**S.F. 435**

(Betzold)

H.F. 2114

(Smith)

Executive Summary of Commission Staff Materials

<i>Affected Pension Plan(s):</i>	Statewide and Major Local Retirement Plans
<i>Relevant Provisions of Law:</i>	Minnesota Statutes, Section 352.04, Subdivision 8, and Related Provisions
<i>General Nature of Proposal:</i>	Omitted Salary Deduction Recovery Provisions Made More Uniform and Consistent
<i>Date of Summary:</i>	March 28, 2005

Specific Proposed Change(s)

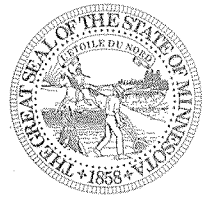
- Omitted deduction recovery provisions added to plans lacking provision, the member responsibility for payment made uniform, an employer obligation for late omitted deductions added where lacking, and a three-year limit on the recovery of omitted deductions is added where no limit currently applies.

Policy Issues Raised by the Proposed Legislation

1. Appropriateness of adding omitted deduction recovery provisions for plans without provision.
2. Appropriateness of standardizing member responsibility for short-duration omitted deductions.
3. Appropriateness of adding employer responsibility for long-duration omitted deductions where responsibility is lacking.
4. Appropriateness of delaying employer responsibility for short-duration omitted deductions.
5. Appropriateness of adding consistent three-year statute of limitations on payment of omitted deductions for plans lacking limit.

Potential Amendments

No technical or substantive amendments.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director *JAM*

RE: S.F. 435 (Betzold); H.F. 2114 (Smith); Clarification and Updating of Omitted Salary Deduction Recovery Provisions

DATE: March 28, 2005

Summary of S.F. 435 (Betzold); H.F. 2114 (Smith)

S.F. 435 (Betzold); H.F. 2114 (Smith) amends the omitted salary deduction recovery portions of Minnesota Statutes, Chapters 352 (General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional)), 352B (State Patrol Plan), 353 (General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) and Public Employees Police and Fire Plan (PERA-P&F)), 353E (PERA Local Government Correctional Service Retirement Plan (PERA-Correctional)), 354 (Teachers Retirement Association (TRA)), 354A (first class city teacher retirement fund associations), 422A (Minneapolis Employees Retirement Fund (MERF)), and 490 (Uniform Judges Retirement Plan) by updating the language and style of the omitted salary deduction recovery provisions and by making the provisions more uniform.

Background Information on Omitted Salary Deductions

Minnesota public pension plans, with the exception of volunteer firefighter relief associations, are contributory retirement plans. Contributory retirement plans are retirement plans where the active membership participates in the funding of the retirement plan through mandatory member contributions. Public sector pension plans are typically contributory retirement plans, while private sector pension plans are typically noncontributory retirement plans.

In Minnesota, the Commission's policy in setting the member contribution rates has been to require general employee retirement plan member contributions to equal at least one-half of the actuarial normal cost of the plan and to require public safety employee retirement plan member contributions to equal 40 percent of the actuarial cost of the plan.

The various retirement plans provide for collecting the mandatory member contributions by payroll deductions by the employing unit.

A primary issue is the issue of the member responsibility for the payment of any omitted deduction amount. Since the payment and receipt of member deductions triggers the crediting of allowable service for vesting, benefit eligibility, and benefit calculation purposes, when there are omitted deductions, the plan member will suffer the consequences and has an interest in making necessary corrections. Two of the three statewide major pension plans provide for the member payment of omitted member deductions, but Teachers Retirement Association (TRA), the three first class city teacher retirement fund associations, and MERF have no comparable authority.

Another significant issue is the issue of the employer responsibility for the payment of any omitted deduction amount. There is considerable variability in the employer authority or requirement for the payment of omitted member deductions, with no employer payment provision for MERF, with an immediate automatic employer responsibility for the four teacher retirement plans, and a variable requirement for MSRS-General and PERA-General after a certain period of time without member payment. It is unclear what the policy basis might be for treating various plan members differently and more advantageously.

Another issue of significance is the issue of whether or not there should be a limitation on the payment of omitted deductions and, if there should be a limit, the length until that limit is met. The seven plans differ, with no limit for MSRS-General and MERF, a three-year limit for PERA-General and the first class city teacher retirement fund associations, and a 46-year limit (1957) for TRA. The differences have no specified or easily inferred policy basis. Consideration should be given to treating all public pension plan members consistently in whether and when omitted deductions can be corrected.

