



S.F. 273
(Pappas)

H.F. 343
(Nelson)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA
Relevant Provisions of Law: Minnesota Statutes, Sec. 353.01, Subd. 10
General Nature of Proposal: Modifies the definition of "salary"
Date of Summary: February 18, 2013

Specific Proposed Changes

- **Inclusions:** Expansion of periodic compensation, modification of certain supplemental retirement plan contributions, addition of non-wrongful-discharge salary reductions remedied through a grievance, addition of paid leave of absence amounts, and addition of performance or merit pay amounts.
- **Exclusions:** Extension to lump sum personal leave or benevolent leave donation payments, addition of accrued prior year compensatory or overtime hours pay paid at separation, expansion to retirement incentive payments, expansion to expense allowance and per diem payments, expansion to disability insurance payments, specification of particular forms or types of employer-paid fringe benefits exclusion, and addition of non-performance or non-merit bonus payments.
- **Conditional Inclusion:** Expansion to court-ordered employer payments to an employee.

Policy Issues Raised by the Proposed Legislation

General Issues

1. Appropriateness of the broad approach and specificity of the definition.
2. Comparability of the PERA salary definition with other retirement plan definitions.
3. Potential need for remedial corrections in the salary definitions of the statewide and major local retirement plans.

Specific Issues

4. Appropriateness of including in covered salary employer contributions to post-retirement health care expense plans.
5. Appropriateness of the omission of an inclusion for the International Association of Machinists supplemental pension plan employer contributions.
6. Lack of clarity in the application of the paid leave salary credit inclusion.
7. Appropriateness of the additional inclusion of performance or merit bonus payments.
8. Lack of clarity in the benevolent leave donation additional exclusion.
9. Appropriateness of PERA authority to exclude employer-paid amounts under grievances, settlements, or court orders.
10. Unclear need for salary credit purchase for covered salary inclusion additions.
11. Effective Date: Retroactivity of Duluth salary supplement employer payment Court of Appeals decision reversal.
12. Effective Date: Appropriateness of immediate effective date.

Potential Amendments

- S0273-1A is a technical amendment intended to clarify the proposed legislation without making any intended substantive modifications.
- S0273-2A aggregates the various elements in the current statutory definitions of covered salary and adds that composite definition to Minnesota Statutes, Chapter 356.
- S0273-3A deletes, pending a time when PERA can propose a more narrowly focused inclusion, the inclusion of employer contributions to post-retirement health care expense plans.
- S0273-4A adds the appropriate statutory cross-reference to treat the machinist pension plan as a supplemental pension plan identical to the laborers, plumbers, and operating engineers.



TO: Members of the Legislative Commission on Pensions and Retirement
 FROM: Lawrence A. Martin, Executive Director *JLM*
 RE: S.F. 273 (Pappas); H.F. 343 (Nelson): PERA; Salary Definition Modification.
 DATE: February 18, 2013

Summary of S.F. 273 (Pappas); H.F. 343 (Nelson)

S.F. 273 (Pappas); H.F. 343 (Nelson) amends Minnesota Statutes, Section 353.01, Subdivision 10, the definition of "salary" for contribution and benefit calculation purposes for the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), the Public Employees Police and Fire Retirement Plan (PERA-P&F), and the Local Government Correctional Service Retirement Plan (PERA-Correctional), by making the following changes:

- (1) Inclusion: Expansion of Periodic Compensation. "Wages" are added to "periodic compensation," payment by the employing governmental subdivision is specified, the use of the compensation amount before member contributions considered "picked-up" for federal tax purposes is added, and the use of the compensation amount before deferred compensation or similar deductions is modified to mean tax-sheltered amounts that would otherwise have been a cash payment. *(Para. (a), Cl. (1))*
- (2) Inclusion: Modification of Certain Supplemental Retirement Plan Contributions. The inclusion is expanded to include tax-preferred pre-retirement health care expense plans, with the elimination that the employer be the sole source of the contributions. *(Para. (a), Cl. (2))*
- (3) Inclusion: Addition of Non-Wrongful-Discharge Salary Reductions Remedied Through a Grievance. A new inclusion is added to cover a grievance, settlement, or litigation award of lost earnings from a suspension, leave, or involuntary termination that is not handled by the general wrongful termination provision of Minnesota Statutes, Chapter 356. *(Para. (a), Cl. (4))*
- (4) Inclusion: Addition of Paid Leave of Absence Amounts. A new inclusion is added to cover paid personal, parental, medical, or military leaves of absence up to the amount of earnings otherwise payable during the period. *(Para. (a), Cl. (5))*
- (5) Inclusion: Addition of Performance or Merit Pay Amounts. A new inclusion is added to cover performance or merit bonus payments that are in addition to or in lieu of regular salary increases made under a written compensation plan, policy, or agreement for attaining goals or measures during a specified period. *(Para. (a), Cl. (6))*
- (6) Exclusion: Extension to Lump Sum Personal Leave or Benevolent Leave Donation Payments. The exclusion of payments for unused annual, vacation, or sick leave is extended to payments for unused personal leave and the value of donated hours under a leave donation program. *(Para. (b), Cl. (2))*
- (7) Exclusion: Addition of Accrued Prior Year Compensatory or Overtime Hours Pay Paid at Separation. An exclusion is added for accrued compensatory or overtime payments at separation that include previous year's hours. *(Para. (b), Cl. (3))*
- (8) Exclusion: Expansion to Retirement Incentive Payments. The severance payment exclusion is specified to include any form of payment and is expanded to include any form of retirement incentive payment. *(Para. (b), Cl. (4))*
- (9) Exclusion: Expansion to Expense Allowance and Per Diem Payments. The reimbursement of expenses exclusion is expanded to include allowance or per diem payments. *(Para. (b), Cl. (5))*
- (10) Exclusion: Expansion to Disability Insurance Payments. The worker's compensation payment exclusion is expanded to disability insurance payments, whether from self-insurance arrangements or insurance arrangements. *(Para. (b), Cl. (7))*
- (11) Exclusion: Specification of Particular Forms or Types of Employer-Paid Fringe Benefits Exclusion. Employer-paid fringe benefits are made a separate exclusion item, and seven particular forms or types of those benefits are specified, with the employer-paid fringe benefit made as a salary supplement which is not available to the employee cash specification made retroactive to August 1, 2007. *(Para. (b), Cl. (9))*
- (12) Exclusion: Addition of Non-Performance or Non-Merit Bonus Payments. An exclusion is added for bonus payments that are not performance pay or merit pay. *(Para. (b), Cl. (14))*
- (13) Conditional Inclusion: Expansion to Court-Ordered Employer Payments to an Employee. The conditional inclusion of grievance or legal salary settlements, if determined by the PERA executive director as consistent with salary inclusions, is expanded to include court-ordered salary settlements. *(Para. (c))*

Background Information

- **Attachment A:** Background information on the various definitions of the term "covered salary" used by Minnesota defined benefit plans.
- **Attachment B:** Side-by-side comparison of the various "salary" definitions of the various Minnesota defined benefit retirement plans.
- **Attachment C:** Background information on the 2012 Minnesota Court of Appeals decision on PERA salary determinations.

Technical Amendment

Amendment S0273-1A is intended to clarify the proposed legislation without making any intended substantive modifications.

- The amendment to page 1, line 8, substitutes payable for paid in paragraph (a), clause (1), because it is more consistent with the compensation items included as deductions before actual payment.
- The amendment to page 2, lines 19-23, incorporates the substance of the proposed second sentence of the clause into the initial portion of the clause.
- The amendment to page 2, lines 27, 29, 32-35, and page 3, lines 1, 7, and 26-30, moves the benevolent leave proposed exclusion to a separate clause since it represents a new exclusion rather than a continuation of an existing inclusion.
- The amendment to page 2, line 28, adds "personal leave" to the leaves in the benevolent leave donation exclusion, since some public employers have replaced sick and vacation leave with personal leave.
- The amendment to page 2, line 30, substitutes "termination of public service," a phrase defined in PERA law, for "separation of service," an undefined phrase.
- The amendment to page 2, line 36, substitutes "employer self-insurance arrangements" for "self-insured employers" for clarity.

Attachment D is a draft engrossment of the proposed legislation with amendment S0273-1A.

Discussion and Analysis

S.F. 273 (Pappas); H.F. 343 (Nelson) substantially revises the definition of the term "salary" for three defined benefit retirement plans administered by the Public Employees Retirement Association (PERA), the General Employees Retirement Plan (PERA-General), the Public Employees Police and Fire Retirement Plan (PERA-P&F), and the Local Government Correctional Service Retirement Plan (PERA-Correctional), by expanding the inclusion of periodic compensation, by modifying the inclusion of certain supplemental retirement plan contributions, by adding the inclusion of non-wrongful-discharge salary reductions remedied through a grievance, adding the inclusion of paid leave of absence amounts, by adding performance or merit pay amounts, by extending the exclusion to lump sum personal leave or benevolent leave donation payments, by adding the exclusion of accrued prior year compensatory or overtime hours pay paid at separation, by expanding the exclusion of retirement incentive payments, by expanding the exclusion to expense allowance and per diem payments, by expanding the exclusion to disability insurance payments, by specifying the exclusions of particular forms or types of employer-aid fringe benefits, by adding an exclusion of non-performance or non-merit bonus payments, and by expanding the conditional inclusion to certain court-ordered employer payments to an employee.

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

General Issues

1. Appropriateness of the Broad Approach and Specificity of the Definition. The policy issue is whether or not the approach utilized by PERA in identifying both compensation items for inclusion in covered salary and compensation items for exclusion from covered salary is the appropriate manner for regulating this element of a defined benefit retirement plan. As a review of Attachment B indicates, the PERA definition of "salary" is already the most detailed and lengthy of the salary definitions of the various statewide and major local retirement plans, but that level of detail and that length did not prevent PERA from litigation with active and retirement employees of Duluth and from a ruling by the Court of Appeals invalidating its interpretation of its salary definition in August 2010 (see In the Matter of the PERA Salary Determinations Affecting Retired and Active Employees of the City of Duluth, A11-1330). As the PERA salary definition becomes less generic and more specific, the greater the chance becomes that nuanced changes in compensation practices or even compensation nomenclature could render the definition inoperative or ambiguous, resulting in the same situation as with the Duluth supplemental pay issue.

2. Comparability of the PERA Salary Definition with Other Retirement Plan Definitions. The policy issue is the appropriateness of the increased degree of difference between the PERA definition, if enacted as proposed, and the definitions of other retirement plans. While PERA covers the greatest number of separate public employing units, with presumably the greatest range in compensation types and practices, the extent of regulation contained in the current PERA definition, enhanced by the proposed legislation, is dramatically more extensive and detailed than the other retirement plans covering many of the same employers. All of the statewide and major local retirement plans are covered by portability provisions that utilize a common final average salary figure in their retirement annuity or retirement benefit calculation. When the salary definitions vary considerably in their content and regulation, the statutory intent to avoid distortions in the average salary figures when reflecting a retiree's standard of living could easily be defeated.
3. Potential Need for Remedial Corrections in the Salary Definitions of the Statewide and Major Local Retirement Plans. The policy issue is whether or not there is a potential need to augment the definitions of the various statewide and major local retirement plans, including PERA, to gain greater consistent regulation of this element of the defined benefit retirement plan design and correct any omissions or ambiguities in those plans. If there is to be more consistent practice and treatment in covered salary among the retirement plans, that could be best achieved by creating a uniform definition in Minnesota Statutes, Chapter 356, Retirement Generally, and referencing that uniform definition in the definition sections of the various retirement plans.

Amendment S0273-2A aggregates the various elements in the current statutory definitions of covered salary and adds that composite definition to Minnesota Statutes, Chapter 356.

Specific Issues

4. Appropriateness of Including in Covered Salary Employer Contributions to Post-Retirement Health Care Expense Plans (Line 1.17). The policy issue is whether or not it is appropriate to include in covered salary for contribution and benefit calculation purposes employer contributions to post-retirement health care expense plans. While some post-retirement health care expense plans may be funded over an extended period of time and would not cause a spike in a final average salary calculation, some post-retirement health care expense plans, such as the State of Minnesota's, converting a portion of end-of-career sick leave into a post-retirement health care expense plan contribution by the employer, really are a severance payment replacement or alternative and could cause a high-five average salary spike. Since the inclusion is done by cross-reference to Minnesota Statutes, Section 356.24, Subdivision 1, Clause (7), generally rather than by specifically restricting it to long-duration employer contribution plans, the proposed change could allow severance-type employer contribution plans that otherwise would be excluded under current law.

If the Commission believes that this inclusion is potentially too broad, it could be deleted pending a time when PERA can propose a more narrowly focused inclusion (**Amendment S0273-3A**).

5. Appropriateness of the Omission of an Inclusion for the International Association of Machinists Supplemental Pension Plan Employer Contributions (Line 1.17). The policy issue is whether or not it is appropriate to include as covered salary for contributions and benefit computation purposes the employer contributions to the Laborers National Industrial Pension Plan, the Laborers Union Local Pension Plan, the Plumbers and Pipefitters Union pension plans, and the International Union of Operating Engineers Pension Plan, but not extend that same treatment to employer contributions to the International Association of Machinists National Pension Plan. The laborers, plumbers, and operating engineers pension plan salary inclusions were added to PERA law in 2005 (1st Spec. Sess. Laws, Ch. 8, Art. 1, Sec. 9). The machinist pension plan was added as a supplemental retirement plan to Minnesota Statutes, Section 356.24, Subdivision 1, in 2006 (Laws 2006, Ch. 271, Art. 7, Sec. 1), but is not recommended for inclusion in PERA covered salary for an identical arrangement as the laborers, plumbers, and operating engineers pension plans. It is unclear why the PERA covered salary definition was not amended to include the machinist pension plan employer contributions in 2006 and remains unclear why it has not been forwarded as an inclusion by PERA now.

If the Commission wishes to treat the machinist pension plan as a supplemental pension plan identical to the laborers, plumbers, and operating engineers pension plans, the appropriate statutory cross-reference could be added (**Amendment S0273-4A**).

6. Lack of Clarity in the Application of the Paid Leave Salary Credit Inclusion (Lines 2.15-2.18). The policy issue is whether or not the proposed covered salary inclusion addition of employer salary payments during an authorized leave of various kinds provides clear guidance for implementation consistent with the underlying intent. Minnesota Statutes, Section 353.01, Subdivision 10, currently credits as salary for PERA retirement plans wages or compensation paid to a public employee.

