



H.F. 3798
(Murphy, M.)

S.F. 3324
(Betzold)

Executive Summary of Commission Staff Materials

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| <u>Affected Pension Plan(s):</u> | MSRS, PERA, TRA, First Class City Teacher Plans |
| <u>Relevant Provisions of Law:</u> | Portions of Minnesota Statutes, Chapters 43A, 352, 352D, 353, 353D, 353F, 354, 356 |
| <u>General Nature of Proposal:</u> | Benefit-related and administrative provisions for MSRS, PERA, TRA, first class city teacher plans |
| <u>Date of Summary:</u> | April 3, 2008 |

Specific Proposed Changes

- Increases TRA reemployed annuitant exempt income limit to \$46,000.
- Revises reemployed annuitant account holding period for numerous plans to permit earlier receipt.
- Revises and restricts state employee postretirement option program to make it more likely that the program will not violate federal in-service distribution requirements.
- Changes the TRA strike period and leave of absence service credit purchase procedures by revising time limits and interest computation procedures.
- Revises MSRS and PERA leave of absence service credit purchase provisions.
- Prohibits a PERA employed disabilitant from receiving service credit in a PERA plan unless further disability payments are waived.
- Clarifies MSRS-General to MSRS-Correctional transfer procedures.
- Makes other changes of an administrative nature.

Policy Issues Raised by the Proposed Legislation

1. Whether many of the provisions in the bill are appropriate for a bill which is supposed to be administrative in nature.
2. Whether the state employee postretirement option program should be revised or repealed.
3. Complexity of the programs and interaction between programs making it difficult for Legislature to grasp the full extent of the changes and the policy implications of those changes.
4. Proposed changes in reemployed annuitant exempt earnings limit will create considerable discrepancies in policies between plans.
5. Whether the changes in reemployed annuitant savings accounts are appropriate.
6. Divergent changes in leave of absence/strike period provisions will create differences in treatment between similar plans, and partially reverses move last year to uniform treatment.
7. Whether to create a system to handle privatization requests, rather than handling each proposed privatization through separate bills.
8. Whether to approve removal of three institutions added to PERA privatization chapter in the past, but for which the purchase or leasing agreement failed to occur.
9. Whether to depart from existing policy by permitting in-service distributions for TRA teachers who are at least age 62.

Potential Amendments

- H3798-1A removes Article 1.
- H3798-2A adds an effective date, the day following final enactment.
- H3798-3A repeals this program, effective July 1, 2009, with a further requirement that no post-retirement option employment positions may be created or renewed after July 1, 2008.
- H3798-4A revises language to ensure that all PERA termination of service requirements and separation requirements in PERA law that might prohibit PERA staff from taking part in the post-retirement option program are waived for purposes of using this program.
- H3798-5A adds a similar minimum age 62 requirement if the MnSCU returning annuitant program found in MSRS, TRA, and first class city teacher law has the same conflict with federal requirements.

- H3798-6A removes section 1, which would have limited to program to those who are at least age 62, and replaces it with revisions to keep the program open to all eligible retirees with the added restriction that no initial offer to enter the program can be made until at least 30 days after the effective date of retirement, and there must be a 30-day break between the end of a post-retirement option appointment and the offer of a continuation or renewal.
- H3798-7A also removes section 1 and replaces it with revisions to keep the program open to all eligible retirees with the added restriction that no initial offer to enter the program, and no renewal offer, can be made until at least 30 days after the effective date of retirement, unless the individual is at least age 62.
- H3798-8A deletes Article 2, Section 1, the increase in the TRA exempt income limit to \$46,000.
- H3798-9A deletes the new exempt limit amount, \$46,000, and inserts an amount to be specified by the Commission or other legislative committee.
- H3798-10A modifies MSRS, PERA, and first class city teacher plan law to permit use of the same \$46,000 limit that would be created for TRA reemployed annuitants under Section 1.
- H3798-11A would make Article 2, Section 1, effective on January 1, 2009, rather than retroactively from January 1, 2008.
- H3798-12A removes Article 2, Section 2.
- H3798-13A reinstates the requirement that the individual be at least age 65 before the assets of the account are distributed to the individual.
- H3798-14A revises the effective date to be January 1, 2009.
- H3798-15A deletes the sections of this article and replaces them with three sections.
- H3798-16A is comparable to Amendment H3798-13A except in the leave of absence payment procedure language.
- H3798-17A ratifies and makes operative into law TRA's strike period provision, as amended over time.
- H3798-18A removes Article 4 from the bill.
- H3798-19A removes Article 5, Section 1.
- H3798-20A can be used if the Commission concludes that an extension of time for Clearwater County to file local approval forms should not be permitted.
- H3798-21A can be used to remove from the bill the PERA and TRA sections which revise policies regarding terminations if there is an agreement prior to termination to return to employment.
- H3798-22A revises the PERA statement in law regarding terminations; the policy applies only to individuals who return as employees and not those who return as independent contractors of employees of independent contractors.
- H3798-23A reinstates the PERA leave of absence service credit purchase provision, as enacted last year, except for adding the statement that payment may be made anytime prior to termination of service.
- H3798-24A removes PERA's proposed limitation on additional plan coverage for reemployed disabilitants.
- H3798-25A revises the Public Employees Defined Contribution (PEDC) investment option provision by permitting the Commission to specify a date or a time period to be specified after which the revised investment option election is effective.
- H3798-26A revises the full actuarial value computation procedure used by all plans whenever a full actuarial value service credit purchase is to be computed, by replacing "the member's effective date of retirement" with "termination of service," making the terms consistent with the procedure almost always followed by the Commission.
- H3798-27A retains MSRS leave of absence service credit purchase provision as enacted last year. The amendment removes Article 7, Section 1, from the bill.
- H3798-28A removes the MSRS-Unclassified Plan surviving spouse term-certain provision, from the bill.
- H3798-29A removes term-certain options in TRA and the first class city teacher plans.
- H3798-30A provides an alternative solution to the MSRS salary cap enforcement action by removing Section 6 from the bill and replacing it with a repeal of a repealer, removing the 2005 repeal of Minnesota Statutes 2004, Section 356.611, Subdivision 1. That would validate the action taken in the 2005 First Special Session.
- H3798-31A removes the TRA provision which, as revised, would permit in-service distributions to those over age 62.
- H3798-32A leaves Article 8, Section 1, in the bill, but revises it so that the changes in this provision are similar to those which PERA seeks to add to its termination provision.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: H.F. 3798 (Murphy, M.); S.F. 3324 (Betzold): MSRS, PERA, TRA; Benefit-Related and Administrative Provisions

DATE: March 5, 2008

General Summary of H.F. 3798 (Murphy, M.); S.F. 3324 (Betzold)

H.F. 3798 (Murphy, M.); S.F. 3324 (Betzold) amends benefit-related and administrative provisions for Minnesota State Retirement System (MSRS), Public Employees Retirement Association (PERA), and Teachers Retirement Association (TRA) as follows:

- (a) increases TRA reemployed annuitant exempt income limit to \$46,000;
- (b) revises the reemployed annuitant account holding period in various plans (including first class city teacher plans) to permit earlier receipt;
- (c) restricts the state employee post-retirement program to conform with federal in-service distribution restrictions;
- (d) changes the TRA strike period and leave of absence service credit purchase procedures by revising time limits and interest computation procedures;
- (e) revises MSRS and PERA leave of absence service credit purchase provisions;
- (f) prohibits a PERA employed disabilitant from receiving service credit in a PERA plan unless further disability payments are waived;
- (g) clarifies General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) to Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) transfers of past service procedure; and
- (h) makes various other changes of a largely administrative nature.

A section-by-section summary and analysis follows.

Article 1 - Post Retirement Option Revision

Article 1, Section 1, revises Minnesota Statutes 2007 Supplement, Section 43A.346, Subdivision 2, the state employee post-retirement option program eligibility provision, by (1) adding a requirement that an eligible individual must be at least age 62; and (2) by stating that, for PERA staff who are covered by this provision, a PERA provision requiring a 30-day separation from service for a termination to be considered valid for purposes of drawing a PERA annuity is waived for purposes of this post-retirement option program.

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

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

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

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

Based on a review of federal compliance requirements, PERA concluded that this program as stated in current law is not compliant with federal requirements. Because active employees are making arrangements to return to employment with the employing unit following a "termination," PERA is concerned that the federal government would not view these terminations as valid, and that the retirement benefits these individuals begin to draw would be viewed as in-service distributions. In general, allowing in-service distributions is inconsistent with remaining a qualified plan for tax purposes.

PERA's suggestion for addressing this problem is to restrict access to this program to those who are at least age 62. The proposed resolution is based on language that was part of the federal Pension Protection Act of 2006. That act amended Section 401(a) of the Internal Revenue Code by adding a paragraph stating:

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

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

The other change PERA proposes is to add a waiver stating that PERA's 30-day separation from service requirement, found in PERA's definition of retirement (Minnesota Statutes, Section 353.01, Subdivision 28) which requires a complete separation from covered employment for at least 30 days, be waived for purposes of this state employee post-retirement option program. PERA is requesting this waiver because under this program there may be no true separation from service.

Policy issues raised by Article 1, Section 1, are:

1. Appropriate for Administrative Bill. The issue is whether it is appropriate to consider this provision in an administrative bill given the numerous issues it raises and the limited time currently available to the Commission to review a complex matter.
2. Proper Current Action. It would appear that the Legislature, when it created this program in 2005, inadvertently created in-service distribution problems for the pension funds of the employees who take part in this program. The existing law does appear to be out of compliance with federal requirements. The issue is what to do about that problem. PERA is suggesting revising the program to limit it to the group for which an in-service distribution is permitted under federal law, those who are at least age 62. Another alternative is to end the program, or at least suspend it until a broad range of issues involving federal requirements, the need for the program, program design, and how this program integrates with other post-retirement employment, pre-retirement transition-to-full retirement provisions, and early retirement provisions can be studied.
3. In-Service Distribution Issues. The issue is whether the Commission and Legislature want to knowingly permit in-service distributions (to those who are at least age 62), at least on a limited basis to individuals who are in this particular program. In PERA's case, the staff of PERA is covered under this section, but the broad PERA-covered membership in school districts, cities, and

counties is not. Permitting in-service distributions to individuals in this program is likely to create pressure to permit this treatment for a much larger group, any members of our public pension plans who are at least age 62. While in-service distributions may be permitted under federal law for the age 62 and older age group, the Commission may wish to address the question of whether this reflects good pension policy. This is not a subject that the Commission has previously addressed. The Commission may choose to be aware that the Teachers Retirement Association (TRA), in Article 8, Section 1, of this proposed draft legislation, is proposing to permit in-service distributions to any TRA member who is at least age 62 if the individual submitted a termination notice, even individuals who immediately return to full employment. Permitting in-service distributions is contrary to a core concept that the purpose of retirement plan benefits is to support individuals who are truly retired.

4. Consensus Regarding Appropriate Changes. The suggested changes in this provision came from PERA. However, most of the individuals in this program are drawing benefits from Minnesota State Retirement System (MSRS) plans. A question is whether MSRS agrees there is a problem, and whether MSRS agrees that the proposed change is an appropriate solution.
5. Effective Date Questions. Currently, no effective date is included for this provision. The Commission may wish to consider adding an effective date. As part of this consideration, the Commission may wish to consider that the federal law change permitting in-service distributions if the individual is at least age 62 is effective for plan years after December 31, 2006.
6. Issue of Employees in Program Who Are Less Than Age 62. The issue is what happens to individuals currently in the program who are not at least age 62. Presumably, if the proposed changes in this section are enacted, no new employees under age 62 will be permitted in the program, but will existing employees under age 62 be terminated from the program? The Commission may wish to hear testimony on this matter.
7. Scope of Change. The issue is the scope of the change, whether to limit change to this one program, or whether similar changes are needed in other programs. For example, there are numerous provisions in law which permit Minnesota State Colleges and Universities System (MnSCU) employees to terminate service and return to work under an agreement under which they will not earn more than \$46,000 and will be employed on a one-third to two-thirds of full-time basis. These provisions can be construed as requiring, or certainly permitting, these employee/employer agreements to be reached prior to the individual terminating service for purposes of commencing the annuity. If the post-retirement option program under Section 43A.346 has an in-service distribution problem worthy of addressing, it would seem that these MnSCU employee provisions share that flaw. These MnSCU provisions are found in several different defined benefit plans which might provide coverage to some MnSCU employees. The MSRS provision is Section 352.1155, the TRA provision is Section 354.445, and the first class city teacher plan provision is Section 354A.31, Subdivision 3a.
8. Interaction with Other Provisions. The Commission may choose to be aware that other provisions of law, some included in the current bill, interact with this provision. Changes in those provisions may impact the need for this program or alter how to best structure this program. Article 2, Section 2, of this bill would revise the treatment of reemployed annuitant savings accounts, permitting a retiree to access those accounts far sooner following the end of the reemployment period. If that provision is enacted, it may impact the need for or utilization of the post-retirement option program, which waives the use of reemployed annuitant accounts for individuals who are in the program. Another provision, Article 2, Section 1, would greatly increase the amount that a retired TRA member, who is reemployed in TRA-covered employment, could earn before triggering deferrals to a reemployed annuitant account. The new maximum exempt reemployed annuitant salary would be \$46,000. If that change is made for TRA, similar increases for the retirees of other plans, including MSRS and PERA, are likely to also be enacted. If the maximum exempt income limit for all reemployed retirees were \$46,000, there may be little need for the post-retirement option program, at least as it is currently structured. The program contains a waiver from use of reemployed annuitant savings accounts for those who are in the program, but that may no longer be needed if a general \$46,000 exempt income limit were in place. The post-retirement option program requires a cutback in service, with no individual in the program being permitted to work more than 50 percent time. Few individuals would earn \$46,000 or more working at most half-time.

9. Other Bills/Alternative Resolution. The Commission may choose to be aware that another bill, H.F. 3436 (Nelson); S.F. 3136 (Betzold), a state employee post-retirement employment provision modification, is a joint MSRS/Department of Employee Relations bill which tries to address problems in the post-retirement option program, but in a different manner than that proposed in the bill currently before the Commission. Rather than limiting the program to those who are at least age 62, H.F. 3436 (Nelson); S.F. 3136 (Betzold) seeks to address in-service distribution problems by ensuring there is a true separation from service by adding a requirement that any offer, whether verbal or in writing, cannot be made until at least 30 days after the employee's retirement. The Commission might choose to delete this article from the current bill and deal with these issues when H.F. 3436 (Nelson); S.F. 3136 (Betzold) is heard.
10. Study. While the Commission and Legislature may feel a need to make some short-term changes in this program for federal compliance, the Commission and Legislature may also wish to study the general issue of transitioning into full retirement. Currently, there are programs which require individuals to terminate service, commence benefits, and be rehired on a less-than full-time basis. There are programs which permit individuals to start part-time employment for several years before they submit a resignation, without negatively impacting their high-five average salary when they do terminate and commence benefits. There are reemployed annuitant exempt earnings provisions (which differ from plan to plan, and with some plans having no provision) which probably impact where and if retirees will seek at least partial employment. Finally, there are many provisions which encourage early retirement, at ages where individuals are still quite productive, at the same time that federal government policies are discouraging early withdrawal from the workforce. There may be overlap between programs, there may also be gaps in coverage, and there are inconsistent treatments between similar groups, and early retirement policy as reflected in Minnesota law is in conflict with federal retirement policy. Perhaps further study is needed about government labor force needs and how to best meet those needs while remaining in compliance with federal code requirements.

Article 1 Amendments for Consideration

1. **Amendment H3798-1A** removes Article 1 in its entirety. The Commission may choose to take this action if the Commission concludes that given the complexity of the issues raised, the limited time available for Commission consideration, and no immediate harm will occur if no action is taken. The Commission may also choose to use this amendment if it wishes to address problems in the post-retirement option program within the context of H.F. 3436 (Nelson); S.F. 3136 (Betzold), rather than the current bill. If the Commission does not use Amendment H3798-1A, the following additional amendments are provided for Commission consideration.
2. **Amendment H3798-2A** adds an effective date, the day following final enactment. If the Commission concludes that a retroactive effective date to January 1, 2007, or some other past date is needed, that could be done by verbal amendment. A problem with a retroactive effective date is that the program probably had individuals in the program who are younger than age 62.
3. **Amendment H3798-3A** repeals this program, effective July 1, 2009, with a further requirement that no post-retirement option employment positions may be created or renewed after July 1, 2008. (Under law, these appointments last for one year. Thus, all existing positions in the program will have terminated by July 1, 2009.)
4. **Amendment H3798-4A** revises the new language on lines 2. 24 and 2.25, to ensure that all PERA termination of service requirements and separation requirements in PERA law that might prohibit PERA staff from taking part in the post-retirement option program are waived for purposes of using this program.
5. **Amendment H3798-5A** adds a similar minimum age 62 requirement to those programs if the Commission concludes that the MnSCU returning annuitant program found in MSRS, TRA, and first class city teacher law has the same conflict with federal requirements as this post-retirement option program.
6. **Amendment H3798-6A** is an alternative way of addressing issues with the post-retirement option program, using the solution proposed in H.F. 3436 (Nelson); S.F. 3136 (Betzold). The amendment removes section 1, which would have limited to program to those who are at least age 62, and replaces it with revisions to keep the program open to all eligible retirees with the added restriction that no initial offer to enter the program can be made until at least 30 days after the effective date

of retirement, and there must be a 30-day break between the end of a post-retirement option appointment and the offer of a continuation or renewal. This approach directly addresses concerns about Internal Revenue Service (IRS) separation from service requirements. A drawback, however, is that this adds considerable uncertainty. Individuals may be very reluctant to terminate service and commence an annuity without any offer to return to service part time. The Commission may wish to consider whether this program can be, or should be, salvaged.

7. **Amendment H3798-7A** is an alternative to Amendment H3798-6A, by marrying concepts of the current bill with those of H.F. 3436 (Nelson); S.F. 3136 (Betzold). The amendment removes section 1, which would have limited to program to those who are at least age 62, and replaces it with revisions to keep the program open to all eligible retirees with the added restriction that no initial offer to enter the program, and no renewal offer, can be made until at least 30 days after the effective date of retirement, unless the individual is at least age 62. If the individual is at least age 62, the 30-day separation requirements do not apply, and an offer can be made and accepted before termination of service. This approach addresses concerns about Internal Revenue Service (IRS) separation from service requirements, for those under age 62, and relies on the recently enacted federal provision which permits in-service distributions to those who are at least age 62. This has the drawbacks mentioned previously in the discussion of Amendment H3798-6A for those under age 62, and the drawback of explicitly permitting in-service distributions for those at least age 62. The Commission may wish to give serious consideration to the policy implications of permitting in-service distributions. It may be difficult to limit that policy to this program. The Commission may wish to consider whether this program can be, or should be, salvaged.

Article 2 - Revised Reemployed Annuitant Treatment

Article 2, Section 1, revises Minnesota Statutes, Section 354.44, Subdivision 5, TRA's reemployed annuitant provision, to exempt all earnings up to \$46,000, rather than applying the considerably lower earnings limits used by the Social Security Administration.

Under the current law version of Section 354.44, Subdivision 5, if a TRA retiree is reemployed in a position normally covered by TRA, the association will withhold from the annuity one-half of the amount in excess of the Social Security exempt earnings amount applicable for the given age of the retiree. Any withheld amount is transferred to a savings account for the individual and is disbursed to the individual with six percent interest approximately one year after attaining age 65, or one year after the reemployment terminates, whichever is later. According to the Social Security website, the Social Security exempt earnings limit in 2008 is \$13,560 in years prior to the individual attaining the Social Security normal retirement age, and is \$36,120 in the year the individual attains the Social Security normal retirement age. After that age, no limitations apply.

TRA is proposing to replace use of the Social Security exempt earnings limits, using instead a fixed \$46,000 earnings limit for those who have not attained the Social Security normal retirement age. As in current law, half of any amount in excess of the new exempt limit would be redirected to the retiree savings account.

Additional background on reemployed exempt earnings limits appears in **Attachment A**.

Policy issues raised by Article 2, Section 1, are:

1. Appropriateness for Inclusion in Administrative Bill/Alternative Bills. The issue is whether it is appropriate to include this provision in an administrative bill. The provision clearly impacts the annuity amounts that retirees may receive currently. Thus, the provision is clearly benefit-related, and the proposal has considerable policy implications. The Commission may choose to decide that this proposal is not suitable for an administrative bill. There is another bill revising the TRA and first class city teacher plan exempt income limit to \$46,000. That bill is H.F. 3415 (Pelowski); S.F. 3531 (Larson). The Commission may wish to handle this matter in the context of that bill rather than the current bill.
2. Reemployed Annuitant Lack of Additional Pension Coverage. The issue is whether reemployed annuitant policy, as it is currently evolving, will lead to having reemployed annuitants considered as active plan members, accruing further salary and service credit. They are providing considerable service and there is no limit to the salary they can receive. This may lead to pressure on the Legislature, or an equal protection lawsuit, to either permit these individuals to begin accruing a new additional annuity payable upon termination of the reemployment, or to having the

plans annually adjust the existing retirement annuity benefit to include the impact of the additional salary and service. This could create considerable administrative burden and add to plan costs.

