



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director **EB**
RE: Erroneous Contribution Amendments; PERA, First Class City Teacher Plans
DATE: March 30, 2009

The Commission's agenda includes amendments for the Public Employees Retirement Association (PERA) and the first class city teacher retirement fund associations revising the erroneous contribution provisions for these organizations currently found in the Commission's omnibus pension bill. The amendments are:

- Amendment S0191-19A revises the PERA provision in the omnibus retirement bill by making technical revisions, by permitting PERA to waive repayment of interest if amounts are less than \$10, and by adding an election for government subdivisions with employees who have invalid salary amounts detected and in the process of correction on the day this legislation passes. These government subdivisions may elect to have the approximate three-year statute of limitations apply to adjustments in process by submitting a resolution to PERA within 90 days.
- Amendment S0191-21A revises the first class city teacher retirement fund association erroneous contribution provision as found in the omnibus bill by making it comparable to the proposed provisions for PERA, except this provision does not have election language. Upon discovery, erroneous contributions must be discontinued and prior erroneous contribution amount must be returned, with interest to the employee or prior employee, while any excess employer contributions will be returned to the employer by credits against future employee contributions. Excess benefit payments that have occurred due to erroneous past contributions must be returned to the association by direct payment or by deductions from monthly annuity payments. Adjustments can be made for the current fiscal year and prior two fiscal years, unless fraud or misconduct is involved, in which case a longer period can be used. The provisions are effective upon enactment.

1.1 moves to amend the delete everything amendment (S0191-DE3) to
1.2 S.F. No. 191; H.F. No. 723, as follows:

1.3 Page 61, after line 12, insert:

1.4 "Sec. 8. Minnesota Statutes 2008, section 353.03, subdivision 3a, is amended to read:

1.5 Subd. 3a. **Executive director.** (a) **Appointment.** The board shall appoint an
1.6 executive director on the basis of education, experience in the retirement field, and
1.7 leadership ability. The executive director must have had at least five years' experience in
1.8 an executive level management position, which has included responsibility for pensions,
1.9 deferred compensation, or employee benefits. The executive director serves at the pleasure
1.10 of the board. The salary of the executive director is as provided by section 15A.0815.

1.11 (b) **Duties.** The management of the association is vested in the executive director
1.12 who shall be the executive and administrative head of the association. The executive
1.13 director shall act as adviser to the board on all matters pertaining to the association and
1.14 shall also act as the secretary of the board. The executive director shall:

1.15 (1) attend all meetings of the board;

1.16 (2) prepare and recommend to the board appropriate rules to carry out the provisions
1.17 of this chapter;

1.18 (3) establish and maintain an adequate system of records and accounts following
1.19 recognized accounting principles and controls;

1.20 (4) designate, with the approval of the board, up to two persons who may serve in
1.21 the unclassified service and whose salaries are set in accordance with section 43A.18,
1.22 subdivision 3, appoint a confidential secretary in the unclassified service, and appoint
1.23 employees to carry out this chapter, who are subject to chapters 43A and 179A in the same
1.24 manner as are executive branch employees;

1.25 (5) organize the work of the association as the director deems necessary to fulfill
1.26 the functions of the association, and define the duties of its employees and delegate to
1.27 them any powers or duties, subject to the control of, and under such conditions as, the
1.28 executive director may prescribe;

1.29 (6) with the approval of the board, contract for the services of an approved actuary,
1.30 professional management services, and any other consulting services as necessary to fulfill
1.31 the purposes of this chapter. All contracts are subject to chapter 16C. The commissioner
1.32 of administration shall not approve, and the association shall not enter into, any contract
1.33 to provide lobbying services or legislative advocacy of any kind. Any approved actuary
1.34 retained by the executive director shall function as the actuarial advisor of the board and
1.35 the executive director ~~and may perform actuarial valuations and experience studies to~~
1.36 ~~supplement those performed by the actuary retained.~~ In addition to filing requirements

2.1 under section 356.214~~2~~, any supplemental actuarial valuations or experience studies shall
2.2 be filed with the executive director of the Legislative Commission on Pensions and
2.3 Retirement. Copies of professional management survey reports shall be transmitted to the
2.4 secretary of the senate, the chief clerk of the house of representatives, and the Legislative
2.5 Reference Library as provided by section 3.195, and to the executive director of the
2.6 commission at the same time as reports are furnished to the board. Only management
2.7 firms experienced in conducting management surveys of federal, state, or local public
2.8 retirement systems shall be qualified to contract with the director hereunder;

2.9 (7) with the approval of the board provide in-service training for the employees
2.10 of the association;

2.11 (8) make refunds of accumulated contributions to former members and to the
2.12 designated beneficiary, surviving spouse, legal representative or next of kin of deceased
2.13 members or deceased former members, as provided in this chapter;

2.14 (9) determine the amount of the annuities and disability benefits of members covered
2.15 by the association and authorize payment of the annuities and benefits beginning as of
2.16 the dates on which the annuities and benefits begin to accrue, in accordance with the
2.17 provisions of this chapter;