Because it currently does not specify that the wages or compensation be in return for employment services rendered, any wages or compensation are covered salary unless excluded and salary continuation by a public employer during a leave presumably has been credited as covered salary without a specific inclusion provision. Thus the need for this inclusion addition is unclear. This proposed inclusion appears to include salary credit for paid leaves only when the pay is equivalent to what the public employee would have otherwise earned during the leave period. Since equivalency presumably includes any salary increases that may be granted and can only be determined at the end of the paid leave, it leaves the salary credit potentially in question during the leave. While the Commission staff is not fully informed on leave practices by governmental subdivisions, it appears likely that at least some designated paid leaves are compensated for only a portion of the full salary otherwise payable and hence would not be creditable under the proposed language. If the intent of the inclusion is to cover that paid designated leaves, however compensated, but to limit the resulting salary credited by PERA to a maximum of the amount that the person on leave would have received if regularly employed, the current phrasing of the proposed inclusion does not appear to adequately convey that intent and would need to be redrafted.

7. Appropriateness of the Additional Inclusion of Performance or Merit Bonus Payments (Lines 2.19-2.23). The policy issue is whether or not the proposed additional inclusion in PERA-covered salary of performance or merit bonus payments under a written plan, policy, or bargaining agreement is appropriate. Covered salary is defined because of its use in determining the final average salary base to which the total benefit formula percentage is applied to determine the person's retirement annuity. Since that salary base for benefit computation is intended to reflect the person's standard of living at retirement or benefit commencement, covered salary should not include irregular or unusual compensation items that do not actually give rise to a person's standard of living and inclusion in the benefit computation procedure generating what is intended to be an adequate annuity. While performance and merit bonuses are apparently common in some private sector employments, such as sales or marketing, their use in the public sector is less clear. In any event, performance or merit bonuses appear to be infrequent or not annually recurring compensation items and hence unlikely to play a substantial role in setting a person's standard of living to be replaced in whole or in part by a defined benefit public retirement plan. If the proposed inclusion addition was more carefully crafted to isolate the inclusion only to bonuses that do recur annually, the proposal would be of less concern as a compensation phenomenon comparable to severance payments. The bonus inclusion also provides a sense of the problems attendant to highly detailed or specific regulation in that the provision relates only to performance or merit bonus payments, which in the state employment context are known as "achievement awards," and, for PERA members in state employment, may not fall into the coverage of the provision.
8. Lack of Clarity in the Benevolent Leave Donation Additional Exclusion (Lines 2.27-2.28). The policy issue is whether or not the proposed addition as an exclusion in the PERA covered salary definition of the value of donations under a benevolent leave donation program correctly captures legislative intent. The lack of clarity arises from a lack of specification of which public employee is to be covered by the provision. Benevolent leave donation programs relate to two public employees, the public employee making the donation and the public employee receiving the donation, and the proposed exclusion does not indicate which are covered by the additional exclusion. The prior exclusion onto which the proposed additional benevolent donation exclusion is attached all relate to a public employee who earned unused leave time, and its incremental attachment proposed would logically infer that it applies to the public employee who earned the leave time to be donated. If PERA is actually proposing a different result, that intention should be clearly indicated and a corrective amendment drafted.
9. Appropriateness of PERA Authority to Exclude Employer-Paid Amounts under Grievances, Settlements, or Court Orders (Lines 4.2-4.6). The policy issue is whether or not the current practice of PERA to exclude employer-paid amounts under grievance awards or legal settlements if, upon PERA review, they are determined to be inconsistent with the inclusion provisions of the definition and with prior PERA determinations and whether or not its proposed extension to employer-paid amounts under court orders are appropriate. The authority accorded to PERA under the provision appears to be very broad and, in contrast to the rest of the definition, very unspecific. The portion of the provision that enshrines past determinations in judging these third party awards does not include any requirement that the past creditable salary determinations informing PERA's decision on any payment amount required by a grievance award, legal settlement, or court order be generally available to the public employees, public employers, and lawyers doing public sector employment representation. The provision proposed for amendment, and expansion to court orders, appears to apply in instances such as discriminatory employment practices or sexual harassment at the workplace and allows PERA to determine whether or not employer-paid awards will be credited as covered salary for contribution and benefit computation purposes.

10. Unclear Need for Salary Credit Purchase for Covered Salary Inclusion Additions. The policy issue is whether or not it will be appropriate or necessary to allow any affected PERA employees with past employer-payment amounts that are newly made covered salary for PERA retirement coverage by the proposed legislation. The proposed legislation adds employer contributions to post-retirement health care expenses, non-wrongful-discharge grievance, settlement, or court order employer payments for employment suspensions, leaves, or terminations, paid leave employer-paid compensation amounts, and performance or merit bonus employer payments to the items included in PERA-covered salary. For PERA members who are within five years of their expected retirement date and who have one or more of those payments recently, the employer payments newly eligible as covered salary could provide a larger retirement annuity if the applicable PERA members could make their member contributions on the amount and have the amounts included in the highest five successive years' average salary. To do so, some salary credit purchase authority would be necessary and could be formulated by the Commission staff if so directed.
11. Effective Date: Retroactivity of Duluth Salary Supplement Employer Payment Court of Appeals Decision Reversal (Lines 3-15-3.17, 4.7-4.9). The policy issue is whether or not it is appropriate by legislation to obtain a legal victory in a litigated dispute rather than appealing the Court of Appeals decision to the Minnesota State Supreme Court. As summarized in the background attachment on the recent Duluth covered salary dispute (**Attachment C**), PERA prevailed with respect to 1995-2007 insurance supplement payments by Duluth, but lost with respect to 1995-2007 salary supplement payments by Duluth. Proposed additional covered salary exclusion Section 352.01, Subdivision 10, Paragraph (b), Clause (9), Item vii, reverses the 2012 Court of Appeals decision on salary supplement payments by all PERA-covered employing units both prospectively and retroactively to August 1, 2007, presumably applicable to the recent Duluth salary dispute without specifically referencing the Court of Appeals decision. This portion of the proposed legislation places the Commission and the Legislature in the position of ultimately deciding an appeal of a dispute without hearing the legal arguments from the parties and without observing the full set of procedures that constitute judicial due process. The Commission may wish to query PERA about what its intentions are with respect to benefit modifications and contribution refunds for Duluth salary supplement payments under the retroactive effective date, and may wish to hear testimony from Duluth city officials and affected Duluth employees.
12. Effective Date: Appropriateness of Immediate Effective Date (lines 4.7-4.9). The policy issue is whether or not an immediate effective date for most of the covered salary definition changes is appropriate. The proposed legislation adds some compensation items as PERA covered salary and excludes some other compensation items as excluded from PERA covered salary. With an immediate effective date, compensation items may change their inclusion/exclusion status during the course of a pay period, making implementation by PERA-covered governmental subdivision difficult or impossible. The Commission may wish to take testimony from the League of Minnesota Cities, with Association of Minnesota Counties, or the Minnesota Association of Townships about the ability of their member governmental subdivisions to implement the statutory changes proposed by PERA on a date uncertain near or at the end of the 2013 Legislative Session.

Background Information on the Definition of Covered Salary for Minnesota Defined Benefit Plans

1. Defined Benefit Plans

Most Minnesota public pension plans are defined benefit plans. In defined benefit plans, the pension benefit amount that is ultimately payable is pre-determinable or fixed using a formula or comparable arrangement. The fixed element of the benefit amount leaves a variable element, which is the funding required to provide that benefit. The formula utilizes allowable service credit and salary credit in the calculation, averaging the salary amounts for the five successive years' average salary period that produces the highest amount for use as the base to which is applied a total percentage amount determined by assigning a percentage amount to each year of allowable service credit.

2. Historical Shift to Salary-Based Plans and the Change in Salary Basis

Minnesota's statewide retirement plans were not originally salary-related pension plans, with the predecessor to Teachers Retirement Association (TRA) established in 1915 as a money purchase (defined contribution) plan, with the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) established in 1929 as a set dollar amount (\$200 per month) plan, and with the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) established in 1931 also as a set dollar amount (\$200 per month) plan. Conversion to salary-related pension plans occurred for MSRS-General and PERA-General in 1957, which was a recommendation of the initial interim predecessor to the Legislative Commission on Pensions and Retirement, and for TRA in 1969, which was a recommendation of the initial permanent predecessor to the Pension Commission. The first class city teacher retirement fund associations and Minneapolis Employees Retirement Fund (MERF) generally shifted to salary-related pension plans in the 1950s (the Duluth Teachers Retirement Fund Association (DTRFA) shifted in 1971).

When the statewide Minnesota retirement plans converted to salary-related pension plans, they initially utilized a "career average" salary base for determining benefits, moving to a "highest five years' average" salary base in 1973. The career average salary utilized the salary portion of the retirement formula to account for plan members who worked in disparate compensation arrangements, either as seasonal or part-time employees or as employees with considerable overtime or extracurricular compensation, thereby not requiring sensitivity in the crediting of allowable service.

Covered salary for retirement purposes was limited for most or all public employees covered by a statewide retirement plan. In 1957, the maximum covered salary was \$4,800. In 1965, the maximum covered salary was increased to \$7,200. In 1967, covered salary was increased to a plan member's total salary.

3. Benefit Impact of Various Employment Situations

The following demonstrates the impact of different employment situations for a hypothetical MSRS-General plan member (full-time employment, part-time or seasonal employment, early or late occurring mixes of part-time or seasonal employment, recurring overtime or extracurricular employment, and early or late occurring mixes of overtime or extracurricular employment), comparing career average salary and highest five years' average salary results, including the portion of member contributions recovered by one year's benefit amount:

(1) Year	(2) Salary Increase Rate	(3) Regular Career	(4) Part-Time/Seasonal Career	(5) Early Partial Part-Time/Seasonal Employment	(6) Late Partial Part-Time/Seasonal Employment	(7) Overtime/Extra-Curricular Career	(8) Early Partial Overtime / Extra-Curricular Employment	(9) Late Partial Overtime/ Extra-Curricular Employment
1972	6.00	7,700	3,850	3,850	7,700	9,625	9,625	7,700
1973	5.95	8,162	4,081	4,081	8,162	10,203	10,203	8,162
1974	5.90	8,648	4,324	4,324	8,648	10,810	10,810	8,648
1975	5.85	9,158	4,579	4,579	9,158	11,448	11,448	9,158
1976	5.80	9,693	4,847	4,847	9,693	12,116	12,116	9,693
1977	5.75	10,256	5,128	5,128	10,256	12,820	12,820	10,256
1978	5.70	10,846	5,423	5,423	10,846	13,558	13,558	10,846
1979	5.65	11,464	5,732	5,732	11,464	14,330	14,330	11,464
1980	5.60	12,112	6,056	6,056	12,112	15,140	15,140	12,112
1981	5.55	12,790	6,395	6,395	12,790	15,988	15,988	12,790
1982	5.50	13,500	6,750	6,750	13,500	16,875	16,875	13,500
1983	5.45	14,242	7,121	7,121	14,242	17,803	17,803	14,242
1984	5.40	15,018	7,509	7,509	15,018	18,773	18,773	15,018
1985	5.35	15,829	7,915	7,915	15,829	19,786	19,786	15,829

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Year	Salary Increase Rate	Regular Career	Part-Time/ Seasonal Career	Early Partial Part-Time/ Seasonal Employment	Late Partial Part-Time/ Seasonal Employment	Overtime/ Extra-Curricular Career	Early Partial Overtime / Extra-Curricular Employment	Late Partial Overtime/ Extra-Curricular Employment
1986	5.30	16,676	8,338	8,338	16,676	20,845	20,845	16,676
1987	5.25	17,560	8,780	8,780	17,560	21,950	17,560	17,560
1988	5.20	18,482	9,241	9,241	18,482	23,103	18,482	18,482
1989	5.15	19,443	9,722	9,722	19,443	24,304	19,443	19,443
1990	5.10	20,444	10,222	10,222	20,444	25,555	20,444	20,444
1991	5.05	21,487	10,744	10,744	21,487	26,859	21,487	21,487
1992	5.00	22,561	11,281	11,281	22,561	28,201	22,561	22,561
1993	5.00	23,689	11,845	11,845	23,689	29,611	23,689	23,689
1994	5.00	24,874	12,437	12,437	24,874	31,093	24,874	24,874
1995	5.00	26,118	13,059	13,059	26,118	32,648	26,118	26,118
1996	5.00	27,423	13,712	13,712	27,423	34,279	27,423	27,423
1997	5.00	28,795	14,398	14,398	28,795	35,994	28,795	35,994
1998	5.00	30,234	15,117	15,117	30,234	37,793	30,234	37,793
1999	5.00	31,746	15,873	15,873	31,746	39,683	31,746	39,683
2000	5.00	33,333	16,667	16,667	33,333	41,666	33,333	41,666
2001	5.00	35,000	17,500	17,500	35,000	43,750	35,000	43,750
Total Member Contributions		\$22,291	\$11,146	\$14,328	\$19,109	\$27,864	\$24,052	\$23,882

	Regular Career	Part-time/ Seasonal Career	Early Partial Part-Time/ Seasonal Employment	Late Partial Part-Time/ Seasonal Employment	Overtime/ Extra-Curricular Career	Early Partial Over-time/ Extra-Curricular Employment	Late Partial Overtime/ Extra-Curricular Employment
<u>Career Avg. Salary Benefit</u>							
Career Average Salary	\$18,576	\$9,288	\$11,940	\$15,924	\$23,200	\$20,044	\$19,902
Benefit Accrual (0.51)	0.51	0.51	0.51	0.51	0.51	0.51	0.51
Annual Ret. Benefit	\$9,474	\$4,737	\$6,089	\$8,121	\$11,842	\$10,222	\$10,150
Benefit/Contribution Ratio	0.4250	0.4250	0.4250	0.4250	0.4250	0.4250	0.4250
<u>High-Five Average Salary Benefit</u>							
High-Five Average Salary	\$31,822	\$15,911	\$31,822	\$15,911	\$39,777	\$31,822	\$39,777
Benefit Accrual (0.51)	0.51	0.51	0.51	0.51	0.51	0.51	0.51
Annual Ret. Benefit	\$16,229	\$8,115	\$16,229	\$8,115	\$20,286	\$16,229	\$20,286
Benefit/Contribution Ratio	0.7281	0.7281	1.1327	0.4247	0.7280	0.6747	0.8494