3. Appropriateness of Increasing Reemployed Exempt Earnings. The issue is whether it is appropriate to increase the exempt amount given recent policy changes in this area. Not too long ago, individuals forfeited amounts withheld from their annuities due to income earned from reemployment covered by the same retirement system. The present policy, of redirecting any withheld amount to a savings account held for the individual, was a considerable relaxation of policy, removing much or all of the penalty previously associated with retiree reemployment, and perhaps encouraging individuals to retire and start drawing benefits too early, while they were still quite productive. The change that is now proposed will allow more income to be received currently by the reemployed retiree rather than being deferred to the future. The change may further encourage early retirement, which may not be in the best interest of the employing units.
4. Equity Issue; Limited Scope of Reemployed Exempt Earnings Provisions. The Commission may choose to consider that reemployed exempt earnings provisions in TRA or any of the other plans have a limited scope, leading to outcomes which some may deem inequitable. At most, reemployed exempt earnings provisions apply within a single plan or plan system. A TRA annuitant who becomes reemployed in a TRA-covered school district would be subject to TRA's reemployed annuitant provision. Similarly, an MSRS-General annuitant reemployed in a position covered by MSRS would be subject to the MSRS reemployed annuitant provision. However, a TRA retiree who became employed in an MSRS position, or as a teacher in Duluth or St. Paul, faces no exempt earnings limitation. Similarly, no exempt earnings limits apply to any retired public employee who becomes employed in the private sector. Given the incomplete coverage of these provisions, an argument can be made that increasing the exempt income limit for reemployment within the same system improves fairness.
5. Impact on the Plan, Reduction of Gain. A new higher exempt income limit would have a slight negative impact on the plan, because few individuals would reach the limit, thus nothing would be transferred to the account. For those who do have amounts transferred, the transfers would be for lesser amounts. Under law, the plan pays six percent annual interest on these accounts. This is less than the plans earn on assets, which historically has actually been in excess of the 8.5 percent rate or return assumption. Thus, long term, the plan will receive less gain.
6. Impact on the Plan, Contribution Loss if Retirees Replace Active Teachers. Increasing the TRA reemployed annuitant exempt earnings limit may encourage more teachers to retire early and then seek reemployment. This has a financial impact on the pension plan to the extent that retirees fill positions and provide service that otherwise would be provided by active plan members. Active plan members and the school districts that hire them make employee and employer contributions to the plan. No employee or employer contributions, however, are made if the hired individual is a retiree. TRA has recently expressed some concern about the extent to which retirees are providing services and displacing active plan members. Any displacement of active plan members shrinks the total covered salary base upon which contributions are made. All teacher plans have unfunded liability, and when the contribution base shrinks, the contribution rate needed to pay off the amount of unfunded liability must be increased proportionately. This puts a greater contribution burden on active teachers.

TRA has also observed that employers have a cost incentive to hire a retiree rather than an individual who would be an active plan member. By hiring the retiree, the employer avoids the employer contribution cost. TRA has discussed proposing a law change to require employers who hire retirees to make an employer contribution, to remove the financial incentive to hire a retiree rather than a younger teacher. That concept is not included in this bill.

7. Inconsistent With First Class City Teacher Plans and Other General Employee Plans. The current first class city teacher plan law is not consistent with TRA law, and the proposed TRA change creates considerably more discrepancy. The first class city teacher law, Section 354A.30, Subdivision 3, withholds from the annuity an amount equal to one-third of excess income, rather than one-half as in current TRA law. The TRA current law and this proposal are not consistent with existing PERA or MSRS law.

8. Generous Nature of the Change. The issue is whether the proposal is too generous. The proposal, which includes a \$46,000 exempt earnings limit, is more generous than that of any other plan and would use a limit much higher than the Social Security exempt income limit. All other plans which have a reemployed annuitant provision use the Social Security exempt income limit as the income level triggering a deferral to the reemployed annuitant savings account.
9. Undermining MnSCU Reemployed Annuity Program. The issue is that this change undermines a Minnesota State Colleges and Universities System (MnSCU) reemployed annuitant program. Minnesota Statutes, Section 354.445, is a reemployed annuitant program covering MnSCU's TRA-covered members. (As discussed previously, similar MnSCU provisions also appear in MSRS and first class city teacher law.) That program allows certain MnSCU retirees to return to MnSCU employment and be subject to a \$46,000 reemployment earnings exemption, comparable to the amount TRA is proposing for all TRA reemployed annuitants. However, the MnSCU program is more restrictive than TRA's current proposal. TRA's current proposal would provide a \$46,000 reemployed annuitant earnings limit to any TRA retiree who is less than the Social Security normal retirement age who becomes reemployed in a TRA-covered position. In contrast, the MnSCU provision in existing law requires that the individual have had at least ten years of TRA service credit, be employed full-time at MnSCU prior to termination of service, is reemployed by MnSCU under an agreement in which the individual will earn less than \$46,000 and work at least one-third and more than two-thirds of full time. If the current TRA proposal were to pass, it would make this MnSCU provision irrelevant. The TRA proposal is as generous, using the same \$46,000 exempt income amount, and contains no restrictions.
10. Scope. The issue is proper scope. If this provision were enacted for TRA, the first class city teacher plans are likely to request comparable treatment. The MSRS and PERA plan administrators are likely to argue that equity considerations would suggest that this treatment also be extended to their plans.
11. Interaction with Other Programs. As mentioned previously, using a more generous exempt reemployed income limit, if extended to the MSRS and PERA plans, may change program utilization and create a need to review the design of the post-retirement option program found in Article 1, Section 1. The Commission may also wish to consider that the next section in this bill revises the treatment of the reemployed retiree savings accounts which, when combined with the change proposed in this section, reflects a significant watering down of current policy.
12. Effective Date. The issue is whether this change should be January 1, 2008, as contained in the bill, or January 1, 2009. Using a January 1, 2008, date will allow TRA to apply the proposed new exempt salary amount to current school year earnings.

Article 2, Section 2, revises Minnesota Statutes, Section 356.47, Subdivision 3, dealing with accounts created for MSRS, PERA, TRA, and first class city teacher plan reemployed annuitants who had exceeded plan earnings limitations, to permit payment of the account value on the first of the month following one year after terminating the employment that lead to the account's creation, rather than at age 65 or the first of the month following one year after terminating the employment that lead to the account's creation, whichever is later.

The reemployed annuitant accounts created and disbursed under Section 356.47 represented a significant departure from policy in place before 2000. Prior to that time, individuals who exceeded exempt income thresholds had all or portions of their annual annuity amount forfeited to the pension fund. These forfeitures, which for some plans were triggered after very low reemployment salary limits, were a strong inducement for capable employees to remain in covered employment and to not commence benefit receipt until the end of their productive years. This policy was changed in 2000 (Laws 2000, Chapter 461, Article 2). Any amounts that under prior law would have been forfeited are instead transferred to a savings account held on behalf of the reemployed retiree, payable with six percent interest at age 65 or approximately 13 months after the reemployment ends, whichever is later. The request for that change came mainly from teachers. That change was recognized as having financial implications for the pension funds (they no longer had the financial gain received from forfeitures) and this represented a significant change in policy. The incentive to not commence an annuity prior to the time that an individual was truly leaving the workforce was considerably weakened. Because of the considerable policy and financial implications of that 2000 proposal, the proposal was not considered in the context of an administrative bill. The current proposal, which allows the savings account disbursements to occur at an earlier date than under current law, represents further change.

Policy issues raised by Article 2, Section 2, are:

1. Consistency with Commission Policy Principles. The issue is whether Commission members deem this proposal to be sufficiently compatible with the Commission's policy principle. The Legislative Commission on Pensions and Retirement Principles of Pension Policy states the following as the purpose of Minnesota public pension plans:

II.A. Purpose of Minnesota Public Pension Plans

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

The Commission might conclude, particularly when coupled with changes in exempt income limits which may occur as a result of Section 1 of Article 2, or proposals in other bills to extend or enhance "Rule of 90" and other early retirement provisions, that the Commission is being asked to depart too far from the role of pension plans outtransitioning employees at the end of their productive working lives, and not before. On the other hand, the Commission might choose to consider this proposal to revise Section 356.47, Subdivision 3, in isolation. This proposal shortens the delay in releasing the savings account assets to the retiree after the reemployment ends. If the purpose of retirement annuities is to support individuals in retirement, then the end of the reemployment may signify that the individual has truly withdrawn from the labor force, and speeding up the release of assets intended to support an individual in retirement may be appropriate. However, it might simply indicate that the individual has shifted employment to the private sector, or to public employment covered by another public pension plan system.

2. Scope. The provision being amended, Section 356.47, Subdivision 3, has broad application, covering retirees of MSRS, PERA, TRA, and first class city teacher plans. The Commission may choose to determine through brief testimony whether the administrators of these plans, particularly the first class city teacher plans, are supportive of this proposed change.
3. Appropriateness of Removing the Age 65 Minimum Age Requirement. The issue is whether it is appropriate to remove any minimum age for receipt to the assets in the reemployed annuity account. Existing law specifies that the account cannot be liquidated before age 65, even if the reemployment that resulted in the accounts creation ended well before that age. As proposed in this draft legislation, the account would be distributed to the retiree one year after the end of the reemployment period that resulted in the account's creation, regardless of age. An early retiree (MSRS and PERA public safety plan members can retire as early as age 50, while some TRA and other general plan retirees are qualifying for the "Rule of 90" as early as their mid-50s) could terminate from the applicable reemployment while in their 50s and commence receipt of the account. That may be well before they have need of those assets or are truly retired. They may have simply shifted to other employment (private sector, or public employment covered by another retirement system) which exempts them from the reemployed annuitant provision. The Commission may wish to consider whether to insert, by amendment, age 65 or some other age as a minimum age before the account can be distributed to the individual.
4. Reduction of Gain to Pension Fund. The issue is that earlier distribution will lessen the gain to the pension fund. As discussed previously, the pension fund typically earns at least 8.5 percent on assets, but is paying six percent interest on these accounts. Thus, liquidating the accounts earlier than permitted under existing law will cause the pension fund to forgo gains.

Article 2 Amendments for Consideration

1. **Amendment H3798-8A** deletes Article 2, Section 1, the increase in the TRA exempt income limit to \$46,000. The Commission might wish to consider this amendment if the Commission concludes that the provision is inappropriate for an administration bill, or if the proposed increase is unnecessary, or if more study of the entire package of pre-retirement/post-retirement provisions is needed before any action is taken on any individual programs.

2. **Amendment H3798-9A** is an alternative to Amendment H3798-8A. The H3798-9A amendment deletes the new exempt limit amount, \$46,000, and inserts an amount to be specified by the Commission or other legislative committee. This could be used if the Commission concludes that some increase is appropriate, but the new limit should differ from the proposed \$46,000.
3. **Amendment H3798-10A** can be used if Section 1 of Article 2 remains and the Commission concludes it would be appropriate to provide comparable treatment in other plans. This amendment modifies MSRS, PERA, and first class city teacher plan law to permit use of the same \$46,000 limit that would be created for TRA reemployed annuitants under Section 1. If the Commission uses Amendment H3798-9A to create a new exempt income maximum in TRA which differs from \$46,000 and the Commission wishes to also extend similar treatment to other plans, Amendment H3798-10A could be modified by verbal amendment to contain an identical dollar limit, or the Commission could give its staff a directive to make that change in Amendment H3798-10A.
4. **Amendment H3798-11A** makes Article 2, Section 1, effective on January 1, 2009, rather than retroactively from January 1, 2008. If the Commission uses this amendment and also Amendment H3798-10A, the Commission could direct its staff to revise the effective dates in Amendment H3798-10A to January 1, 2009.
5. **Amendment H3798-12A** removes Article 2, Section 2. It can be used if the Commission concludes that revising the reemployed annuitant savings account provision to provide earlier release of the assets to the annuitant is unnecessary or inappropriate given the considerable recent revisions in reemployed annuitant policy.
6. **Amendment H3798-13A** can be used if Article 2, Section 2, remains in the bill. The amendment reinstates the requirement that the individual be at least age 65 before the assets of the account are distributed to the individual. This makes it more likely that the assets of the account would actually be used to support the individual in retirement, as opposed to some other use. That could be used if the Commission is concerned that distributions could occur at ages well before the individual is truly retired, particularly individuals in public safety plans who commence receipt of retirement benefits as early as age 50. If the Commission wishes, it could use some age other than age 65 as the minimum age, by replacing "age 65" with another age specified by the Commission. Perhaps the Commission might wish to consider use of age 62, rather than age 65. Age 62 is the minimum age for receipt of Social Security benefits.
7. **Amendment H3798-14A** can be used if Article 2, Section 2, remains in the bill and the Commission concludes that a retroactive effective date is not appropriate. The amendment revises the effective date to be January 1, 2009.

Article 3 - Teachers Retirement Association Clarification of Strike Period Procedure

Article 3, Section 1, revises Minnesota Statutes 2007 Supplement, Section 354.72, Subdivision 2, TRA's new procedure for determining payment requirements for service credit for leaves of absence and for strike periods, by specifying that any payment made under the provision must occur before the effective date of retirement, and by stating that payment for service credit can be made without interest if made by June 30 of the year in which the leave of strike period occurred.

In 2007 the Legislature revised TRA, PERA, and MSRS leave of absence payment procedures, considerably improving uniformity across the systems and largely eliminating interest-free loans, by requiring interest on any payment made after it would have been made if the individual had not been on leave or on strike. Individuals were given approximately one year after a strike or leave to make contributions with interest to receive service credit. After one year, a full actuarial value payment is required.

The TRA proposal in Article 3, Section 1, is a modest step away from the more uniform treatment created by the 2007 Legislature and reestablishes a no-interest policy for certain brief time periods. The new language specifies that payment can be made without interest if made before June 30 of the fiscal year of the leave or strike period. This may create several months of interest-free loan if payment is made before June 30 related to a strike that occurred early in the school year, or for a leave of absence that ended before June 30.

Policy issues raised by Article 3, Section 1, are:

1. Uniformity Issues. The 2007 Legislature created a leave/strike period service credit payment policy intended to provide uniform treatment across TRA, PERA, and MSRS, to the extent possible. The current proposal seems a modest step away from uniform treatment, by permitting interest-free loans (by not charging interest) for portions of one year. The expected return (actuarial assumption) on TRA assets is 8.5 percent per year. When payments are late and no interest is charged, TRA loses the investment return that would have been earned if the contributions had been made in a timely manner. If a payment is one-half year late and no interest is charged, that is equivalent to providing the individual with a 4.25 percent discount. If the delay is one year and no interest is charged, the provided discount is 8.5 percent. These discounts harm the fund. Ignoring changes in the way Post Fund assets are valued, according the 2007 actuarial valuation TRA had \$1.36 billion in unfunded liability. Given that unfunded liability and a general requirement to operate TRA in a fiscally prudent manner, proposing to reauthorize interest-free loans is questionable. Several years ago TRA employing unit reporting requirements were revised to require prompt reporting of any change in teacher status, including commencing or returning from a leave. In the last several years TRA has spent many millions of dollars revamping its computer systems. TRA ought to have the information and ability to permit prompt payment on leaves and to require interest if there is any delay.
2. Proper End Date for Eligibility. The issue is the proper eligibility end date. On line 5.16 of the bill a clarifying statement is added that payment must occur "before the effective date of retirement." Perhaps it should be before termination of service, rather than before retirement. That would be more consistent the remainder of the provision and consistent with policy generally followed by the Commission. The provision authorizes a "teacher" (line 4.22) to purchase service credit. An individual who has terminated service no longer has the status of "teacher" under TRA law, because he or she is no longer providing teaching service. A teacher may terminate service but not commence receipt of a retirement annuity, becoming a deferred annuitant. With rare exceptions, the Commission has required that only active members can purchase service credit. The Commission may wish to consider an amendment.
3. Conforming with Applicable 2007 Law. The proposed effective date is July 1, 2007, the effective date of last year's legislation. This suggests that TRA has been using the proposed provision since last year, rather than the requirements as enacted last year.

Article 3, Section 2, revises a 2002 session law (the effective date provision for Laws 2002, Chapter 392, Section 4) to cause a TRA strike period service credit purchase provision to remain in law and be considered operative, rather than expiring a year after its 2002 enactment.

This section of the bill is an effort to resolve a problem with TRA's strike period service credit purchase provision recently brought to the Legislative Commission on Pensions and Retirement staff attention by Revisor of Statutes staff. The resolution contained in the bill resolves the issue in a manner desired by TRA.

The problem started in 2002, when the Legislature passed language temporarily amending "allowable service" definitions found in MSRS, PERA, and TRA law. The new language specified a procedure to permit state employees, local government employees, or teachers, as applicable, to purchase service credit in the applicable plans for strike periods that had recently occurred. The language on line 5.21, referring to "section 1, clause (11)" is referring to the language added to MSRS statute; the reference on line 5.22 to "section 2, paragraph (a), clause (8)" refers to the PERA language; and "section 3, clause (9)," refers to the TRA language. In order to cover strikes that had already occurred, the provisions were made retroactive to July 1, 2001, and lines 5.22 and 5.23 state that all three of these provisions were to expire on July 1, 2002 (12 months after the effective date). Therefore, the provisions were to become inoperative on July 1, 2002, just a few months after the Governor signed the 2002 bill on May 22, 2002.

When Minnesota Statutes 2002 was published, the MSRS, PERA, and TRA strike period language was included with a footnote at the end of the applicable sections stating that authority to use the strike period service credit purchase provisions expired on July 1, 2002.

In the next version of statutes published in 2004, the applicable MSRS and PERA strike period provisions no longer appear because they had expired. But due to an apparent error, the TRA strike period language remained. Although this provision was inoperative as of July 1, 2002, it has been

revised several times since and continues to be treated by TRA as operative law. The first revision occurred shortly after 2002, when a technical correction to the provision was made in a Revisor's bill. In 2005, the Legislature enacted a new and permanent strike period service credit purchase provision to apply to all plans covered by the combined service annuity provision, including TRA, since it is a combined service annuity plan. That provision was coded as Section 356.195, Service Credit Purchase Provisions for Strike Periods. Section 356.195 permits purchase of service credit for contributions plus interest during the first year, and full actuarial value thereafter, with no purchase permitted after five years. Based on the expired strike period service credit purchase language which continued to appear in printed TRA statutes, TRA contended that it had a strike period provision in its own law, and it preferred that provision to the language added to Chapter 356, in part because the TRA-specific provision did not put a five-year time limit on purchases. In 2007 (Laws 2007, Chapter 134, Article 2, Sections 31 to 35, and 41 to 42), a clarification was added to the strike provision in Chapter 356 stating that it applied to all combined service annuity plans except TRA. It was assumed that this would clarify that the strike period language in Chapter 354 was to be used by TRA, and not the provision that appeared in Chapter 356. The actual impact, however, was to leave TRA with no authority to permit purchases of service credit for strike periods, because it could no longer use the provision in Chapter 356 and the language in Chapter 354 had expired. The 2007 legislation included additional changes to the TRA strike period provision and TRA leave of absence provisions. These were extensively revised by amending the various TRA strike period and leave of absence provisions by removing the various conflicting payment terms that appeared in those provisions and inserting a crossreference to a new payment procedure coded as Section 356.72. The payment provision in Section 354.72 is again proposed for change in Article 3, Section 1 of the bill.

A problem now facing the Commission is that statutes specifying strike period service credit purchase procedures for TRA are based on several years of revising an inoperative provision which should have been removed from statute, and TRA has probably permitted service credit purchases based on this inoperative provision as amended over time.

The solution proposed in the bill is to revise the 2002 effective date provision to not have the TRA provision expire and to make that change retroactive. As revised, only the MSRS and PERA provisions expired. With this change, the TRA provision will remain operative as amended since that time, and any service credit purchases permitted by TRA under those provisions will presumably be based on valid legal authority.

A policy issue raised by Article 3, Section 2, is:

1. Alternative Courses of Action. The drafting in the bill is the approach preferred by TRA, since it allows TRA to have its own strike period service credit purchase provision and validates any prior purchases under that provision. The issue, however, is whether the Commission and Legislature prefer that treatment.

An argument for the approach in the bill is that although the Commission and Legislature in 2002 intended that the TRA strike period service credit purchase provision should expire in 2002, the various later revisions to that inoperative language may be interpreted as a reversal of that legislative intent. The various Legislatures after 2002 intended that that law, as amended from time to time, should be operative.

A counter argument is that what occurred after 2002 does not reflect any change in legislative intent; it simply reflects a compounding of errors. If the TRA language had been removed from statute following 2002 as intended, we would not now have two somewhat different strike period service credit purchase provisions, one found in the TRA chapter and the other found in Chapter 356 applicable to most other Minnesota defined benefit plans. If the Commission wishes to have the language in Chapter 354 removed and TRA added to the Chapter 356 amendment, the Commission may wish to consider an amendment.

Article 3 Amendments for Consideration

1. **Amendment H3798-15A**. The Commission may wish to consider Amendment H3798-15A if the Commission opposes the TRA-proposed solution to its strike period service credit purchase authority problem and concludes that the temporary language added in 2002 should have been removed from statute after the July 1, 2002, expiration date of that provision. This amendment deletes the sections of this article and replaces them with three sections.

The first section strikes the remaining strike period language in Minnesota Statutes, Section 354.05, Subdivision 13 (what now remains of the language which should have been removed after July 1, 2004).

