



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Rachel Barth, Deputy Director  
RE: H.F. 3351 (Theis); S.F. 2890 (Pederson): MnSCU-IRAP and PERA-General; Service Credit Purchase  
DATE: March 17, 2016

### Summary of H.F. 3351 (Theis); S.F. 2890 (Pederson)

H.F. 3351 (Theis); S.F. 2890 (Pederson) permits Linda Donnay to purchase service credit from the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) for the five years she was erroneously placed in the Minnesota State Colleges and Universities System (MnSCU) Individual Retirement Account Plan (IRAP). The main components of the bill are:

1. Transfers past IRAP member contributions, plus investment returns, to PERA, plus Ms. Donnay's payment of any shortage compared to the PERA required member contributions on her MnSCU compensation;
2. Transfers any remaining balance left in the IRAP account to PERA;
3. Requires MnSCU to pay PERA any remainder of the service credit purchase payment amount calculated under Minn. Stat. § 356.551 within 60 days of PERA receiving Ms. Donnay's portion; and
4. Requires Ms. Donnay to make the service credit purchase before January 1, 2017.

### Public Pension Problem of Linda Donnay

Linda Donnay is a 55-year-old employee of St. Cloud State University (SCSU), which is part of MnSCU. Ms. Donnay began her public employment in 1993 at St. Cloud Technical College in a position that was covered by PERA-General. Ms. Donnay eventually began to work for SCSU in a position that was still covered by PERA-General. On February 22, 2006, Ms. Donnay changed positions within SCSU with different union coverage and was erroneously placed in MnSCU IRAP, a defined contribution plan. Under Minn. Stat. § 354B.21, Subd. 3, Ms. Donnay's retirement coverage should have remained with PERA-General despite switching to an employment position with default IRAP coverage. Ms. Donnay remained in the IRAP plan until May 10, 2011, when MnSCU discovered the error and Ms. Donnay resumed her PERA-General coverage.

At the time the coverage error was discovered, MnSCU cited to Minn. Stat. § 356.99, which states that if a coverage error is discovered within two fiscal years of its initial occurrence, then all the contributions made to the erroneous retirement plan are transferred to the correct retirement plan, but if a coverage error is discovered after two fiscal years of its initial occurrence, then all the contributions remain in the erroneous retirement account. Because the error was discovered more than two years after its initial occurrence, MnSCU stated that the money in Ms. Donnay's IRAP account must remain there. However, Minn. Stat. § 356.99 does not apply to erroneous coverage between a defined benefit plan, like PERA-General, and a defined contribution plan, like IRAP, it only applies to erroneous coverage between two

defined benefit plans. According to Commission staff documents, defined contribution plans were intentionally excluded from the statute and cases of erroneous retirement coverage between a defined benefit and a defined contribution plan, like the current situation, should be solved with special legislation. Due to the lack of statutory remedy to solve Ms. Donnay's erroneous retirement coverage, Ms. Donnay would like to purchase the five years of service credit from PERA-General through special legislation.

## **Policy Considerations**

The proposed legislation raises the following policy considerations:

1. **Cost.** Ms. Donnay will be required to pay the member contribution portion of the total required amount calculated under Minn. Stat. § 356.551 in order to cover the liability PERA will assume if the service credit is purchased. PERA estimated that the total required amount that must be paid is \$62,144.91 and Ms. Donnay's portion of that total amount is \$29,417.90. Under the proposed legislation, the member contributions Ms. Donnay made to her IRAP account for the five years, plus any investment earnings, must be transferred to PERA to cover her portion of the costs. If the transferred amount does not cover her portion of the total amount, Ms. Donnay may use any remaining assets of her IRAP account to cover the costs. If Ms. Donnay's IRAP account does not cover her portion, she must pay the remaining balance from another funding source. After Ms. Donnay has paid her portion, any remaining assets in her IRAP account must be transferred to PERA. The proposed legislation requires MnSCU to pay any remaining balance of the total required amount.
2. **Evidence of Error.** The Commission has approved past bills that provided a remedy to an individual after discovering that an employer or retirement plan error led to the incorrect retirement coverage. Although there does not appear to be a past bill that has dealt with an issue similar to Ms. Donnay's situation, there are several past cases where MnSCU erroneously placed an individual into a retirement plan due to a failure to provide the individual with information regarding retirement coverage option elections. The Commission has approved such bills that provided those individuals with the option to elect the appropriate retirement coverage. Such bills required the individual to pay the appropriate member contributions and, due to the error, required MnSCU to pay the remaining balance of the required purchase amount. In Ms. Donnay's case, MnSCU made an error and failed to maintain Ms. Donnay's correct retirement coverage under PERA-General. The proposed legislation deals with issues similar to previous enacted legislation and therefore would not set an inappropriate precedent.
3. **Retirement Plan Support.** PERA has stated that if the required amount determined under Minn. Stat. § 356.551 is fully paid, they would not oppose the bill. MnSCU made a general statement of support for Ms. Donnay's legislative request to move the funds to PERA due to the error. The bill ensures that PERA receives the required amount determined under Minn. Stat. § 356.551 and there is evidence of an error.