4. The Purpose for Defining Covered Salary

For Minnesota defined benefit pension plans, the definition of covered salary is the measure of a plan member's standard of living to be used in determining the appropriate replacement amount. Several decades ago, when employees received only one form of compensation as remuneration for their services, there were fewer questions about the adequacy of using "salary" to measure a person's standard of living. Now, with the advent of numerous employment-related compensation items, this may no longer be the case. For instance for police officers, their recurring compensation package can include a base salary, shift differential, uniform allowances, education incentive payments, court appearance amounts, dog handler compensation, tactical or special squad compensation, and overtime. There also may be additional compensation items like lump sum annual bonus or merit payments, tuition payments, and employer-paid flexible benefit account balances. Any definition or redefinition of covered salary should attempt to reasonably capture those items on which a public employee's regular standard of living is based. Among the teacher plans, there have been recent complaints concerning the adequacy of the covered salary figure. Over the past several sessions, proposed legislation has been introduced to attempt to reflect early or mid-career extracurricular teaching compensation in the highest five successive years' average salary figure. Also, in past legislative sessions, proposed legislation has been introduced to add an alternative highest five successive years' average salary figure in TRA based on the average salary of all comparable TRA members, to adjust for lower salaries for some rural teachers. Similarly, the definition of covered salary should accurately reflect real compensation, so not to overstate a person's standard of living. The late Governor Rudy Perpich was once in the news regarding pension credit he had in the Public Employees Retirement Association (PERA) for a period of service as a Hibbing School Board member, when his salary was in dispute, when apparently there was an arrangement in Hibbing during the early and mid-1950s for school board members to rotate salaried board positions among the various members and to pair salaried and non-salaried board members in order to share the salary of one salaried position. PERA, historically, has also covered city attorneys and other professionals retained by local government units who bear a close resemblance to independent contractors and may be credited with covered salary amounts based on a gross retained fee that does not closely relate to the individual's actual personal compensation.

5. A Comparison of Covered Salary Definitions

Over time, as compensation arrangements in public employment have become more varied and complicated, the definition of covered salary and the inclusions in it and the exclusions from it have grown and changed. The following compares the definitions of covered salary for the Legislators Retirement Plan, MSRS-General, the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), the State Patrol Retirement Plan, PERA-General, the Public Employees Police and Fire Retirement Plan (PERA-P&F), the Local Government Correctional Service Retirement Plan (PERA-Correctional), TRA, DTRFA, the St. Paul Teachers Retirement Fund Association (SPTRFA), and the Judges Retirement Plan:

	Salary means:
Legislators Plan	Regular compensation payable under law to a member of the Legislature and paid to the person for service as a Legislator, including the monthly compensation paid to the member of the Legislature and per diem payments paid during a regular or special session to the member of the Legislature. [3A.01, Subd. 10, Para. (a) and (b)]
MSRS-General	<ol style="list-style-type: none"> (1) Wages paid to an employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reductions; or (2) other periodic compensation, paid to an employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reductions; (3) amounts paid as a result of a grievance proceeding or a legal settlement is reviewed by the executive director and determined to be consistent with section 352.01, Subdivision 13, Paragraph (a), and prior determinations; and (4) during a period of receipt of workers' compensation while on a leave of absence, the differential between the salary that the employee would normally receive during the leave and the salary received, if any, on which the employee makes a member contribution equivalent amount. All amounts are subject to federal Internal Revenue Code compensation limits referenced in Section 356.611. <p>[352.01, Subd. 13, Para. (a) and (c), and Subd. 13a]</p>
MSRS-Correctional	Same as MSRS-General.
State Patrol Plan	Same as MSRS-General under Section 352.01, Subdivision 13. [352B.011, Subd. 4]
PERA-General	<ol style="list-style-type: none"> (1) Periodic compensation before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs; (2) wages; (3) net income from fees; (4) for a public employee with supplemental retirement plan coverage under three union pension plans requiring all plan contributions be made by the employer, the supplemental plan contribution if it results in a mandatory reduction in employee wages through withholding or in an amount in lieu of what otherwise would have been wages; (5) for a member of a consolidated police or fire plan, the pre-consolidation salary rate upon which pre-consolidation member contributions were made; and (6) during a period of receipt of workers' compensation while on a leave of absence, the differential between the salary that the employee would normally receive during the leave and the salary received, if any, on which the employee makes a member contribution equivalent amount. All amounts are subject to federal Internal Revenue Code compensation limits referenced in Section 356.611. (7) [353.01, Subd. 10, Para. (a)]
PERA-P&F	Same as PERA-General.
PERA- Correctional	Same as PERA-General.
TRA	<p>Periodic compensation before deduction for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs. All amounts are subject to federal Internal Revenue Code compensation limits referenced in Section 356.611.</p> <p>Amounts provided to a teacher by the employer through a grievance proceeding or a legal settlement are salary only if the settlement is reviewed by the executive director and the amount are determined by the executive director to be consistent with Section 354.05, Subdivision 35, Paragraph (a).</p> <p>[354.05, Subd. 35, Para. (a) and (c)]</p>
DTRFA	<p>The entire compensation paid to a teacher before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs. During a period of receipt of workers' compensation while on a leave of absence, the differential between the salary that the employee would normally receive during the leave and the salary received, if any, on which the employee makes a member contribution equivalent amount. All amounts are subject to federal Internal Revenue Code compensation limits referenced in Section 356.611. Amounts provided to a teacher by the employer through a grievance proceeding or a legal settlement are salary only if the settlement is reviewed by the executive director and the amounts are determined by the executive director to be consistent with Section 354A.011, Subdivision 24, Paragraph (a).</p> <p>[354A.011, Subd. 24, Para. (a) and (c), and 354A.108]</p>
SPTRFA	<p>The entire compensation paid to a teacher before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs. All amounts are subject to federal Internal Revenue Code compensation limits referenced in Section 356.611. Amounts provided to a teacher by the employer through a grievance proceeding or a legal settlement are salary only if the settlement is reviewed by</p>

Salary means:

the executive director and the amounts are determined by the executive director to be consistent with Section 354A.011, Subdivision 24, Paragraph (a).

[354A.011, Subd. 24, Para. (a)]

Judges Plan Salary is subject to federal Internal Revenue Code compensation limits referenced in Section 356.611.

Salary does not mean:

- Legislators Plan
- (1) Per diem payments paid to a member of the Legislature other than during the regular or special session;
 - (2) additional compensation attributable to a leadership position under Section 3.099, Subdivision 3;
 - (3) living expense payments under Section 3.101; and
 - (4) special session living expense payments under Section 3.103.
- [3A.01, Subd. 10, Para. (c)]
- MSRS-General
- (1) Lump sum sick leave payments;
 - (2) severance payments;
 - (3) lump sum annual leave payments;
 - (4) overtime payments made at the time of separation from state service;
 - (5) payments in lieu of employer-paid group insurance coverage, including the difference between single rates and family rates for an employee with single coverage;
 - (6) payments made as an employer-paid fringe benefit;
 - (7) workers' compensation payments;
 - (8) employer contributions to a deferred compensation or tax-sheltered annuity program; and
 - (9) amounts contributed under a benevolent vacation or sick leave donation program.
- [352.01, Subd. 13, Para. (b)]
- MSRS- Correctional
- State Patrol Plan
- (1) Any lump sum annual leave payments made at separation;
 - (2) any overtime payments made at separation;
 - (3) any severance pay amounts;
 - (4) any reduced salary paid during receipt of workers' compensation for a temporary disability.
- [352B.011, Subd. 4, Para. (b)]
- PERA-General
- (1) Fees paid to court reporters;
 - (2) unused annual vacation or sick leave payments, paid either in lump sum or periodically;
 - (3) severance payments;
 - (4) expense reimbursements;
 - (5) lump sum settlements not attached to a specific earnings period;
 - (6) workers' compensation payments;
 - (7) employer-paid amounts used by an employee toward the cost of insurance coverage costs;
 - (8) employer-paid fringe benefits;
 - (9) employer-paid amounts to flexible spending accounts;
 - (10) employer-paid amounts to employer-paid amounts to cafeteria plans;
 - (11) employer-paid amounts to health care expense accounts;
 - (12) employer-paid amounts to daycare expenses;
 - (13) any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates paid to a member with single coverage;
 - (14) certain amounts determined by the executive director to be ineligible;
 - (15) the amount which the employing unit would otherwise pay towards single or family insurance coverage where through contract or agreement with some, but not all, employees, the employer:
 - (a) discontinues or does not provide for new hires payment toward the cost of the employee's selected insurance coverages under a group plan offered by the employer;
 - (b) makes the employee solely responsible for all contributions towards the cost of the employees selected insurance coverages under a group plan offered by the employer, including any amount the employer makes toward other employee's selected insurance coverage under the group plan offered by the employer; and
 - (c) provides increased salary rates for employees who do not have any employer-paid group insurance coverages; and
 - (16) compensation paid to volunteer ambulance personnel or volunteer firefighters unless the ambulance personnel or firefighters are plan members for that service.
- [353.01, Subd. 10; 353.86; 353.87]
- PERA-P&F
- PERA- Correctional
- TRA
- (1) Lump sum annual leave payments;
 - (2) lump sum wellness and sick leave payments;
 - (3) employer-paid amounts used by an employee toward the cost of insurance coverage;
 - (4) employer-paid fringe benefits;
 - (5) employer-paid amounts towards flexible spending accounts;
 - (6) employer-paid amounts towards cafeteria plans;
 - (7) employer-paid amounts towards health care expense accounts;
 - (8) employer-paid amounts towards daycare expenses;

Salary does not mean:

- (9) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage;
- (10) certain amounts determined by the executive director to be ineligible;
- (11) any form of payment made in lieu of any other employer-paid fringe benefit or expense;
- (12) any form of severance payments;
- (13) workers' compensation payments;
- (14) disability insurance payments, including self-insurance disability payments;
- (15) payments to school administrators for services in addition to the normal work year contract if these services are performed on an extended duty day, a weekend, a holiday, an annual leave day, a sick leave day, or any other non-duty day;
- (16) severance payments under Minnesota Statutes, Section 356.24, Subd. 1, Clause (4);
- (17) payments made for a suspension or a leave of absence for health reasons other than accumulated sick leave under a uniform school district policy applicable equally to all similarly situated persons in the district;
- (18) payments made to an employee to terminate employment;
- (19) payments that are not clearly for the performance of services by the employee for the employer;
- (20) payments to a school administrator for service as an advisor or consultant to the employer under an agreement to terminate employment within two years of the execution of the agreement in an amount that is significantly different than the most recent contract salary;
- (21) payments under a procedure that allows the employee to designate the time of the payment if paid during the person's formula service credit period; and
- (22) lump sum payments made during the employee's highest five years' salary averaging period for additional services rendered without pay during other years of salary.

[354.05, Subds. 35 and 35a]

DTRFA

- (1) Lump sum annual leave payments;
- (2) lump sum wellness and sick leave payments;
- (3) employer-paid amounts used by an employee toward the cost of insurance coverage;
- (4) employer-paid fringe benefits;
- (5) employer-paid amounts towards flexible spending accounts;
- (6) employer-paid amounts towards cafeteria plans;
- (7) employer-paid amounts towards health care expense accounts;
- (8) employer-paid amounts towards daycare expenses;
- (9) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage;
- (10) certain amounts determined by the executive secretary to be ineligible;
- (11) any form of payment made in lieu of any other employer-paid fringe benefit or expense;
- (12) any form of severance payments;
- (13) workers' compensation payments;
- (14) disability insurance payments, including self-insurance disability payments;
- (15) payments to school administrators for services in addition to the normal work year contract if these services are performed on an extended duty day, a weekend, a holiday, an annual leave day, a sick leave day, or any other non-duty day;
- (16) severance payments under Minnesota Statutes, Section 356.24, Subdivision 1, Clause (4), Subclause (ii); and
- (17) payments made for a suspension or a leave of absence for health reasons other than accumulated sick leave under a uniform school district policy applicable equally to all similarly situated persons in the district.

[354A.011, Subd. 24, Para. (b)]

SPTRFA

- (1) Lump sum annual leave payments;
- (2) lump sum wellness and sick leave payments;
- (3) employer-paid amounts used by an employee toward the cost of insurance coverage;
- (4) employer-paid fringe benefits;
- (5) employer-paid amounts towards flexible spending accounts;
- (6) employer-paid amounts towards cafeteria plans;
- (7) employer-paid amounts towards health care expense accounts;
- (8) employer-paid amounts towards daycare expenses;
- (9) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage;
- (10) certain amounts determined by the executive director to be ineligible;
- (11) any form of payment made in lieu of any other employer-paid fringe benefit or expense;
- (12) any form of severance payments;
- (13) workers' compensation payments;
- (14) disability insurance payments, including self-insurance disability payments;
- (15) payments to school administrators for services in addition to the normal work year contract if these services are performed on an extended duty day, a weekend, a holiday, an annual leave day, a sick leave day, or any other non-duty day;
- (16) severance payments under Minnesota Statutes, Section 356.24, Subd. 1, Clause (4), Subclause (ii); and
- (17) payments made for a suspension or a leave of absence for health reasons other than accumulated sick leave under a uniform school district policy applicable equally to all similarly situated persons in the district.

[354A.011, Subd. 24, Para. (b)]

Judges Plan

Salary paid to a judge.

[490.121, Subd. 21]

Many Minnesota defined benefit public pension plans utilize a highest five successive years' average covered salary figure for benefit calculation purposes in order to lessen the potential for manipulation from career-end compensation amounts that would occur if a shorter period of service credit was used. However, manipulation apparently occurs. It has been reported that various public employees who receive hourly compensation work substantial overtime during the period prior to retirement, in order to "boost" their highest five successive years' average salary in plans where overtime payments are included in covered salary. Some school superintendents approaching retirement in the past have negotiated contracts that accelerated salary to the early years of the contract, during the period giving rise to the highest five successive years' average salary, in return for an agreement to perform the superintendent's duties for a reduced salary level (up to the Social Security earnings maximum) after retirement. The definition of covered salary must have sufficient safeguards against manipulation. In the past, there have been proposals to eliminate overtime compensation from covered salary or to set a maximum on the percentage increase in covered salary included in the highest five successive years' average salary.

