



H.F. 1539

(Poppe)

S.F. 1295

(Sparks)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): TRA, MnSCU-IRAP
Relevant Provisions of Law: Special law request
General Nature of Proposal: Request to transfer coverage from MnSCU-IRAP to TRA
Date of Summary: February 23, 2012

Specific Proposed Changes

- Permits a certain Minnesota State Colleges and Universities System (MnSCU) faculty member hired in 2005 to elect Teachers Retirement Association (TRA) coverage retroactive to hire date due to an apparent MnSCU failure to inform the person, when hired, of right to elect TRA during first year of MnSCU employment.

Policy Issues Raised by the Proposed Legislation

1. Question of whether special legislation is needed; perhaps existing general law provision permitting transfer to TRA coverage upon receiving tenure might handle this situation.
2. Whether equity arguments sufficiently support the requested treatment.
3. Question of support by MnSCU.
4. Amount of the full actuarial value payment to TRA and the sharing of that payment responsibility between the employee and MnSCU.

Potential Amendment

H1539-1A revises the final date for the affected person to elect the coverage change from January 1, 2012, to January 1, 2013. The bill was drafted last year with an expectation that it would be enacted in 2011. If the bill passes during the 2012 Session, this date change is necessary to make the bill operational.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director ^{EB}
RE: H.F. 1539 (Poppe); S.F. 1295 (Sparks): TRA/MnSCU-IRAP Special Law
Provision: Permitting a MnSCU Employee to Elect TRA Coverage Due to Failure to
Provide Timely Election Notice
DATE: February 23, 2012

Summary of H.F. 1539 (Poppe); S.F. 1295 (Sparks)

H.F. 1539 (Poppe); S.F. 1295 (Sparks) permits a certain Minnesota State Colleges and Universities (MnSCU) faculty member, initially employed at Metropolitan State University on August 27, 2005, to elect Teachers Retirement Association (TRA) coverage, rather than the default MnSCU Individual Retirement Account Plan (MnSCU-IRAP) coverage, from her hire date because of an apparent failure by MnSCU to provide the employee with timely information about the options for retirement coverage. As drafted, MnSCU would pay part of the full-actuarial value cost of the past service.

Public Pension Problem of Michelle Benegas

Michelle Benegas is a 33-year-old faculty member in the MnSCU system who has worked at several MnSCU colleges or universities. For that employment Ms. Benegas has MnSCU-IRAP coverage. Under the MnSCU-IRAP coverage provision (Minnesota Statutes, Section 354B.21), TRA coverage may be elected during the first year of employment. If TRA is not elected, MnSCU-IRAP is the default coverage. Ms. Benegas contends that she was not informed of her right to elect TRA, and apparently it is now too late to make an election under general law.

According to information provided by MnSCU (attached), Ms. Benegas went to her Human Resources Department and requested information about electing TRA coverage, and indicated that she had not received this information when she was hired by Metropolitan State University. MnSCU has a procedure requiring the employing institution to provide information to new employees regarding default and optional retirement coverage, and the employing institution is required to obtain a signed statement from the employee acknowledging receipt of these materials. In researching Ms. Benegas' claim, MnSCU asked personnel at Metropolitan State University, and all other MnSCU units in which Ms. Benegas has worked, to search their records for Ms. Benegas' signed statement. None of the institutions could find the applicable document. It appears that Metropolitan State University did not provide the materials to Ms. Benegas, and none of the later institutions did either. Apparently, all later institutions in which Ms. Benegas worked assumed that Metropolitan State University, her first MnSCU employer, had provided those materials to her.

MnSCU has a Defined Contribution Plan Advisory Committee (DCP Advisory Committee) to address administrative issues that arise from the various primary and supplemental plans offered to MnSCU employees. Ms. Benegas was advised that she had a right to appear before that committee to request its support for special legislation to address her retirement problem. The DCP Advisory Committee concluded that it does appear that Ms. Benegas was not provided with the required information about retirement plan coverage, and recommended to the Chancellor that MnSCU should assist Ms. Benegas in seeking a legislative remedy.

Background Information on Relevant Topics

The following attachment provides background information on topics relevant to the proposed legislation:

- **Attachment A:** Background information on the Higher Education Individual Retirement Account Plan (IRAP).

Discussion and Analysis

H.F. 1539 (Poppe); S.F. 1295 (Sparks) permits Ms. Benegas to elect TRA rather MnSCU-IRAP coverage, retroactive to her hire date of August 27, 2005, because of an apparent failure by MnSCU to provide her with timely information about an option to elect TRA coverage in lieu of default MnSCU-IRAP coverage.