If the required payroll deduction of a member contribution does not occur, it normally would be caused by an employing unit accounting error. Most retirement plans, but not all plans, have omitted member deduction recovery requirements, but those requirements vary between plans. The following summarizes the difference between major aspects of the omitted deduction provisions of the various general employee retirement plans:

Plan	Omitted Deduction – Member Payment
MSRS-General	If deduction is not taken for 60 days or less, deduction is to be made from later payroll abstract. [Minnesota Statutes, Section 352.04, Subdivision 8]
PERA-General	Omission of a deduction must be immediately reported to PERA, with payment of the omitted deduction consistent with PERA executive director reporting procedures and methods. If the entire deduction omission period is 60 days or less, the employer may report and submit omitted deduction payment to PERA under regular reporting and remittance procedures. [Minnesota Statutes, Section 353.27, Subdivision 12]
TRA	Omitted deductions after 6/30/1957 and before 7/1/1991 may be paid any time before retirement by the member, plus annual compound interest at 8.5 percent from the end of the fiscal year in which the shortage occurred to the date of payment, with formula service credit downwardly adjusted if the shortage is not paid. [Minnesota Statutes, Section 354.50, Subdivision 5]
DTRFA	No requirement for member payment of omitted deductions.
MTRFA	No requirement for member payment of omitted deductions.
SPTRFA	No requirement for member payment of omitted deductions.
MERF	No specific provision.

Plan	Omitted Deduction – Employer Payment
MSRS-General	If deduction is not taken for more than 60 days, employer is obligated to pay both member and employer contribution plus 8.5 percent of the total annual amount if under one year or interest at the compound annual rate of 8.5 percent if period exceeds one year. [Minnesota Statutes, Section 352.04, Subdivision 8]
PERA-General	If deduction is omitted for more than 60 days, the employer must furnish sufficient data to allow PERA to determine omitted amounts, future deductions must be made, and the employing unit required to pay the omitted deduction amount, plus the associated employer contribution amounts, and interest on the total at the compound interest rate of 8.5 percent from the date the amount was first payable to the date of actual payment. The employer may not hold the member liable for the omitted deduction amount or attempt to recover the amount from the member. [Minnesota Statutes, Section 353.27, Subdivision 12]
TRA	Omitted deductions after 6/30/1981 are the sole obligation of the employing unit and must be paid following notification by TRA with annual compound interest at the rate of 8.5 percent from the end of the fiscal year in which the shortage occurred to the date of the payment. The employer must pay the employer contribution applicable to omitted deductions after 6/30/1986. [Minnesota Statutes, Section 354.50, Subdivision 5]
DTRFA	Omitted deductions are the sole obligation of the employing unit and must be paid following notification by the plan with monthly compound interest at the rate of 0.71 percent from the date the payment was due to the date that payment is made, with a minimum interest charge of \$10. [Minnesota Statutes, Section 354A.12, Subdivision 1a]
MTRFA	Omitted deductions are the sole obligation of the employing unit and must be paid following notification by the plan with monthly compound interest at the rate of 0.71 percent from the date the payment was due to the date that payment is made, with a minimum interest charge of \$10. [Minnesota Statutes, Section 354A.12, Subdivision 1a]
SPTRFA	Omitted deductions are the sole obligation of the employing unit and must be paid following notification by the plan with monthly compound interest at the rate of 0.71 percent from the date the payment was due to the date that payment is made, with a minimum interest charge of \$10. [Minnesota Statutes, Section 354A.12, Subdivision 1a]
MERF	No specific provision.

Plan	Omitted Deduction For Subsequently Terminating Employee
MSRS-General	For omitted member deduction for employee who terminates before the omission is corrected, and the period is 60 days or under, no member contribution is collected, but employer is obligated to pay the employer contribution, and the unpaid member contribution is considered to be a refund open for repayment in the event that the person returns to State employment. If the period is over 60 days, employer is obligated to pay member and employer contributions, plus amount in lieu of interest or interest at 8.5 percent. [Minnesota Statutes, Section 352.04, Subdivision 8]
PERA-General	If there are omitted member deductions for a person who has terminated, no omitted member deductions are payable, but the employing unit is liable for the employer contributions associated with the member deductions, plus interest at a compound annual rate of 8.5 percent. A terminated member for whom deductions were omitted or a current member with a prior period covered by an omitted deduction period may pay the omitted deduction amount within a period of six months after initial notification of eligibility to pay the amount, or, if the person is covered by another Minnesota public pension plan, within six months of the termination of subsequent public service. If the terminating member is immediately eligible to begin receipt of an annuity, the terminating member shall pay the omitted deduction amount within six months of notification, or forfeit the payment right, and the employing unit is obligated to pay the omitted employer contributions associated with the deductions, plus interest at an annual compound rate of 8.5 percent. [Minnesota Statutes, Section 353.27, Subdivisions 12, 12a, and 12b]
TRA	No specific provision.