With the Combined Service Annuity provision, Minnesota Statutes, Section 356.30, there is portability of pension credit between the various Minnesota public pension plans. Portability includes the use of a common highest five successive years' average salary for the benefit computation of all participating plans. This portability argues for consistency among the various pension plans in their definition of covered salary and the highest five successive years' average salary. While the retirement plan administrators have argued in the past that there is substantial consistency in the salary definitions among the various pension plans, that consistency is not as clear in reviewing the comparison of various statutory definitions.

Development of Current Salary Definitions

1. Legislators Retirement Plan. When established in 1965, the retirement plan was not a salary-related defined benefit plan, but provided a specific dollar amount.

In 1969 (Laws 1969, Ch. 1115, Sec. 1), the plan was modified to be a salary-related defined benefit plan, but the phrase "average monthly salary" was not defined.

In 1978 (Laws 1978, Ch. 796, Sec. 1), the phrase "average monthly salary" was defined as the final monthly salary paid during the legislator's final term in office for legislators who terminated legislative service before the beginning of the 1981 legislative session and as the average of the legislator's highest five successive years' of salary received as a legislator (or all legislative service if less than five years) for legislators who terminate legislative service after the beginning of the 1981 legislative session.

In 1981 (Laws 1981, Ch. 224, Sec. 3), the definition was clarified that total salary averaged for less than five years applies only if the legislator's service after the beginning of the 1981 legislative session is less than five years and that it did not include additional legislative leadership position payments.

In 1989 (Laws 1989, Ch. 319, Art. 16, Sec. 1-2), a definition of the term "salary" was added as the regular compensation of legislators under law and paid for legislative service, including monthly compensation paid to the legislative and regular or special session legislative per diem, but not including per diem payments other than regular or special session per diem payments, additional leadership position compensation, living expense payments, and special session living expense payments, and the definition of the phrase "average monthly salary" was shortened to be the average of the five years of salary received as a legislator upon which contributions to the Legislators Retirement Plan were made or past service payments or in-lieu-of-contribution payments were made.

In 1995 (Laws 1995, Ch. 186, Sec. 1), the "average monthly salary" definition cross-reference to in-lieu-of-contribution payments was corrected with the addition of a specification of the 1992 Minnesota Statutes and the addition of a "before July 1, 1994" reference.

In 2006 (Laws 2006, Ch. 271, Art. 10, Sec. 3, 11), the definitions of "average monthly salary" and "salary" were repositioned alphabetically and the "salary" definition was divided into three paragraphs.

2. General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). Before 1957, the retirement plan did not provide a salary-related retirement annuity or

benefit and had no definition of salary, although member and employer contributions were set as a percentage of salary.

In 1957 (Laws 1957, Ch. 928, Sec. 5), the term “salary” was first defined as any compensation paid to any employee, including wages, allowance, and fees.

In 1983 (Laws 1983, Ch. 286, Sec. 3), the definition was modified by adding an exclusion of severance pay amounts, without specifically defining the term “severance pay.”

In 1990 (Laws 1990, Ch. 570, Art. 10, Sec. 1), the definition was significantly revised and expanded, set as the periodical compensation paid to any employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs, wages, and net income from fees, but excluding lump sum sick leave payments, severance payments, all payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates for an employee with single coverage, and workers’ compensation payments.

In 1993 (Laws 1993, Ch. 307, Art. 3, Sec. 1), credit for any salary reduction during the receipt of temporary workers’ compensation was authorized.

In 1994 (Laws 1994, Ch. 528, Art. 1, Sec. 3), the definition was augmented by the addition of sum-sum annual leave payments, overtime payments made at the time of separation of state service, and payments as an employer-paid fringe benefit to the exclusions from the definition and the rewording of the workers’ compensation payment exclusion from “salary.”

In 1995 (Laws 1995, Ch. 262, Art. 1, Sec. 3), the definition was further amended, repositioning the inclusion of “wages,” replacing the inclusion of “periodical compensation” with “periodic compensation,” eliminating the inclusion of “net income from fees,” clarifying exclusions for employer contributions to a deferred compensation or tax-sheltered annuity program, and adding an exclusion for amounts contributed under a benevolent vacation and sick leave donation program.

In 2004 (Laws 2004, Art. 2, Sec. 1), the definition was reorganized into inclusion and exclusion paragraphs and clauses, and the provision requiring grievance proceeding or legal settlement salary amounts to be reviewed by the executive director and determined consistent with the balance of the definition before inclusion.

3. State Patrol Retirement Plan. Prior to 2004, the retirement plan had no specific definition of “salary.”

In 2004 (Laws 2004, Ch. 267, Art. 2, Sec. 2), the term “salary” was defined through cross-reference to the MSRS-General definition.

In 2005 (1st Spec. Sess. Laws 2005, Ch. 8, Art. 1, Sec. 7), a proviso was added that the term is subject to the federal Internal Revenue Code-based limitations of Minnesota Statutes, Section 356.611, on covered salary.

In 2009 (Laws 2009, Ch. 169, Art. 2, Sec. 15, Subd. 4), the definitions section, including the “average monthly salary” definition, was recodified, with the “average monthly salary” definition moved to Minnesota Statutes, Section 352B.011.

4. General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General). Before 1957, the retirement plan did not provide a retirement annuity or benefit that was salary-related, but had member and employer contributions set as a percentage of salary.

In 1941 (Laws 1941, Ch. 285, Sec. 1), “salary” was defined as the periodical compensation of any public employee and also means “wages” and, in the case of officers elected to a fee office, includes “fees.”

In 1957 (Laws 1957, Ch. 935, Sec. 9), the retirement plan shifted to a salary-related defined benefit retirement plan.

In 1959 (Laws 1959, Ch. 650, Sec. 4), the definition was shortened and simplified, set as the periodical compensation of any public employee and also means “wages” and includes “fees.”

In 1971 (Laws 1971, Ch. 106, Sec. 4), the term was redefined to also include net income from fees after the deduction of expenses that are paid by the primary public employers and, except for justices of the peace who were members of the plan on June 30, 1971, excludes occasional compensation that

was received from a source other than the primary public employer or from sources other than the public.

In 1973 (Laws 1973, Ch. 753, Sec. 8), the definition was again simplified and shortened, set as the periodical compensation of any public employee before deductions for deferred compensation or for supplemental retirement plans, and also means “wages” and the net income from fees.

In 1974 (Laws 1974, Ch. 229, Sec. 3), exclusions from the definition were added for lump sum annual leave payments, annual leave payments made after the termination of public service, amounts paid under an employer-paid disability insurance policy after all accrued sick leave had been used, and an inclusion within the definition was added for amounts paid under an employer-paid disability insurance policy before all accrued sick leave had been used.

In 1975 (Laws 1975, Ch. 102, Sec. 2), an exclusion from the definition for workers’ compensation payments was added.

In 1983 (Laws 1983, Ch. 286, Sec. 6), an exclusion from the definition for fees paid to district court reporters was added.

In 1987 (Laws 1987, Ch. 296, Sec. 2), an inclusion in the definition was added for the salary levels of police officers and firefighters covered by local relief association consolidation accounts administered by PERA who elect to have retirement annuity or benefit amounts calculated under the Public Employees Police and Fire Retirement Plan (PERA-P&F) benefit plan.

In 1989 (Laws 1989, Ch. 319, Art. 3, Sec. 3), an exclusion was added to the definition for any compensation paid to volunteer ambulance service personnel or to volunteer firefighters unless Minnesota Statutes, Sections 353.86 and 353.87, provide differently.

In 1991 (Laws 1991, Ch. 341, Sec. 3), the language style and usage of the provision was clarified and the exclusion for sick leave payments was clarified and expanded as being unused and whether paid in a lump sum or in periodic payments.

In 1993 (Laws 1993, Ch. 307, Art. 4, Sec. 7), the definition was restructured and the exclusions were expanded to include expense reimbursements, lump sum settlements not attached to a specific earnings period, employer-paid amounts to flexible spending accounts, employer-paid amounts to cafeteria plans, employer-paid amounts to health care expense accounts, and employer-paid daycare expense amounts.

In 1994 (Laws 1994, Ch. 528, Art. 2, Sec. 1), the definition was restructured and the exclusions from the definition were expanded with the addition of amounts used by an employee towards the cost of insurance coverage, employer-paid fringe benefits, unspecified “certain” amounts determined to be ineligible by the executive director, and certain amounts paid to employees relating to the difference between single and family insurance coverage.

In 2004 (Laws 2004, Ch. 267, Art. 2, Sec. 3), the exclusions were expanded with the addition of salary amounts in excess of federal Internal Revenue Code salary limits and amounts provided through a grievance proceeding or legal settlement if reviewed by the executive director and determined by the executive director as consistent with other parts of the definition and prior determinations.

In 2005 (1st Spec. Sess. Laws 2005, Ch. 8, Art. 1, Sec. 9), the inclusions in the definition were expanded to include employer-paid contributions to supplemental retirement plans for employees covered by the supplemental plan, when the supplemental plan requires that all contributions be made by the employer, and when the contribution is made by mandatory withholdings from employee’s wages.

In 2008 (Laws 2008, Ch. 349, Art. 5, Sec. 15), the inclusion for employer-paid supplemental retirement plan contributions was clarified to cover wage reductions rather than withholdings or to cover amounts paid in lieu of wages and the exclusions were expanded to apply to federal grant amounts specifically prohibited for use in paying pension plan contributions unless the contributions were made from non-federal grant amounts.

5. Teachers Retirement Association (TRA). Before 1969, the retirement plan did not provide a retirement annuity or benefit that was salary-related, but had member and employer contributions set as a percentage of salary, and the retirement plan did not have a definition of salary until 1975.

In 1975 (Laws 1975, Ch. 306, Sec. 4), the term was defined as compensation paid to a teacher other than lump sum annual or sick leave payments and other than all forms of severance payments.

In 1983 (Laws 1983, Ch. 148, Sec. 2), a definition of severance payments was added to the definition, framed as payments to an employee to terminate employment, payments that are not clearly for performance of services to the employer, and payments to an administrator for advising a successor or acting as a consultant to the employer under an agreement to terminate employment within two years for significantly different compensation than the most recent contract.

In 1989 (Laws 1989, Ch. 319, rt. 2, Sec. 4), the definition was reorganized and significantly modified, specifying that it includes teacher compensation upon which member contributions are required and made and paid before any allowance reductions under the federal Internal Revenue Code for employee selected fringe benefits, tax-sheltered annuities, deferred compensation, or any combination, specifying that exclusions also are workers' compensation payments and disability insurance payments, including self-insured disability payments. The severance payments definition was moved to a separate definition and expanded to include payments made under a procedure that allows the teacher to designate the timing of payments during a period of formula service credit.

In 1994 (Laws 1994, Ch. 528, Art. 3, Sec. 6), the inclusion paragraph was amended by replacing the specific federal Internal Revenue Code reference with an "employee-paid" reference and the exclusions were expanded with the addition of wellness payments, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, automobile allowance, tax-sheltered annuity payments, and some leave payments.

In 2000 (Laws 2000, Ch. 461, Art. 3, Sec. 28), the definition was clarified as being periodic compensation before various types of salary reduction programs and the exceptions from salary related to insurance coverage differentials were consolidated into a single clause.

In 2004 (Laws 2004, Ch. 267, Art. 2, Sec. 4), a requirement that amounts of payments through a grievance proceeding or legal settlement was added, recognized as salary only if the settlement is reviewed by the executive director and determined to be consistent with the statutory provision and prior determinations.

In 2005 (1st Spec. Sess. Laws 2005, Ch. 8, Art. 1, Sec. 17), a proviso was added that the term is subject to the federal Internal Revenue Code-based limitations of Minnesota Statutes, Section 356.611, on covered salary.

6. Duluth Teachers Retirement Fund Association (DTRFA). In the 1979 codification of the first class city teachers retirement fund coordinated program provisions (Laws 1979, Ch. 217, Sec. 1, Subd. 24), the term was defined as the entire compensation paid to a retirement plan member from any source, including amounts from other than public funds, other than any lump sum annual leave payments, sick leave payments, and all severance payments.

In 1994 (Laws 1994, Ch. 542, Sec. 1), the definition was substantially revised, specifying that it is the teacher's entire compensation upon which member contributions are required and made and paid before tax-deferred reductions permitted under the federal Internal Revenue Code for fringe benefits, tax-sheltered annuities, or deferred compensation, and specifically excluding lump sum annual leave payments, lump sum wellness and sick leave payments, payments in lieu of employer-paid group insurance coverage, payments for the difference between single and family insurance premium rates payable to a teacher with single coverage, employer-paid fringe benefits such as flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or automobile allowances and expenses, payments to school principals and administrators for services in addition to the normal work year contract performed on an extended duty day, weekends, holidays, leave days, and other non-duty days, tax-sheltered annuity employer contributions, and some leave payments.

In 2001 (1st Spec. Sess. Laws 2001, Ch. 10, Art. 3, Sec. 19, 21), the definition was clarified as being compensation of a teacher before various types of salary reduction programs, the exceptions from salary related to insurance coverage differentials were consolidated into a single clause, payments made in lieu of another employer-paid fringe benefit or expense was added as an exception, severance payments were added as an exception, workers' compensation was added as an exception, disability insurance and self-insurance payments were added as an exception, and temporary workers' compensation payments for which the teacher makes the equivalent member contribution amount payment were included as salary.

In 2004 (Laws 2004, Ch. 267, Art. 2, Sec. 5), a requirement was added that amounts of payments through a grievance proceeding or legal settlement are recognized as salary only if the settlement is reviewed by the executive director and determined to be consistent with the statutory provision and prior determinations.

In 2005 (1st Spec. Sess. Laws 2005, Ch. 8, Art. 1, Sec. 20), a proviso was added that the term is subject to the federal Internal Revenue Code-based limitation of Minnesota Statutes, Section 356.611, on covered salary.