The second section revises the existing law language of Section 354.72, the TRA leave of absence strike period purchase provision found in TRA law, by removing the authority to use that provision to purchase strike periods, and by adding a statement that the provision can be used for leave of absence purchases by TRA members up to the date of termination. By retaining the existing law payment terms for leaves, this section does not have the interest-free loan problem of Article 3, Section 1, as found in the bill.

The third section makes the strike period service credit purchase provision in Chapter 356 apply to TRA.

Amendment H3798-16A is an alternative to Amendment H3798-15A and is comparable to that amendment except in the leave of absence payment procedure language. That language is comparable to Article 3, Section 1, of the bill, except that the strike period authority has been removed and the last date to use the provision is the date of termination from service rather than the retirement date.

2. **Amendment H3798-17A** is an alternative to either of the two previous amendments. Under this amendment, the second section of the article is unchanged and TRA's strike period provision, as amended over time, is ratified and made operative law. However, the first section is replaced with the existing law version of the TRA leave of absence/strike period payment requirements, except for adding language stating that the provision can be used anytime prior to termination of service. This approach avoids the interest free-loan problem.

Article 4 - Public Employees Retirement Association Revised Privatization Procedure

Article 4, Section 1, is a new section, Certification and Decertification of Medical Facilities and Other Public Employing Units, with proposed coding as Section 353F.025. The chief clerical officer of a governmental subdivision may submit a resolution from the governing body requesting coverage for privatized employees following a privatization, if the governing body agrees to pay for the actuarial review by the actuary jointly retained by the retirement plans. If the actuarial review indicates that a net gain is expected to PERA due to privatization, PERA's executive director will forward, before January 15, a recommendation in the form of legislation that the entity be included under the PERA Privatization Chapter, Chapter 353F. If the entity fails to privatize within one year of the final enactment date of the legislation which would have added the entity to the chapter, the executive director shall include a recommendation in the next proposed legislation to remove them from the chapter.

Article 4, Section 1, is an effort to simplify the process for adding privatized entities to the PERA privatization chapter. Up to the current time, each entity which wishes to have privatized employees added to that chapter has had a bill introduced, and the Commission has reviewed each of these bills separately. There are presently 19 entities included in the chapter as an eligible medical facility or other public employing unit, and the chapter was first enacted in 1991, suggesting that the Commission has reviewed and approved two to three privatization bills per year requesting treatment under this chapter. (The Commission has also dealt with a few privatizations requesting other treatment.) The primary criteria that have been used by the Commission to decide whether to authorize inclusion under the applicable chapter is whether the privatization will result in at least some net gain for PERA. That is the same criteria or test that will be applied under this proposed section, with PERA making that determination rather than the Commission. Those that meet the applicable criteria will be included in a legislative request to the Commission and Legislature by PERA. The intention is to present the Commission with one privatization bill per session, rather than several individual bills. The procedure also gives PERA a format for decertifying units which fail to privatize. At the present time, there are three medical facilities in the chapter's included list which failed to privatize. These are Kanabec Hospital, Northfield Hospital, and Renville County Hospital in Olivia.

Additional information on privatizations is contained in Attachment B.

Policy issues raised by Article 4, Section 1, are:

1. Need for Change. The issue is whether there is sufficient need for change. Under the proposed approach there will be a single bill unless an entity requests a privatization treatment other than that contained in Chapter 353F. That single bill will probably need minimal review, since PERA will have already determined whether the proposed privatization is expected to meet the criteria for inclusion which the Commission has been using, mainly that the privatization will not create a loss to PERA. However, review of privatization bills has not been particularly burdensome to the Commission. On average the Commission has handled two to three of these per session. Perhaps PERA can provide information through testimony regarding whether it expects the number of future requests to increase, stay the same, or decrease.
2. Consistency with Commission Policy. The standard which PERA proposes to apply is the same as that used by the Commission. The privatization must not cause a loss to PERA, or PERA will not include that entity in proposed legislation.
3. Less Review of Policy. A potential drawback to the bill is that the Legislature may be slower to recognize a need to revise privatization policy. Currently, when the Commission reviews a privatization bill, the Commission is provided with information about past privatizations and the evolution of privatization policy over time. The Commission may spend some time considering whether the model reflected in Chapter 353F remains appropriate, or whether different treatment should be used. That may be less likely if the Commission's review becomes increasingly pro forma.

Article 4 Amendment for Consideration

1. **Amendment H3798-18A** removes Article 4 from the bill. The Commission may choose to use this amendment if the Commission concludes that the present procedure does not overly burden the Commission, creating insufficient need for the proposed procedure.

Article 5 - Public Employees Retirement Association Privatizations

Article 5, Section 1, revises Minnesota Statutes 2007 Supplement, Section 353F.02, Subdivision 4, the list of medical facilities covered under PERA's privatization chapter, Chapter 353F, by striking Kanabec Hospital, Northfield Hospital, and Renville County Hospital in Olivia.

PERA is seeking to remove these entities from the list of eligible institutions because the privatization of the facility failed to occur. A few problems may occur if the entities remain in the list. First, if at some future date the entity were to privatize, it can be argued that the privatized employees must be granted the extra rights provided under Chapter 353F because the privatizing hospital is listed in the eligibility list, but this new privatization may not meet the standards usually applied. Prior to being included in that list, there was an actuarial review of the employees expected to be privatized, and a finding that under the expected privatization PERA was not expected to be harmed if the privatized employees were granted coverage under Chapter 353F. Given that finding, through legislation the entity was added to the eligible list under that chapter. However, that privatization failed to occur. If at some unknown future date the organization is privatized, the PERA-General chapter which applies to the employees up to the date of privatization will have changed over time, changes may have occurred in the continuing benefit rights provided under the privatization chapter, and the employee group being privatized will be different than the one originally reviewed. Some employees will have retired or terminated, those that remain will be older, and new employees will have been hired. There is no reason to assume that a privatization at this later date will not harm PERA if the privatized employees are placed under Chapter 353F, simply because an earlier actuarial review of a different employee group at a different point in time reached that conclusion.

A second issue, somewhat related to the first, is that an organization might want to remain on the list as a place holder in case a future privatization does occur, to retain access to attractive benefits. For example, in 2006 (Laws 2006, Chapter 271, Article 5, Section 3) the deferred annuity augmentation rates applicable to deferred annuities of individuals covered under the PERA privatization chapter were revised for new privatizations. The deferred annuity augmentation rates that had been in the law for privatizations (five percent per year up to age 55, and 7.5 percent per year thereafter) were made applicable only if the legislation that added the medical facility or other employing unit to the eligibility list was enacted before July 26, 2005, and became effective before January 1, 2007. If the enacting legislation which added an entity to the list became effective after that date, lesser

augmentation rates apply (four percent per year up to age 55 and six percent annually thereafter). Therefore, it is possible that an entity may wish to remain on the eligible list after a failed privatization effort. That inclusion could be interpreted as a safeguard, locking in then-existing benefit provisions of the privatization chapter to protect against a benefit downgrade before some other future privatization can occur. (However, if a benefit improvement occurred the opposite might occur, depending upon the specific drafting of the benefit change. If a benefit improvement applied only to privatized employees of entities added to the list on or after the benefit improvement legislation was enacted, an entity added to the eligibility list earlier, for which a privatization did not occur until after the benefit improvement was enacted, would not have access to the improved benefit.)

Northfield Hospital, one of the hospitals proposed for removal from the list, was added to the list through Laws 2005, First Special Session, Chapter 8, Article 6, with a final enactment date of July 25, 2005, just meeting the deadline for inclusion using the older, higher deferred annuity augmentation rates. The other two organizations proposed for removal from the list, Kanabec Hospital and Renville County Hospital in Olivia, had been added to the list at an earlier date. Therefore, if privatizations were to occur at any of these three entities, the employees of these organizations would appear to be eligible for the old, higher augmentation rates, rather than the lower rates imposed by Laws 2006, Chapter 271, Article 5, Section 3. In contrast, if they are stricken from the list they are no longer eligible under the privatization chapter. If at a future date, based on another effort to privatize and another actuarial review, a bill passes which again adds the entity to the eligibility list, presumably the re-addition to the eligible list would again make the privatized employees eligible for treatment under Chapter 353F, but at the current lower augmentation rates.

Policy issues raised by Article 5, Section 1, are:

1. Implications of Removal. The issue is whether the Commission and Legislature ought to remove the three hospitals from the eligible list. As noted in previous discussion, if the entities are removed they could be again added to the list at a later date, if another privatization looks as though it will occur, following another actuarial review, final enactment of the applicable bill, and local approval. However, adding them to the list at a later date would seem to make the privatized employees eligible for the lesser deferred annuities augmentation rates applicable for entities included in through legislation enacted after 2006. On the other hand, if the entities are simply left on the eligible list and a privatization does occur, that would seem to undermine or sidestep the careful review process and criteria the Commission has used in reviewing privatizations. The Commission and Legislature has only approved for inclusion under Chapter 353F privatizations which had already occurred or which were expected to occur in the near future (before the Legislature again meets in session), and for which an actuarial review concluded that placing privatized employees under Chapter 353F would not harm PERA. If, after being added to the list, a privatization does not occur until many months or years later, the situation at the time of the privatization could be much different and PERA could be harmed.
2. Position of Hospital Representatives, Local Officials. The issue is whether representatives from the applicable hospitals, or from the applicable cities or counties, object to the proposal to remove these institutions from the Chapter 353F eligible list.
3. Consideration of Privatization Time Limit. The issue is whether the Commission should consider an amendment to place a time limit by which if the privatization has not occurred, the entity is not placed on the eligible list or is removed from that list, whichever is applicable. This need not be considered if the previous Article is recommended to pass, since PERA will be given authority to recommend removals from the list.

Article 5, Section 2, amends an effective date provision (Laws 2006, Chapter 271, Article 5, Section 5) to provide the governing body of Clearwater County additional time (until January 1, 2009) to file a certificate of approval with the Secretary of State, relating to the local approval requirement in 2006 legislation adding Clearwater County Memorial Hospital to the medical facilities eligible under the PERA privatization chapter.

The Legislature has provided extensions of time to properly file local approval documents related to PERA privatization documents. In 2005, Fair Oaks Lodge, Wadena, for which PERA privatized employee legislation passed in 2004 but for which local approval was not provided by the deadline (the start of the 2005 legislative session), was given an extension to January 1, 2006, to complete and properly file the local approval documents. The provision passed in a Commission omnibus pension bill, and the source bills were H.F. 704 (Koenen); S.F. 888 (Kubly). A similar extension was provided

in 2006 to Hutchinson Area Health Care, through a House Rules Committee amendment to the Commission omnibus bill.

Policy issues raised by Article 5, Section 2, are:

1. Justification for an Extension. Through brief testimony from PERA's executive director, the Commission may wish to better understand the factual circumstance. If a privatization has not occurred or is not likely to occur, the Commission may choose to not allow an extension. The Commission may also wish to seek assurance that the parties involved in the current sale or lease continue to support the treatment that would be provided under the privatization chapter.
2. Impact on PERA. PERA would be better off if the extension is not permitted. Placing employees in the PERA privatization chapter causes PERA to forego some of the actuarial gains that would otherwise occur due to a privatization.

Article 5 Amendments for Consideration

1. **Amendment H3798-19A** removes Section 1. The Commission may choose to use this amendment if the Commission concludes that the three hospitals should remain on the list. If the Commission concludes that one or two should remain, but not all three, the Commission can create that treatment by verbal amendments to the section as it appears in the bill or by direction to staff.
2. **Amendment H3798-20A** can be used if the Commission concludes that an extension of time for Clearwater County to file local approval forms should not be permitted. If the Commission favors an extension but prefers a date other than January 1, 2009, the Commission could do a verbal amendment to line 8.18 of the bill.

Article 6 - Public Employee Retirement Association Provisions

Article 6, Section 1, amends PERA's excluded employee provision (Minnesota Statutes 2007 Supplement, Section 353.01, Subdivision 2b) by revising the membership exclusion for resident physicians and pharmacists, physician and pharmacist interns, in a degree or residency program in public hospitals to also include those in a degree or residency program in clinics.

A policy issue raised by Article 6, Section 1, is:

1. Clarification or Policy Change. The issue is whether the proposal represents a change in the scope of the provision, or if the change is solely a clarification. The change appears to be an effort to clarify, but if the Commission has any reservations it may wish to hear testimony on this question.

Article 6, Section 2, revises PERA's definition of salary (Minnesota Statutes, Section 353.01, Subdivision 10) by excluding from salary, for PERA purposes, any 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.

The change is intended as clarification, using language which appeared years ago in Comprehensive Employment and Training Act (CETA) provisions in Minnesota public plans. Employers make contributions to public plans based on an individual's salary. The new language clarifies that contributions must not be made from a grant if the grant terms prohibit use of grant money for pension contribution purposes. Under these circumstances, PERA is declaring that salary paid from a grant with this type of restriction is not salary for PERA pension purposes. Since there is no salary for pension purposes, there is no basis for making contributions. However, if financial sources which are not restricted are available to make contributions, the salary is salary for pension purposes and contributions can be made to the fund.

Article 6, Section 3, revises PERA's "termination of public service" definition (Minnesota Statutes, Section 353.01, Subdivision 11a) by adding a statement that a termination is not valid if the member has an agreement to return to a government subdivision as an employee, an independent contractor, or an employee of an independent contractor.

At least in part, the change is an effort to ensure consistency with federal requirements. If an agreement exists to return to service, there has been no true severing of the employee/employer relationship. If PERA were to accept this as a termination and allow retirement benefits to commence, this could be viewed as an in-service distribution, which is not consistent with qualified plan requirements under Section 401(a) of the Internal Revenue Code. However, given recent changes due to the Pension Protection Act of 2006, in-service distributions would seem to be permissible under federal law if the individual is at least 62.

Policy issues raised by Article 6, Section 3, are:

1. Possible Inconsistency with Article 1, Section 1. The issue is whether this provision is compatible with the post-retirement option program, as revised under Article 1, Section 1, of this bill. Perhaps an amendment is needed to Article 1, Section 1, waiving application of this proposed provision for purposes of the post-retirement option program. If the Commission concludes a clarifying amendment is needed, it can use Amendment H3798-3A, discussed earlier.
2. Inconsistency with Article 8, Section 1. PERA and TRA seem to be taking radically different positions on terminations. Under Article 8, Section 1, TRA proposes to accept any termination as valid if the individual is at least age 62. The Commission generally tries to have similar plans follow the same policy.
3. Independent Contractor Issue, Unclear Status. The issue is whether it is necessary or appropriate to include those who return as an independent contractor or employee of an independent contractor under this prohibition. Perhaps PERA's executive director can provide brief testimony on this issue. As proposed, those who return as independent contractors are in an unusual position under PERA law. PERA law prohibits including independent contractors as PERA members (Minnesota Statutes, Section 353.01, Subdivision 2b, Clause (22)), because they are considered private sector rather than public employees. However, for the individual who was a public employee with PERA coverage and who returns as an independent contractor under an arrangement made while the individual was an active plan member, the individual's active plan coverage presumably must end (because independent contractors are excluded from coverage) but under this provision as amended the individual will not be considered to have terminated public service. This is confusing and seems inconsistent.
4. Need for Further Study. Given that laws for some plan systems contain no statement regarding the status of a termination if there is an agreement between the active member and employer to return to work following termination, PERA proposes an explicit prohibition while TRA proposes a very loose standard for anyone at least age 62. The Commission may wish to study this matter further and to act through legislation to establish a consistent policy for all pension plans.

Article 6, Section 4, amends PERA's leave of absence purchase provision (Minnesota Statutes 2007 Supplement, Section 353.0161, Subdivision 2) by:

- allowing purchases to occur up to 30 days after termination of public service if an individual terminates before the end of a leave;
- basing contribution-plus-interest payments on average monthly salary during the six months prior to the leave rather than upon the hourly salary rate on the date of returning from the leave; and
- stating that if a full actuarial payment is required (because payment is made more than one year after the end of the leave), payment must be made before termination.

Last year the Legislature revised TRA, PERA, and MSRS leave of absence payment procedures, considerably improving uniformity across the systems and largely eliminating interest-free loans by requiring interest on any payment made after it would have been made if the individual had not been on leave or on strike. Not charging interest would harm the fund. Individuals were given approximately one year after a strike or leave to make contributions with interest to receive service credit. After one year, a full actuarial value payment is required.

The PERA proposal in this section is a modest step away from the more uniform treatment created by the 2007 Legislature.

Policy issues raised by Article 6, Section 4, are:

1. Uniformity Issue. The 2007 Legislature created a leave/strike period service credit payment policy intended to provide uniform treatment across TRA, PERA, and MSRS, to the extent possible. The current proposal seems a modest step away from uniform treatment.
2. Proper Salary Base. During the first year after a leave, when contribution-plus-interest payment is permitted, the existing law used, for purposes of computing the contributions, is the salary rate upon return to service. PERA is proposing to use the average monthly salary in the six months prior to the leave. That is the salary base that had been used for PERA personal, parental, and medical leaves under law in effect prior the changes in leave of absence computation provisions enacted last year. Use of that base will result in a lower contribution to the fund in cases where a salary increase as occurred since the leave commenced.
3. Issue of Conforming with Applicable 2007 Law. The proposed effective date is July 1, 2007, the effective date of last year's legislation. This suggests that PERA has been using the proposed provisions since last year, rather than the requirements as enacted last year.

Article 6, Section 5, adds a subdivision to Minnesota Statutes, Section 353.27, which prohibits a disabilitant from any PERA plan, who becomes employed in a position covered by the same or another PERA plan, from making contributions unless the individual waives the right to further disability payments.

Although this provision is drafted to apply to any PERA plan, the problem that PERA is addressing stems mainly from its Public Employees Police and Fire Plan (PERA-P&F). Being a public safety plan, PERA-P&F has a less restrictive disability standard than a general plan. With a public safety plan, individuals can qualify if they are no longer able to perform their specific police officer or firefighter duties. There are many disabled police officers and firefighters who are receiving disability benefits while earning considerable income from employment in the private or public sector. In contrast, general employee plans have a far more stringent standard. To qualify for disability, the individual must be unable to perform any gainful employment.

Because of the physical risk involved in public safety employment, coupled with the employment-specific disability standard and generous disability benefits, many police officers and firefighters have gone on disability, causing the cost of PERA-P&F disability provisions to be very high. To take some pressure off the need to further increase PERA-P&F contribution rates, last year PERA sought extensive changes in disability provisions in its public safety plans, particularly PERA-P&F. Various changes in PERA-P&F disability eligibility requirements and disability benefit provisions were enacted through Laws 2007, Chapter 134, Article 4.

The change proposed in this section of the bill is to establish in law a policy which PERA officials contend should have been included in the package they presented last year. Under the proposed language, if a PERA disabilitant becomes employed in a position covered by any PERA plan, the individual cannot be treated as an active employee (for purposes making contributions and earning service credit) unless he or she agrees to waive receipt of further disability benefits. PERA has indicated that it has been following this policy, but without clear statutory authority. The drafting in this section of the bill, if enacted, will provide that authority.

Policy issues raised by Article 6, Section 5, are:

1. Nature of Change; Inclusion in Administrative Bill. An issue is whether this provision is appropriate for inclusion in an administrative bill. The provision is benefit-related, dealing with rights to continue to receive disability benefits and to accrue service credit. The package of PERA-P&F disability provisions, of which this should have been a part, was definitely not considered last year to be administrative legislation. However, in the past, the Commission has permitted some non-administrative provisions in a bill that is largely administrative, providing the Commission has sufficient time to consider the implications.
2. Cost Impact of Proposal. The issue is the unclear cost impact of the proposal. If accrual of service credit is prohibited unless the individual waives continued receipt of disability benefits being received from PERA plans, that might cause some individuals to waive the disability benefits, which would appear to help lower plan cost. However, placing this in law may have no impact because PERA claims it is already doing this administratively. Any cost savings has already been recognized. It is also possible that individuals may decide that they prefer to continue receiving

disability benefits rather than accrue service credit in another plan. Finally, the main impact may be in where individuals seek employment. In order to continue receiving disability benefits, disabled PERA-P&F members may simply seek employment outside of the PERA system, covered by other public plans or in private sector.

3. Position of Members and Unions. The issue is whether police officers, firefighters, and correctional officers support this provision or view it as controversial and harmful.
4. Administrative Policy Implications. The issue is whether PERA should have adopted this policy without specific legal authority and whether the Commission is comfortable in effect ratifying PERA past policy decisions.

Article 6, Section 6, amends Minnesota Statutes 2007 Supplement, Section 353.27, Subdivision 14, a provision dealing with service credit purchases for periods prior to an employer being certified as a governmental subdivision, by adding a qualifying statement regarding full actuarial value purchases, stating that they may be made any time prior to termination of public service.

The subdivision being amended was enacted last year to deal with situations where an entity is determined to be a government subdivision for PERA purposes (in other words an employer who must report its employees for PERA coverage), but it is recognized that the organization met the definition of a government subdivision before PERA became aware of the situation and certified the employing unit. This leads to a situation where a period of employment prior to the date the unit is certified was of the nature of public employment, creating a need to permit purchases of service credit. For any portion of the retroactive period in excess of three years, a full actuarial value payment is required. The new proposed language states that those full actuarial value payments are permitted any time prior to termination of public service.