2.18 (10) pay annuities, refunds, survivor benefits, salaries, and necessary operating
2.19 expenses of the association;

2.20 (11) prepare and submit to the board and the legislature an annual financial report
2.21 covering the operation of the association, as required by section 356.20;

2.22 (12) prepare and submit biennial and annual budgets to the board for its approval
2.23 and submit the approved budgets to the Department of Finance for approval by the
2.24 commissioner;

2.25 (13) reduce all or part of the accrued interest payable under section 353.27,
2.26 subdivisions 12, 12a, and 12b, or 353.28, subdivision 5, upon receipt of proof by the
2.27 association of an unreasonable processing delay or other extenuating circumstances of
2.28 the employing unit; and notwithstanding section 353.27, subdivision 7, may authorize
2.29 that accrued interest of \$10 or less is not payable to the member when a credit has been
2.30 taken by the employer to correct an employee deduction taken in error. The executive
2.31 director shall prescribe and submit for approval by the board the conditions under which
2.32 such interest may be reduced; and

2.33 (14) with the approval of the board, perform such other duties as may be required for
2.34 the administration of the association and the other provisions of this chapter and for the
2.35 transaction of its business.

2.36 **EFFECTIVE DATE.** This section is effective the day after final enactment."

3.1 Page 62, line 25, strike "(d)" and insert "(e)"

3.2 Page 63, line 4, delete ", except that" and insert a period

3.3 Page 63, delete line 18 and insert "invalid employee deductions at the rate specified
3.4 under section 353.34, subdivision 2, from the received date of each invalid salary
3.5 transaction through the date the credit or refund is made; and the employer"

3.6 Page 63, line 22, delete "as determined" and insert "at the rate specified"

3.7 Page 63, line 23, after "2" insert ", from the received date of each invalid salary
3.8 transaction through the date the credit or refund is made"

3.9 Page 64, delete line 12

3.10 Page 64, line 13, delete everything before "an" and insert "(g) If the accrual date of
3.11 any retirement annuity, survivor benefit, or disability benefit is within the limitation period
3.12 specified in paragraph (c), and"

3.13 Page 64, line 25, after "enactment" insert a period

3.14 Page 64, delete lines 26 to 27

3.15 Page 65, line 4, delete "as" and delete "under 353.34, subdivision" and insert "in
3.16 the manner provided for a former member under subdivision 7, paragraph (e), clause
3.17 (2), item (i),"

3.18 Page 65, line 5, delete "2,"

3.19 Page 84, after line 7, insert:

3.20 "Sec. 44. APPLICATION OF PUBLIC EMPLOYEES RETIREMENT
3.21 ASSOCIATION ERRONEOUS RECEIPTS AND DISBURSEMENTS PROVISION;
3.22 ELECTION.

3.23 (a) If adjustments under section 10 due to invalid salary amounts are in process as of
3.24 the effective date of this section for employees or former employees of a governmental
3.25 subdivision, the governing body of the governmental subdivision may elect to have the
3.26 statute of limitations under section 10, paragraphs (c) and (g), apply to adjustments
3.27 or corrections in process as of the effective date of section 10, by a resolution of the
3.28 governing body transmitted to the Public Employees Retirement Association executive
3.29 director within 90 days after the effective date of this section.

3.30 (b) If the governing body of the governmental subdivision declines the treatment
3.31 permitted under paragraph (a) or fails to submit a resolution in a timely manner, the statute
3.32 of limitations does not apply to adjustments or corrections in process as of the effective
3.33 date.

3.34 EFFECTIVE DATE. This section is effective the day after final enactment."

3.35 Renumber the sections in sequence and correct the internal references

3.36 Amend the title accordingly

1.1 moves to amend the delete everything amendment (S0191-DE3) to
1.2 S.F. No. 191; H.F. No. 723, as follows:

1.3 Page 79, delete section 34 and insert:

1.4 "Sec. 34. Minnesota Statutes 2008, section 354A.12, is amended by adding a
1.5 subdivision to read:

1.6 Subd. 6. **Adjustment for erroneous receipts.** (a) Adjustments to correct employer
1.7 contributions and employee deductions taken in error from amounts which are not salary
1.8 under section 354A.011, subdivision 24, must be made as specified in this section.

1.9 (b) Upon discovery of the receipt of erroneous employee deductions and employer
1.10 contributions under paragraph (a), the executive director must require the employer to
1.11 discontinue the erroneous employee deductions and erroneous employer contributions
1.12 reported on behalf of an active member. Upon discontinuation, the executive director
1.13 must provide for a refund or credit to the employer in the amount of the invalid employee
1.14 deductions with interest on the employee deductions at the rate specified in section
1.15 354A.37, subdivision 3, from the received date of each invalid salary transaction to the
1.16 first day of the month in which the credit or refund is made. The employer must pay the
1.17 refunded employee deductions plus interest to the active member.