7. St. Paul Teachers Retirement Fund Association (SPTRFA). In the 1979 codification of the first class city teachers retirement fund coordinated program provisions (Laws 1979, Ch. 217, Sec. 1, Subd. 24), the term was defined as the entire compensation paid to a retirement plan member from any source, including amounts from other than public funds, other than any lump sum annual leave payments, sick leave payments, and all severance payments:

In 1994 (Laws 1994, Ch. 542, Sec. 1), the definition was substantially revised, specifying that it is the teacher's entire compensation upon which member contributions are required and made and paid before tax-deferred reductions permitted under the federal Internal Revenue Code for fringe benefits, tax-sheltered annuities, or deferred compensation, and specifically excluding lump sum annual leave payments, lump sum wellness and sick leave payments, payments in lieu of employer-paid group insurance coverage, payments for the difference between single and family insurance premium rates payable to a teacher with single coverage, employer-paid fringe benefits such as flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or automobile allowances and expenses, payments to school principals and administrators for services in addition to the normal work year contract performed on an extended duty day, weekends, holidays, leave days, and other non-duty days, tax-sheltered annuity employer contributions, and some leave payments.

In 2001 (1st Spec. Sess. Laws 2001, Ch. 10, Art. 3, Sec. 19, 21), the definition was clarified as being compensation of a teacher before various types of salary reduction programs, the exceptions from salary related to insurance coverage differentials were consolidated into a single clause, payments made in lieu of another employer-paid fringe benefit or expense was added as an exception, severance payments were added as an exception, workers' compensation was added as an exception, and disability insurance and self-insurance payments were added as an exception.

In 2004 (Laws 2004, Ch. 267, Art. 2, Sec. 5), a requirement was added that amounts of payments through a grievance proceeding or legal settlement are recognized as salary only if the settlement is reviewed by the executive director and determined to be consistent with the statutory provision and prior determinations.

In 2005 (1st Spec. Sess. Laws 2005, Ch. 8, Art. 1, Sec. 20), a provision was added that the term is subject to the federal Internal Revenue Code-based limitation of Minnesota Statutes, Section 356.611, on covered salary.

Side-by-Side Comparison of Minnesota Defined Benefit Retirement Plan Definitions of Salary

3A.01 LEGISLATORS RETIREMENT PLAN

Subd. 10. Salary. (a) "Salary" means the regular compensation payable under law to a member of the legislature and paid to the person for service as a legislator.

(b) The term includes the monthly compensation paid to the member of the legislature and the per diem payments paid during a regular or special session to the member of the legislature.

(c) The term does not include per diem payments paid to a member of the legislature other than during the regular or special session; additional compensation attributable to a leadership position under section 3.099, subdivision 3; living expense payments under section 3.101; and special session living expense payments under section 3.103.

490.121 JUDGES RETIREMENT

Subd. 21. Final average compensation. "Final average compensation" means the total amount of salary payable to a judge in the highest five years out of the last ten years before the termination of judicial service, divided by five if the number of years of service by the judge equals or exceeds ten. If the number of years of service by the judge is less than ten, but more than five, the highest five years of salary must be counted. If the number of years of service by the judge is less than five, the aggregate salary for the period of service must be divided by the number of months in the period and multiplied by 12.

Subd. 21a. Covered salary limitation. "Final average compensation" is subject to the limitations of section 356.611.

352B.011 STATE TROOPERS, RETIREMENT

Subd. 4. Average monthly salary. (a) Subject to the limitations of section 356.611, "average monthly salary" means the average of the highest monthly salaries for five years of service as a member upon which contributions were deducted from pay under section 352B.02, or upon which appropriate contributions or payments were made to the fund to receive allowable service and salary credit as specified under the applicable law. Average monthly salary must be based upon all allowable service if this service is less than five years.

(b) The salary used for the calculation of "average monthly salary" means the salary of the member as defined in section 352.01, subdivision 13. The salary used for the calculation of "average monthly salary" does not include any lump-sum annual leave payments and overtime payments made at the time of separation from state service, any amounts of severance pay, or any reduced salary paid during the period the person is entitled to workers' compensation benefit payments for temporary disability.

352.01 STATE RETIREMENT

Subd. 13. Salary. (a) Subject to the limitations of section 356.611, "salary" means wages, or other periodic compensation, paid to an employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs.

(b) "Salary" does not include:

- (1) lump-sum sick leave payments;
- (2) severance payments;
- (3) lump-sum annual leave payments and overtime payments made at the time of separation from state service;
- (4) payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to an employee with single coverage;
- (5) payments made as an employer-paid fringe benefit;
- (6) workers' compensation payments;
- (7) employer contributions to a deferred compensation or tax-sheltered annuity program; and
- (8) amounts contributed under a benevolent vacation and sick leave donation program.

(c) Amounts provided to an employee by the employer through a grievance proceeding or a legal settlement are salary only if the settlement is reviewed by the executive director and the amounts are determined by the executive director to be consistent with paragraph (a) and prior determinations.

353.01 PUBLIC EMPLOYEES RETIREMENT ASSOC.

Subd. 10. Salary. (a) Subject to the limitations of section 356.611, "salary" means:

(1) the periodic compensation of a public employee, before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs, and also means "wages" and includes net income from fees;

(2) for a public employee who is covered by a supplemental retirement plan under section 356.24, subdivision 1, clause (8), (9), or (10), which require all plan contributions be made by the employer, the contribution to the applicable supplemental retirement plan when an agreement between the parties establishes that the contribution will either result in a mandatory reduction of employees' wages through payroll withholdings, or be made in lieu of an amount that would otherwise be paid as wages; and

(3) for a public employee who has prior service covered by a local police or firefighters relief association that has consolidated with the Public Employees Retirement Association or to which section 353.665 applies and who has elected coverage either under the public employees police and fire fund benefit plan under section 353A.08 following the consolidation or under section 353.665, subdivision 4, the rate of salary upon which member contributions to the special fund of the relief association were made prior to the effective date of the consolidation as specified by law and by bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure and the actual periodic compensation of the public employee after the effective date of consolidation.

(b) Salary does not mean:

(1) the fees paid to district court reporters, unused annual vacation or sick leave payments, in lump-sum or periodic payments, severance payments, reimbursement of expenses, lump-sum settlements not attached to a specific earnings period, or workers' compensation payments;

(2) employer-paid amounts used by an employee toward the cost of insurance coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage and certain amounts determined by the executive director to be ineligible;

352B.011 STATE TROOPERS, RETIREMENT**354.05 TEACHERS RETIREMENT**

Subd. 35. Salary. (a) Subject to the limitations of section 356.611, "salary" means the periodic compensation, upon which member contributions are required before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs.

(b) "Salary" does not mean:

- (1) lump-sum annual leave payments;
- (2) lump-sum wellness and sick leave payments;

(3) employer-paid amounts used by an employee toward the cost of insurance coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage and certain amounts determined by the executive director to be ineligible;

(4) any form of payment made in lieu of any other employer-paid fringe benefit or expense;

(5) any form of severance payments;

(6) workers' compensation payments;

(7) disability insurance payments, including self-insured disability payments;

(8) payments to school principals and all other administrators for services that are in addition to the normal work year contract if these additional services are performed on an extended duty day, Saturday, Sunday, holiday, annual leave day, sick leave day, or any other nonduty day;

(9) payments under section 356.24, subdivision 1, clause (4); and

(10) payments made under section 122A.40, subdivision 12, except for payments for sick leave that are accumulated under the provisions of a uniform school district policy that applies equally to all similarly situated persons in the district.

(c) Amounts provided to an employee by the employer through a grievance proceeding or a legal settlement are salary only if the settlement is reviewed by the executive director and the amounts are determined by the executive director to be consistent with paragraph (a) and prior determinations.

353.01 PUBLIC EMPLOYEES RETIREMENT ASSOC.

(3) the amount equal to that which the employing governmental subdivision would otherwise pay toward single or family insurance coverage for a covered employee when, through a contract or agreement with some but not all employees, the employer:

(i) discontinues, or for new hires does not provide, payment toward the cost of the employee's selected insurance coverages under a group plan offered by the employer;

(ii) makes the employee solely responsible for all contributions toward the cost of the employee's selected insurance coverages under a group plan offered by the employer, including any amount the employer makes toward other employees' selected insurance coverages under a group plan offered by the employer; and

(iii) provides increased salary rates for employees who do not have any employer-paid group insurance coverages;

(4) except as provided in section 353.86 or 353.87, compensation of any kind paid to volunteer ambulance service personnel or volunteer firefighters, as defined in subdivision 35 or 36;

(5) the amount of compensation that exceeds the limitation provided in section 356.611; and

(6) amounts paid by a federal or state grant for which the grant specifically prohibits grant proceeds from being used to make pension plan contributions, unless the contributions to the plan are made from sources other than the federal or state grant.

(c) Amounts provided to an employee by the employer through a grievance proceeding or a legal settlement are salary only if the settlement is reviewed by the executive director and the amounts are determined by the executive director to be consistent with paragraph (a) and prior determinations.

354A.011 TEACHERS RETIREMENT, CERTAIN CITIES

Subd. 24. Salary; covered salary. (a) Subject to the limitations of section 356.611, "salary" or "covered salary" means the entire compensation, upon which member contributions are required and made, that is paid to a teacher before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs.

(b) "Salary" does not mean:

- (1) lump-sum annual leave payments;
- (2) lump-sum wellness and sick leave payments;

(3) employer-paid amounts used by an employee toward the cost of insurance coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage, and certain amounts determined by the executive secretary or director to be ineligible;

(4) any form of payment that is made in lieu of any other employer-paid fringe benefit or expense;

(5) any form of severance payments;

(6) workers' compensation payments;

(7) disability insurance payments, including self-insured disability payments;

(8) payments to school principals and all other administrators for services that are in addition to the normal work year contract if these additional services are performed on an extended duty day, Saturday, Sunday, holiday, annual leave day, sick leave day, or any other nonduty day;

(9) payments under section 356.24, subdivision 1, clause (4)(ii); and

(10) payments made under section 122A.40, subdivision 12, except for payments for sick leave that are accumulated under the provisions of a uniform school district policy that applies equally to all similarly situated persons in the district.

(c) Amounts provided to an employee by the employer through a grievance proceeding or a legal settlement are salary only if the settlement is reviewed by the executive director and the amounts are determined by the executive director to be consistent with paragraph (a) and prior determinations.

**Background Information on the
2012 Minnesota Court of Appeals Decision on
PERA Salary Determinations (A11-1330)**

1. Introduction. Since 2008, there has been a dispute arising in the City of Duluth over the inclusion of certain city payments in the salaries of Duluth employees reported to the Public Employees Retirement Association (PERA) since 1995. The dispute followed the statewide retirement plan's administrative appeal procedure, culminating in an appeal to the Minnesota Court of Appeals.
2. Facts Underlying the Litigation. The General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) has had a definition of salary since 1941 (Laws 1941, Ch. 285, Sec. 1), initially for contribution purposes and, after 1956, for retirement annuity computation. As the compensation system of governmental subdivision employees acquired more elements and became more complicated, the PERA statutory definition of salary became more complicated. In interpreting the statutory definition, PERA has fashioned an internal working definition of the term and, since at least the early 1980s, has issued a manual for employers clarifying various practices and procedures, including what constitutes covered salary and how to report salary amounts.

Since the mid-1990s, the City of Duluth and its employees have included in their collective bargaining agreements the practice of making supplemental compensation payments and, subsequently, to apply the supplemental compensation payments to the purchase of group health insurance. From 1995 until 2007, Duluth reported both the salary supplemental payments and the insurance supplement payments to PERA as covered salary and made member deductions and employer contributions on both supplemental amounts, reportedly after obtaining prior PERA guidance. In 2007, Duluth stopped reporting salary supplemental compensation and insurance supplement payments to PERA and deducting or making PERA contributions, apparently based on new PERA guidance. In 2008, PERA and Duluth conducted a joint investigation of the salary issue, requiring adjustments in retiree benefits and member and employer contributions. Upon an administrative review of the question, and an administrative law judge (ALJ) concluded that PERA's interpretation of the statute with respect to salary supplement payments was not properly promulgated as an interpretation rule, but that PERA's interpretation of the statute with respect to insurance supplement payments was consistent with the plain meaning of the statute and was an interpretive rule. The PERA board modified some of the ALJ's findings, rejected some of the ALJ's conclusions of law, and accepted in part the ALJ's recommendations.

3. Appeals Court Decision. In the judicial appeal of the PERA board's decision on the Duluth salary issue, the Court of Appeals addressed the following four questions:
 - 1) Did PERA engage in improper rulemaking in interpreting PERA law to exclude from covered salary Duluth's salary supplement payments?
 - 2) Did PERA engage in improper rulemaking in interpreting PERA law to exclude from covered salary Duluth's insurance supplement payments?
 - 3) Did PERA's decision fail to meet the statute of limitations, was it barred by estoppel, or did it violate Duluth PERA member's constitutional rights?
 - 4) Did PERA err in not awarding attorney fees to the Duluth PERA members?
 - The Court of appeals apparently decided that PERA did not properly promulgate under Minnesota Statutes, Chapter 14, an administrative rule with respect to either the Duluth salary supplement payments or the Duluth insurance supplement payments, so in neither situation does PERA's determinations with respect to Duluth have the force and effect of law.
 - The Court of Appeals found that the PERA salary definition was ambiguous with respect to the salary supplement payments in the Duluth situation and the PERA determination on salary supplement payments was not justified by the plain meaning of the statute.
 - The Court of Appeals also decided that the PERA determination on the Duluth salary supplement payments was not a longstanding interpretation because it was of uncertain origin and duration, is unwritten and indefinite, and is impossible to discern.
 - The Court of Appeals did decide that the PERA determination on the Duluth insurance supplement payments was justified because it was consistent with the plan meaning of the statute.
 - The Court of Appeals found that the PERA determinations did not fail any statute of limitations, since PERA law since 1990 authorizes benefit adjustments at any time and judicial action statutes of limitations do not apply to administrative agencies.
 - The Court of Appeals rejected constitutional challenges, finding no impairment of any contract, and finding that no right to have insurance supplement payments be included in PERA salary calculations to have been established and protected from a taking of private property.
 - With respect to an award of attorney fees to the PERA members who challenged the PERA determination, the Court of Appeals remanded the question to the PERA board since the PERA members were partially successful on appeal.