The proposed legislation raises a number of pension and related public policy issues for consideration by and possible discussion by the Commission, as follows:

1. Need for Special Legislation. The issue is whether legislation is indeed needed to address this situation. The Commission may wish to ask MnSCU administrators whether the desired transfer of coverage to TRA could be accomplished under a provision in existing general law. Under Minnesota Statutes, Section 354B.21, Subdivision 2, Paragraph (f), MnSCU faculty members who did not elect TRA during their first year of service are permitted to elect TRA coverage within one year after achieving tenure. This provision would not address Ms. Benegas' circumstance if she achieved tenure more than a year ago, and the payment terms may not reflect the role of MnSCU in creating Ms. Benegas' coverage problem. Both the special law bill before the Commission and this paragraph of existing general law require a full actuarial value payment, but the general law provision does not mandate MnSCU to cover any of that cost for the employee.
2. Appropriateness of Special Retirement Coverage Change Election. The policy issue is the appropriateness of permitting Ms. Benegas, a MnSCU faculty member covered by MnSCU-IRAP since August 2005, to now elect TRA coverage for both future and past MnSCU faculty employment. The proposed special retirement coverage change election can be viewed as a deadline extension or waiver. In the Commission's Principles of Pension Policy, Principle II.C.11. addresses the issue of deadline extensions and waivers:

II.C.11. Deadline Extensions and Waivers

Deadline extensions or waivers should be permitted only if, on a case-by-case basis, it is determined that there is a sufficient equitable basis for the extension or waiver, the extension or waiver does not involve broader applicability than the pension plan members making the request, and that the extension or waiver is unlikely to constitute an inappropriate precedent for the future.

Thus, any Commission recommendation of the election option should depend on the equities of the situation. Ms. Benegas contends she was not informed of her opportunity to elect TRA coverage during her first year of employment. If that is the case, then this is a request to correct an employer error. Since MnSCU has been unable to find any signed statement indicating that Ms. Benegas was provided with information about the default retirement coverage and the right to elect TRA, the equities appear to run with Ms. Benegas and against MnSCU.

3. Influence of Investment Market Results on the Request. If a sizable portion of Ms. Benegas' investment portfolio in her MnSCU-IRAP account was invested in equities in 2008-2009, the portfolio's value declined considerably due to the market crash during the Great Recession which would have provided an incentive for Ms. Benegas to seek an alternative to defined contribution plan coverage. While the improvement in investment markets that began in 2009 has repaired a considerable portion of the damage to asset values, recent experience clearly indicates the variability and risks in the investment markets. Thus, incentive remains to seek defined benefit plan coverage. While this might a motivating factor behind Ms. Benegas' request, in her particular case it does appear that the employer erred by not informing her in a timely manner about her retirement coverage options.
4. Question of Support by MnSCU. MnSCU supports this special law request and the payment terms.
5. Full Actuarial Value Payment and Mandatory MnSCU Payment. Since TRA did not cause harm, the Commission's policy is to require a full actuarial value payment to TRA, a payment that fully covers the liability the plan is assuming. The bill as drafted does require a full actuarial value payment with MnSCU covering a fair portion of the payment. The drafting is generally consistent with special legislation enacted in recent years where employer error caused a loss of service credit in a defined benefit plan. Presumably, TRA or MnSCU can provide the Commission with information on the full actuarial value amount, and the dollar amounts to be paid by the employee and employer.
6. Past Practice. The policy issue is the extent to which identical or similar previously enacted special legislation exists to provide guidance for the Commission. Two recent special laws regarding MnSCU employees with some relevance to the current situation are:
 - Laws 2006, Chapter 271, Article 14, Section 8. In 2006, a person with past TRA coverage due to employment before becoming a MnSCU employee, who became a community college employee and who defaulted to MnSCU-IRAP coverage, was allowed to elect prospective TRA coverage and to obtain prior TRA coverage for the community college employment in a full actuarial value

service credit purchase to the extent of her IRAP account balance, without any additional financial obligation placed on MnSCU.

MnSCU's role in the circumstances that lead to the 2006 special legislation is somewhat unclear. Regarding the situation addressed in 2006, MnSCU suggests that sufficient information should have been available, from a variety of sources, to alert the specific employee to the availability of a retirement coverage election. In attached materials MnSCU indicates that union representatives provided information at employee meetings on the employee's campus regarding retirement coverage options available to the employee. It is unclear whether specific information about election options was made available by the institution to the employee. In attached material MnSCU claims there was some documentation about the applicable coverage election, but the actual enacted legislation stated (in Laws 2006, Chapter 271, Article 14, Section 8, paragraph (b)), that no election had been offered to the applicable individual.

- Laws 2008, Chapter 349, Article 16, Section 4. In 2008, a person initially employed on a less-than-25 percent-time basis at Metropolitan State University, and who progressed to more substantial part-time employment and then to full-time employment at that institution, was not informed about retirement coverage options for which the person became eligible when the more substantial employment commenced. The person received default MnSCU-IRAP coverage without being informed of a right to elect TRA. The special law provision permitted the person to elect prospective and retroactive TRA coverage in lieu of MnSCU-IRAP. For the retroactive TRA coverage, the person was required to pay an amount from the person's MnSCU-IRAP account to TRA equal to the TRA employee contributions that would have been made to TRA if a timely election had occurred, plus 8.5 percent interest. The remainder of the account (primarily past MnSCU employer contributions plus any additional investment earnings) also transferred to TRA. MnSCU was required to pay to TRA any additional amount needed to ensure that TRA received, in total, the full actuarial value of the service credit purchase.

The 2008 case seems most similar to the current situation. Like the current case, MnSCU could not locate any documentation that an election notice was provided to the employee, and MnSCU concluded that an employer error occurred. The payment terms in H.F. 1539 (Poppe); S.F. 1295 (Sparks) are the same as those used in the 2008 legislation.