1.18 (c) If the individual is a former member who is not receiving a retirement annuity or
1.19 benefit and has not received a refund under section 354A.37, subdivision 3, related to the
1.20 applicable service, the executive director must return the erroneous employee deductions
1.21 to the former member through a refund within interest at the rate specified in section
1.22 354A.37, subdivision 3, from the received date of each invalid salary transaction to the
1.23 first day of the month in which the credit or refund is made.

1.24 (d) The executive director must return the invalid employer contributions reported
1.25 on behalf of a member or former member to the employer by providing a credit against
1.26 future contributions payable by the employer.

1.27 **EFFECTIVE DATE.** This section is effective the day after final enactment.

1.28 Sec. 35. Minnesota Statutes 2008, section 354A.12, is amended by adding a
1.29 subdivision to read:

1.30 Subd. 7. **Recovery of benefit overpayments.** (a) If the executive director discovers,
1.31 within the time period specified in subdivision 8 following the payment of a refund or
1.32 the accrual date of any retirement annuity, survivor benefit, or disability benefit, that
1.33 benefit overpayment has occurred due to using invalid service or salary, or due to any
1.34 erroneous calculation procedure, the executive director must recalculate the annuity or
1.35 benefit payable and recover any overpayment. The executive director shall recover the

2.1 overpayment by requiring direct repayment or by suspending or reducing the payment of a
2.2 retirement annuity or other benefit payable under this chapter to the applicable person or
2.3 the person's estate, whichever applies, until all outstanding amounts have been recovered.

2.4 (b) In the event the executive director determines that an overpaid annuity or benefit
2.5 that is the result of invalid salary included in the average salary used to calculate the
2.6 payment amount must be recovered, the executive director must determine the amount of
2.7 the employee deductions taken in error on the invalid salary, with interest as determined
2.8 under 354A.37, subdivision 3, and must subtract that amount from the total annuity or
2.9 benefit overpayment, and the remaining balance of the overpaid annuity or benefit, if
2.10 any, must be recovered.

2.11 (c) If the invalid employee deductions plus interest exceed the amount of the
2.12 overpaid benefits, the balance must be refunded to the person to whom the benefit or
2.13 annuity is being paid.

2.14 (d) Any invalid employer contributions reported on the invalid salary must be
2.15 credited against future contributions payable by the employer.

2.16 (e) If a member or former member, who is receiving a retirement annuity or
2.17 disability benefit for which an overpayment is being recovered, dies before recovery of the
2.18 overpayment is completed and an optional annuity or refund is payable, the remaining
2.19 balance of the overpaid annuity or benefit must continue to be recovered from the payment
2.20 to the optional annuity beneficiary or refund recipient.

2.21 (f) The board of trustees shall adopt policies directing the period of time and manner
2.22 for the collection of any overpaid retirement or optional annuity, and survivor or disability
2.23 benefit, or a refund that the executive director determines must be recovered as provided
2.24 under this section.

2.25 **EFFECTIVE DATE.** This section is effective the day after final enactment.

2.26 Sec. 36. Minnesota Statutes 2008, section 354A.12, is amended by adding a
2.27 subdivision to read:

2.28 Subd. 8. **Additional procedures.** (a) If paragraph (b) does not apply, the period of
2.29 adjustment under subdivisions 6 and 7 is limited to the fiscal year in which the error is
2.30 discovered by the executive director and the immediate two preceding fiscal years.

2.31 (b) If there is evidence of fraud or other misconduct on the part of the employee or
2.32 the employer, the board of trustees may authorize adjustments to the account of a member
2.33 or former member to correct erroneous employee deductions and employer contributions
2.34 on invalid salary and the recovery of any overpayments for a period longer than specified
2.35 under paragraph (a).

3.1 (c) Notwithstanding other provisions of this section, the executive director may
 3.2 apply the Revenue Procedures defined in the Internal Revenue Service Employee Plans
 3.3 Compliance Resolution System and not issue a refund of erroneous employee deductions
 3.4 and employer contributions or not recover a small overpayment of benefits if the cost to
 3.5 correct the error would exceed the amount of the refund or overpayment.

3.6 (d) Notwithstanding other provisions of this section, interest of \$10 or less shall not
 3.7 be payable to a member or former member.

3.8 **EFFECTIVE DATE.** This section is effective the day after final enactment.

3.9 Sec. 37. Minnesota Statutes 2008, section 354A.12, is amended by adding a
 3.10 subdivision to read:

3.11 Subd. 9. **Employer responsibility for fees, penalties.** Any fees or penalties
 3.12 assessed by the Internal Revenue Service for any failure by an employer to follow the
 3.13 statutory requirements for reporting eligible members and salary must be paid by the
 3.14 employer.

3.15 **EFFECTIVE DATE.** This section is effective the day after final enactment."

3.16 Renumber the sections in sequence and correct the internal references

3.17 Amend the title accordingly