A bill for an act

relating to retirement; Public Employees Retirement Association; revising the definition of salary; amending Minnesota Statutes 2012, section 353.01, subdivision 10.

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

Section 1. Minnesota Statutes 2012, section 353.01, subdivision 10, is amended to read:

Subd. 10. **Salary.** (a) Subject to the limitations of section 356.611, "salary" means:

(1) the wages or periodic compensation of payable to a public employee, by the employing governmental subdivision before;

(i) employee retirement deductions that are designated as picked-up contributions under section 356.62; and

(ii) any employee-elected tax-sheltered deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs; and also means "wages" and includes net income from fees that would have otherwise been available as a cash payment to the employee;

(2) for a public employee who is covered by a supplemental retirement plan under section 356.24, subdivision 1, clause (7), (8), (9), or (10), ~~which require all plan contributions be made by the employer, the contribution~~ contributions to the applicable supplemental retirement plan when an agreement between the parties establishes that the ~~contribution~~ contributions will either result in a mandatory reduction of employees' wages through payroll withholdings, or be made in lieu of an amount that would otherwise be paid as wages; ~~and~~

(3) for a public employee who has prior service covered by a local police or firefighters relief association that has consolidated with the Public Employees Retirement

2.1 Association or to which section 353.665 applies and who has elected coverage either
 2.2 under the public employees police and fire fund benefit plan under section 353A.08
 2.3 following the consolidation or under section 353.665, subdivision 4, the rate of salary
 2.4 upon which member contributions to the special fund of the relief association were made
 2.5 prior to the effective date of the consolidation as specified by law and by bylaw provisions
 2.6 governing the relief association on the date of the initiation of the consolidation procedure
 2.7 and the actual periodic compensation of the public employee after the effective date of
 2.8 consolidation;

2.9 (4) for a public employee who receives payment through a grievance, settlement,
 2.10 or court order that is attached to a specific period in which the employee's regular salary
 2.11 was not earned or paid to the member due to suspension, leave of absence, or period of
 2.12 involuntary termination that is not a wrongful discharge under section 356.50, the amount
 2.13 that is equivalent to the earnings the member would have otherwise earned during the
 2.14 applicable period;

2.15 (5) for a member who is absent from employment by reason of an authorized
 2.16 personal, parental, medical, or military leave of absence, the amount paid to the employee
 2.17 during the leave period that is equivalent to the earnings the member would have otherwise
 2.18 earned during the applicable period; and

2.19 (6) for a public employee who receives in addition to regular salary or in lieu
 2.20 of regular salary increases performance or merit bonus payment under a written
 2.21 compensation plan, policy, or bargaining agreement, the compensation paid to the
 2.22 employee for attaining or exceeding performance goals, duties, or measures during a
 2.23 specified period of employment.

2.24 (b) Salary does not mean:

2.25 (1) the fees paid to district court reporters;

2.26 (2) unused annual, vacation, personal, or sick leave payments, in the form of
 2.27 lump-sum or periodic payments;

2.28 (3) payment of the value of hours donated under a benevolent vacation, personal,
 2.29 or sick leave donation program;

2.30 (4) payments for accrued compensatory or overtime hours that are made at the time
 2.31 of termination of public service and that include pay for work performed in a calendar or
 2.32 school year prior to the year in which the payment is issued;

2.33 (5) any form of severance payments, or retirement incentive payments;

2.34 (6) an allowance payment or per diem payments for or reimbursement of expenses;

2.35 (7) lump-sum settlements not attached to a specific earnings period, or;

3.1 (8) workers' compensation payments or disability insurance payments, including
3.2 payments from employer self-insurance arrangements;

3.3 ~~(2)~~ (9) employer-paid amounts used by an employee toward the cost of insurance
3.4 coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health
3.5 care expense accounts, day care expenses, or any payments in lieu of any employer-paid
3.6 group insurance coverage, including the difference between single and family rates that
3.7 may be paid to a member with single coverage and certain amounts determined by the
3.8 executive director to be ineligible;

3.9 (10) employer-paid fringe benefits, including, but not limited to:

3.10 (i) employer-paid premiums for all types of insurance;

3.11 (ii) membership dues or fees for the use of fitness or recreational facilities;

3.12 (iii) incentive payments or cash awards relating to a wellness program;

3.13 (iv) the value of any nonmonetary benefits;

3.14 (v) any form of payment made in lieu of an employer-paid fringe benefit;

3.15 (vi) an employer-paid amount made to a deferred compensation or tax-sheltered
3.16 annuity program; and

3.17 (vii) any amount paid by the employer as a supplement to salary, either as a
3.18 lump-sum amount or a fixed or matching amount paid on a recurring basis, that is not
3.19 available to the employee as cash;

3.20 ~~(3)~~ (11) the amount equal to that which the employing governmental subdivision
3.21 would otherwise pay toward single or family insurance coverage for a covered employee
3.22 when, through a contract or agreement with some but not all employees, the employer:

3.23 (i) discontinues, or for new hires does not provide, payment toward the cost of the
3.24 employee's selected insurance coverages under a group plan offered by the employer;

3.25 (ii) makes the employee solely responsible for all contributions toward the cost of
3.26 the employee's selected insurance coverages under a group plan offered by the employer,
3.27 including any amount the employer makes toward other employees' selected insurance
3.28 coverages under a group plan offered by the employer; and

3.29 (iii) provides increased salary rates for employees who do not have any
3.30 employer-paid group insurance coverages;

3.31 ~~(4)~~ (12) except as provided in section 353.86 or 353.87, compensation of any
3.32 kind paid to volunteer ambulance service personnel or volunteer firefighters, as defined
3.33 in subdivision 35 or 36;

3.34 ~~(5)~~ (13) the amount of compensation that exceeds the limitation provided in section
3.35 356.611; and

4.1 ~~(6)~~ (14) amounts paid by a federal or state grant for which the grant specifically
4.2 prohibits grant proceeds from being used to make pension plan contributions, unless the
4.3 contributions to the plan are made from sources other than the federal or state grant; and
4.4 (15) bonus pay that is not performance or merit pay under paragraph (a), clause (6).

4.5 (c) Amounts, other than those provided under paragraph (a), clause (4), provided to
4.6 an employee by the employer through a grievance proceeding, a court order, or a legal
4.7 settlement are salary only if the settlement or court order is reviewed by the executive
4.8 director and the amounts are determined by the executive director to be consistent with
4.9 paragraph (a) and prior determinations.

4.10 **EFFECTIVE DATE.** This section is effective the day following final enactment,
4.11 except that paragraph (b), clause (9), item (vii), is effective retroactively from August
4.12 1, 2007.

- 1.1 moves to amend S.F. No. 273; H.F. No. 343, as follows:
- 1.2 Page 1, line 8, delete "paid" and insert "payable"
- 1.3 Page 2, line 19, after "receives" insert "in addition to regular salary or in lieu of
- 1.4 regular salary increases"
- 1.5 Page 2, line 21, after "attaining" insert "or exceeding"
- 1.6 Page 2, line 22, delete everything after "employment."
- 1.7 Page 2, delete line 23
- 1.8 Page 2, line 25, strike "the"
- 1.9 Page 2, line 27, strike the comma and insert a semicolon and delete "or" and insert "
- 1.10 (3) payment of" and after "vacation" insert a comma
- 1.11 Page 2, line 27, after "vacation" insert a comma
- 1.12 Page 2, line 28, delete "and" and insert "personal, or"
- 1.13 Page 2, line 29, delete "(3)" and insert "(4)"
- 1.14 Page 2, line 30, delete "separation from service" and insert "termination of public
- 1.15 service"
- 1.16 Page 2, line 32, delete "(4)" and insert "(5)" and strike the first "payments"
- 1.17 Page 2, line 33, delete "(5)" and insert "(6)" and after "diem" insert "payments"
- 1.18 Page 2, line 34, delete "(6)" and insert "(7)"
- 1.19 Page 2, line 35, delete "(7)" and insert "(8)"
- 1.20 Page 2, line 36, delete "self-insured employers" and insert "employer self-insurance
- 1.21 arrangements"
- 1.22 Page 3, line 1, delete "(8)" and insert "(9)"
- 1.23 Page 3, line 7, delete "(9)" and insert "(10)" and after "benefits" insert a comma
- 1.24 Page 3, line 9, after "for" insert "the"
- 1.25 Page 3, line 10, after "to" insert "a" and delete "programs" and insert "program"
- 1.26 Page 3, line 18, delete "(10)" and insert "(11)"
- 1.27 Page 3, line 29, delete "(11)" and insert "(12)"
- 1.28 Page 3, line 32, delete "(12)" and insert "(13)"
- 1.29 Page 3, line 34, delete "(13)" and insert "(14)"
- 1.30 Page 4, line 1, delete "(14)" and insert "(15)"

1.1 moves to amend S.F. No. 273; H.F. No. 343, as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2012, section 3A.01, subdivision 1b, is amended to read:

1.4 Subd. 1b. **Average monthly salary.** "Average monthly salary" means the average
1.5 of the salaries under subdivision 10 and section 356.612 for the member's highest five
1.6 successive years of salary that was received as a member of the legislature and upon which
1.7 the member has made contributions under section 3A.03, subdivision 1, or for which the
1.8 member of the legislature has made payments for past service under Minnesota Statutes
1.9 2004, section 3A.02, subdivision 2, or has made, before July 1, 1994, payments in lieu of
1.10 contributions under Minnesota Statutes 1992, section 3A.031.

1.11 Sec. 2. Minnesota Statutes 2012, section 3A.01, subdivision 10, is amended to read:

1.12 Subd. 10. **Salary.** (a) "Salary" means the ~~regular compensation~~ salary under section
1.13 356.612 that is payable under law to a member of the legislature and paid to the person
1.14 for service as a legislator.

1.15 (b) Notwithstanding any provision of section 356.612 to the contrary, the term
1.16 includes the monthly compensation paid to the member of the legislature and the per diem
1.17 payments paid during a regular or special session to the member of the legislature.

1.18 (c) Notwithstanding any provision of section 356.612 to the contrary, the term does
1.19 not include per diem payments paid to a member of the legislature other than during the
1.20 regular or special session; additional compensation attributable to a leadership position
1.21 under section 3.099, subdivision 3; living expense payments under section 3.101; and
1.22 special session living expense payments under section 3.103.

1.23 Sec. 3. Minnesota Statutes 2012, section 352.01, subdivision 13, is amended to read:

1.24 Subd. 13. **Salary.** ~~(a) Subject to the limitations of section 356.611, "salary" means~~
1.25 ~~wages, or other periodic compensation.~~ Amounts paid to an employee by the employer
1.26 under section 356.612 before deductions for deferred compensation, supplemental
1.27 retirement plans, or other voluntary salary reduction programs.

1.28 (b) "Salary" does not include:

1.29 (1) ~~lump-sum sick leave payments;~~

1.30 (2) ~~severance payments;~~

1.31 (3) ~~lump-sum annual leave payments and overtime payments made at the time~~
1.32 ~~of separation from state service;~~

2.1 ~~(4) payments in lieu of any employer-paid group insurance coverage, including the~~
 2.2 ~~difference between single and family rates that may be paid to an employee with single~~
 2.3 ~~coverage;~~

2.4 ~~(5) payments made as an employer-paid fringe benefit;~~

2.5 ~~(6) workers' compensation payments;~~

2.6 ~~(7) employer contributions to a deferred compensation or tax-sheltered annuity~~
 2.7 ~~program; and~~

2.8 ~~(8) amounts contributed under a benevolent vacation and sick leave donation~~
 2.9 ~~program.~~

2.10 ~~(e) amounts provided to an employee by the employer through a grievance~~
 2.11 ~~proceeding or a legal settlement are salary only if the settlement is reviewed by the~~
 2.12 ~~executive director and the amounts are determined by the executive director to be~~
 2.13 ~~consistent with paragraph (a) and prior determinations.~~

2.14 Sec. 4. Minnesota Statutes 2012, section 352.01, subdivision 13a, is amended to read:

2.15 Subd. 13a. **Reduced salary during period of workers' compensation.** (a) An
 2.16 employee on leave of absence receiving temporary workers' compensation payments and a
 2.17 reduced salary or no salary from the employer who is entitled to allowable service credit
 2.18 for the period of absence, may make payment to the fund for the difference between salary
 2.19 received, if any, and the salary the employee would normally receive if not on leave of
 2.20 absence during the period.

2.21 (b) The employee shall pay an amount equal to the employee and employer
 2.22 contribution rate under section 352.04, subdivisions 2 and 3, on the differential salary
 2.23 amount for the period of the leave of absence.

2.24 (c) The employing department, at its option, may pay the employer amount on
 2.25 behalf of its employees.

2.26 (d) Payment made under this subdivision must include interest at the rate of 8.5
 2.27 percent per year, and must be completed within one year of the return from leave of absence.

2.28 (e) Allowable service and salary are creditable under sections 352.01, subdivision
 2.29 11 and 13, and 356.612 upon receipt of the payments required under paragraphs (b),
 2.30 (c), and (d).

2.31 Sec. 5. Minnesota Statutes 2012, section 352.01, subdivision 14a, is amended to read:

2.32 Subd. 14a. **Average salary.** (a) "Average salary" means the average of the salaries
 2.33 under subdivision 13 and section 356.612 for the highest five successive years of salary
 2.34 upon which the employee has made contributions to the retirement fund by payroll

3.1 deductions. Average salary must be based upon all allowable service if this allowable
 3.2 service is less than five years.

3.3 (b) "Average salary" does not include the payment of accrued unused annual leave
 3.4 or overtime paid at time of final separation from state service if paid in a lump sum nor
 3.5 does it include the reduced salary, if any, paid during the period the employee is entitled to
 3.6 workers' compensation benefit payments for temporary disability.

3.7 (c) For an employee ~~covered~~ with coverage in part by the correctional state
 3.8 employees retirement plan and in part by the general state employees retirement plan,
 3.9 "average salary" means the average of the monthly ~~salary~~ salaries under subdivision 13
 3.10 and section 356.612 during the employee's highest five successive years of salary as an
 3.11 employee covered by the general state employees retirement plan, or as employee covered
 3.12 by the correctional state employees retirement plan, or by a combination of the two. If
 3.13 the total of the covered service is less than five years, the determination of average salary
 3.14 must be based on all allowable service.