A policy issue raised by Article 6, Section 6, is:

1. Proper Time Limit. The issue is whether the proper time limit for making a payment under this section should be anytime prior to termination of public service. That is not necessarily unreasonable. However, a drawback is that under this language an individual may wish to purchase service decades after the individual is first reported as a public employee. PERA may need to review old records to verify eligibility and the proper length of the period permitted for purchase. That may be particularly difficult under these circumstances, because the time period at issue is before the date the employing unit was first certified as a public employer. It is not clear that PERA would have proper records or could obtain them, particularly if the employing unit no longer exists. The Commission may wish to consider a much shorter window. While many general provisions which reference the Section 356.551 full actuarial value provision permit payment up to the date of termination of service, others do not. The strike period service credit purchase provision applicable to most plans, found in Section 356.195, permits full actuarial value service credit purchases when payment is received more than one year after the end of the strike period, but payments are not permitted after five years.

Article 6, Section 7, amends the Public Employees Defined Contribution (PEDC) plan investment option provision, Minnesota Statutes, Section 353D.05, Subdivision 2, by removing statements that any change in investment options made by the individual are effective at the beginning of the next month.

A policy issue raised by Article 6, Section 7, is:

1. Appropriateness of the Change. The existing law language reflects that the various investment vehicles used by this plan were valued monthly. When an individual sought to change investment vehicles or otherwise alter his or her asset mix, it was necessary to wait until the first of the month so the account could be valued and the proper amount to be transferred could be determined. These accounts may now be valued daily, or at least more frequently than in the past, and it is no longer necessary to wait until the first of the month to make the transfers. However, a question is whether simply striking sentences as in the bill is the best alternative. Under that approach, there is no statement in the law regarding when transfer will occur. The Commission may wish to consider whether some statement is needed to replace the removed language.

Article 6, Section 8, revises the full actuarial value computation procedure (Minnesota Statutes, Section 356.551, Subdivision 2) by:

- adding clarifying language stating the lump sum payment requirement and the requirement that payment must be made within one year of the service credit purchase authorization date apply unless otherwise specified in the statutes of a given plan; and
- adding a requirement that no purchase can be made after retirement.

A policy issue raised by Article 6, Section 8, is:

1. Proper End Date. It seems proper to add a statement specifying that purchases cannot be made after an individual leaves public employment. A statement of that type is often included in special law service credit purchase bills because this statement in Section 356.551 failed to include it. However, a question arises regarding whether the cutoff should be when an individual retires, as stated in this bill, or when an individual terminates service. With very few exceptions, the Commission and Legislature has required that individuals be active public employees in order to be eligible for purchase service credit in a plan. An individual ceases to be an active employee upon termination of covered employment or termination from service. That often occurs, in some cases many years, before an individual applies for retirement. That would suggest replacing “retirement” on line 17.20 with “termination of service.”

Article 6 Amendments for Consideration

1. **Amendment H3798-21A** can be used to remove from the bill the PERA and TRA sections (lines 14.1 to 14.11, and lines 22.1 to 22.7) which revise policies regarding terminations if there is an agreement prior to termination to return to employment. The Commission may wish to use this amendment if the Commission concludes that more study of these termination situations is needed before the Commission and Legislature revise existing policy as stated in law.
2. **Amendment H3798-22A** is an alternative to Amendment H3798-21A, and could be used if the Commission is comfortable with revising the PERA statement in law regarding terminations (lines 14.1 to 14.11), but believes that the policy should apply only to individuals who return as employees and not those who return as independent contractors of employees of independent contractors.
3. **Amendment H3798-23A** revises Section 4, the PERA leave of absence service credit purchase provision, by reinstating the language as enacted last year, except for adding the statement that payment may be made anytime prior to termination of service.
4. **Amendment H3798-24A** removes Section 5, PERA’s proposed limitation on additional plan coverage for reemployed disabilitants. The Commission may choose to use this amendment if the Commission deems the proposed legislation inappropriate for an administrative bill, is in general too controversial, or is an unnecessary restriction on reemployed disabilitants.
5. **Amendment H3798-25A** revises Section 7, the Public Employees Defined Contribution (PEDC) investment option provision, by permitting the Commission to specify a date or a time period to be specified after which the revised investment option election is effective.
6. **Amendment H3798-26A** revises Section 8, the full actuarial value computation procedure used by all plans whenever a full actuarial value service credit purchase is to be computed, by replacing “the member’s effective date of retirement” with “termination of service,” making the terms consistent with the procedure almost always followed by the Commission. Purchases of service credit are permitted by active plan members under applicable special or general law. Individuals lose the status of being an active plan member when they terminate from service, which could be many years before they retire.

Article 7 - Minnesota State Retirement System Provisions

Article 7, Section 1, amends the MSRS leave of absence purchase provision (Minnesota Statutes 2007 Supplement, Section 352.017, Subdivision 2) by:

- allowing purchases to occur up to 30 days after termination of service if an individual terminates before or at the end of a leave; and

- stating that if a full actuarial payment is required (because payment is made more than one year after the end of the leave), payment must be made before termination.

In 2007, the Legislature revised TRA, PERA, and MSRS leave of absence payment procedures, considerably improving uniformity across the systems and largely eliminating interest-free loans, by requiring interest on any payment made after it would have been made if the individual had not been on leave or on strike. Not charging interest would harm the fund. Individuals were given approximately one year after a strike or leave make contributions with interest to receive service credit. After one year, a full actuarial value payment is required.

Policy issues raised by Article 7, Section 1, are:

1. Uniformity Issue. The 2008 MSRS, PERA, and TRA proposals are not consistent, moving away from uniform treatment.
2. Issue of Conforming with Applicable 2007 Law. The proposed effective date is July 1, 2007, the effective date of last year's legislation. This suggests that MSRS has been using the proposed provisions since last year, rather than the requirements as enacted last year.

Article 7, Section 2, revises an MSRS miscellaneous refund provision, Minnesota Statutes, Section 352.22, Subdivision 10, permitting refunds to be paid to individuals who leave MSRS General coverage and become covered by other plans, by removing language requiring a 30-day delay in requesting a refund after leaving the MSRS-covered position.

The 30-day delay requirement does not appear in other MSRS refund provisions. Some of these provisions had 30-day delay requirements, but these were removed. As a practical matter, the language may make little difference.

Article 7, Section 3, clarifies Minnesota Statutes 2007 Supplement, Section 352.955, Subdivision 3, the Post-June 30, 2007, MSRS-General-to-Correctional-Plan past service credit transfer payment procedure enacted last year. The MSRS-Correctional Plan, which under the procedure in this provision must receive the full actuarial value of any past service credit being transferred, receives several forms of payment which in total must equal the full actuarial value. The employee must make an employee contribution rate differential payment based on salary during the most recent 12 months of the period being transferred applied to the contribution rate differential between the MSRS-General and MSRS-Correctional during that 12-month period. The employer must make a corresponding payment, except based on the difference between the employer contribution rates. The employee and employer must make an additional payment, shared 40 percent by the employee and 60 percent by the employer, equal to the full actuarial value remaining after subtracting the payments just mentioned, and the assets transferred from MSRS-General (equal to the funded portion of the MSRS-General service credit being transferred). The minimum total payment from the employee must be equal to the employee differential contribution amount for the entire period being transferred, and the minimum total payment from the employer must be equal to the employer differential contribution amount for the entire period being transferred.

MSRS views the changes in this provision as being administrative, clarifying but not otherwise changing the provision as passed last year. While it is possible to interpret the revision as revising the way the total employee payment is split between a contribution differential payment rather than the employee portion of the remaining full actuarial value, the employee's payment in total does not change. Similarly, there is no change in the total employer payment.

Article 7, Section 4, clarifies Minnesota Statutes 2007 Supplement, Section 352.955, Subdivision 5, a provision specifying the impact of the transfer of service credit to MSRS-Correctional, by stating that only the service credit being transferred from MSRS-General to MSRS-Correctional is forfeited in MSRS-General, and not MSRS-General service credit which the individual might have due to other service.

This change is purely technical, providing clarification.

Article 7, Section 5, revises Minnesota Statutes, Section 352D.075, Subdivision 5, the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) plan surviving spouse term-certain annuity provision, by removing the five- and six-year term-certain options for surviving spouses of deceased MSRS-Unclassified participants.

Comparable changes were made in the similar MSRS-General provision last year, and a year or two earlier in PERA plans. The argument plan administrators have used is that five- or six-year payouts are not eligible for favorable tax treatment. Because of that, plan staff has actively discouraged individuals from considering those options. The preference of plan administrators is to amend plan law so that option cannot be offered.

Policy issues raised by Article 7, Section 5, are:

1. Sufficient Need to Conform with MSRS-General. An issue is whether the Commission feels a need to revise this provision to eliminate five- (and six-) year term certain survivor annuities, as the Commission has recently done in MSRS-General law and PERA law.
2. Scope. If the Commission is convinced by arguments the plan administrators have made that five- or six-year term certain survivor annuities should not be offered because of federal tax treatment, the Commission may wish to consider whether to revise similar provisions in other plans. These options have been removed from PERA and most MSRS plans, and will be removed from MSRS-Unclassified if this provision is enacted, but TRA and the first class city teacher plans continue to have provisions which offer five-year term-certain annuities.

Article 7, Section 6, repeals a state salary limitation law which capped salary for pension purposes at 110 percent of the governor's salary unless a specified position was exempted from the cap, enacted as Laws 2005 First Special Session, Chapter 8, Article 1, Section 23, retroactive from its enactment date (July 26, 2005).

Laws 2005 First Special Session, Chapter 8, Article 1, Section 23, passed in an omnibus pension bill developed during the 2005 Regular Session, but which did not pass until the 2005 First Special Session. The provision was an effort to revise Minnesota Statutes 2004, Section 356.611, Subdivision 1, a provision that capped salary for pension purposes, resetting the cap at 110 percent, rather than 95 percent, of the governor's salary. This provision of law does exempt various positions from this cap, and that list was also revised by that same 2005 First Special Session law provision. As written, that provision applied to any plan included under the combined service annuity provision (any Minnesota defined benefit plan which uses the high-five average salary to compute annuities, plus MSRS-Unclassified).

MSRS enforced Laws 2005 First Special Session, Chapter 8, Article 1, Section 23. Given the salary-for-pension-purposes limits specified there and the various exemptions, the only MSRS members that MSRS concluded were subject to the cap were a few employees at the University of Minnesota. As a consequence, for those few individuals MSRS did not accept contributions based on any salary amounts in excess of the cap.

However, at some point MSRS discovered that Section 356.611, Subdivision 1, the provision which Laws 2005 First Special Session, Chapter 8, Article 1, Section 23, sought to amend, was in fact repealed shortly before in the 2005 Regular Session by Laws 2005, Chapter 169, Section 2, one of the final bills passed during the regular session. Thus, the action to amend Section 356.611, Subdivision 1, during the 2005 First Special Session had no effect, since it proposed amending a provision that had been removed from law by a repealer during the 2005 Regular Session. The Revisor of Statutes, in the hardbound version of statutes, indicates in the text of Minnesota Statutes, Section 356.611, that Subdivision 1 was repealed in 2005 by Chapter 169, Section 2, and has included the language of Laws 2005 First Special Session, Chapter 8, Article 1, Section 23, which sought to revise that repealed subdivision, in a footnote to Section 356.611.

Laws 2005, Chapter 169, is an act relating to local government, and presumably was heard by the Government Operations Committees, but was not heard or otherwise reviewed by the Commission. Laws 2005, Chapter 169, Section 1, amended Minnesota Statutes, Section 43A.17, Subdivision 9, a political subdivision compensation limit provision. The provision set the maximum salary of individuals employed by local political subdivisions at 110 percent of the governor's salary, with that dollar limit to be indexed to inflation. Various exemptions are provided. Medical doctors are excluded from the provision, as are all school districts. The Commissioner of Employee Relations may also recommend higher limits for positions which required specific expertise and for which market wages require a higher limit to attract and retain capable employees. This provision, as revised by the Legislature in the 2005 Regular Session, reflects an effort to limit actual salary amounts, with various exemptions. The second section of this 2005 Regular Session act repealed Minnesota Statutes 2004, Section 356.611, Subdivision 1. That section placed limits on various salaries *for pension*

purposes, with various exceptions. The probable rationale for the repeal was that with Section 43A.17, Subdivision 9, placing limits on actual salaries, there was no need for a section in Chapter 356 which placed limits on salary for pension purposes.

MSRS is seeking to remedy the situation created by its enforcement of the inoperative Minnesota Statutes, Section 356.611, Subdivision 1. MSRS is proposing to eliminate the inoperative language found in the footnote to Minnesota Statutes, Section 356.611, by repealing Laws 2005 First Special Session, Chapter 8, Article 1, Section 23. MSRS currently contends that if the law were properly applied, it should not cap salaries upon which pension contributions were made those few University of Minnesota employees. To correct for the restricted contributions by and on behalf of the few University of Minnesota employees, MSRS claims it can take corrective action under its existing laws, presumably using Minnesota Statutes, Section 352.04, Subdivision 8, payment of omitted salary deductions. Under that provision, if a deduction is more than 60 days past due, the deduction amount becomes the payment responsibility of the employer, and if the delay exceeds one year, the additional contribution amount required must include 8.5 percent interest.

Policy issues raised by Article 7, Section 6, are:

1. Impact of Repealer. An argument for removing Laws 2005 First Special Session, Chapter 8, Article 1, Section 23, retroactive from its effective date is that it was never operative because it tried to amend a repealed provision. However, MSRS did enforce this inoperative law, and the resulting contribution underpayments will need to be addressed.
2. Consideration of Alternative Policies. The issue is whether the solution proposed by MSRS is the best solution. The Commission might consider taking action which would cause Section 356.661, Subdivision 1, as revised by the Legislature in the 2005 Special Session, to be operative law. If that action were taken, presumably the actions MSRS took relating to the capped contributions for the few University of Minnesota employees would have been proper, eliminating the need for further remedial action by MSRS. Before considering this action, the Commission may wish to hear the views of the MSRS executive director on the matter and check with other fund directors to determine whether that legislative action would create any detrimental impact on their plans.
3. Legal Authority for MSRS Remedial Action. The Commission may wish hear from MSRS regarding how it will correct the contribution problem it now apparently has with the University of Minnesota employees, given its proposed solution as reflected in Article 7, Section 6. If the omitted contribution provision will be used (Minnesota Statutes, Section 352.04, Subdivision 8) that provision requires payment by the employing unit with interest. The problem MSRS now seeks to correct was not caused by the employing unit. Charging interest could be justified under an argument that the interest payment is not in any sense a penalty, but rather an amount needed to correct for the time value of money and to ensure that the university does not receive a windfall. On the other hand, perhaps one can argue that no interest should be paid if it is MSRS or the Legislature which caused the problem by confusing the operative law when the Legislature included, in a 2005 Special Session bill, language to amend a provision which had already been repealed. Does MSRS intend to waive interest? If so, does it have authority to waive interest without legislative language to address this special situation?
4. Possible Problem in Other Plan Systems. The issue is whether there is a similar problem in other plan systems (PERA, TRA, first class city teacher plans, or others) which may need to be addressed in some manner.

Article 7 Amendments for Consideration

1. **Amendment H3798-27A** could be used if the Commission concludes that MSRS leave of absence service credit purchase provision should remain as enacted last year. The amendment removes Section 1 from the bill.
2. **Amendment H3798-28A** removes Section 5, the MSRS-Unclassified Plan surviving spouse term-certain provision, from the bill. The Commission could use this amendment if it concludes that the law should remain unchanged.

3. **Amendment H3798-29A** is an alternative to Amendment H3798-28A. If the Commission concludes that the removal of the five- and/or six-year term-certain annuity option is appropriate in plans where it currently exists, the Commission may wish to consider Amendment H3798-29A, which removes those term-certain options in TRA and the first class city teacher plans. The Commission may wish to hear testimony from TRA and the first class city teacher plans to determine whether they support this amendment.
4. **Amendment H3798-30A** provides an alternative solution to the MSRS salary cap enforcement action which MSRS seeks to address through Section 6 of this article. Amendment H3798-30A removes Section 6 from the bill and replaces it with a repeal of a repealer, removing the 2005 repeal of Minnesota Statutes 2004, Section 356.611, Subdivision 1. That would validate the action taken in the 2005 First Special Session. It would, however, result in two statutes, Minnesota Statutes, Section 43A.17, Subdivision 9, capping salaries, and another statute, Section 356.661, Subdivision 1, capping salary for pension purposes, which might be reviewed as largely duplicative.

Article 8 - Teachers Retirement Association Provisions

Article 8, Section 1, amends TRA's "termination of teaching service" definition, Section 354.05, Subdivision 37, by adding a statement that TRA will treat, as a valid termination, situations where the member, prior to submitting the termination, has entered into a written contract to resume teaching with a TRA employing unit, providing the individual is at least age 62.

Many issues raised by this provision are covered in discussion and policy issues covered in the Article 1 discussion. If there is a written agreement between the individual and a covered TRA employing unit to return to employment following a "termination," there has been no true severing of the relationship between the employee and employer, and the termination can be viewed as a sham termination resulting in in-service distributions of retirement assets to active employees, which is not consistent with qualified plan status for tax purposes. TRA would rely on the apparent exemption, discussed previously, permitting such distributions if the individual is at least age 62.

This provision in Article 8, Section 1, raises many of the policy issues discussed in the first section of this memo dealing with Article 1. The Commission may wish to take the time, over the next interim, to carefully consider the best policy regarding in-service distributions. Some policy issues raised by Article 8, Section 1, are:

1. In-Service Distribution Issues. While in-service distributions to those ages 62 or older may be permitted under federal law, the Commission ought to determine whether that policy is appropriate for any Minnesota public plans. There is inadequate time for that study and analysis during this session.
2. Future Implications. This proposal is likely to lead, in the future, to requirements that the retirement benefits of the reemployed annuitant be recomputed each year to incorporate the additional service and salary the individual has provided to the employer. Those recomputations currently occur for Social Security benefit recipients who provide employment after commencing receipt of Social Security benefits.
3. Conflict with Commission Policy. The provision can be viewed as conflicting with the Commission's policy principle which states in relevant part that our public pension plans exist for "the outtransitioning of existing public employees at the normally expected conclusion of their working careers," and that the intended purpose of retirement benefits is to support long-service individuals in retirement, when coupled with Social Security benefits and personal savings, without noticeable decrease in the standard of living. Under TRA's proposal, retirement assets can be distributed to individuals who are not outtransitioning. These individuals are returning to provide service to the employing unit, and there is no prohibition against returning to full-time employment. As drafted, full-time teachers, if they are at least 62, can submit a termination simply to cause the TRA annuity to commence while continuing in the same full-time employment.
4. Double-Dipping. The proposal violates the concept that double-dipping is not appropriate and should not be permitted.

5. Inconsistency with Other Plans. As stated previously, TRA and PERA are moving in completely opposite directions on termination issues, with PERA strengthening requirements for all those who terminate, while TRA wants to eliminate all termination requirements, other than submitting a document to permit TRA determine a date for commencing benefits, for those who are at least 62.
6. Unclear Impact on Plan Cost. TRA's proposal adds some uncertainty to TRA plan costs. Permitting in-service distributions after age 62 may influence, in unpredictable ways, the probabilities of commencing benefits at given ages, leading to an unpredictable impact on plan cost.

Article 8, Section 2, revises the payment terms for TRA family leaves, Minnesota Statutes, Section 354.096, Subdivision 2, to eliminate payment language applicable when individuals make payment during the leave, replacing it with a reference to payment terms under Minnesota Statutes, Section 354.72.

This change appears to have no material impact, and can be viewed as a conforming change to the revision of the TRA strike period/leave of absence payment terms provision found in Article 3.

Article 8, Section 3, revises Minnesota Statutes, Section 354.33, Subdivision 5, a benefit provision applicable to certain money purchase plan annuitants, by striking a crossreference to Section 354.55, Subdivision 3, a provision proposed for repeal in Section 4.

This is a technical change.

Article 8, Section 4, repeals Minnesota Statutes 2006, Sections 354.44, Subdivision 6a; 354.465; 354.51, Subdivision 4; and 354.55, Subdivisions 2,3,6,12, and 15.

These provisions are suggested for repeal because they are deemed to be obsolete.

- Section 354.44, Subdivision 6a, deals with modification of certain TRA benefit recipients due to 1997 benefit improvement provisions. The provision applies to TRA retirees, disabilitants, and survivors who commenced receiving benefits after June 30, 1997, and before July 1, 2002. The provision is not applicable to any benefit computed after 2002, so presumably it can be repealed.
- Section 354.465 applies to individuals who elected joint-and-survivor coverage before July 1, 1981, permitting them to revise that coverage prior to the date of retirement.
- Section 354.51, Subdivision 4, allows individuals who became TRA members before June 30, 1957, and who had service in other states, to purchase service credit for that out-of-state service. In general, payment had to be made before July 1, 1973.
- Section 354.55, Subdivision 2, deals with benefit coverage elections which had to be made prior to 1957.
- Section 354.55, Subdivision 3, deals with computing benefits for certain individuals who terminated TRA-covered service before July 1, 1957.
- Section 354.55, Subdivision 6, deals with computing annuities which commenced before June 30, 1965.
- Section 354.55, Subdivision 12, deals with retirements that occur under pre-1973 law.
- Section 354.55, Subdivision 13, deals with computing annuities for individuals who terminated service before July 1, 1968.