Potential Amendment for Commission Consideration

Amendment H1539-1A revises the final date for the affected person to elect the coverage change from January 1, 2012, to January 1, 2013. The bill was drafted last year with an expectation that it would be enacted in 2011. If the bill passes during the 2012 Session, this date change is necessary to make the bill operational.

Background Information on the Higher Education Individual Retirement Account Plan (IRAP)

Difference Between Defined Contribution Retirement Plans and Defined Benefit Retirement Plans

There are two major factors in designing retirement plans and attempting to fix or make pre-determinable one or the other factors constitutes the difference between defined contribution retirement plans and defined benefit retirement plans. When one factor is fixed or made pre-determinable, the other factor is automatically made variable. The factors are the level of the benefits and the level of contributions.

In a defined contribution retirement plan, the level of contributions or the amount of member and/or employer funding are specified or fixed in some manner, making the level of eventual benefits and/or their duration the variable factor. Most commonly, in a defined contribution plan, the funding of the plan is specified as a percentage of the covered payroll of plan members. Those contributions, allocated to individual accounts and frequently invested based on individual selection, along with any investment return obtained, constitute the benefit available to the plan member upon termination of employment or retirement. Most commonly, the individual account balance is payable in a lump sum upon the termination of plan coverage or is available to be transferred to an insurance company for the purchase of a retirement annuity. Some retirement plans that generally are classified as defined contribution plans permit the individual account balance amount to be converted into a retirement annuity within the retirement plan at a specified rate, although the assumption of that retirement annuity mortality risk actually defines the post-retirement benefit amount and subjects the retirement plan to potential future mortality and investment return experience losses and a chance for an unfunded actuarial accrued liability, akin to a defined benefit plan.

In a defined benefit retirement plan, the level of benefits at the time of retirement or after retirement are specified or fixed in some manner, making the level of contributions or the amount of funding from period to period the variable factor. Most commonly, in a defined benefit plan, the retirement benefit is specified as a percentage of the final salary or of the final average salary per year of credited service rendered. Thus, the plan tracks and awards allowable service credit and salary credit and amasses a liability for the service and salary credit rendered to date that requires the periodic calculation and assessment by an actuary. The resulting actuarial valuation report both assesses the amount of actuarial accrued liability that the retirement plan has amassed to date and the amount of total contributions needed for the future plan year or plan years. Most commonly, in defined benefit plans, any lump sum amount is limited to a pre-retirement employment termination member contribution refund, with the regular retirement benefit only payable as a retirement annuity. Generally, a regular retirement annuity has optional equivalent value forms that open for election by the plan member. Retirement plans that are defined benefit plans can take on defined contribution retirement plan aspects, such as determining post-retirement adjustment amounts from the amount of investment gain in whole or in part generated by the plan.

Contrasting Development of Defined Contribution Plans Between the Private Sector and the Public Sector

In the private sector as a whole, defined contribution plans are very prevalent, while in the public sector as a whole, defined benefit plans predominate. However, many of those private sector defined contribution plans have been established and are maintained by sole proprietor businesses or similar small employers. Among industrial employers in the private sector and other large employers, defined benefit plans are more prevalent. Public sector pension plans, which are typically very large membership single employer or multiple employer pension plans, tend to follow the private sector industrial model in utilizing defined benefit pension plans. In the private sector, defined contribution plans, in the form of Internal Revenue Code Section 401(k) plans are relatively common and generally function as supplemental thrift or savings plans. In the public sector, supplemental defined contribution pension plans also occur frequently. Primary coverage private sector pension plans, either defined benefit plans or defined contribution plans, are most commonly funded by the employing unit, while primary coverage public sector pension plans are most commonly funded by a combination of member and employer contributions. Supplementary pension plans, both private sector and public sector, are almost always funded by member contributions and frequently include some employer funding.

Higher Education Individual Retirement Account Plan (IRAP)

Public pension coverage for public university and public college faculty and upper level administrators frequently follow the private and nonprofit sector practice of utilizing defined contribution plan coverage, frequently through the use of the Teachers Insurance and Annuity Association-College Retirement Equity Fund (TIAA-CREF). The coverage generally either is exclusive defined contribution plan coverage or is

the inclusion of defined contribution plan coverage as an elective alternative to the defined benefit plan coverage otherwise applicable to governmental employees at that level.

The Minnesota State Colleges and Universities System (MnSCU) Individual Retirement Account Plan (IRAP) stems from the late 1980s, when state university and state college teachers and related employees sought coverage by a defined contribution plan rather than by TRA, which is a defined benefit program. That IRAP plan, currently coded as Minnesota Statutes, Chapter 354B, was established by the 1988 Legislature (Laws 1988, Chapter 709, Article 11), but was not implemented until mid-1989 due to problems in ensuring proper Social Security coverage. The plan was expanded to include technical college managerial employees in 1993 and technical college faculty in 1994. The Higher Education IRAP plan covers faculty members and upper-level administrators at MnSCU, but does not cover faculty or administrators at the University of Minnesota.

