position under this section commences receipt of the annuity,~~ the provisions of section 352.115, subdivision 10, or 353.37 governing annuities of reemployed annuitants, shall not apply for the duration of a terminated state employee's employment in the a postretirement option position.

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

Sec. 4. Minnesota Statutes 2006, section 43A.346, subdivision 5, is amended to read:

Subd. 5. **Appointing authority discretion.** The appointing authority has sole discretion to determine if and the extent to which a postretirement option position under this section is available to a terminated state employee. Any offer of such a position must be made in writing to the ~~employee~~ person by the appointing authority on a form prescribed by the Department of Employee Relations and the Minnesota State Retirement System or the Public Employees Retirement Association. An offer of a postretirement option position and any related verbal offer or agreement must not be made until at least 30 days after the person terminated employment. The appointing authority may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

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

Sec. 5. Minnesota Statutes 2006, section 43A.346, subdivision 6, is amended to read:

Subd. 6. **Duration.** Postretirement option employment shall be for an initial period not to exceed one year. During that period, the appointing authority may not modify the conditions specified in the written offer without the ~~employee's agreement~~

3.1 person's consent, except as required by law or by the collective bargaining agreement or
3.2 compensation plan applicable to the ~~employee~~ person. At the end of the initial period,
3.3 the appointing authority has sole discretion to determine if the offer of a postretirement
3.4 option position will be renewed, renewed with modifications, or terminated. An offer
3.5 of renewal and any related verbal offer or agreement must not be made until at least
3.6 30 days after termination of the person's previous postretirement option employment.
3.7 Postretirement option employment may be renewed for periods of up to one year, not to
3.8 exceed a total duration of five years. No person shall be employed in one or a combination
3.9 of postretirement option positions under this section for a total of more than five years.

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

3.11 Sec. 6. Minnesota Statutes 2006, section 43A.346, subdivision 7, is amended to read:

3.12 Subd. 7. **Copy to fund.** The appointing authority shall provide the Minnesota
3.13 State Retirement System or the Public Employees Retirement Association with a copy of
3.14 the offer, the terminated state employee's acceptance of the terms, and any subsequent
3.15 renewal agreement.

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

3.17 Amend the title accordingly

1.1 moves to amend H.F. No. 3436; S.F. No. 3136, the delete everything
1.2 amendment (.....), as follows:

1.3 Page 3, after line ..., insert:

1.4 "Sec. 7. Minnesota Statutes 2006, section 43A.346, is amended by adding a subdivision
1.5 to read:

1.6 Subd. 11. **Expiration.** This section expires July 1, 2009. No one may enter into or
1.7 be reappointed to a postretirement option position after June 30, 2008.

1.8 **EFFECTIVE DATE.** This section is effective the day following final enactment."

1.9 Amend the title accordingly

..... moves to amend H.F. No. 3436; S.F. No. 3136, as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2006, section 43A.346, is amended by adding a subdivision to read:

Subd. 11. **Expiration.** This section expires July 1, 2009. No one may enter into or be reappointed to a postretirement option position after June 30, 2008.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **[43A.51] VOLUNTARY HOUR REDUCTION OPTION.**

Subdivision 1. **Definitions.** (a) "State employee" means a person employed in a civil service position with an eligible employing unit.

(b) "Employing unit" means an employing unit in the executive or legislative branch of state government, the Minnesota State Retirement System, the Public Employees Retirement Association, the Office of the Legislative Auditor, or the Metropolitan Council.

Subd. 2. **Eligibility.** This section applies to a state employee who:

(1) has a minimum of 20 years of service with one or more eligible employing units;

(2) has been employed full-time for the last five years with an eligible employing unit;

(3) except for an annuity from a volunteer firefighter relief association covered by section 69.771, is not receiving an annuity from any retirement plan or fund specified in sections 356.20, subdivision 2, or 356.30, subdivision 3, including individual retirement account plans under chapters 354B and 354D;

(4) except for a distribution from a volunteer firefighter plan, has not received a distribution other than a refund from a plan or fund specified in clause (3);

(5) is at least age 62; and

(6) agrees to accept a voluntary hour reduction option offered by the employing unit, working a reduced schedule that is no more than 75 percent of full-time employment and no less than 50 percent of full-time employment.

Subd. 3. Employing unit discretion The employing unit has sole discretion to determine if and the extent to which a voluntary hour reduction option is available to a state employee. Any offer of an option must be made in writing to the employee by the employing unit on a form prescribed by the Department of Employee Relations and the Minnesota State Retirement System or the Public Employees Retirement Association. The hours worked and work schedule must be mutually agreed to by the state employee and the employing unit. The employing unit may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

Subd. 4. Duration. Voluntary hour reduction employment shall be for an initial period of one year. During that period, the employing unit may not modify the conditions specified in the written offer without the employee's agreement, except as required by law or by the collective bargaining agreement or compensation plan applicable to the employee. At the end of the initial period, the employing unit has sole discretion to determine if the offer of a voluntary hour reduction position will be renewed, renewed with modifications, or terminated. Voluntary hour reduction employment may be renewed for an additional one-year period. No more than two one-year renewal periods are permitted.

Subd. 5. Copy to fund. The employing unit shall provide the Minnesota State Retirement System or the Public Employees Retirement Association with a copy of the offer, the employee's acceptance of the terms, and any subsequent renewal agreement.