Article 8 Amendments for Consideration

1. **Amendment H3798-31A** removes Section 1, the TRA provision which, as revised, would permit in-service distributions to those over age 62. The Commission may wish to consider this amendment if Amendment H3798-21A is not used.
2. **Amendment H3798-32A** is an alternative to Amendment H3798-31A. Amendment H3798-32A leaves Section 1 in the bill, but revises it so that the changes in this provision are similar to those which PERA seeks to add to its termination provision. Under this amendment, a teacher will not be considered to have terminated service if the individual, prior to termination, has entered into an agreement to return to a TRA employing unit to provide teaching service as an employee, independent contractor, or employee of an independent contractor.

Article 9 - Repeal of Obsolete Leave and Election Procedures

Article 9, Section 1, repeals Minnesota Statutes, Sections 354A.091, Subdivisions 1a and 1b; and 355.629.

The three provisions proposed for repeal are obsolete. The two provisions in Chapter 354A are first class city teacher plan extended leave of absence provisions applying to leaves that commenced between 1978 and 1984. An extended leave of absence cannot exceed five years. Therefore, by the late 1980s these provisions were not longer needed. TRA had comparable provisions that were repealed in 1991. These two first class city teacher provisions should have been repealed at the same time. The executive directors of the Duluth Teachers Retirement Fund Association (DTRFA) and the St. Paul Teachers Retirement Fund Association (SPTRFA) have reviewed these repealers and approve of the proposed action.

Minnesota Statutes, Chapter 355, deals with Social Security coverage. Minnesota Statutes, Section 355.629, is a Social Security election of coverage provision added to law in 2002, authorizing a second referendum giving legislators a second chance to elect Social Security coverage. The referendum was held on a date set by the governor. This was a one-time event which has already occurred and, thus, the provision has no further application. The chapter at one time had referendum provisions for many different employee groups and pension funds. The Legislature has routinely repealed these referendum provisions after the referendum has occurred, since the provisions were no longer needed. The last extensive action to repeal obsolete provisions from this chapter occurred in 2002, when several dozen obsolete provisions were repealed.

Attachment A

Background Information on Reemployed Annuitant Earnings Limitations

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

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

| Year | Under Age 65 | Age 65-69 |
|------|--------------|-----------|
| 1985 | \$5,400 | \$7,320 |
| 1986 | \$5,760 | \$7,800 |
| 1987 | \$6,000 | \$8,160 |
| 1988 | \$6,120 | \$8,400 |
| 1989 | \$6,480 | \$8,880 |
| 1990 | \$6,840 | \$9,360 |
| 1991 | \$7,080 | \$9,720 |
| 1992 | \$7,440 | \$10,200 |
| 1993 | \$7,680 | \$10,560 |
| 1994 | \$8,040 | \$11,160 |
| 1995 | \$8,160 | \$11,280 |
| 1996 | \$8,280 | \$12,500 |
| 1997 | \$8,640 | \$13,500 |
| 1998 | \$9,120 | \$14,500 |
| 1999 | \$9,600 | \$15,500 |

| Year | Prior to Year of Full Retirement Age | Year of Full Retirement Age |
|------|--------------------------------------|-----------------------------|
| 2000 | \$10,080 | \$17,000 |
| 2001 | \$10,680 | \$25,000 |
| 2002 | \$11,280 | \$30,000 |
| 2003 | \$11,520 | \$30,720 |
| 2004 | \$11,640 | \$31,080 |
| 2005 | \$12,000 | \$31,800 |
| 2006 | \$12,480 | \$33,240 |
| 2007 | \$12,960 | \$34,440 |
| 2008 | \$13,560 | \$36,120 |

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

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

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

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

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

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

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

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

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

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

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

TRA Annuitant Retiring at Age 63
Final Five Years' Salary

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

| | |
|--|--|
| Highest Five Successive Years Average Salary | \$53,517.65 |
| Benefit Accrual Percentage (30 Years x 1.7) | <u>x .51</u> |
| | \$27,294 (\$2,274.50/month) ¹ |

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

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

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

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

Attachment B

Background Information on Health Care Facility Privatizations

- a. Privatization Trend. There is a trend among health care facilities to convert from public sector ownership to private sector or quasi-public sector ownership. These conversions have involved selling, leasing, or transferring the facility, along with transferring the existing employees to that reorganized health care facility. The privatization of health care facilities is occurring among both large and small hospitals, clinics, and related health care providers. The privatizations typically increase organizational flexibility and reduce various costs, allowing the privatized organization to be financially competitive. One area of potential savings is the elimination of PERA active member coverage (or coverage by another public pension plan, if applicable), which is eliminated by the privatization.
- b. Privatization Impact on Retirement Coverage. When a privatization occurs and employees no longer qualify as public employees for PERA pension purposes, PERA membership terminates and retirement benefit coverage problems may emerge. Under current PERA law, three years of PERA coverage is required for vesting. For employees who terminate PERA membership without vesting, no deferred retirement annuity right typically is available. The member may elect a refund of accumulated member contributions with six percent interest, or the individual may leave the contributions at PERA, perhaps in the expectation that the individual will change employment in the future and again become a covered public employee. For a vested employee who terminates PERA membership with at least three years of service, there is a choice between a deferred retirement annuity right and a refund. The deferred retirement annuity is augmented by three percent per year under age 55 and five percent per year thereafter until retirement.

When a privatization occurs and employees lose the right to continue coverage by the public plan, all of the employees are impacted. The employee may be terminated from employment at the time of the sale, transfer, or reorganization. Those employees will lose both continued employment and continued retirement coverage. For employees who remain employed after transfer to the newly organized health care facility, the privatization interrupts their benefit coverage. If there is no pension plan established by the privatized health care facility, the employees will suffer a loss of overall benefit coverage other than Social Security coverage. If the new employer does provide a plan, portability problems between the old plan and the new plan are likely.

- c. Evolution of Privatization Treatment. The Legislature has dealt with privatizations on several occasions over the past few decades, primarily health care privatizations. The treatment has evolved over time. At times, in addition to any benefit that the employee may have been eligible for under a public pension plan as a deferred annuitant, the individual was offered an enhanced refund (employee plus employer contributions) plus interest. On a few occasions, the individuals were permitted to remain in PERA-General. The following summarizes treatments used since 1984:
 - In 1984, relating to the privatization of the Owatonna City Hospital, legislation allowed the affected employees to receive a deferred retirement annuity with at least five years of service or to receive a refund of employee and employer contributions, plus interest at six percent, compounded annually.
 - In 1986, relating to the St. Paul Ramsey Medical Center reorganization, legislation allowed only a delayed right to withdraw from PERA and receipt of a refund of only member contributions plus interest at five percent, compounded annually.
 - In 1987, relating to the Albany Community Hospital and the Canby Community Hospital, legislation allowed the affected employees to receive a deferred retirement annuity with a five-year vesting period or to receive a refund of both the employee and employer contributions, plus compound annual interest at six percent.
 - In 1988, relating to the Gillette Children's Hospital employees, legislation continued the membership of the affected employees in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), but excluded new employees from public pension plan coverage.
 - In 1994, relating to the St. Paul Ramsey Medical Center again, legislation continued the PERA membership of existing employees who were PERA members unless the employee elected to terminate PERA membership before July 1, 1995.

- In 1995 through 1998, the approach used for PERA privatizations during this period required PERA coverage to end for all employees at the time of the transfer of the health care facility to the new ownership. The new health care entity was urged but not required to provide a “PERA-like” plan for individuals who are transferred with the facility and remain as employees of the new entity. For individuals who are terminated at the time of the transfer, and who were not vested in PERA, the city was authorized to match any refund with interest that the individual received from PERA. This model was used with the Olmsted County Medical Center privatization (1995), the Itasca County Medical Center (1995 and 1996), Jackson Medical Center, Melrose Hospital, Pine Villa Nursing Home, and the Tracy Municipal Hospital and Clinic (1997), and the Luverne Community Hospital (1998) privatizations.
- In 1996, a different approach was used for the University of Minnesota Hospital-Fairview merger, a procedure which was coded as Chapter 352F. Prior to the privatization, the University employees were covered by a public plan comparable to PERA-General, the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). This is the model upon which the PERA privatization chapter, Chapter 353F, which was enacted in 1999, is based. In this model, termination of coverage by the public plan occurs at the time of the privatization, but the employees who terminated coverage (even those who were not vested) were permitted deferred annuities from the public plan with an augmentation rate that exceeded that used under general law, and the employees were allowed to use service with the new organization to meet age/service requirements for qualifying for the “Rule of 90” under the public plan. The legislation that included specific privatizations in the PERA privatization chapter are contingent upon local approval and a finding by the actuary that the inclusion is not expected to create a loss for PERA.
- In 2004, two different approaches were used. A few groups wished to remain as active PERA members, the new employers were willing to provide that treatment and to cover the resulting PERA-General employer contribution requirements, and PERA did not oppose that proposed treatment. This treatment, allowing the employees to remain as active PERA members following privatization, was extended to Anoka County Achieve Program employees and to Government Training Office employees, despite the changed status of these individuals from public sector to private sector. The chief reservation against this treatment is a federal requirement that public plans should not provide coverage to private sector employees, under threat of losing its qualified status and making contributions subject to immediate taxation. However, public plans are permitted to cover a small percentage of private sector employees, providing the percentage is minimal. While the dividing line between an acceptable minimal percentage and an unacceptable percentage is unclear, it was safe to assume that the small number of individuals involved in these two privatizations would not cause a plan qualification problem. Plan qualification concerns may be an issue in the future if this treatment is proposed for other privatizations, causing the percentage of private employees in PERA to grow.

The other model used in 2004 was the model specified in the PERA privatized employee chapter. This approach was used for Fair Oaks Lodge, Kanabec Hospital, RenVilla Nursing Home, and the St. Peter Community Health Care Center.

- In 2005 and 2006, the Legislature returned to the use of a single model, approving three more additions to the PERA privatization chapter in 2005 (Bridges Medical Center, Hutchinson Area Health Care, and Northfield Hospital), and in 2006 (City of Cannon Falls Hospital, Clearwater County Health Services, and Dassel Lakeside Community Home), all contingent upon local approval and a find by the actuary that inclusion under the chapter would not create a loss for PERA.
- In 2006, the deferred annuity augmentation rates for post-2006 privatizations were reduced because PERA argued that the pre-2006 privatization deferred annuity augmentation rates were actuarially unsupportable given PERA’s funding problems. For post-2006 privatizations under Minnesota Statutes, Chapter 353F, the deferred annuity augmentation rates are four percent (rather than 5.5 percent) until the first of the year following the year in which the individual turns age 55, and six percent (rather than 7.5 percent) thereafter.
- In 2007, the Legislature continued the use of a single model for treating public employee privatizations, approving the addition of the Lakefield Nursing Home, the Lakeview Nursing Home in Gaylord, and the Oakland Park Nursing Home to the PERA privatization chapter with local approval and with actuarial work indicating no new net actuarial loss for PERA-General.

H. R. 4—271

“Years of service:

The
nonforfeitable
percentage is:

5 80
6 or more 100.”

(2) CONFORMING AMENDMENT.—Section 203(a) of such Act is amended by striking paragraph (4).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2006.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

(ii) January 1, 2007; or

(B) January 1, 2009.

(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

(4) SPECIAL RULE FOR STOCK OWNERSHIP PLANS.—Notwithstanding paragraph (1) or (2), in the case of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986) which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of such Code), the amendments made by this section shall not apply to any plan year beginning before the earlier of—

(A) the date on which the loan is fully repaid, or

(B) the date on which the loan was, as of September 26, 2005, scheduled to be fully repaid.

SEC. 905. DISTRIBUTIONS DURING WORKING RETIREMENT.

(a) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subparagraph (A) of section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following new sentence: “A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.”

(b) AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 (as amended by this Act) is amended by inserting after paragraph (35) the following new paragraph:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in plan years beginning after December 31, 2006.

SEC. 906. TREATMENT OF CERTAIN PENSION PLANS OF INDIAN TRIBAL GOVERNMENTS.

(a) DEFINITION OF GOVERNMENT PLAN TO INCLUDE CERTAIN PENSION PLANS OF INDIAN TRIBAL GOVERNMENTS.—

(1) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 414(d) of the Internal Revenue Code of 1986 (defining governmental plan) is amended by adding at the end the following: “The term ‘governmental plan’ includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).”.

(2) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(A) Section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32)) is amended by adding at the end the following: “The term ‘governmental plan’ includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).”.

(B) Section 4021(b)(2) of such Act is amended by adding at the end the following: “or which is described in the last sentence of section 3(32).”.

(b) CLARIFICATION THAT TRIBAL GOVERNMENTS ARE SUBJECT TO THE SAME PENSION PLAN RULES AND REGULATIONS APPLIED TO STATE AND OTHER LOCAL GOVERNMENTS AND THEIR POLICE AND FIREFIGHTERS.—

(1) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(A) POLICE AND FIREFIGHTERS.—Subparagraph (H) section 415(b)(2) of the Internal Revenue Code of 1986 (defining participant) is amended—

Exempt Amounts Under the Earnings Test

Updated October 17, 2007

How the earnings test works

The retirement earnings test applies only to people below normal retirement age (NRA), which ranges from age 65 to 67 depending on year of birth. Social Security withholds benefits if your earnings exceed a certain level, called a retirement earnings test exempt amount, *and* if you are under your NRA. One of two different exempt amounts apply, depending on the year you attain your NRA. These exempt amounts generally increase annually with increases in the national average wage index.

Exempt Amounts for 2008

We determine the exempt amounts using procedures defined in the Social Security Act. For people attaining NRA *after 2008*, the annual exempt amount in 2008 is \$13,560. For people attaining NRA *in 2008*, the annual exempt amount is \$36,120. This higher exempt amount applies only to earnings made in months prior to the month of NRA attainment.

Benefits Withheld When Earnings Exceed Exempt Amounts

We withhold \$1 in benefits for every \$2 of earnings in excess of the lower exempt amount. We withhold \$1 in benefits for every \$3 of earnings in excess of the higher exempt amount. Earnings in or after the month you reach NRA do not count toward the retirement test.

Annual Retirement Earnings Test Exempt Amounts

| Year | Lower amount ¹ | Higher amount ² |
|------|---------------------------|----------------------------|
| 2000 | \$10,080 | \$17,000 |
| 2001 | 10,680 | 25,000 |
| 2002 | 11,280 | 30,000 |
| 2003 | 11,520 | 30,720 |
| 2004 | 11,640 | 31,080 |
| 2005 | 12,000 | 31,800 |
| 2006 | 12,480 | 33,240 |
| 2007 | 12,960 | 34,440 |
| 2008 | 13,560 | 36,120 |

¹ Applies in years before the year of attaining NRA.

² Applies in the year of attaining NRA, for months prior to such attainment.

From 1983-1999 the higher exempt amounts applied at ages 65 through 69, as shown in our historical series of exempt amounts.

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

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

W. ANDREW KNIGHT
ASSISTANT CITY AUDITOR, DALLAS, TEXAS

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

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

THE RETIRE AND REHIRE PRACTICE

What is it?

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

Who is doing it?

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

Why does it happen?

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

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

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

TWO MAJOR RISKS OF THE RETIRE AND REHIRE PRACTICE

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

Risk One: Negative Actuarial Impact

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

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

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

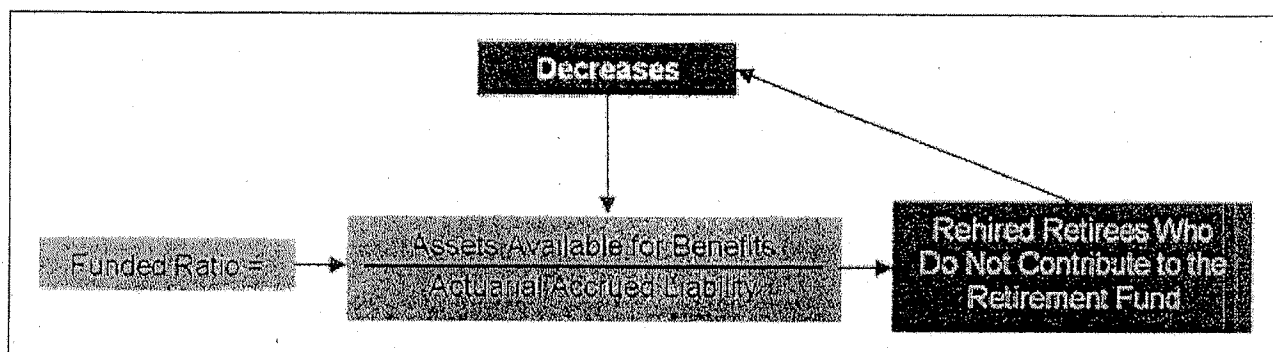


Figure 1: Measuring the Actuarial Risk Placed on the Fund

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

Avoiding In-service Distributions

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

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

Risk Two: Noncompliance With IRS Rules

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

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

termination of employment in which the employer and employee relationship is completely severed.

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

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

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

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

AUDIT CONSIDERATIONS

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

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

Public Perception Issues of the Retire and Rehire Practice

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

BALANCING THE BENEFITS WITH THE COSTS

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

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

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- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 1, delete article 1
- 1.3 Renumber the articles in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 2, after line 25, insert:
- 1.3 **"EFFECTIVE DATE. This section is effective the day following final enactment."**

1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

1.2 Page 2, after line 25, insert:

1.3 "Sec. 2. **REPEALER.**

1.4 Minnesota Statutes 2006, section 43A.346, subdivisions 3, 4, 5, 6, 7, 8, 9, and 10,
1.5 and Minnesota Statutes 2007 Supplement, section 43A.346, subdivisions 1 and 2, are
1.6 repealed effective July 1, 2009. No postretirement option employment positions may
1.7 be created or renewed after July 1, 2008."

1.8 Amend the title accordingly

1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

1.2 Page 2, line 24, after "requirement" insert "and termination of service requirement
1.3 prohibiting return to work agreements"

1.4 Page 2, line 25, delete "subdivision 28, paragraph (a), is" and insert "subdivisions
1.5 11a and 28, are"

..... moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

Page 2, after line 25, insert:

"Sec. 2. Minnesota Statutes 2006, section 352.1155, subdivision 1, is amended to read:

Subdivision 1. **Eligibility.** Except as indicated in subdivision 4, the annuity reduction provisions of section 352.115, subdivision 10, do not apply to a person who:

(1) is at least age 62;

(2) retires from the Minnesota State Colleges and Universities system with at least ten years of combined service credit in a system under the jurisdiction of the Board of Trustees of the Minnesota State Colleges and Universities;

(2) (3) was employed on a full-time basis immediately preceding retirement as a faculty member or as an unclassified administrator in that system;

(3) (4) begins drawing an annuity from the general state employees retirement plan of the Minnesota State Retirement System; and

(4) (5) returns to work on not less than a one-third time basis and not more than a two-thirds time basis in the system from which the person retired under an agreement in which the person may not earn a salary of more than \$46,000 in a calendar year from employment after retirement in the system from which the person retired.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2008.

Sec. 3. Minnesota Statutes 2006, section 354.445, is amended to read:

354.445 NO ANNUITY REDUCTION.

(a) The annuity reduction provisions of section 354.44, subdivision 5, do not apply to a person who:

(1) is at least age 62;

(2) retires from the Minnesota State Colleges and Universities system with at least ten years of combined service credit in a system under the jurisdiction of the Board of Trustees of the Minnesota State Colleges and Universities;

~~(2)~~ (3) was employed on a full-time basis immediately preceding retirement as a faculty member or as an unclassified administrator in that system;

~~(3)~~ (4) begins drawing an annuity from the teachers retirement association; and

~~(4)~~ (5) returns to work on not less than a one-third time basis and not more than a two-thirds time basis in the system from which the person retired under an agreement in which the person may not earn a salary of more than \$46,000 in a calendar year from employment after retirement in the system from which the person retired.

(b) Initial participation, the amount of time worked, and the duration of participation under this section must be mutually agreed upon by the president of the institution where the person returns to work and the employee. The president may require up to one-year notice of intent to participate in the program as a condition of participation under this section. The president shall determine the time of year the employee shall work. The employer or the president may not require a person to waive any rights under a collective bargaining agreement as a condition of participation under this section.

(c) Notwithstanding any law to the contrary, a person eligible under paragraphs (a) and (b) may not, based on employment to which the waiver in this section applies, earn further service credit in a Minnesota public defined benefit plan and is not eligible to participate in a Minnesota public defined contribution plan, other than a volunteer fire plan governed by chapter 424A. No employer or employee contribution to any of these plans may be made on behalf of such a person.

(d) For a person eligible under paragraphs (a) and (b) who earns more than \$46,000 in a calendar year from employment after retirement due to employment by the Minnesota state colleges and universities system, the annuity reduction provisions of section 354.44, subdivision 5, apply only to income over \$46,000.

(e) A person who returns to work under this section is a member of the appropriate bargaining unit and is covered by the appropriate collective bargaining contract. Except as provided in this section, the person's coverage is subject to any part of the contract limiting rights of part-time employees.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2008.