The argument made by the initial proponents of a defined contribution plan for higher education faculty and administrators is that higher education faculty, as a group, are highly mobile. If an individual changes employment to another college in another state, the individual retains the full value of the IRAP account, and the account continues to grow in value over time due to the continuing investment earnings on the account. A defined benefit plan may be a better choice for higher education faculty members who are less mobile, by reason of personal choice or lack of opportunity, particularly as these individuals become long-term employees. A defined benefit plan may also be best for higher education faculty members who have considerable prior TRA or first class city teacher plan covered service. The MnSCU higher education faculty is also covered by the Higher Education Supplemental Retirement Plan (SRP), which is also a defined contribution plan. Higher education faculty and administrators are covered by the SRP whether the individual is a TRA member or an IRAP member. The SRP was created in 1968. At that time, TRA provided the primary coverage for higher education faculty and the SRP was created to address deficiency in the benefits provided by TRA. Those deficiencies in TRA benefits were addressed decades ago when TRA moved to use of the high five average salary to compute benefits, and benefits were further enhanced in more recent years. The problem that the SRP was intended to address has been eliminated. Given that elimination, the purpose for continuing the SRP currently is unclear.

The Minnesota State University System and the Minnesota State Community College System shifted to defined contribution plan coverage as an option in the form of the Individual Retirement Account Plan (IRAP) in the late 1980s. Technical College faculty members were added to IRAP in the mid-1990s, when IRAP was also shifted from being the exclusive type of pension benefit coverage for new hires to an option as an alternative to defined benefit plan coverage by the statewide Teachers Retirement Association (TRA) or by one of the first class city teacher retirement fund associations. The creation of IRAP was as a result of active lobbying by the union representatives of State University and State Community College faculty members. Coverage by IRAP is the primary retirement vehicle for teaching personnel employed by the Minnesota State Colleges and Universities (MnSCU), which is the successor to the three prior higher education systems.

Lisa Diesslin

From: Mary Muenchow [Mary.Muenchow@so.mnscu.edu]
Sent: Monday, February 28, 2011 9:09 AM
To: Ed Burek
Cc: Gary Janikowski; Mark Wirtanen
Subject: RE: Benegas Purchase Bill DRAFT.docx

Ed,
In response to your questions below:

(1) The employee came forward to her HR office requesting information regarding a possible election to TRA. She indicated that she had never received a notice of her right to elect TRA coverage when she was hired. The initial employing institution, Metropolitan State University, was asked to research their records for a copy of the election notice that was provided to Ms. Benegas. We also asked all of her other employing institutions to do the same; they all relied upon her initial employing institution's duty to provide her with the election notice. All institutions are directed to retain a copy of this signed notice to document the fact that the employee was provided with information about their election rights. The university could not locate that document, and could not substantiate that Ms. Benegas had indeed been provided with an opportunity to elect TRA at the time of her hire. Since her hire date was in 2005, it is well past the one year election period. The only way to allow her to exercise an election for TRA coverage at this point is through special legislation.

(2) the DCR Advisory Committee is the Defined Contribution Retirement Plan Advisory Committee. The DCR is actually composed of IRAP, SRP and our TSA plans. The advisory committee is comprised of: an Office of the Chancellor administrator, Gary Janikowski, representatives from the third party administrator, TIAA-CREF, and representatives from each of the unions and salary plan groups that cover all MnSCU employees. The committee hears updates and makes recommendations on the funds array, asset management, administration of the plan, changes to the structure of the plan that would require legislative and plan document changes, etc.

Because members of the Pension Commission had at one point asked MnSCU to address those individuals who may not have received a notice of their right to elect TRA coverage rather than IRAP, we designed a process to bring these to the DCR Committee for a recommendation. If a campus is contacted by an employee who is questioning their receipt of an election notice and the campus cannot locate documentation of that election, the employee is advised that he/she has a right to appear in front of the DCR Advisory Committee and request their support in seeking special legislation. The employee explains their request for a chance to make an election; makes a statement regarding never receiving an election notice or the circumstances surrounding their request; and the campus must indicate whether they have the documentation or not, providing copies if there are any, etc. If it appears that the employee indeed did not receive an election notice, then the DCR Committee, as it did with Ms. Benegas, will make a recommendation to the Office of the Chancellor to assist the employee with pursuit of special legislation to allow the election.

(3) My apologies for the typo. I guess none of us caught this. The date in paragraph (c) should be August 27, 2005 as well.

(4) In the 2006 case (Ms. Siegel), MnSCU had documentation of an election provision and a union representative offered testimony on providing information at employee meetings held on the constituent's campus. In the 2008 case (Ms. Mosby), MnSCU could not locate any documentation that an election notice had been provided to the employee. In this case (Ms. Benegas), MnSCU cannot locate any documentation that an election notice had been provided to the employee.

I hope this answers your questions. If you need any additional information, please don't hesitate to contact me.