3.15 Sec. 6. Minnesota Statutes 2012, section 352B.011, subdivision 4, is amended to read:

3.16 Subd. 4. **Average monthly salary.** (a) Subject to the limitations of section 356.611,
 3.17 "average monthly salary" means the average of the highest monthly salaries for five
 3.18 years of allowable service as a member upon which contributions were deducted from
 3.19 pay under section 352B.02, or upon which appropriate contributions or payments were
 3.20 made to the fund to receive allowable service and salary credit as specified under the
 3.21 applicable law. Average monthly salary must be based upon all allowable service if ~~this~~
 3.22 allowable service is less than five years.

3.23 (b) The salary used for the calculation of "average monthly salary" means the
 3.24 salary of the member as defined in ~~section~~ sections 352.01, subdivision 13, and 356.612.
 3.25 Notwithstanding any provision to the contrary of section 356.612, the salary used for the
 3.26 calculation of "average monthly salary" does not include any lump-sum annual leave
 3.27 payments and overtime payments made at the time of separation from state service, any
 3.28 amounts of severance pay, or any reduced salary paid during the period the person is
 3.29 entitled to workers' compensation benefit payments for temporary disability.

3.30 Sec. 7. Minnesota Statutes 2012, section 353.01, subdivision 10, is amended to read:

3.31 Subd. 10. **Salary.** (a) ~~Subject to the limitations of section 356.611~~, "salary"
 3.32 means: amounts paid to a public employee by a governmental subdivision under section
 3.33 356.612.(1) ~~the periodic compensation of a public employee, before deductions for~~

4.1 ~~deferred compensation, supplemental retirement plans, or other voluntary salary reduction~~
4.2 ~~programs, and "Salary" also means "wages" and includes the net income from fees;~~

4.3 ~~(2) (b) For a public employee who is covered by a supplemental retirement plan~~
4.4 ~~under section 356.24, subdivision 1, clause (8), (9), or (10), which require requires all plan~~
4.5 ~~contributions be made by the employer, the contribution to the applicable supplemental~~
4.6 ~~retirement plan when an agreement between the parties establishes that the contribution~~
4.7 ~~will either result in a mandatory reduction of employees' wages through payroll~~
4.8 ~~withholdings, or be made in lieu of an amount that would otherwise be paid as wages; and,~~
4.9 ~~"salary also means employer-paid contributions to a supplemental retirement plan.~~

4.10 ~~(3) (c) for a public employee who has prior service covered by a local police or~~
4.11 ~~firefighters relief association that has consolidated with the Public Employees Retirement~~
4.12 ~~Association or to which section 353.665 applies and who has elected coverage either under~~
4.13 ~~the public employees police and fire fund benefit plan under section 353A.08 following~~
4.14 ~~the consolidation or under section 353.665, subdivision 4, "salary" means the rate of~~
4.15 ~~salary upon which member contributions to the special fund of the relief association~~
4.16 ~~were made prior to before the effective date of the consolidation as specified by law and~~
4.17 ~~by bylaw provisions governing the relief association on the date of the initiation of the~~
4.18 ~~consolidation procedure and the actual periodic compensation of the public employee~~
4.19 ~~after the effective date of consolidation.~~

4.20 ~~(b) Salary (d) "Salary" also does not mean: (1) the fees paid to district court~~
4.21 ~~reporters, unused annual vacation or sick leave payments, in lump-sum or periodic~~
4.22 ~~payments, severance payments, reimbursement of expenses, lump-sum settlements not~~
4.23 ~~attached to a specific earnings period, or workers' compensation payments;~~

4.24 ~~(2) employer-paid amounts used by an employee toward the cost of insurance~~
4.25 ~~coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health~~
4.26 ~~care expense accounts, day care expenses, or any payments in lieu of any employer-paid~~
4.27 ~~group insurance coverage, including the difference between single and family rates that~~
4.28 ~~may be paid to a member with single coverage and certain amounts determined by the~~
4.29 ~~executive director to be ineligible;~~

4.30 ~~(3) the amount equal to that which the employing governmental subdivision would~~
4.31 ~~otherwise pay toward single or family insurance coverage for a covered employee when,~~
4.32 ~~through a contract or agreement with some but not all employees, the employer:~~

4.33 ~~(i) discontinues, or for new hires does not provide, payment toward the cost of the~~
4.34 ~~employee's selected insurance coverages under a group plan offered by the employer;~~

4.35 ~~(ii) makes the employee solely responsible for all contributions toward the cost of~~
4.36 ~~the employee's selected insurance coverages under a group plan offered by the employer;~~

5.1 ~~including any amount the employer makes toward other employees' selected insurance~~
 5.2 ~~coverages under a group plan offered by the employer; and~~

5.3 ~~(iii) provides increased salary rates for employees who do not have any~~
 5.4 ~~employer-paid group insurance coverages;~~

5.5 ~~(4) (e) Except as provided in section 353.86 or 353.87, "salary" also does not mean~~
 5.6 ~~compensation of any kind paid to volunteer ambulance service personnel or volunteer~~
 5.7 ~~firefighters, as defined in subdivision 35 or 36;~~

5.8 ~~(5) the amount of compensation that exceeds the limitation provided in section~~
 5.9 ~~356.611; and~~

5.10 ~~(6) (f) "Salary" also does not mean amounts that are paid by a federal or state grant~~
 5.11 ~~for which the grant specifically prohibits grant proceeds from being used to make pension~~
 5.12 ~~plan contributions, unless the contributions to the plan are made from sources other than~~
 5.13 ~~the federal or state grant.~~

5.14 ~~(c) Amounts provided to an employee by the employer through a grievance~~
 5.15 ~~proceeding or a legal settlement are salary only if the settlement is reviewed by the~~
 5.16 ~~executive director and the amounts are determined by the executive director to be~~
 5.17 ~~consistent with paragraph (a) and prior determinations.~~

5.18 Sec. 8. Minnesota Statutes 2012, section 353.01, subdivision 17a, is amended to read:

5.19 Subd. 17a. **Average salary.** (a) "Average salary;" for purposes of calculating a
 5.20 retirement annuity under section 353.29, subdivision 3, means an amount ~~equivalent to~~
 5.21 determined as the average of the highest salary annual salaries of the member, police
 5.22 officer, or firefighter, whichever applies, upon which employee contributions were paid for
 5.23 any five successive years of allowable service, based on dates of salary periods as listed
 5.24 on salary deduction reports. Average salary must be based upon all allowable service if
 5.25 this service is less than five years.

5.26 (b) "Average salary" may not include any reduced salary paid during a period
 5.27 in which the employee is entitled to benefit payments from workers' compensation for
 5.28 temporary disability, unless the average salary is higher, including this period.

5.29 Sec. 9. Minnesota Statutes 2012, section 353.86, subdivision 4, is amended to read:

5.30 Subd. 4. **Compensation.** Notwithstanding any provision of section 353.01,
 5.31 subdivision 10, or 356.612 to the contrary, compensation received for service rendered by
 5.32 volunteer ambulance service personnel to whom subdivision 1 applies who exercise their
 5.33 option in accordance with subdivision 2 ~~shall~~ must be considered salary.

6.1 Sec. 10. Minnesota Statutes 2012, section 353.87, subdivision 1, is amended to read:

6.2 Subdivision 1. **Participation.** Except as provided in subdivision 2, a volunteer
6.3 firefighter, as defined in section 353.01, subdivision 36, who, on June 30, 1989, was
6.4 a member of, and a participant in, the general employees retirement fund plan of the
6.5 Public Employees Retirement Association or the public employees police and fire fund
6.6 retirement plan and was making contributions to either of those funds based, at least in
6.7 part, on compensation for services performed as a volunteer firefighter shall continue as
6.8 a member of, and a participant in, the general employees retirement fund plan of the
6.9 Public Employees Retirement Association or the public employees police and fire fund
6.10 retirement plan and compensation for services performed as a volunteer firefighter must be
6.11 considered salary under sections 353.01, subdivision 10, and 356.612.

6.12 Sec. 11. Minnesota Statutes 2012, section 354.05, subdivision 13a, is amended to read:

6.13 Subd. 13a. **Average salary.** (a) "Average salary," for the purpose of determining the
6.14 member's retirement annuity, means the average salary annual salaries under subdivision
6.15 35 and section 356.612 upon which contributions were made for the highest five
6.16 successive years of formula service credit.

6.17 (b) "Average salary" may not include any more than the equivalent of 60 monthly
6.18 salary payments.

6.19 (c) "Average salary" must be based upon determined using all years of formula
6.20 service credit if ~~this~~ formula service credit is less than five years.

6.21 Sec. 12. Minnesota Statutes 2012, section 354.05, subdivision 35, is amended to read:

6.22 Subd. 35. **Salary.** (a) ~~Subject to the limitations of section 356.611,~~ "Salary"
6.23 means ~~the periodic compensation, upon which member contributions are required before~~
6.24 ~~deductions for deferred compensation, supplemental retirement plans, or other voluntary~~
6.25 ~~salary reduction programs~~ amounts paid to a teacher by an employing unit under section
6.26 356.612.

6.27 (b) "Salary" does not mean:

6.28 (1) ~~lump-sum annual leave payments;~~

6.29 (2) ~~lump-sum wellness and sick leave payments;~~

6.30 (3) ~~employer-paid amounts used by an employee toward the cost of insurance~~

6.31 ~~coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health~~

6.32 ~~care expense accounts, day care expenses, or any payments in lieu of any employer-paid~~

6.33 ~~group insurance coverage, including the difference between single and family rates that~~

7.1 ~~may be paid to a member with single coverage and certain amounts determined by the~~
 7.2 ~~executive director to be ineligible;~~

7.3 ~~(4) any form of payment made in lieu of any other employer-paid fringe benefit or~~
 7.4 ~~expense;~~

7.5 ~~(5) any form of severance payments;~~

7.6 ~~(6) workers' compensation payments;~~

7.7 ~~(7) disability insurance payments, including self-insured disability payments;~~

7.8 ~~(8) payments to school principals and all other administrators for services that are in~~
 7.9 ~~addition to the normal work year contract if these additional services are performed on an~~
 7.10 ~~extended duty day, Saturday, Sunday, holiday, annual leave day, sick leave day, or any~~
 7.11 ~~other nonduty day; and~~

7.12 ~~(9) payments under section 356.24, subdivision 1, clause (4); and~~

7.13 ~~(10) payments made under section 122A.40, subdivision 12, except for payments for~~
 7.14 ~~sick leave that are accumulated under the provisions of a uniform school district policy~~
 7.15 ~~that applies equally to all similarly situated persons in the district.~~

7.16 ~~(c) Amounts provided to an employee by the employer through a grievance~~
 7.17 ~~proceeding or a legal settlement are salary only if the settlement is reviewed by the~~
 7.18 ~~executive director and the amounts are determined by the executive director to be~~
 7.19 ~~consistent with paragraph (a) and prior determinations.~~

7.20 Sec. 13. Minnesota Statutes 2012, section 354A.011, subdivision 7a, is amended to read:

7.21 Subd. 7a. **Average salary.** "Average salary," for purposes of computing a normal
 7.22 coordinated program retirement annuity under section 354A.31, subdivision 4 or 4a,
 7.23 means an amount equal to the average salary of the salaries under section 356.612 upon
 7.24 which contributions were made for the highest five successive years of service credit
 7.25 but may not, in any event, include any more than the equivalent of 60 monthly salary
 7.26 payments. Average salary must be based upon all years of allowable service credit if ~~this~~
 7.27 allowable service credit is less than five years.

7.28 Sec. 14. Minnesota Statutes 2012, section 354A.011, subdivision 24, is amended to read:

7.29 Subd. 24. **Salary; covered salary.** ~~(a) Subject to the limitations of section 356.611,~~
 7.30 ~~"Salary" or "covered salary" means the entire compensation, upon which member~~
 7.31 ~~contributions are required and made, that is paid to a teacher before deductions for deferred~~
 7.32 ~~compensation, supplemental retirement plans, or other voluntary salary reduction programs~~
 7.33 amounts paid to a teacher by the respective employing unit under section 356.612.

7.34 (b) "Salary" does not mean:

- 8.1 ~~(1) lump-sum annual leave payments;~~
- 8.2 ~~(2) lump-sum wellness and sick leave payments;~~
- 8.3 ~~(3) employer-paid amounts used by an employee toward the cost of insurance~~
- 8.4 ~~coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health~~
- 8.5 ~~care expense accounts, day care expenses, or any payments in lieu of any employer-paid~~
- 8.6 ~~group insurance coverage, including the difference between single and family rates that~~
- 8.7 ~~may be paid to a member with single coverage, and certain amounts determined by the~~
- 8.8 ~~executive secretary or director to be ineligible;~~
- 8.9 ~~(4) any form of payment that is made in lieu of any other employer-paid fringe~~
- 8.10 ~~benefit or expense;~~
- 8.11 ~~(5) any form of severance payments;~~
- 8.12 ~~(6) workers' compensation payments;~~
- 8.13 ~~(7) disability insurance payments, including self-insured disability payments;~~
- 8.14 ~~(8) payments to school principals and all other administrators for services that are in~~
- 8.15 ~~addition to the normal work year contract if these additional services are performed on an~~
- 8.16 ~~extended duty day, Saturday, Sunday, holiday, annual leave day, sick leave day, or any~~
- 8.17 ~~other nonduty day; and~~
- 8.18 ~~(9) payments under section 356.24, subdivision 1, clause (4)(ii); and~~
- 8.19 ~~(10) payments made under section 122A.40, subdivision 12, except for payments for~~
- 8.20 ~~sick leave that are accumulated under the provisions of a uniform school district policy~~
- 8.21 ~~that applies equally to all similarly situated persons in the district.~~
- 8.22 ~~(e) Amounts provided to an employee by the employer through a grievance~~
- 8.23 ~~proceeding or a legal settlement are salary only if the settlement is reviewed by the~~
- 8.24 ~~executive director and the amounts are determined by the executive director to be~~
- 8.25 ~~consistent with paragraph (a) and prior determinations.~~

8.26 Sec. 15. Minnesota Statutes 2012, section 354A.108, is amended to read:

8.27 **354A.108 PAYMENT BY TEACHERS COLLECTING WORKERS'**

8.28 **COMPENSATION.**

8.29 (a) A member of the Duluth Teachers Retirement Fund Association who is receiving

8.30 temporary workers' compensation payments related to the member's teaching service and

8.31 who either is receiving a reduced salary from the employer or is receiving no salary from

8.32 the employer is entitled to receive allowable service and salary credit under subdivisions

8.33 4 and 24 and section 356.612 for the period of time that the member is receiving the

8.34 workers' compensation payments upon making the required payment amount.