Subd. 6. Retirement contributions. Notwithstanding any provision to the contrary, the eligible state employee assigned to a part-time position under this section and the employer shall continue to make contributions to the retirement plan providing coverage as though the person is employed on a full-time basis, and the person shall accrue salary credit and service credit for plan purposes as though employed full-time.

Subd. 7. Restrictions. A state employee, for the duration of employment under this section, is not entitled to make employee contributions or accrue service credit in any other Minnesota public employee pension plan, other than a volunteer firefighter relief association to which section 69.771 applies.

Subd. 8. Insurance. A state employee who accepts a voluntary hour reduction option under this section shall be provided with healthcare coverage and other insurance coverage on the same basis as other employees working a comparable percentage

3.1 of full-time employment and covered by the same collective bargaining contract or
3.2 compensation plan.

3.3 Subd. 9. **Expiration** This section expires July 1, 2012.

3.4 **EFFECTIVE DATE.** This section is effective July 1, 2009."

3.5 Amend the title accordingly

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **3436**

February 25, 2008

Authored by Nelson

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

A bill for an act

relating to retirement; modifying state employee postretirement employment provisions; amending Minnesota Statutes 2006, sections 43A.346, subdivisions 5, 6; 352.115, subdivision 10; 356.47, subdivision 1.

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

Section 1. Minnesota Statutes 2006, section 43A.346, subdivision 5, is amended to read:

Subd. 5. **Appointing authority discretion.** The appointing authority has sole discretion to determine if and the extent to which a postretirement option position under this section is available to a state employee. Any offer of such a position must be made in writing to the employee by the appointing authority on a form prescribed by the Department of Employee Relations and the Minnesota State Retirement System or the Public Employees Retirement Association. The offer, and any related verbal offer or agreement, must not be made until at least 30 days after the employee's retirement. The appointing authority may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to employees retiring after that date.

Sec. 2. Minnesota Statutes 2006, section 43A.346, subdivision 6, is amended to read:

Subd. 6. **Duration.** Postretirement option employment shall be for an initial period not to exceed one year. During that period, the appointing authority may not modify the conditions specified in the written offer without the employee's agreement, except as

required by law or by the collective bargaining agreement or compensation plan applicable to the employee. At the end of the initial period, the appointing authority has sole discretion to determine if the offer of a postretirement option position will be renewed, renewed with modifications, or terminated. For retirees employed under this section on the effective date of this section, an offer of renewal, and any related verbal offer or agreement, must not be made until at least 30 days after termination of the employee's previous position. Postretirement option employment may be renewed for periods of up to one year, not to exceed a total duration of five years. No person shall be employed in one or a combination of postretirement option positions under this section for a total of more than five years.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. 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, worked 1,045 hours in any calendar year. If~~ When the retired employee ~~has not yet reached~~ reaches 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~~ this limit does not apply.

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

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

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

3.3 **EFFECTIVE DATE.** This section is effective the day following final enactment
3.4 and applies to employees retiring after that date.

3.5 Sec. 4. Minnesota Statutes 2006, section 356.47, subdivision 1, is amended to read:

3.6 Subdivision 1. **Application.** This section applies to the balance of annual retirement
3.7 annuities on the amount of retirement annuity reductions after reemployed annuitant
3.8 earnings limitations for retirement plans governed by section ~~352.115, subdivision 10;~~
3.9 353.37; 354.44, subdivision 5; or 354A.31, subdivision 3.

3.10 **EFFECTIVE DATE.** This section is effective the day following final enactment.

..... moves to amend H.F. No. 3436 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2006, section 43A.346, subdivision 5, is amended to read:

Subd. 5. **Appointing authority discretion.** The appointing authority has sole discretion to determine if and the extent to which a postretirement option position under this section is available to a state employee. Any offer of such a position must be made in writing to the employee by the appointing authority on a form prescribed by the Department of Employee Relations and the Minnesota State Retirement System or the Public Employees Retirement Association. If the employee is under the age of 62 on the day of retirement, the offer, and any related verbal offer or agreement, must not be made until at least 30 days after the employee's retirement. The appointing authority may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to employees retiring after that date.

Sec. 2. Minnesota Statutes 2006, section 43A.346, subdivision 6, is amended to read:

Subd. 6. **Duration.** Postretirement option employment shall be for an initial period not to exceed one year. During that period, the appointing authority may not modify the conditions specified in the written offer without the employee's agreement, except as required by law or by the collective bargaining agreement or compensation plan applicable to the employee. At the end of the initial period, the appointing authority has sole discretion to determine if the offer of a postretirement option position will be renewed, renewed with modifications, or terminated. For retirees employed under this section who are under 62 and who retired before the effective date of this section, an offer of renewal, and any related verbal offer or agreement, must not be made until at least 30 days after

2.1 termination of the employee's previous position. Postretirement option employment may
2.2 be renewed for periods of up to one year, not to exceed a total duration of five years. No
2.3 person shall be employed in one or a combination of postretirement option positions under
2.4 this section for a total of more than five years.

2.5 **EFFECTIVE DATE.** This section is effective the day following final enactment."

2.6 Delete the title and insert:

2.7 "A bill for an act
2.8 relating to retirement; modifying state employee postretirement employment
2.9 provisions; amending Minnesota Statutes 2006, section 43A.346, subdivisions
2.10 5, 6."