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>>> Ed Burek <edward.burek@lcpr.leg.mn> 2/25/2011 3:46 PM >>>
Mary,

I have a few questions:

- (1) Can you provide more information regarding what caused the problem?
- (2) You mention the DRC Advisory Committee. What do the initials DRC stand for? What is its role? Does this clearly mean that MNSCU supports this bill?
- (3) In the draft language that you sent, in a few places the draft indicates that August 27, 2005, is the person's start date, but in paragraph (c) the date is August 25, 2005. The correct date is the 27th?
- (4) Your drafting appears to be modeled upon a special law MNSCU employee coverage change bill, Laws 2008, Chapter 349, Article 16, Section 4. That bill permitted transfer of coverage to TRA, with a transfer of all assets from the IRAP account to TRA, and with MNSCU paying any additional payment amount up to the full actuarial value. An earlier bill for another individual, permitting a similar transfer of coverage to TRA but with the employee responsible for paying the full actuarial value, passed as Laws 2006, Chapter 271, Article 14, Section 8. That 2006 bill passed with the employee fully responsible for covering all cost because MNSCU strongly opposed placing any liability on MNSCU. How does the current situation differ from the 2006 case?

-----Original Message-----

From: Mary Muenchow [mailto:Mary.Muenchow@so.mnscu.edu]
Sent: Friday, February 25, 2011 2:40 PM
To: Ed Burek
Cc: benegas3@gmail.com; Gary Janikowski; Mark Wirtanen
Subject: Benegas Purchase Bill DRAFT.docx

Good Afternoon, Ed.
Attached is a draft of the individual pension bill that we discussed. This right to elect TRA and transfer her IRAP account is for Michelle Benegas, currently employed at St. Paul College and Metropolitan State University, who appeared in front of our DRC Advisory Committee. The committee recommended that we pursue this election option for Ms. Benegas. TRA is aware of this request; in fact, Ms. Benegas met with Mark Wirtanen of TRA, and Mark and I have been discussing this purchase, the cost, etc.

If you have any questions, or need any additional information, please don't hesitate to let me know.

Thank you.

Mary J. Muenchow
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Laws 2006, Chapter 271, Article 14, Section 8

Sec. 8. TEACHERS RETIREMENT ASSOCIATION; PROSPECTIVE TEACHERS RETIREMENT ASSOCIATION COVERAGE; PURCHASE OF PAST SERVICE CREDIT.

(a) An eligible person described in paragraph (b) is authorized to become a coordinated member of the Teachers Retirement Association, and to purchase service and salary credit in the Teachers Retirement Association coordinated plan retroactive from January 1, 1995, upon making an election under paragraph (c) and upon making the required payment under paragraph (d).

(b) An eligible person is a person who:

(1) was born on September 10, 1958;

(2) has prior employment covered by the Public Employees Retirement Association general plan;

(3) is the director of student support services at North Hennepin Community College;

(4) began working at North Hennepin Community College on February 3, 1992, with coverage for that service by the higher education individual retirement account plan; and

(5) was not offered an election of Teachers Retirement Association coverage, as required under Laws 1994, chapter 508, article 1, section 10.

(c)(1) To be eligible for coverage by the Teachers Retirement Association, an eligible person must submit a written application to the executive director of the Teachers Retirement Association on a form provided by the Teachers Retirement Association. The application must include all documentation of the applicability of this section and any other relevant information that the executive director may require. Following receipt by the executive director of the written application specified in this paragraph and receipt of the payment specified in paragraph (d):

(i) Teachers Retirement Association plan membership commences as of July 1, 2006;

(ii) individual retirement account plan coverage terminates for the applicable eligible person; and

(iii) past salary and service credit is granted from January 1, 1995, as specified in this section.

(2) The authority granted by this section is voided if the applicable eligible individual terminates from Minnesota State Colleges and Universities system employment before receipt by the executive director of the Teachers Retirement Association of the application specified in this paragraph and the amount specified in paragraph (d).

(d) To receive the treatment specified in this section, an eligible person shall make payment of the amount determined under Minnesota Statutes, section 356.551, to the executive director of the Teachers Retirement Association for the period from January 1, 1995. The individual is authorized to cover the payment using assets transferred from the eligible individual's individual retirement account plan account, or from any other sources permitted by law. The total amount to be paid under this paragraph must be determined by the executive director of the Teachers Retirement Association. Written notification of the amount required under this paragraph must be transmitted to the eligible individual. The Teachers Retirement Association is authorized to utilize the actuary jointly retained under Minnesota Statutes, section 356.214, to make the computations required under this paragraph. The Teachers Retirement Association shall allocate the amount received under this paragraph between the Teachers Retirement Association and the Public Employees Retirement Association, or other applicable pension fund, as indicated by the full actuarial cost determination required under this paragraph.

Laws 2008, Chapter 349, Article 16, Section 4

Sec. 4. TEACHERS RETIREMENT ASSOCIATION COVERAGE ELECTION FOR CERTAIN MNSCU FACULTY MEMBERS.

(a) Notwithstanding any provision to the contrary of Minnesota Statutes, chapter 354B, an eligible person described in paragraph (b) may elect prospective and retroactive retirement coverage under paragraph (c).

(b) An eligible person is a person who:

(1) was born on December 9, 1954;

(2) was initially employed by the Minnesota State Colleges and Universities system on a part-time basis at Metropolitan State University on January 12, 2004;

(3) was first employed in excess of 25 percent of full-time employment by the Minnesota State Colleges and Universities system on August 27, 2005;

(4) was covered by the higher education individual retirement account plan because of a failure of the Minnesota State Colleges and Universities system to advise about the default retirement coverage provision of Minnesota Statutes, section 354B.21, subdivision 3; and

(5) became a full-time employee of the Minnesota State Colleges and Universities system as a full-time faculty member at Metropolitan State University on July 17, 2007.