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

Subd. 3a. **No annuity reduction.** (a) The annuity reduction provisions of subdivision 3 do not apply to a person who:

(1) is at least age 62;

(2) retires from the technical college system with at least ten years of service credit in the system from which the person retires;

3.1 ~~(2)~~ (3) was employed on a full-time basis immediately preceding retirement as a
3.2 technical college faculty member;

3.3 ~~(3)~~ (4) begins drawing an annuity from a first class city teachers retirement
3.4 association; and

3.5 (4) (5) returns to work on not less than a one-third time basis and not more than a
3.6 two-thirds time basis in the technical college system under an agreement in which the
3.7 person may not earn a salary of more than \$46,000 in a calendar year from the technical
3.8 college system.

3.9 (b) Initial participation, the amount of time worked, and the duration of participation
3.10 under this section must be mutually agreed upon by the employer and the employee. The
3.11 employer may require up to a one-year notice of intent to participate in the program as a
3.12 condition of participation under this section. The employer shall determine the time
3.13 of year the employee shall work.

3.14 (c) Notwithstanding any law to the contrary, a person eligible under paragraphs
3.15 (a) and (b) may not earn further service credit in a first class city teachers retirement
3.16 association and is not eligible to participate in the individual retirement account plan or
3.17 the supplemental retirement plan established in chapter 354B as a result of service under
3.18 this section. No employer or employee contribution to any of these plans may be made on
3.19 behalf of such a person.

3.20 **EFFECTIVE DATE.** This section is effective retroactively from January 1, 2008."

3.21 Amend the title accordingly

..... moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

Page 1, delete section 1 and insert:

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

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

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

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

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

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

2.5 **EFFECTIVE DATE.** This section is effective the day following final enactment."
2.6 Amend the title accordingly

1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

1.2 Page 1, delete section 1 and insert:

1.3 "Section 1. Minnesota Statutes 2007 Supplement, section 43A.346, subdivision 2,
1.4 is amended to read:

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

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

1.11 (2) terminates state or Metropolitan Council employment;

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

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

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

(c) For purposes of this section, if the eligible state employee is at least age 62, the length of separation requirement and termination of service agreement prohibiting return to work agreements under section 353.01, subdivisions 11a and 28, are not applicable.

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

Sec. 2. Minnesota Statutes 2006, section 43A.346, subdivision 5, is amended to read:

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

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

Sec. 3. Minnesota Statutes 2006, section 43A.346, subdivision 6, is amended to read:

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

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

Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 2, delete section 1
- 1.3 Renumber the sections in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 3, lines 3 and 5, delete "\$46,000" and insert "\$....."

..... moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

Page 2, after line 27, insert:

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

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

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

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

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

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

EFFECTIVE DATE. This section is effective retroactively from January 1, 2008.

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

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

EFFECTIVE DATE. This section is effective retroactively from January 1, 2008.

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

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

EFFECTIVE DATE. This section is effective retroactively from January 1, 2008.

Sec. 4. Minnesota Statutes 2006, section 353.37, subdivision 4, is amended to read:

Subd. 4. **Resumption of annuity.** The association ~~shall~~ must resume paying a full annuity to the reemployed annuitant at the start of each calendar year until the salary exceeds the ~~maximums~~ maximum permitted under subdivision 1, or on the first of the month following termination of employment which resulted in the suspension of the annuity. The executive director may adopt policies regarding the suspension and reduction of annuities under this section.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2008."

Page 3, after line 26, insert:

"Sec. 6. Minnesota Statutes 2006, section 354A.31, subdivision 3, is amended to read:

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

(a) Any person who retired and is receiving a coordinated program retirement annuity under the provisions of sections 354A.31 to 354A.41 or any person receiving a basic program retirement annuity under the governing sections in the articles of incorporation or bylaws and who has resumed teaching service for the school district in which the teachers retirement fund association exists is entitled to continue to receive retirement annuity payments, except that all or a portion of the annuity payments must be ~~reduced~~ deferred during the calendar year immediately following the calendar year in which the person's ~~income~~ salary from the teaching service is in an amount greater than ~~the annual maximum earnings allowable for that age for the continued receipt of full benefit amounts monthly under the federal old age, survivors, and disability insurance program as set by the secretary of health and human services under United States Code, title 42, section 403 \$46,000.~~ The amount of the ~~reduction~~ deferral must be one-third the amount in excess of ~~the applicable reemployment income maximum specified in this subdivision~~ \$46,000 and must be deducted from the annuity payable for the calendar year immediately following the calendar year in which the excess amount was earned. ~~If the person has not yet reached the minimum age for the receipt of Social Security benefits, the maximum earnings for the person must be equal to the annual maximum earnings allowable for the minimum age for the receipt of Social Security benefits.~~

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

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

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

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

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

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

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 3, line 26, delete "retroactively from" and insert "on" and delete "2008" and
- 1.3 insert "2009"

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 3, delete section 2
- 1.3 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 3, line 28, reinstate the stricken language
- 1.3 Page 3, line 29, reinstate "or" and delete "Beginning"
- 1.4 Page 3, line 31, reinstate the stricken language

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 4, line 16, delete "retroactively from" and insert "on" and delete "2008" and
- 1.3 insert "2009"

1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

1.2 Page 4, delete article 3 and insert:

1.3 "ARTICLE 3

1.4 TEACHERS RETIREMENT ASSOCIATION
1.5 CLARIFICATION OF STRIKE PERIOD PROCEDURE

1.6 Section 1. Minnesota Statutes 2007 Supplement, section 354.05, subdivision 13,
1.7 is amended to read:

1.8 Subd. 13. **Allowable service.** "Allowable service" means:

1.9 (1) Any service rendered by a teacher for which on or before July 1, 1957, the
1.10 teacher's account in the retirement fund was credited by reason of employee contributions
1.11 in the form of salary deductions, payments in lieu of salary deductions, or in any other
1.12 manner authorized by Minnesota Statutes 1953, sections 135.01 to 135.13, as amended by
1.13 Laws 1955, chapters 361, 549, 550, 611, or

1.14 (2) Any service rendered by a teacher for which on or before July 1, 1961, the
1.15 teacher elected to obtain credit for service by making payments to the fund ~~pursuant to~~
1.16 under Minnesota Statutes 1980, section 354.09 and section 354.51, or

1.17 (3) Any service rendered by a teacher after July 1, 1957, for any calendar month
1.18 when the member receives salary from which deductions are made, deposited and credited
1.19 in the fund, or

1.20 (4) Any service rendered by a person after July 1, 1957, for any calendar month
1.21 where payments in lieu of salary deductions are made, deposited and credited into the
1.22 fund ~~as provided in~~ under Minnesota Statutes 1980, section 354.09, subdivision 4, and
1.23 section 354.53, or

1.24 (5) Any service rendered by a teacher for which the teacher elected to obtain credit
1.25 for service by making payments to the fund ~~pursuant to~~ under Minnesota Statutes 1980,
1.26 section 354.09, subdivisions 1 and 4, sections 354.50, 354.51, Minnesota Statutes 1957,

section 135.41, subdivision 4, Minnesota Statutes 1971, section 354.09, subdivision 2, or Minnesota Statutes, 1973 Supplement, section 354.09, subdivision 3, or

(6) Both service during years of actual membership in the course of which contributions were currently made and service in years during which the teacher was not a member but for which the teacher later elected to obtain credit by making payments to the fund as permitted by any law then in effect, or

(7) Any service rendered where contributions were made and no credit was established because of the limitations contained in Minnesota Statutes 1957, section 135.09, subdivision 2, as determined by the ratio between the amounts of money credited to the teacher's account in a fiscal year and the maximum retirement contribution allowable for that year, or

(8) MS 2002 [Expired]

~~(9) A period of time during which a teacher was on strike without pay, not to exceed a period of one year, if payment in lieu of salary deductions is made under section 354.72, or~~

~~(10)~~ (9) A period of service before July 1, 2006, that was properly credited as allowable service by the Minneapolis Teachers Retirement Fund Association, and that was rendered by a teacher as an employee of Special School District No. 1, Minneapolis, or by an employee of the Minneapolis Teachers Retirement Fund Association who was a member of the Minneapolis Teachers Retirement Fund Association by virtue of that employment, who has not begun receiving an annuity or other retirement benefit from the former Minneapolis Teachers Retirement Fund Association calculated in whole or in part on that service before July 1, 2006, and who has not taken a refund of member contributions related to that service unless the refund is repaid under section 354.50, subdivision 4. Service as an employee of Special School District No. 1, Minneapolis, on or after July 1, 2006, is "allowable service" only as provided by this chapter.

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

Sec. 2. Minnesota Statutes 2007 Supplement, section 354.72, is amended to read:

**354.72 AUTHORIZED LEAVE OF ABSENCE ~~AND STRIKE PERIOD~~
SERVICE CREDIT PURCHASE PROCEDURE.**

Subdivision 1. **Application.** This section applies to any ~~strike period under section 354.05, subdivision 13, clause (9), and to any~~ period of authorized leave of absence without pay under sections 354.093, 354.094, 354.095, and 354.096 for which the teacher obtains credit for allowable service by making payment as specified in this section to the Teachers Retirement Association fund. Each year of an extended leave of absence under section 354.094 is considered to be a separate leave for purposes of this section.

Subd. 2. **Purchase procedure.** (a) A teacher may purchase credit for allowable and formula service in the plan for a period specified in subdivision 1 if the teacher makes a payment as specified in paragraph (b) or (c), whichever applies. The employing unit, at its option, may pay the employer portion of the amount specified in paragraph (b) on behalf of its employees.

(b) If payment is received by the executive director within one year from the end of the ~~strike period or~~ authorized leave under section 354.093, 354.095, or 354.096, or after June 30 and before the following June 30 for an extended leave of absence under section 354.094, the payment must equal the total employee and employer contributions, including amortization contributions if applicable, given the contribution rates in section 354.42, multiplied by the member's average monthly salary rate on the commencement of the leave ~~or period of strike~~, multiplied by the months and portions of a month of the leave of absence ~~or period of strike~~ for which the teacher seeks allowable service credit. Payments made under this paragraph must include compound interest at a monthly rate of 0.71 percent from the last day of the leave period ~~or strike period~~, or from June 30 for an extended leave of absence under section 354.094, until the last day of the month in which payment is received.

(c) If payment is received by the executive director after the applicable last permitted date under paragraph (b), the payment amount is the amount determined under section 356.551. Notwithstanding payment deadlines specified in section 356.551, payment under this section may be made anytime before the effective date of retirement.

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

Sec. 3. Minnesota Statutes 2007 Supplement, section 356.195, subdivision 1, is amended to read:

Subdivision 1. **Covered plans.** This section applies to all defined benefit plans specified in section 356.30, subdivision 3, ~~except clause (10).~~

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

Amend the title accordingly

..... moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

Page 4, delete article 3 and insert:

"ARTICLE 3

TEACHERS RETIREMENT ASSOCIATION CLARIFICATION OF STRIKE PERIOD PROCEDURE

Section 1. Minnesota Statutes 2007 Supplement, section 354.05, subdivision 13,
is amended to read:

Subd. 13. **Allowable service.** "Allowable service" means:

(1) Any service rendered by a teacher for which on or before July 1, 1957, the
teacher's account in the retirement fund was credited by reason of employee contributions
in the form of salary deductions, payments in lieu of salary deductions, or in any other
manner authorized by Minnesota Statutes 1953, sections 135.01 to 135.13, as amended by
Laws 1955, chapters 361, 549, 550, 611, or

(2) Any service rendered by a teacher for which on or before July 1, 1961, the
teacher elected to obtain credit for service by making payments to the fund pursuant to
under Minnesota Statutes 1980, section 354.09 and section 354.51, or

(3) Any service rendered by a teacher after July 1, 1957, for any calendar month
when the member receives salary from which deductions are made, deposited and credited
in the fund, or

(4) Any service rendered by a person after July 1, 1957, for any calendar month
where payments in lieu of salary deductions are made, deposited and credited into the
fund ~~as provided in~~ under Minnesota Statutes 1980, section 354.09, subdivision 4, and
section 354.53, or

(5) Any service rendered by a teacher for which the teacher elected to obtain credit
for service by making payments to the fund ~~pursuant to~~ under Minnesota Statutes 1980,
section 354.09, subdivisions 1 and 4, sections 354.50, 354.51, Minnesota Statutes 1957,

section 135.41, subdivision 4, Minnesota Statutes 1971, section 354.09, subdivision 2, or Minnesota Statutes, 1973 Supplement, section 354.09, subdivision 3, or

(6) Both service during years of actual membership in the course of which contributions were currently made and service in years during which the teacher was not a member but for which the teacher later elected to obtain credit by making payments to the fund as permitted by any law then in effect, or

(7) Any service rendered where contributions were made and no credit was established because of the limitations contained in Minnesota Statutes 1957, section 135.09, subdivision 2, as determined by the ratio between the amounts of money credited to the teacher's account in a fiscal year and the maximum retirement contribution allowable for that year, or

(8) MS 2002 [Expired]

~~(9) A period of time during which a teacher was on strike without pay, not to exceed a period of one year, if payment in lieu of salary deductions is made under section 354.72, or~~

~~(10)~~ (9) A period of service before July 1, 2006, that was properly credited as allowable service by the Minneapolis Teachers Retirement Fund Association, and that was rendered by a teacher as an employee of Special School District No. 1, Minneapolis, or by an employee of the Minneapolis Teachers Retirement Fund Association who was a member of the Minneapolis Teachers Retirement Fund Association by virtue of that employment, who has not begun receiving an annuity or other retirement benefit from the former Minneapolis Teachers Retirement Fund Association calculated in whole or in part on that service before July 1, 2006, and who has not taken a refund of member contributions related to that service unless the refund is repaid under section 354.50, subdivision 4. Service as an employee of Special School District No. 1, Minneapolis, on or after July 1, 2006, is "allowable service" only as provided by this chapter.

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

Sec. 2. Minnesota Statutes 2007 Supplement, section 354.72, is amended to read:

**354.72 AUTHORIZED LEAVE OF ABSENCE ~~AND STRIKE PERIOD~~
SERVICE CREDIT PURCHASE PROCEDURE.**

Subdivision 1. **Application.** This section applies to any ~~strike period under section 354.05, subdivision 13, clause (9), and to any~~ period of authorized leave of absence without pay under sections 354.093, 354.094, 354.095, and 354.096 for which the teacher obtains credit for allowable service by making payment as specified in this section to the Teachers Retirement Association fund. Each year of an extended leave of absence under section 354.094 is considered to be a separate leave for purposes of this section.

Subd. 2. **Purchase procedure.** (a) A teacher may purchase credit for allowable and formula service in the plan for a period specified in subdivision 1 if the teacher makes a payment as specified in paragraph (b) ~~or~~ (c), or (d), whichever applies. The employing unit, at its option, may pay the employer portion of the amount ~~specified in paragraph (b)~~ on behalf of its employees.

(b) If payment is received by the executive director ~~within one year from the end~~ by June 30 of the fiscal year of the strike period or authorized leave included under section 354.093, 354.095, or 354.096, or payment must equal the total employee and employer contribution rates, including amortization contribution rates if applicable, multiplied by the member's average monthly salary rate on the date the leave commenced, or for an extended leave under section 354.094, on the salary received during the year immediately preceding the initial year of the leave, multiplied by the months and portions of a month of the leave for which the teacher seeks allowable service credit.

(c) If payment is made after June 30 and before the following June 30 for leaves of absence under sections 354.093, 354.095, or 354.096, or for an extended leave of absence under section 354.094, the payment must equal the total employee and employer contributions, including amortization contributions if applicable, given the contribution rates in section 354.42, multiplied by the member's average monthly salary rate on the commencement of the leave or period of strike, multiplied by the months and portions of a month of the leave of absence or period of strike for which the teacher seeks allowable service credit. Payments made under this paragraph must include the amount determined in paragraph (b) plus compound interest at a monthly rate of 0.71 percent from the last day of the leave period or strike period, or from June 30 for an extended leave of absence under section 354.094, until the last day of the month in which payment is received.

~~(e)~~ (d) If payment is received by the executive director after the applicable last permitted date under paragraph ~~(b)~~ (c), the payment amount is the amount determined under section 356.551. Notwithstanding payment deadlines specified in section 356.551, payment under this section may be made anytime prior to termination.

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

Sec. 3. Minnesota Statutes 2007 Supplement, section 356.195, subdivision 1, is amended to read:

Subdivision 1. **Covered plans.** This section applies to all defined benefit plans specified in section 356.30, subdivision 3, ~~except clause (10).~~

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

Amend the title accordingly

..... moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

Page 4, delete section 1 and insert:

"Section 1. Minnesota Statutes 2007 Supplement, section 354.72, subdivision 2, is amended to read:

Subd. 2. **Purchase procedure.** (a) A teacher may purchase credit for allowable and formula service in the plan for a period specified in subdivision 1 if the teacher makes a payment as specified in paragraph (b) or (c), whichever applies. The employing unit, at its option, may pay the employer portion of the amount specified in paragraph (b) on behalf of its employees.

(b) If payment is received by the executive director within one year from the end of the strike period or authorized leave under section 354.093, 354.095, or 354.096, or after June 30 and before the following June 30 for an extended leave of absence under section 354.094, the payment must equal the total employee and employer contributions, including amortization contributions if applicable, given the contribution rates in section 354.42, multiplied by the member's average monthly salary rate on the commencement of the leave or period of strike, multiplied by the months and portions of a month of the leave of absence or period of strike for which the teacher seeks allowable service credit. Payments made under this paragraph must include compound interest at a monthly rate of 0.71 percent from the last day of the leave period or strike period, or from June 30 for an extended leave of absence under section 354.094, until the last day of the month in which payment is received.

(c) If payment is received by the executive director after the applicable last permitted date under paragraph (b), the payment amount is the amount determined under section 356.551. Notwithstanding payment deadlines specified in section 356.551, payment under this section may be made anytime before termination of service.

EFFECTIVE DATE. This section is effective retroactively from July 1, 2007."

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 5, delete article 4
- 1.3 Renumber the articles in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 7, delete section 1
- 1.3 Renumber the sections in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 7, delete section 2
- 1.3 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 13, delete section 3
- 1.3 Page 21, delete section 1
- 1.4 Renumber the sections in sequence and correct the internal references
- 1.5 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 14, line 11, delete "independent contractor, or employee of an independent
- 1.3 contractor"

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 14, lines 20 to 28, reinstate the stricken language and delete the new language

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 15, delete section 5
- 1.3 Renumber the sections in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 16, line 14, reinstate the stricken language
- 1.3 Page 16, line 15, reinstate "investment options is effective" and after the stricken "
- 1.4 month" insert "....." and reinstate "following the date of receipt of the"
- 1.5 Page 16, line 16, reinstate the stricken language
- 1.6 Page 16, line 23, reinstate the stricken language
- 1.7 Page 16, line 24, reinstate "under this paragraph is effective" and after the stricken "
- 1.8 month" insert "....." and reinstate "following the date of receipt of a"
- 1.9 Page 16, line 25, reinstate the stricken language

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 17, line 20, delete "the member's effective date of retirement" and insert "
- 1.3 termination of service"

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 18, delete section 1
- 1.3 Renumber the sections in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 21, delete section 5
- 1.3 Renumber the sections in sequence and correct the internal references
- 1.4 Amend the title accordingly

..... moves to amend H.F. No. 3798; S.F. No. 3324, as follows:

Page 21, after line 23, insert:

"Sec. 6. Minnesota Statutes 2006, section 354.46, subdivision 2a, is amended to read:

Subd. 2a. **Survivor coverage term certain.** (a) In lieu of the 100 percent optional annuity under subdivision 2, or a refund under section 354.47, subdivision 1, the surviving spouse of a deceased member may elect to receive survivor coverage in a term certain of ~~five~~, ten, 15, or 20 years, but monthly payments must not exceed 75 percent of the average high-five monthly salary of the deceased member. The monthly term certain annuity must be actuarially equivalent to the 100 percent optional annuity under subdivision 2.

(b) If a surviving spouse elects a term certain payment and dies before the expiration of the specified term certain period, the commuted value of the remaining annuity payments must be paid in a lump sum to the surviving spouse's estate.

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

Sec. 7. Minnesota Statutes 2006, section 354A.35, subdivision 2b, is amended to read:

Subd. 2b. **Survivor coverage term certain.** (a) In lieu of the 100 percent optional annuity under subdivision 2, or a refund under subdivision 1, the surviving spouse of a deceased member may elect to receive survivor coverage in a term certain of ~~five~~, ten, 15, or 20 years, but monthly payments must not exceed 75 percent of the average high-five monthly salary of the deceased member. The monthly term certain annuity must be actuarially equivalent to the 100 percent optional annuity under subdivision 2.

(b) If a surviving spouse elects a term certain annuity and dies before the expiration of the specified term certain period, the commuted value of the remaining annuity payments must be paid in a lump sum to the survivor's estate.

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

Renumber the sections in sequence and correct the internal references

2.1 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 21, line 25, delete everything after "2005," and insert "chapter 169, section
- 1.3 2, is repealed retroactively from June 3,"
- 1.4 Page 21, line 26, delete everything before "2005"

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 21, delete section 1
- 1.3 Renumber the sections in sequence and correct the internal references
- 1.4 Amend the title accordingly

- 1.1 moves to amend H.F. No. 3798; S.F. No. 3324, as follows:
- 1.2 Page 22, lines 4 and 5, delete the new language
- 1.3 Page 22, line 6, after "service" insert "as an employee, an independent contractor, or
- 1.4 an employee of an independent contractor,"

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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **3798**

March 4, 2008

Authored by Murphy, M., by request.