9.1 (b) The required amount payable by the member must be calculated first by
 9.2 determining the differential salary amount, which is the difference between the salary
 9.3 received, if any, during the period of time that the member is collecting workers'
 9.4 compensation payments, and the salary that the member received for an identical length
 9.5 period immediately before collecting the workers' compensation payments. The member
 9.6 shall pay an amount equal to the employee contribution rate under section 354A.12,
 9.7 subdivision 1, multiplied by the differential salary amount.

9.8 (c) If the member makes the employee payment under this section, the employing
 9.9 unit shall make an employer payment to the Duluth Teachers Retirement Fund Association
 9.10 equal to the employer contribution rate under section 354A.12, subdivision 2a, multiplied
 9.11 by the differential salary amount.

9.12 (d) Payments made under this subdivision are payable without interest if paid by
 9.13 June 30 of the year during which the workers' compensation payments are received by the
 9.14 member. If paid after June 30, payments made under this subdivision must include interest
 9.15 at the rate of 8.5 percent per year. Payment under this section must be completed within
 9.16 one year of the termination of the workers' compensation payments to the member.

9.17 (e) Allowable service and salary are creditable under subdivisions 4 and 24 and
 9.18 section 356.612 upon receipt of the payments required under paragraphs (b), (c), and (d).

9.19 Sec. 16. **[356.612] DEFINITION OF COVERED SALARY.**

9.20 Subdivision 1. Salary; salary inclusions. (a) "Salary means wages or other periodic
 9.21 compensation that was paid to a person with retirement coverage by an enumerated
 9.22 retirement plan upon which employee or member contributions were required by law and
 9.23 were made before any deductions for deferred compensation, supplemental retirement
 9.24 plans, or other voluntary salary reduction programs.

9.25 (b) "Salary" also means an amount paid to a plan member by the employing unit
 9.26 through a grievance proceeding or through a legal settlement if the grievance proceeding
 9.27 result or settlement is provided to the executive director for review within 90 days of its
 9.28 rendering and the amount is determined by the executive director to be consistent with
 9.29 paragraph (a) and with any prior determinations under this paragraph.

9.30 (c) "Salary" does not mean:

9.31 (1) lump sum sick leave payments;

9.32 (2) lump sum annual leave payments;

9.33 (3) lump sum wellness payments;

9.34 (4) lump sum overtime payments made at the time of separation of covered service;

10.1 (5) employer-paid amounts used by a plan member toward the cost of insurance
10.2 coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health
10.3 care expense accounts, and day care expenses;

10.4 (6) payments in lieu of any employer-paid group insurance coverage, including
10.5 the difference between single rates and family rates that may be paid to a plan member
10.6 who has single coverage;

10.7 (7) an amount equal to that amount which the employing unit would otherwise pay
10.8 toward single or family insurance coverage for a plan member when, through a contract or
10.9 agreement with some employees, but not all employees:

10.10 (i) the employing unit discontinues or, for newly hired employees, does not provide
10.11 a payment toward the cost of the plan member's selected insurance coverages under a
10.12 group plan offered by the employer;

10.13 (ii) the employing unit makes the plan member solely responsible for all
10.14 contributions toward the cost of the plan member's selected insurance coverages under
10.15 a group plan offered by the employing unit, including any amount that the employing
10.16 unit makes toward other plan members' selected insurance coverages under a group plan
10.17 offered by the employing unit; or

10.18 (iii) the employing unit provides increased salary rates for plan members who do not
10.19 have any employing unit-paid group insurance coverages;

10.20 (8) any form of severance payment;

10.21 (9) workers' compensation payments unless allowable service and salary credit
10.22 are obtained by the plan member by making a payment in lieu of member contributions
10.23 under the applicable law;

10.24 (10) disability insurance payments, including self-insurance disability payments;

10.25 (11) amounts contributed under a benevolent vacation and sick leave donation
10.26 program;

10.27 (12) employer contributions to a deferred compensation program or to a tax-sheltered
10.28 annuity program; or

10.29 (13) amounts in excess of the limitations of section 356.611.

10.30 Subd. 2. **Severance payment.** "Severance payment" includes, but is not limited to,
10.31 the following:

10.32 (1) a payment made by an employing unit to a plan member for the purpose of
10.33 inducing the plan member to terminate employment;

10.34 (2) a payment, or a portion of a payment, that is made by an employing unit to
10.35 a plan member if not clearly for the performance of employment services by the plan
10.36 member to the employing unit;

11.1 (3) a payment to a plan member by the employing unit for the purpose of inducing
 11.2 the plan member to serve or to compensate the plan member for services as an advisor
 11.3 to the person's successor or as a consultant to the employing unit under an agreement
 11.4 to terminate employment entered into during the period of the last two years before
 11.5 retirement and where the compensation for those future services is significantly different
 11.6 than the person's most recent salary;

11.7 (4) a payment made to a plan member by the employing unit under a procedure that
 11.8 allows the plan member to designate the timing of the payment and the occurrence of the
 11.9 payment was during the allowable service period used to calculate the average annual
 11.10 salary for purposes of an annuity or benefit; and

11.11 (5) a lump sum payment made to a plan member by the employing unit during the
 11.12 time period during which occurs the highest five successive years of salary for additional
 11.13 services to be performed or previously performed without pay during other years of salary.

11.14 Subd. 3. **Covered retirement plan.** "Covered retirement plan" is a retirement
 11.15 plan listed in section 356.30, subdivision 3.

11.16 Sec. 17. Minnesota Statutes 2012, section 490.121, subdivision 21, is amended to read:

11.17 Subd. 21. **Final average compensation.** "Final average compensation" means the
 11.18 total amount of salary payable under section 356.612 paid to a judge in the highest five
 11.19 years out of the last ten years before the termination of judicial service, divided by five if
 11.20 the number of years of service by the judge equals or exceeds ten. If the number of years
 11.21 of service by the judge is less than ten, but more than five, the highest five years of salary
 11.22 under section 356.612 must be counted. If the number of years of service by the judge is
 11.23 less than five, the aggregate total salary under section 356.612 for the period of service
 11.24 must be divided by the number of months in the period and multiplied by 12.

11.25 Sec. 18. **REPEALER.**

11.26 Minnesota Statutes 2012, sections 354.05, subdivision 35a; and 490.121, subdivision
 11.27 21a, are repealed.

11.28 Sec. 19. **EFFECTIVE DATE.**

11.29 Sections 1 to 18 are effective July 1, 2013."

1.1 moves to amend S.F. No. 273; H.F. No. 343, as follows:

1.2 Page 1, line 17, delete "(7)"

1.1 moves to amend S.F. No. 273; H.F. No. 343, as follows:

1.2 Page 1, line 17, strike "or" and after "(10)," insert "or (12)"

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 273

(SENATE AUTHORS: PAPPAS)

DATE	D-PG	OFFICIAL STATUS
02/06/2013	159	Introduction and first reading Referred to State and Local Government

1.1 A bill for an act
 1.2 relating to retirement; Public Employees Retirement Association; revising
 1.3 the definition of salary; amending Minnesota Statutes 2012, section 353.01,
 1.4 subdivision 10.

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

1.6 Section 1. Minnesota Statutes 2012, section 353.01, subdivision 10, is amended to read:

1.7 Subd. 10. **Salary.** (a) Subject to the limitations of section 356.611, "salary" means:

1.8 (1) the wages or periodic compensation of paid to a public employee; by the
 1.9 employing governmental subdivision before;

1.10 (i) employee retirement deductions that are designated as picked-up contributions
 1.11 under section 356.62; and

1.12 (ii) any employee-elected tax-sheltered deductions for deferred compensation,
 1.13 supplemental retirement plans, or other voluntary salary reduction programs; and also
 1.14 means "wages" and includes net income from fees that would have otherwise been
 1.15 available as a cash payment to the employee;

1.16 (2) for a public employee who is covered by a supplemental retirement plan
 1.17 under section 356.24, subdivision 1, clause (7), (8), (9), or (10), ~~which require all plan~~
 1.18 ~~contributions be made by the employer, the contribution~~ contributions to the applicable
 1.19 supplemental retirement plan when an agreement between the parties establishes that the
 1.20 ~~contribution~~ contributions will either result in a mandatory reduction of employees' wages
 1.21 through payroll withholdings, or be made in lieu of an amount that would otherwise be
 1.22 paid as wages; ~~and~~

1.23 (3) for a public employee who has prior service covered by a local police or
 1.24 firefighters relief association that has consolidated with the Public Employees Retirement

2.1 Association or to which section 353.665 applies and who has elected coverage either
 2.2 under the public employees police and fire fund benefit plan under section 353A.08
 2.3 following the consolidation or under section 353.665, subdivision 4, the rate of salary
 2.4 upon which member contributions to the special fund of the relief association were made
 2.5 prior to the effective date of the consolidation as specified by law and by bylaw provisions
 2.6 governing the relief association on the date of the initiation of the consolidation procedure
 2.7 and the actual periodic compensation of the public employee after the effective date of
 2.8 consolidation;

2.9 (4) for a public employee who receives payment through a grievance, settlement,
 2.10 or court order that is attached to a specific period in which the employee's regular salary
 2.11 was not earned or paid to the member due to suspension, leave of absence, or period of
 2.12 involuntary termination that is not a wrongful discharge under section 356.50, the amount
 2.13 that is equivalent to the earnings the member would have otherwise earned during the
 2.14 applicable period;

2.15 (5) for a member who is absent from employment by reason of an authorized
 2.16 personal, parental, medical, or military leave of absence, the amount paid to the employee
 2.17 during the leave period that is equivalent to the earnings the member would have otherwise
 2.18 earned during the applicable period; and

2.19 (6) for a public employee who receives performance or merit bonus payment under a
 2.20 written compensation plan, policy, or bargaining agreement, the compensation paid to the
 2.21 employee for attaining performance goals, duties, or measures during a specified period
 2.22 of employment. Performance or merit pay may be in addition to regular salary or may
 2.23 replace regular salary increases.

2.24 (b) Salary does not mean:

2.25 (1) the fees paid to district court reporters;

2.26 (2) unused annual, vacation, personal, or sick leave payments, in the form of
 2.27 lump-sum or periodic payments, or the value of hours donated under a benevolent vacation
 2.28 and sick leave donation program;

2.29 (3) payments for accrued compensatory or overtime hours that are made at the time
 2.30 of separation from service and that include pay for work performed in a calendar or school
 2.31 year prior to the year in which the payment is issued;

2.32 (4) any form of severance payments; or retirement incentive payments;

2.33 (5) an allowance payment or per diem for or reimbursement of expenses;

2.34 (6) lump-sum settlements not attached to a specific earnings period; or

2.35 (7) workers' compensation payments or disability insurance payments, including
 2.36 payments from self-insured employers;

3.1 ~~(2)~~ (8) employer-paid amounts used by an employee toward the cost of insurance
 3.2 coverage, ~~employer-paid fringe benefits~~, flexible spending accounts, cafeteria plans, health
 3.3 care expense accounts, day care expenses, or any payments in lieu of any employer-paid
 3.4 group insurance coverage, including the difference between single and family rates that
 3.5 may be paid to a member with single coverage and certain amounts determined by the
 3.6 executive director to be ineligible;

3.7 (9) employer-paid fringe benefits including, but not limited to:

3.8 (i) employer-paid premiums for all types of insurance;

3.9 (ii) membership dues or fees for use of fitness or recreational facilities;

3.10 (iii) incentive payments or cash awards relating to wellness programs;

3.11 (iv) the value of any nonmonetary benefits;

3.12 (v) any form of payment made in lieu of an employer-paid fringe benefit;

3.13 (vi) an employer-paid amount made to a deferred compensation or tax-sheltered
 3.14 annuity program; and

3.15 (vii) any amount paid by the employer as a supplement to salary, either as a
 3.16 lump-sum amount or a fixed or matching amount paid on a recurring basis, that is not
 3.17 available to the employee as cash;

3.18 ~~(3)~~ (10) the amount equal to that which the employing governmental subdivision
 3.19 would otherwise pay toward single or family insurance coverage for a covered employee
 3.20 when, through a contract or agreement with some but not all employees, the employer:

3.21 (i) discontinues, or for new hires does not provide, payment toward the cost of the
 3.22 employee's selected insurance coverages under a group plan offered by the employer;

3.23 (ii) makes the employee solely responsible for all contributions toward the cost of
 3.24 the employee's selected insurance coverages under a group plan offered by the employer,
 3.25 including any amount the employer makes toward other employees' selected insurance
 3.26 coverages under a group plan offered by the employer; and

3.27 (iii) provides increased salary rates for employees who do not have any
 3.28 employer-paid group insurance coverages;

3.29 ~~(4)~~ (11) except as provided in section 353.86 or 353.87, compensation of any
 3.30 kind paid to volunteer ambulance service personnel or volunteer firefighters, as defined
 3.31 in subdivision 35 or 36;

3.32 ~~(5)~~ (12) the amount of compensation that exceeds the limitation provided in section
 3.33 356.611; ~~and~~

3.34 ~~(6)~~ (13) amounts paid by a federal or state grant for which the grant specifically
 3.35 prohibits grant proceeds from being used to make pension plan contributions, unless the
 3.36 contributions to the plan are made from sources other than the federal or state grant; and

4.1 (14) bonus pay that is not performance or merit pay under paragraph (a), clause (6).

4.2 (c) Amounts, other than those provided under paragraph (a), clause (4), provided to
4.3 an employee by the employer through a grievance proceeding, a court order, or a legal
4.4 settlement are salary only if the settlement or court order is reviewed by the executive
4.5 director and the amounts are determined by the executive director to be consistent with
4.6 paragraph (a) and prior determinations.

4.7 **EFFECTIVE DATE.** This section is effective the day following final enactment,
4.8 except that paragraph (b), clause (9), item (vii), is effective retroactively from August
4.9 1, 2007.