(c) An eligible person may elect retirement coverage by the Teachers Retirement Association rather than the higher education individual retirement account plan for faculty employment rendered after the date of the retirement coverage election under this section and for past Minnesota State Colleges and Universities system faculty employment from January 12, 2004, until the date of the retirement coverage election. The election must be made in writing, must be filed with the executive director of the Teachers Retirement Association, and must be accompanied with any relevant documentation required by the executive director of the Teachers Retirement Association.

(d) If an eligible person makes the retirement coverage election under paragraph (c), the eligible person's member contributions to the higher education individual retirement account plan must be transferred to the Teachers Retirement Association, with any earned investment returns on those contributions. If the transferred member contributions and investment earnings are less than the calculated amount of the member contribution that the eligible person would have made to the Teachers Retirement Association on the eligible person's compensation from the Minnesota State Colleges and Universities system for the period from August 27, 2005, to the date of the retirement coverage election, if the person had been covered by the Teachers Retirement Association during the period, plus annual compound interest at the rate of 8.5 percent, the eligible person shall pay the balance of that calculated member contribution obligation within 30 days of the retirement coverage election. Any payment may be made through an institution-to-institution transfer from the eligible person's account in the Minnesota state deferred compensation program or the eligible person's tax-sheltered savings account under the federal Internal Revenue Code, section 403(b).

(e) Upon the transfer of the equivalent member contribution amount and any additional payments under paragraph (d), the balance of the eligible person's higher education individual retirement account plan account must be transferred to the Teachers Retirement Association. If the amounts under paragraph (d) and the higher education individual retirement account plan account balance under this paragraph are less than the prior service credit purchase payment amount calculated under Minnesota Statutes, section 356.551, the Minnesota State Colleges and Universities system shall pay that difference within 60 days of the retirement coverage election date.

(f) Upon the transfers and payments under paragraphs (d) and (e), the eligible person must be credited by the Teachers Retirement Association with allowable and formula service for Minnesota State Colleges and Universities system employment since January 12, 2004.

(g) The authority to make a retirement coverage election under this section expires on January 1, 2009.

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

Minnesota Statutes 2011, Section 354B.21

354B.21 COVERAGE.

Subdivision 1. Eligibility. The following persons are eligible to have coverage by the individual retirement account plan or coverage by another plan as further specified in this section:

- (1) employees of the board who are employed as faculty in an employment classification included in the state university instructional unit or the state college instructional unit under section 179A.10, subdivision 2;
- (2) the chancellor and employees of the board in eligible unclassified administrative positions;
- (3) the employees in eligible unclassified administrative positions in the state universities;
- (4) the employees in eligible unclassified administrative positions in the technical colleges; and
- (5) the employees in eligible unclassified administrative positions of the Minnesota Office of Higher Education or of the community colleges.

Subd. 1a. Required notice; counseling. (a) No later than 90 days before the end of any applicable election period specified in this section, the employer must provide to a person beginning work in a position subject to this section for which an option to elect alternative retirement plan coverage is authorized the following information:

- (1) the default retirement coverage;
- (2) election procedures, if applicable, for electing coverage other than the default coverage; and
- (3) the Web site and the telephone number for the plan providing default coverage and comparable information for the plan which the person is eligible to elect.

(b) The election of coverage forms must include a certification statement that the employee has received and reviewed materials on the optional coverage and the default coverage prior to making the election.

Subd. 2. Coverage; election. (a) An eligible person employed by the board has the default coverage specified in subdivision 3, or other subdivisions of this section, whichever is applicable, and retains that coverage for the period of covered employment unless a timely election to change that coverage is made as specified in this section.

(b) An eligible person under subdivision 3, paragraph (b) or (c), is authorized to elect prospective Teachers Retirement Association plan coverage.

(c) An eligible person under subdivision 3, paragraph (d), is authorized to elect prospective coverage by the plan established by this chapter.

(d) The election under paragraph (a) must be made within one year of commencing eligible Minnesota State Colleges and Universities system employment. If an election is not made within the specified election period due to a termination of Minnesota State Colleges and Universities system employment, an election may be made within 90 days of returning to eligible Minnesota State Colleges and Universities system employment. Except as specified in paragraph (f), all elections are irrevocable.

(e) Except as provided in paragraph (f), a purchase of service credit in the Teachers Retirement Association plan for any period or periods of Minnesota State Colleges and Universities system employment occurring before the election under this section is prohibited.

(f) Notwithstanding other paragraphs in this subdivision, a faculty member who is a member of the individual retirement account plan may elect to transfer retirement coverage to the teachers retirement plan within one year of the faculty member first achieving tenure or its equivalent at a Minnesota state college or university. The faculty member electing Teachers Retirement Association coverage under this paragraph must purchase service credit in the Teachers Retirement Association for the entire period of time covered under the individual retirement account plan and the purchase payment amount must be determined under section 356.551. The Teachers Retirement Association may charge a faculty member transferring coverage a reasonable fee to cover the costs associated with computing the actuarial cost of purchasing service credit and making the transfer. A faculty member transferring from the individual retirement account plan to the Teachers Retirement Association may use any balances to the credit of the faculty member in the individual retirement account plan, any balances to the credit of the faculty member in the higher education supplemental retirement plan established under chapter 354C, or any source specified in section 356.441, subdivision 1, to purchase the service credit in the Teachers Retirement Association. If the total amount of payments under this paragraph are less than the total purchase payment amount under section 356.551, the payment amounts must be refunded to the applicable source. The retirement coverage transfer and service credit purchase authority under this paragraph expires with respect to any Minnesota State Colleges and Universities System faculty initially hired after June 30, 2014.