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

A bill for an act

relating to retirement; Minnesota State Retirement System; Public Employees Retirement Association; Teachers Retirement Association; restricting state employee postretirement program to conform with federal in-service distribution restrictions; increasing Teachers Retirement Association reemployed annuitant exempt income limit; revising reemployed annuitant account holding period in various plans to permit earlier receipt; revising Teachers Retirement Association strike period and leave of absence service credit purchase procedure; revising Minnesota State Retirement System and Public Employees Retirement Association leave of absence service credit purchase procedure; prohibiting Public Employees Retirement Association reemployed disabilitant from earning service credit unless disability payments are waived; clarifying correctional state employees retirement plan transfer of service credit procedures; making various other revisions of an administrative nature; amending Minnesota Statutes 2006, sections 352.22, subdivision 10; 352D.075, subdivision 2a; 353.01, subdivisions 10, 11a; 353.27, by adding a subdivision; 353D.05, subdivision 2; 354.05, subdivision 37; 354.33, subdivision 5; 354.44, subdivision 5; 356.47, subdivision 3; 356.551, subdivision 2; Minnesota Statutes 2007 Supplement, sections 43A.346, subdivision 2; 352.017, subdivision 2; 352.955, subdivisions 3, 5; 353.01, subdivision 2b; 353.0161, subdivision 2; 353.27, subdivision 14; 353F.02, subdivision 4; 354.096, subdivision 2; 354.72, subdivision 2; Laws 2002, chapter 392, article 2, section 4; Laws 2006, chapter 271, article 5, section 5; proposing coding for new law in Minnesota Statutes, chapter 353F; repealing Minnesota Statutes 2006, sections 354.44, subdivision 6a; 354.465; 354.51, subdivision 4; 354.55, subdivisions 2, 3, 6, 12, 15; 354A.091, subdivisions 1a, 1b; 355.629; Laws 2005, First Special Session chapter 8, article 1, section 23.

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

ARTICLE 1

POSTRETIREMENT OPTION REVISION

Section 1. Minnesota Statutes 2007 Supplement, section 43A.346, subdivision 2,
is amended to read:

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

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

2.7 (2) terminates state or Metropolitan Council employment;

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

2.15 (4) is at least age 62; and

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

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

2.24 (c) For purposes of this section, the length of separation requirement under section
 2.25 353.01, subdivision 28, paragraph (a), is not applicable.

2.26 ARTICLE 2

2.27 REVISED REEMPLOYED ANNUITANT TREATMENT

2.28 Section 1. Minnesota Statutes 2006, section 354.44, subdivision 5, is amended to read:

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

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

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

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

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

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

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

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

3.26 **EFFECTIVE DATE.** This section is effective retroactively from January 1, 2008.

3.27 Sec. 2. Minnesota Statutes 2006, section 356.47, subdivision 3, is amended to read:

3.28 Subd. 3. **Payment.** (a) ~~Upon the retired member attaining the age of 65 years~~
 3.29 ~~or upon the first day of the month next following the month occurring~~ Beginning one
 3.30 year after the termination of the reemployment withholding period ends relating to the
 3.31 reemployment that gave rise to the limitation, whichever is later, and the filing of a written
 3.32 application, the retired member is entitled to the payment, in a lump sum, of the value
 3.33 of the person's amount under subdivision 2, plus interest at the compound annual rate
 3.34 of six percent from the date that the amount was deducted from the retirement annuity
 3.35 to the date of payment.

(b) The written application must be on a form prescribed by the chief administrative officer of the applicable retirement plan.

(c) If the retired member dies before the payment provided for in paragraph (a) is made, the amount is payable, upon written application, to the deceased person's surviving spouse, or if none, to the deceased person's designated beneficiary, or if none, to the deceased person's estate.

(d) In lieu of the direct payment of the person's amount under subdivision 2, on or after the payment date under paragraph (a), if the federal Internal Revenue Code so permits, the retired member may elect to have all or any portion of the payment amount under this section paid in the form of a direct rollover to an eligible retirement plan as defined in section 402(c) of the federal Internal Revenue Code that is specified by the retired member. If the retired member dies with a balance remaining payable under this section, the surviving spouse of the retired member, or if none, the deceased person's designated beneficiary, or if none, the administrator of the deceased person's estate may elect a direct rollover under this paragraph.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2008.

ARTICLE 3

TEACHERS RETIREMENT ASSOCIATION CLARIFICATION OF STRIKE PERIOD PROCEDURE

Section 1. Minnesota Statutes 2007 Supplement, section 354.72, subdivision 2, is amended to read:

Subd. 2. **Purchase procedure.** (a) A teacher may purchase credit for allowable and formula service in the plan for a period specified in subdivision 1 if the teacher makes a payment as specified in paragraph (b) ~~or~~, (c), or (d), whichever applies. The employing unit, at its option, may pay the employer portion of the amount ~~specified in paragraph (b)~~ on behalf of its employees.

(b) If payment is received by the executive director ~~within one year from the end~~ by June 30 of the fiscal year of the strike period or authorized leave included under section 354.093, 354.095, or 354.096, ~~or~~ payment must equal the total employee and employer contribution rates, including amortization contribution rates if applicable, multiplied by the member's average monthly salary rate on the date the leave or strike period commenced, or for an extended leave under section 354.094, on the salary received during the year immediately preceding the initial year of the leave, multiplied by the months and portions of a month of the leave or strike period for which the teacher seeks allowable service credit.

(c) If payment is made after June 30 and before the following June 30 for a strike period or for leaves of absence under sections 354.093, 354.095, or 354.096, or for an extended leave of absence under section 354.094, the payment ~~must equal the total employee and employer contributions, including amortization contributions if applicable, given the contribution rates in section 354.42, multiplied by the member's average monthly salary rate on the commencement of the leave or period of strike, multiplied by the months and portions of a month of the leave of absence or period of strike for which the teacher seeks allowable service credit.~~ Payments made under this paragraph must include the amount determined in paragraph (b) plus compound interest at a monthly rate of 0.71 percent from the last day of the leave period or strike period, or from June 30 for an extended leave of absence under section 354.094, until the last day of the month in which payment is received.

~~(c)~~ (d) If payment is received by the executive director after the applicable last permitted date under paragraph ~~(b)~~ (c), the payment amount is the amount determined under section 356.551. Notwithstanding payment deadlines specified in section 356.551, payment under this section may be made anytime before the effective date of retirement.

EFFECTIVE DATE. This section is effective retroactively from July 1, 2007.

Sec. 2. Laws 2002, chapter 392, article 2, section 4, is amended to read:

Sec. 4. **EFFECTIVE DATE.**

(a) Sections 1, 2, and 3 are effective retroactive to July 1, 2001.

(b) The authority to obtain credit for allowable service under section 1, clause (11); and section 2, paragraph (a), clause (8); and section 3, clause (9), expires 12 months after the date of enactment.

EFFECTIVE DATE. This section is effective retroactively without interruption from July 1, 2002.

ARTICLE 4

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION REVISED PRIVATIZATION PROCEDURE

Section 1. **[353F.025] CERTIFICATION AND DECERTIFICATION OF MEDICAL FACILITIES AND OTHER PUBLIC EMPLOYING UNITS.**

Subdivision 1. Eligibility determination. (a) The chief clerical officer of a governmental subdivision may submit a resolution from the governing body to the executive director of the Public Employees Retirement Association which supports

6.1 providing coverage under this chapter for employees of that governmental subdivision
6.2 who are privatized, and which states that the governing body will pay for actuarial
6.3 calculations, as further specified in paragraph (c).

6.4 (b) The governing body must also provide a copy of any applicable purchase or
6.5 lease agreement and any other information requested by the executive director to allow the
6.6 executive director to verify that under the proposed employer change, the new employer
6.7 does not qualify as a governmental subdivision under section 353.01, subdivision 6,
6.8 making the employees ineligible for continued coverage as active members of the general
6.9 employees retirement plan of the Public Employees Retirement Association.

6.10 (c) Following receipt of a resolution and a determination by the executive director
6.11 that the new employer is not a governmental subdivision, the executive director shall
6.12 direct the consulting actuary retained under section 356.214 to determine whether the
6.13 general employees retirement plan of the Public Employees Retirement Association is
6.14 expected to receive a net gain if privatization occurs, by determining whether the actuarial
6.15 liability of the special benefit coverage provided under this chapter, if extended to the
6.16 applicable employees under the privatization, is less than the actuarial gain otherwise to
6.17 accrue to the plan. The date of the actuarial calculations used to make this determination
6.18 must be within one year of the effective date, as defined in section 353F.02, subdivision 3.

6.19 Subd. 2. **Recommendation to legislature.** (a) If the actuarial calculations under
6.20 subdivision 1, paragraph (c), indicate that a net gain to the general employees retirement
6.21 plan of the Public Employees Retirement Association is expected due to the privatization,
6.22 the executive director shall forward a recommendation and supporting documentation to
6.23 the chair of the Legislative Commission on Pensions and Retirement, the chair of the
6.24 Governmental Operations, Reform, Technology and Elections Committee of the house of
6.25 representatives, the chair of the State and Local Government Operations Oversight
6.26 Committee of the senate, and the executive director of the Legislative Commission on
6.27 Pensions and Retirement. The recommendation must be in the form of an addition to
6.28 the definition of "medical facility" under section 353F.02, subdivision 4, or to "other
6.29 public employing unit" under section 353F.02, subdivision 5, whichever is applicable.
6.30 The recommendation must be forwarded to the legislature before January 15 for the
6.31 recommendation to be considered in that year's legislative session.

6.32 (b) If a medical facility or other public employing unit listed under section 353F.02,
6.33 subdivision 4 or 5, fails to privatize within one year of the final enactment date of the
6.34 legislation adding the entity to the applicable definition, its inclusion under this chapter
6.35 is voided, and the executive director shall include in the proposed legislation under
6.36 paragraph (a) a recommendation that the applicable entity be stricken from the definition.

Subd. 3. **Date of application.** For any privatization added to this chapter after the effective date of this section, the first date of coverage is the effective date as defined in section 353F.02, subdivision 3.

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

ARTICLE 5

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION PRIVATIZATIONS

Section 1. Minnesota Statutes 2007 Supplement, section 353F.02, subdivision 4, is amended to read:

Subd. 4. **Medical facility.** "Medical facility" means:

- (1) Bridges Medical Services;
- (2) the City of Cannon Falls Hospital;
- (3) Clearwater County Memorial Hospital doing business as Clearwater Health Services in Bagley;
- (4) the Dassel Lakeside Community Home;
- (5) the Fair Oaks Lodge, Wadena;
- (6) the Glencoe Area Health Center;
- (7) the Hutchinson Area Health Care;
- (8) ~~the Kanabec Hospital;~~
- (9) the Lakefield Nursing Home;
- (10) (9) the Lakeview Nursing Home in Gaylord;
- (11) (10) the Luverne Public Hospital;
- (12) ~~the Northfield Hospital;~~
- (13) (11) the Oakland Park Nursing Home;
- (14) (12) the RenVilla Nursing Home;
- (15) ~~the Renville County Hospital in Olivia;~~
- (16) (13) the St. Peter Community Healthcare Center; and
- (17) (14) the Waconia-Ridgeview Medical Center.

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

Sec. 2. Laws 2006, chapter 271, article 5, section 5, is amended to read:

Sec. 5. **EFFECTIVE DATE.**

(a) Sections 1, 3, and 4 are effective the day following final enactment and section 3 has effect retroactively from July 25, 2005.

8.1 (b) Section 2 with respect to the Cannon Falls Hospital District is effective upon the
8.2 latter of:

8.3 (1) the day after the governing body of the Cannon Falls Hospital District and its
8.4 chief clerical officer meet the requirements under Minnesota Statutes, section 645.021,
8.5 subdivisions 2 and 3; and

8.6 (2) the first day of the month following certification to the Cannon Falls Hospital
8.7 District by the executive director of the Public Employees Retirement Association that the
8.8 actuarial accrued liability of the special benefit coverage proposed for extension to the
8.9 privatized City of Cannon Falls Hospital employees under section 1 does not exceed the
8.10 actuarial gain otherwise to be accrued by the Public Employees Retirement Association, as
8.11 calculated by the consulting actuary retained under Minnesota Statutes, section 356.214.
8.12 The cost of the actuarial calculations must be borne by the current employer or by the
8.13 entity which is the employer following the privatization.

8.14 (c) Section 2, with respect to Clearwater County Memorial Hospital, is effective
8.15 upon the latter of:

8.16 (1) the day after the governing body of Clearwater County and its chief clerical
8.17 officer meet the requirements under Minnesota Statutes, section 645.021, subdivisions 2
8.18 and 3, except that the certificate of approval must be filed before January 1, 2009; and

8.19 (2) the first day of the month following certification to Clearwater County by the
8.20 executive director of the Public Employees Retirement Association that the actuarial
8.21 accrued liability of the special benefit coverage proposed for extension to the privatized
8.22 Clearwater Health Services employees under section 2 does not exceed the actuarial gain
8.23 otherwise to be accrued by the Public Employees Retirement Association, as calculated by
8.24 the consulting actuary retained under Minnesota Statutes, section 356.214. The cost of
8.25 the actuarial calculations must be borne by the current employer or by the entity which is
8.26 the employer following the privatization.

8.27 (d) Section 2 with respect to the Dassel Lakeside Community Home is effective
8.28 upon the latter of:

8.29 (1) the day after the governing body of the city of Dassel and its chief clerical officer
8.30 timely complete compliance with Minnesota Statutes, section 645.021, subdivisions 2
8.31 and 3; and

8.32 (2) the first day of the month next following certification to the Dassel City
8.33 Council by the executive director of the Public Employees Retirement Association that
8.34 the actuarial accrued liability of the special benefit coverage proposed for extension to
8.35 the privatized Dassel Lakeside Community Home employees under section 2 does not
8.36 exceed the actuarial gain otherwise to be accrued by the Public Employees Retirement

9.1 Association, as calculated by the consulting actuary retained under Minnesota Statutes,
9.2 section 356.214. The cost of the actuarial calculations must be borne by the city of Dassel
9.3 or by the entity which is the employer following the privatization.

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

9.5 **ARTICLE 6**
9.6 **PUBLIC EMPLOYEES RETIREMENT ASSOCIATION PROVISIONS**

9.7 Section 1. Minnesota Statutes 2007 Supplement, section 353.01, subdivision 2b,
9.8 is amended to read:

9.9 Subd. 2b. **Excluded employees.** The following public employees are not eligible
9.10 to participate as members of the association with retirement coverage by the public
9.11 employees retirement plan, the local government correctional employees retirement plan
9.12 under chapter 353E, or the public employees police and fire retirement plan:

9.13 (1) public officers, other than county sheriffs, who are elected to a governing body,
9.14 or persons who are appointed to fill a vacancy in an elective office of a governing body,
9.15 whose term of office commences on or after July 1, 2002, for the service to be rendered
9.16 in that elective position;

9.17 (2) election officers or election judges;

9.18 (3) patient and inmate personnel who perform services for a governmental
9.19 subdivision;

9.20 (4) except as otherwise specified in subdivision 12a, employees who are hired for
9.21 a temporary position as defined under subdivision 12a, and employees who resign from
9.22 a nontemporary position and accept a temporary position within 30 days in the same
9.23 governmental subdivision;

9.24 (5) employees who are employed by reason of work emergency caused by fire,
9.25 flood, storm, or similar disaster;

9.26 (6) employees who by virtue of their employment in one governmental subdivision
9.27 are required by law to be a member of and to contribute to any of the plans or funds
9.28 administered by the Minnesota State Retirement System, the Teachers Retirement
9.29 Association, the Duluth Teachers Retirement Fund Association, the St. Paul Teachers
9.30 Retirement Fund Association, the Minneapolis Employees Retirement Fund, or any police
9.31 or firefighters relief association governed by section 69.77 that has not consolidated
9.32 with the Public Employees Retirement Association, or any local police or firefighters
9.33 consolidation account who have not elected the type of benefit coverage provided by the
9.34 public employees police and fire fund under sections 353A.01 to 353A.10, or any persons

10.1 covered by section 353.665, subdivision 4, 5, or 6, who have not elected public employees
10.2 police and fire plan benefit coverage. This clause must not be construed to prevent a person
10.3 from being a member of and contributing to the Public Employees Retirement Association
10.4 and also belonging to and contributing to another public pension plan or fund for other
10.5 service occurring during the same period of time. A person who meets the definition of
10.6 "public employee" in subdivision 2 by virtue of other service occurring during the same
10.7 period of time becomes a member of the association unless contributions are made to
10.8 another public retirement fund on the salary based on the other service or to the Teachers
10.9 Retirement Association by a teacher as defined in section 354.05, subdivision 2;

10.10 (7) persons who are members of a religious order and are excluded from coverage
10.11 under the federal Old Age, Survivors, Disability, and Health Insurance Program for the
10.12 performance of service as specified in United States Code, title 42, section 410(a)(8)(A),
10.13 as amended through January 1, 1987, if no irrevocable election of coverage has been made
10.14 under section 3121(r) of the Internal Revenue Code of 1954, as amended;

10.15 (8) employees of a governmental subdivision who have not reached the age of
10.16 23 and are enrolled on a full-time basis to attend or are attending classes on a full-time
10.17 basis at an accredited school, college, or university in an undergraduate, graduate, or
10.18 professional-technical program, or a public or charter high school;

10.19 (9) resident physicians, medical interns, and pharmacist residents and pharmacist
10.20 interns who are serving in a degree or residency program in public hospitals or clinics;

10.21 (10) students who are serving in an internship or residency program sponsored
10.22 by an accredited educational institution;

10.23 (11) persons who hold a part-time adult supplementary technical college license who
10.24 render part-time teaching service in a technical college;

10.25 (12) except for employees of Hennepin County or Hennepin Healthcare System,
10.26 Inc., foreign citizens working for a governmental subdivision with a work permit of less
10.27 than three years, or an H-1b visa valid for less than three years of employment. Upon
10.28 notice to the association that the work permit or visa extends beyond the three-year period,
10.29 the foreign citizens must be reported for membership from the date of the extension;

10.30 (13) public hospital employees who elected not to participate as members of the
10.31 association before 1972 and who did not elect to participate from July 1, 1988, to October
10.32 1, 1988;

10.33 (14) except as provided in section 353.86, volunteer ambulance service personnel,
10.34 as defined in subdivision 35, but persons who serve as volunteer ambulance service
10.35 personnel may still qualify as public employees under subdivision 2 and may be members
10.36 of the Public Employees Retirement Association and participants in the public employees

11.1 retirement fund or the public employees police and fire fund, whichever applies, on the
11.2 basis of compensation received from public employment service other than service as
11.3 volunteer ambulance service personnel;

11.4 (15) except as provided in section 353.87, volunteer firefighters, as defined in
11.5 subdivision 36, engaging in activities undertaken as part of volunteer firefighter duties;
11.6 provided that a person who is a volunteer firefighter may still qualify as a public
11.7 employee under subdivision 2 and may be a member of the Public Employees Retirement
11.8 Association and a participant in the public employees retirement fund or the public
11.9 employees police and fire fund, whichever applies, on the basis of compensation received
11.10 from public employment activities other than those as a volunteer firefighter;

11.11 (16) pipefitters and associated trades personnel employed by Independent School
11.12 District No. 625, St. Paul, with coverage under a collective bargaining agreement by the
11.13 pipefitters local 455 pension plan who were either first employed after May 1, 1997, or,
11.14 if first employed before May 2, 1997, elected to be excluded under Laws 1997, chapter
11.15 241, article 2, section 12;

11.16 (17) electrical workers, plumbers, carpenters, and associated trades personnel
11.17 employed by Independent School District No. 625, St. Paul, or the city of St. Paul,
11.18 who have retirement coverage under a collective bargaining agreement by the Electrical
11.19 Workers Local 110 pension plan, the United Association Plumbers Local 34 pension plan,
11.20 or the Carpenters Local 87 pension plan who were either first employed after May 1,
11.21 2000, or, if first employed before May 2, 2000, elected to be excluded under Laws 2000,
11.22 chapter 461, article 7, section 5;

11.23 (18) bricklayers, allied craftworkers, cement masons, glaziers, glassworkers,
11.24 painters, allied tradesworkers, and plasterers employed by the city of St. Paul or
11.25 Independent School District No. 625, St. Paul, with coverage under a collective
11.26 bargaining agreement by the Bricklayers and Allied Craftworkers Local 1 pension plan,
11.27 the Cement Masons Local 633 pension plan, the Glaziers and Glassworkers Local L-1324
11.28 pension plan, the Painters and Allied Trades Local 61 pension plan, or the Twin Cities
11.29 Plasterers Local 265 pension plan who were either first employed after May 1, 2001, or if
11.30 first employed before May 2, 2001, elected to be excluded under Laws 2001, First Special
11.31 Session chapter 10, article 10, section 6;

11.32 (19) plumbers employed by the Metropolitan Airports Commission, with coverage
11.33 under a collective bargaining agreement by the Plumbers Local 34 pension plan, who either
11.34 were first employed after May 1, 2001, or if first employed before May 2, 2001, elected to
11.35 be excluded under Laws 2001, First Special Session chapter 10, article 10, section 6;

12.1 (20) employees who are hired after June 30, 2002, to fill seasonal positions under
12.2 subdivision 12b which are limited in duration by the employer to 185 consecutive calendar
12.3 days or less in each year of employment with the governmental subdivision;

12.4 (21) persons who are provided supported employment or work-study positions
12.5 by a governmental subdivision and who participate in an employment or industries
12.6 program maintained for the benefit of these persons where the governmental subdivision
12.7 limits the position's duration to three years or less, including persons participating in a
12.8 federal or state subsidized on-the-job training, work experience, senior citizen, youth, or
12.9 unemployment relief program where the training or work experience is not provided as a
12.10 part of, or for, future permanent public employment;

12.11 (22) independent contractors and the employees of independent contractors; and

12.12 (23) reemployed annuitants of the association during the course of that
12.13 reemployment.