Subd. 3. Default coverage. (a) Prior to making an election under subdivision 2, or if an eligible person fails to elect coverage by the plan under subdivision 2 or if the person fails to make a timely election, the coverage specified in this subdivision applies.

(b) If an eligible person is employed by the board before July 1, 2011, in an eligible unclassified administrative position or in a faculty position in a technical college, community college, or state university, the retirement coverage is by the plan established by this chapter, unless otherwise specified in this section.

(c) An eligible person described in paragraph (b), except that first employment by the board is on or after July 1, 2011, has retirement coverage by the plan established by this chapter if the eligible person has no:

- (1) allowable service credit in any plan listed in section 356.30, subdivision 3; or
- (2) prior employment covered by the state unclassified employees retirement program under chapter 352D.

(d) An eligible person described in paragraph (c) has retirement coverage by the Teachers Retirement Association if the person has:

(1) prior employment covered by the state unclassified employees retirement program under chapter 352D and has not withdrawn or transferred assets from that account; or

(2) allowable service credit in a plan listed in section 356.30, subdivision 3.

(e) To ensure that coverage is provided by the proper plan, the employee must certify to the board the existence of any service credit in any plan listed in section 356.30, subdivision 3, or whether the person retains a state unclassified employees retirement program account. If an employee fails to correctly certify prior membership in a plan or the existence of an unclassified program account, the Minnesota State Colleges and Universities system and its board shall be held harmless, and notwithstanding any law to the contrary, any resulting cost or financial liability becomes the employee's responsibility.

Subd. 3a. Plan coverage and election; certain past service technical college faculty. (a) Notwithstanding subdivision 3, if an employee of the board was employed in a faculty position in a technical college on June 30, 1997, with coverage by the Teachers Retirement Association, the employee retains that coverage. If the employee was a technical college faculty member on June 30, 1995, covered by a first class city teacher retirement fund established under chapter 354A, the retirement coverage continues with the Duluth Teachers Retirement Fund Association or the St. Paul Teachers Retirement Fund Association, whichever is applicable. If the person was a technical college faculty member on June 30, 1995, covered by the former Minneapolis Teachers Retirement Fund Association, the Teachers Retirement Association shall provide coverage.

(b) An employee under paragraph (a) who has coverage by a first class city teacher fund association retains that coverage for the duration of the person's employment by the board unless, within one year of a change in employment within the Minnesota State Colleges and Universities system, the person elects the individual retirement account plan for all future employment by the board. The election is irrevocable.

Subd. 3b. Coverage of certain former technical college faculty members. A person who was employed as a teacher by a technical college before July 1, 1995, and who subsequently is reclassified into a different employment position while continuing to perform the same or essentially the same employment duties and consequently shifts from the technical college instructional collective bargaining unit to another state collective bargaining unit retains coverage by the Teachers Retirement Association or the applicable first class city teachers retirement fund association, whichever applies.

Subd. 3c. [Repealed, 1Sp2011 c 8 art 2 s 22]

Subd. 4. Coverage in the event of acting, interim, or temporary appointments. (a) A person previously employed by the board and subsequently appointed by the board to an acting, interim, or temporary faculty or eligible unclassified administrative position by the board retains the retirement coverage that the person had in the prior board position. If the participant's status becomes permanent, the participant has the option to make an election of retirement coverage appropriate to the retirement plan in which the employment position should have retirement coverage consistent with subdivision 2.

(b) A person who is appointed to an acting, interim, or temporary faculty position by the board and who was not employed in a faculty position by the board immediately before that appointment must elect coverage as provided in subdivision 2.

Subd. 5. Payment for certain prior uncovered service. (a) A person employed in a faculty position or in an eligible unclassified administrative position by the board who was initially excluded from participation in the individual retirement account plan coverage, who was not covered by any other Minnesota public pension plan for that service, and who is subsequently eligible to participate in the individual retirement account plan may make member contributions for that period of prior uncovered teaching employment or eligible unclassified administrative employment with the board.

(b) The member contributions for prior uncovered board service are the amount that the person would have paid if the prior service had been covered employment. The payment must be made to the individual retirement account plan administrator and may be made only by payroll deduction. The payment must be made by the later of:

(1) 45 days of the start of covered employment; or

(2) the end of the fiscal year in which covered employment began.

(c) The board must contribute an amount to match any contribution made by a plan participant under this subdivision.

(d) Payments of contributions for prior uncovered board service under this subdivision must be invested in the same manner as the regular contributions made by or on behalf of the plan participant.

Subd. 6. Continuation of coverage. Except as otherwise specified in this section, once a person is employed in a position that qualifies for participation in the individual retirement account plan and elects to participate in the plan, all subsequent service by the person as a faculty member or in an eligible unclassified administrative position employed by the board or other employing unit is covered by the individual retirement account plan.

Subd. 7. Coverage; certain part-time employees. A person employed in a part-time faculty position or in a part-time eligible unclassified administrative position who does not meet the definition of covered employment under section 354B.20, subdivision 4, because the employment does not meet the threshold required under that provision, must certify prior membership in the Teachers Retirement Association to the Minnesota State Colleges and Universities system. If the certification is incorrect, the employee, and not the employer, is required to pay interest on the employee and employer contributions, and, if applicable, on the employer additional contributions to the Teachers Retirement Association under section 354.52, subdivision 4.

History: 1995 c 141 art 4 s 9; 1995 c 212 art 3 s 59; art 4 s 64; 1997 c 241 art 8 s 5; 2001 c 133 s 3; 2005 c 107 art 2 s 60; 1Sp2005 c 8 art 4 s 7,8; 2007 c 134 art 1 s 9; 2009 c 169 art 6 s 3; 1Sp2011 c 8 art 2 s 12-19

- 1.1 moves to amend H.F. No. 1539; S.F. No. 1295, as follows:
- 1.2 Page 2, line 33, delete "2012" and insert "2013"

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH
SESSION

HOUSE FILE No. **1539**

April 18, 2011

Authored by Poppe

The bill was read for the first time and referred to the Committee on Government Operations and Elections

1.1 A bill for an act
1.2 relating to retirement; Teachers Retirement Association; permitting certain
1.3 Minnesota State Colleges and Universities system faculty members to elect
1.4 prospective and retroactive defined benefit coverage for Minnesota State
1.5 Colleges and Universities system employment.

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

1.7 Section 1. **TEACHERS RETIREMENT ASSOCIATION; COVERAGE**
1.8 **ELECTION FOR CERTAIN MNSCU FACULTY MEMBER.**

1.9 (a) Notwithstanding any provision to the contrary in Minnesota Statutes, chapter
1.10 354B, an eligible person described in paragraph (b) may elect prospective and retroactive
1.11 retirement coverage under paragraph (c).

1.12 (b) An eligible person is a person who:

1.13 (1) was born on February 2, 1978;

1.14 (2) was initially employed by the Minnesota State Colleges and Universities system
1.15 on a part-time basis at Metropolitan State University on August 27, 2005;

1.16 (3) was also additionally employed within the Minnesota State Colleges and
1.17 Universities system at Inver Hills Community College and St. Paul College; and

1.18 (4) was covered by the higher education individual retirement account plan because
1.19 of a failure of Metropolitan State University to advise the eligible person about the
1.20 optional election and default retirement coverage provisions of Minnesota Statutes, section
1.21 354B.21, subdivisions 2 and 3.

1.22 (c) An eligible person may elect retirement coverage by the Teachers Retirement
1.23 Association rather than the higher education individual retirement account plan for faculty
1.24 employment rendered after the date of the retirement coverage election under this section
1.25 and for past Minnesota State Colleges and Universities system faculty employment from

2.1 August 27, 2005, until the date of the retirement coverage election. The election must
2.2 be made in writing, must be filed with the executive director of the Teachers Retirement
2.3 Association, and must be accompanied with any relevant documentation required by the
2.4 executive director of the Teachers Retirement Association.

2.5 (d) If an eligible person makes the retirement coverage election under paragraph (c),
2.6 the eligible person's member contributions to the higher education individual retirement
2.7 account plan must be transferred to the Teachers Retirement Association, with any earned
2.8 investment returns on those contributions. If the transferred member contributions and
2.9 investment earnings are less than the calculated amount of the member contribution that
2.10 the eligible person would have made to the Teachers Retirement Association on the
2.11 eligible person's compensation from the Minnesota State Colleges and Universities system
2.12 for the period from August 27, 2005, to the date of the retirement coverage election, if
2.13 the person had been covered by the Teachers Retirement Association during the period,
2.14 plus annual compound interest at the rate of 8.5 percent, the eligible person shall pay the
2.15 balance of that calculated member contribution obligation within 30 days of the retirement
2.16 coverage election. Any payment may be made through an institution-to-institution
2.17 transfer from the eligible person's account in the Minnesota state deferred compensation
2.18 program or the eligible person's tax-sheltered savings account under the federal Internal
2.19 Revenue Code, section 403(b).

2.20 (e) Upon the transfer of the equivalent member contribution amount and any
2.21 additional payments under paragraph (d), the balance of the eligible person's higher
2.22 education individual retirement account plan account must be transferred to the Teachers
2.23 Retirement Association. If the amounts under paragraph (d) and the higher education
2.24 individual retirement account plan account balance under this paragraph are less than
2.25 the prior service credit purchase payment amount calculated under Minnesota Statutes,
2.26 section 356.551, the Minnesota State Colleges and Universities system shall pay that
2.27 difference within 60 days of the retirement coverage election date.

2.28 (f) Upon the transfers and payments under paragraphs (d) and (e), the eligible person
2.29 must be credited by the Teachers Retirement Association with allowable and formula
2.30 service for Minnesota State Colleges and Universities system employment since August
2.31 27, 2005.

2.32 (g) The authority to make a retirement coverage election under this section expires
2.33 on January 1, 2012.

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