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

12.15 Sec. 2. Minnesota Statutes 2006, section 353.01, subdivision 10, is amended to read:

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

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

12.20 (2) for a public employee who is covered by a supplemental retirement plan under
12.21 section 356.24, subdivision 1, clause (8), (9), or (10), which require all plan contributions
12.22 be made by the employer, the contribution to the applicable supplemental retirement plan
12.23 when the contribution is from mandatory withholdings from employees' wages; and

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

12.34 (b) Salary does not mean:

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

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

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

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

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

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

13.22 (4) except as provided in section 353.86 or 353.87, compensation of any kind paid to
13.23 volunteer ambulance service personnel or volunteer firefighters, as defined in subdivision
13.24 35 or 36; ~~and~~

13.25 (5) the amount of compensation that exceeds the limitation provided in section
13.26 356.611; and

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

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

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

13.35 Sec. 3. Minnesota Statutes 2006, section 353.01, subdivision 11a, is amended to read:

Subd. 11a. **Termination of public service.** (a) "Termination of public service" occurs (1) when a member resigns or is dismissed from public service by the employing governmental subdivision and the employee does not, within 30 days of the date the employment relationship ended, return to an employment position in the same governmental subdivision; or (2) when the employer-employee relationship is severed due to the expiration of a layoff under subdivision 12 or 12c.

(b) The termination of public service must be recorded in the association records upon receipt of an appropriate notice from the governmental subdivision.

(c) A termination of public service does not occur if, prior to termination of service, the member has an agreement, verbal or written, to return to a governmental subdivision as an employee, independent contractor, or employee of an independent contractor.

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

Sec. 4. Minnesota Statutes 2007 Supplement, section 353.0161, subdivision 2, is amended to read:

Subd. 2. **Purchase procedure.** (a) An employee covered by a plan specified in subdivision 1 may purchase credit for allowable service in that plan for a period specified in subdivision 1 if the employee makes a payment as specified in paragraph (b) or (c), whichever applies. The employing unit, at its option, may pay the employer portion of the amount specified in paragraph (b) on behalf of its employees.

(b) If payment is received by the executive director within one year from the ~~end of date the member returned to work following the authorized leave, or within 30 days after the date of termination of public service if the member did not return to work,~~ the payment amount is equal to the employee and employer contribution ~~as specified in law for the applicable plan at the end of the leave period,~~ or at termination of public service, whichever is earlier, multiplied by the employee's ~~hourly rate of average monthly salary on the date upon which deductions were paid during the six months, or portion thereof, before the commencement of return from~~ the leave of absence and by the ~~days and number of months of the leave of absence for which the employee wants allowable service credit.~~ Payments made under this paragraph must include compound interest at a monthly rate of 0.71 percent from the last day of the leave period until the last day of the month in which payment is received.

(c) If payment is received by the executive director after one year, the payment amount is the amount determined under section 356.551. Payment under this paragraph must be made before the date the person terminates public service under section 353.01, subdivision 11a.

15.1 **EFFECTIVE DATE.** This section is effective retroactively from July 1, 2007.

15.2 Sec. 5. Minnesota Statutes 2006, section 353.27, is amended by adding a subdivision
15.3 to read:

15.4 Subd. 7c. **Limitation on additional plan coverage.** No deductions for any
15.5 plan under this chapter or chapter 353E may be taken from the salary of a person who
15.6 is employed by a governmental subdivision under 353.01, subdivision 6, and who is
15.7 receiving disability benefit payments from any plan under this chapter or chapter 353E
15.8 unless the person waives the right to further disability benefit payments.

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

15.10 Sec. 6. Minnesota Statutes 2007 Supplement, section 353.27, subdivision 14, is
15.11 amended to read:

15.12 Subd. 14. **Treatment of periods before initial coverage date.** (a) If an entity is
15.13 determined to be a governmental subdivision due to receipt of a written notice of eligibility
15.14 from the association, that employer and its employees are subject to the requirements
15.15 of subdivision 12, effective retroactively to the date that the executive director of
15.16 the association determines that the entity first met the definition of a governmental
15.17 subdivision, if that date predates the notice of eligibility.

15.18 (b) If the retroactive time period under paragraph (a) exceeds three years, an
15.19 employee is authorized to purchase service credit in the applicable Public Employees
15.20 Retirement Association plan for the portion of the period in excess of three years, by
15.21 making payment under section 356.551. Notwithstanding section 356.551, subdivision 2,
15.22 regarding time limits on purchases, payment may be made anytime before termination of
15.23 public service.

15.24 (c) This subdivision does not apply if the applicable employment under paragraph
15.25 (a) included coverage by any public or private defined benefit or defined contribution
15.26 retirement plan, other than a volunteer firefighters relief association. If this paragraph
15.27 applies, an individual is prohibited from purchasing service credit for any period or
15.28 periods specified in paragraph (a).

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

15.30 Sec. 7. Minnesota Statutes 2006, section 353D.05, subdivision 2, is amended to read:

15.31 Subd. 2. **Investment options.** (a) A participant may elect to purchase shares in
15.32 the income share account, the growth share account, the international share account,

the money market account, the bond market account, the fixed interest account, or the common stock index account established by section 11A.17, or a combination of those accounts. The participant may elect to purchase shares in a combination of those accounts by specifying the percentage of the total contributions to be used to purchase shares in each of the accounts.

(b) A participant or a former participant may indicate in writing a choice of options for subsequent purchases of shares. After a choice is made, until the participant or former participant makes a different written indication, the executive director of the association shall purchase shares in the supplemental investment account or accounts specified by the participant. If no initial option is indicated by a participant or the specifications made by the participant exceeds 100 percent to be invested in more than one account, the executive director shall invest all contributions made by or on behalf of a participant in the income share account. If the specifications are less than 100 percent, the executive director shall invest the remaining percentage in the income share account. ~~A choice of investment options is effective the first of the month following the date of receipt of the signed written choice of options.~~

(c) Shares in the fixed interest account attributable to any guaranteed investment contract as of July 1, 1994, may not be withdrawn from the fund or transferred to another account until the guaranteed investment contract has expired, unless the participant qualifies for a benefit payment under section 353D.07.

(d) A participant or former participant may also change the investment options selected for all or a portion of the individual's previously purchased shares in accounts, subject to the provisions of paragraph (c) concerning the fixed interest account. ~~A change under this paragraph is effective the first of the month following the date of receipt of a signed written choice of options.~~

(e) The change or selection of an investment option or the transfer of all or a portion of the deceased or former participant's shares in the income share, growth share, common stock index, bond market, international share, money market, or fixed interest accounts must not be made following death of the participant or former participant.

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

Sec. 8. Minnesota Statutes 2006, section 356.551, subdivision 2, is amended to read:

Subd. 2. **Determination.** (a) Unless the minimum purchase amount set forth in paragraph (c) applies, the prior service credit purchase amount is an amount equal to the actuarial present value, on the date of payment, as calculated by the chief administrative officer of the pension plan and reviewed by the actuary retained under section 356.214,

17.1 of the amount of the additional retirement annuity obtained by the acquisition of the
17.2 additional service credit in this section.

17.3 (b) Calculation of this amount must be made using the preretirement interest rate
17.4 applicable to the public pension plan specified in section 356.215, subdivision 8, and
17.5 the mortality table adopted for the public pension plan. The calculation must assume
17.6 continuous future service in the public pension plan until, and retirement at, the age at
17.7 which the minimum requirements of the fund for normal retirement or retirement with an
17.8 annuity unreduced for retirement at an early age, including section 356.30, are met with
17.9 the additional service credit purchased. The calculation must also assume a full-time
17.10 equivalent salary, or actual salary, whichever is greater, and a future salary history that
17.11 includes annual salary increases at the applicable salary increase rate for the plan specified
17.12 in section 356.215, subdivision 4d.

17.13 (c) The prior service credit purchase amount may not be less than the amount
17.14 determined by applying the current employee or member contribution rate, the employer
17.15 contribution rate, and the additional employer contribution rate, if any, to the person's
17.16 current annual salary and multiplying that result by the number of whole and fraction
17.17 years of service to be purchased.

17.18 (d) Unless otherwise provided by statutes governing a specific plan, payment must
17.19 be made in one lump sum within one year of the prior service credit authorization or prior
17.20 to the member's effective date of retirement, whichever is earlier. Payment of the amount
17.21 calculated under this section must be made by the applicable eligible person.

17.22 (e) However, the current employer or the prior employer may, at its discretion, pay
17.23 all or any portion of the payment amount that exceeds an amount equal to the employee
17.24 contribution rates in effect during the period or periods of prior service applied to the
17.25 actual salary rates in effect during the period or periods of prior service, plus interest at the
17.26 rate of 8.5 percent a year compounded annually from the date on which the contributions
17.27 would otherwise have been made to the date on which the payment is made. If the
17.28 employer agrees to payments under this subdivision, the purchaser must make the
17.29 employee payments required under this subdivision within 90 days of the prior service
17.30 credit authorization. If that employee payment is made, the employer payment under this
17.31 subdivision must be remitted to the chief administrative officer of the public pension plan
17.32 within 60 days of receipt by the chief administrative officer of the employee payments
17.33 specified under this subdivision.

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

18.1 **ARTICLE 7**

18.2 **MINNESOTA STATE RETIREMENT SYSTEM PROVISIONS**

18.3 Section 1. Minnesota Statutes 2007 Supplement, section 352.017, subdivision 2,
18.4 is amended to read:

18.5 Subd. 2. **Purchase procedure.** (a) An employee covered by a plan specified in
18.6 this chapter may purchase credit for allowable service in that plan for a period specified
18.7 in subdivision 1 if the employee makes a payment as specified in paragraph (b) or (c),
18.8 whichever applies. The employing unit, at its option, may pay the employer portion of the
18.9 amount specified in paragraph (b) on behalf of its employees.

18.10 (b) If payment is received by the executive director within one year from the ~~end of~~
18.11 date the employee returned to work following the authorized leave, the payment amount is
18.12 equal to the employee and employer contribution rates specified in law for the applicable
18.13 plan at the end of the leave period multiplied by the employee's hourly rate of salary on
18.14 the date of return from the leave of absence and by the days and months of the leave of
18.15 absence for which the employee ~~wants~~ is eligible for allowable service credit. ~~Payments~~
18.16 ~~made under this paragraph~~ The payment must include compound interest at a monthly
18.17 rate of 0.71 percent from the last day of the leave period until the last day of the month in
18.18 which payment is received. If payment is received by the executive director after one year,
18.19 the payment amount is the amount determined under section 356.551. Payment under this
18.20 paragraph must be made before the date of termination from public employment covered
18.21 under chapter 352.

18.22 (c) ~~If payment is received by the executive director after one year, the payment~~
18.23 ~~amount is the amount determined under section 356.551.~~ If the employee terminates
18.24 employment covered by this chapter during the leave or following the leave rather than
18.25 returning to covered employment, payment must be received by the executive director
18.26 within 30 days after the termination date. The payment amount is equal to the employee
18.27 and employer contribution rates specified in law for the applicable plan on the day prior to
18.28 termination date, multiplied by the employee's hourly rate of salary on that date and by the
18.29 days and months of the leave of absence prior to termination.

18.30 **EFFECTIVE DATE.** This section is effective retroactively from July 1, 2007.

18.31 Sec. 2. Minnesota Statutes 2006, section 352.22, subdivision 10, is amended to read:

18.32 Subd. 10. **Other refunds.** Former employees covered by the system are entitled
18.33 to apply for refunds if they are or become members of the State Patrol retirement fund,
18.34 the state Teachers Retirement Association, or employees of the University of Minnesota

19.1 excluded from coverage under the system by action of the Board of Regents; or employees
 19.2 of the adjutant general who under federal law effectually elect membership in a federal
 19.3 retirement system; or officers or employees of the senate or house of representatives,
 19.4 excluded from coverage under section 352.01, subdivision 2b, clause (7). The refunds
 19.5 must include accumulated contributions plus interest as provided in subdivision 2. ~~These~~
 19.6 ~~employees may apply for a refund once 30 days or more have elapsed after their coverage~~
 19.7 ~~ceases, even if they continue in state service but in positions not covered by this chapter.~~

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

19.9 Sec. 3. Minnesota Statutes 2007 Supplement, section 352.955, subdivision 3, is
 19.10 amended to read:

19.11 Subd. 3. **Payment of additional equivalent contributions; post-June 30, 2007,**
 19.12 **coverage transfers.** (a) An eligible employee who ~~was~~ is transferred to plan coverage
 19.13 after June 30, 2007, and who elects to transfer past service credit under this section must
 19.14 pay an additional member contribution for that prior service period. The additional
 19.15 member contribution is ~~(1) the difference between the member contribution rate or rates~~
 19.16 ~~for the general state employees retirement plan of the Minnesota State Retirement System~~
 19.17 ~~for the period of employment covered by the service credit to be transferred and the~~
 19.18 ~~member contribution rate or rates for the correctional state employees retirement plan~~
 19.19 ~~for the most recent 12 month period of employment covered by the service credit to be~~
 19.20 ~~transferred, plus annual compound interest at the rate of 8.5 percent, and (2) the amount~~
 19.21 computed under paragraph (b), plus the greater of the amount computed under paragraph
 19.22 (c), or 40 percent of the unfunded actuarial accrued liability attributable to the past service
 19.23 ~~credit transfer. The unfunded actuarial accrued liability attributable to the past service~~
 19.24 ~~credit transfer is the present value of the benefit obtained by the transfer of the service~~
 19.25 ~~credit to the correctional state employees retirement plan reduced by the amount of the~~
 19.26 ~~asset transfer under subdivision 4, by the amount of the member contribution equivalent~~
 19.27 ~~payment under clause (1), and by the amount of the employer contribution equivalent~~
 19.28 ~~payment under paragraph (c), clause (1).~~

19.29 (b) The executive director shall compute, for the most recent 12 months of service
 19.30 credit eligible for transfer, or for the entire period eligible for transfer if less than 12
 19.31 months, the difference between the employee contribution rate or rates for the general state
 19.32 employees retirement plan and the employee contribution rate or rates for the correctional
 19.33 state employees retirement plan applied to the eligible employee's salary during that
 19.34 transfer period, plus compound interest at a monthly rate of 0.71 percent.

(c) The executive director shall compute, for any service credit being transferred on behalf of the eligible employee and not included under paragraph (b), the difference between the employee contribution rate or rates for the general state employees retirement plan and the employee contribution rate or rates for the correctional state employees retirement plan applied to the eligible employee's salary during that transfer period, plus compound interest at a monthly rate of 0.71 percent.

(d) The executive director shall compute an amount using the process specified in paragraph (b), but based on differences in employer contribution rates between the general state employees retirement plan and the correctional state employees retirement plan rather than employee contribution rates.

(e) The executive director shall compute an amount using the process specified in paragraph (c), but based on differences in employer contribution rates between the general state employees retirement plan and the correctional state employees retirement plan rather than employee contribution rates.

(f) The additional equivalent member contribution under this subdivision must be paid in a lump sum. Payment must accompany the election to transfer the prior service credit. No transfer election or additional equivalent member contribution payment may be made by a person or accepted by the executive director after the one year anniversary date of the effective date of the retirement coverage transfer, or the date on which the eligible employee terminates state employment, whichever is earlier.

~~(e)~~ (g) If an eligible employee elects to transfer past service credit under this section and pays the additional equivalent member contribution amount under subdivision 2 paragraph (a), the applicable department shall pay an additional equivalent employer contribution amount. The additional employer contribution is (1) the difference between the employer contribution rate or rates for the general state employees retirement plan for the period of employment covered by the service credit to be transferred and the employer contribution rate or rates for the correctional state employees retirement plan for the period of employment covered by the service credit to be transferred, plus annual compound interest at the rate of 8.5 percent, and (2) the amount computed under paragraph (d), plus the greater of the amount computed under paragraph (e), or 60 percent of the unfunded actuarial accrued liability attributable to the past service credit transfer calculated as provided in paragraph (a), clause (2).

(h) The unfunded actuarial accrued liability attributable to the past service credit transfer is the present value of the benefit obtained by the transfer of the service credit to the correctional state employees retirement plan reduced by the amount of the asset transfer under subdivision 4, by the amount of the member contribution equivalent

21.1 payment computed under paragraph (b), and by the amount of the employer contribution
 21.2 equivalent payment computed under paragraph (d).

21.3 ~~(d)~~ (i) The additional equivalent employer contribution under this subdivision must
 21.4 be paid in a lump sum and must be paid within 30 days of the date on which the executive
 21.5 director of the Minnesota State Retirement System certifies to the applicable department
 21.6 that the employee paid the additional equivalent member contribution.

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

21.8 Sec. 4. Minnesota Statutes 2007 Supplement, section 352.955, subdivision 5, is
 21.9 amended to read:

21.10 Subd. 5. **Effect of the asset transfer.** Upon the transfer of assets under subdivision
 21.11 4, the service credit in the general state employees retirement plan of the Minnesota State
 21.12 Retirement System related to the period being transferred is forfeited and may not be
 21.13 reinstated. The transferred service credit and the transferred assets must be credited to the
 21.14 correctional state employees retirement plan and fund, respectively.

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

21.16 Sec. 5. Minnesota Statutes 2006, section 352D.075, subdivision 2a, is amended to read:

21.17 Subd. 2a. **Surviving spouse coverage term certain.** In lieu of the annuity under
 21.18 subdivision 2, clause (2) or (3), or in lieu of a distribution under subdivision 2, clause (1),
 21.19 the surviving spouse of a deceased participant may elect to receive survivor coverage in
 21.20 the form of a term certain annuity of ~~five, six~~ ten, 15, or 20 years, based on the value of
 21.21 the remaining shares. The monthly term certain annuity must be calculated under section
 21.22 352D.06, subdivision 1.

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

21.24 Sec. 6. **REPEALER.**

21.25 Laws 2005, First Special Session chapter 8, article 1, section 23, is repealed
 21.26 retroactive from July 26, 2005.

21.27 ARTICLE 8

21.28 TEACHERS RETIREMENT ASSOCIATION PROVISIONS

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

22.1 Subd. 37. **Termination of teaching service.** "Termination of teaching service"
22.2 means the withdrawal of a member from active teaching service by resignation or the
22.3 termination of the member's teaching contract by the employer. A member is not
22.4 considered to have terminated teaching service, if before the age of 62, and before the
22.5 effective date of the termination or retirement, the member has entered into a written
22.6 contract to resume teaching service with an employing unit covered by the provisions
22.7 of this chapter.

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

22.9 Sec. 2. Minnesota Statutes 2007 Supplement, section 354.096, subdivision 2, is
22.10 amended to read:

22.11 Subd. 2. **Payment.** (a) Notwithstanding any laws to the contrary, a member who
22.12 is granted a family leave under United States Code, title 42, section 12631, may receive
22.13 allowable service credit for the leave by making payment ~~of the employee, employer, and~~
22.14 ~~additional employer contributions at the rates under section 354.42, during the leave~~
22.15 ~~period as applied to the member's average full-time monthly salary rate on the date the~~
22.16 ~~leave commenced~~ under section 354.72.

22.17 ~~(b) If payment is made after the leave terminates, section 354.72 applies.~~

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

22.19 Sec. 3. Minnesota Statutes 2006, section 354.33, subdivision 5, is amended to read:

22.20 Subd. 5. **Retirees not eligible for federal benefits.** ~~Notwithstanding the provisions~~
22.21 ~~of section 354.55, subdivision 3,~~ When any person retires after July 1, 1973, who (1)
22.22 has ten or more years of allowable service, and (2) does not have any retroactive Social
22.23 Security coverage by reason of the person's position in the retirement system, and (3) does
22.24 not qualify for federal old age and survivor primary benefits at the time of retirement, the
22.25 annuity must be computed under section 354.44, subdivision 2, of the law in effect on
22.26 June 30, 1969, except that accumulations after June 30, 1957, must be calculated using the
22.27 same mortality table and interest assumption as are used to transfer the required reserves
22.28 to the Minnesota postretirement investment fund.

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

22.30 Sec. 4. **REPEALER.**

22.31 Minnesota Statutes 2006, sections 354.44, subdivision 6a; 354.465; 354.51,
22.32 subdivision 4; and 354.55, subdivisions 2, 3, 6, 12, and 15, are repealed.

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

23.2 **ARTICLE 9**

23.3 **REPEAL OF OBSOLETE LEAVE**
23.4 **AND ELECTION PROCEDURES**

23.5 Section 1. **REPEALER.**

23.6 Minnesota Statutes 2006, sections 354A.091, subdivisions 1a and 1b; and 355.629,
23.7 are repealed.