Plan	Omitted Deduction For Subsequently Terminating Employee
DTRFA	No specific provision.
MTRFA	No specific provision.
SPTRFA	No specific provision.
MERF	No specific provision.

Plan	Time Limitation on Correcting Omitted Deductions
MSRS-General	No provision.
PERA-General	PERA not allowed to recover omitted deductions or contributions due for more than three calendar years after the calendar year in which the omission occurred. No payments of omissions may be accepted by PERA unless PERA has begun action to recover, which occurs when PERA mails written correspondence requesting pertinent data to allow for the computation of the omission. [Minnesota Statutes, Section 353.27, Subdivision 12]
TRA	Omitted deductions dating before 7/1/1957 may not be paid. [Minnesota Statutes, Section 354.51, Subdivision 5]
DTRFA	Omitted deductions due for more than three years after the date of the omission are not payable. [Minnesota Statutes, Section 354A12, Subdivision 1a]
MTRFA	Omitted deductions due for more than three years after the date of the omission are not payable. [Minnesota Statutes, Section 354A12, Subdivision 1a]
SPTRFA	Omitted deductions due for more than three years after the date of the omission are not payable. [Minnesota Statutes, Section 354A12, Subdivision 1a]
MERF	No specific provision.

Discussion and Analysis

S.F. 435 (Betzold); H.F. 2114 (Smith) modifies the omitted member deduction recovery provisions of the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), the State Patrol Retirement Plan, the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), the Public Employees Police and Fire Plan (PERA-P&F), the PERA Local Government Correctional Service Retirement Plan (PERA-Correctional), the Teachers Retirement Association (TRA), the first class city teacher retirement fund associations, the Minneapolis Employees Retirement Fund (MERF), and the Uniform Judicial Retirement Plan by making the following changes:

- a. Adds Omitted Deduction Recovery Provisions for Four Retirement Plans. Includes in a consistent omitted member contribution recovery provision four retirement plans that lack the provision, the State Patrol Retirement Plan, the Local Government Correctional Retirement Plan, MERF, and the Uniform Judicial Retirement Plan;
- b. Standardizes Member Responsibility for Omitted Deductions for Five Retirement Plans. Requires member payment of omitted member deductions during the first 60 days following the omission for TRA, the three first class city teacher retirement fund associations, and MERF;
- c. Adds Employer Responsibility for Paying Omitted Deductions for Three Retirement Plans. Requires employer payment of omitted member deductions after the first 60 days following the omission for the State Patrol Retirement Plan, MERF, and the Uniform Judicial Retirement Plan;
- d. Standardizes Employer Omitted Deductions Payment Responsibility for Four Retirement Plans. Delays the employer payment of omitted member deductions requirement until after the first 60 days following the omission for TRA and the three first class city teacher retirement fund associations; and
- e. Consistent Three-Year Limit on Recovery for Two Retirement Plans. Imposes a three-year limitation on the potential recovery of omitted member deductions for MSRS-General and TRA.

S.F. 435 (Betzold); H.F. 2114 (Smith) raises several pension and related public policy issues that may merit Commission consideration and discussion, as follows:

1. Appropriateness of Adding Omitted Deduction Recovery Provisions to Plans Lacking the Provisions. The policy issue is the appropriateness of adding omitted member contribution deduction recovery provisions to those plans that lack the recovery provisions. Currently, the State Patrol Retirement Plan, MERF, and the Uniform Judicial Retirement Plan lack any provision governing the recovery of omitted member contribution deductions and the Local Government Correctional Retirement Plan

lacks some portions of the omitted deduction recovery provisions. The lack of omitted deduction recovery provisions may reflect the absence of any past accounting or payment errors in making member contribution deductions. If so, errors could occur in the future and the addition of an omitted deduction recovery provision may serve as good insurance for the future. If past employer accounting or payment errors have occurred, but have been handled in a less formal or a less clear manner, the procedures used then may have been deficient and the retirement plan would be better served with a specific statutory process.

2. Appropriateness of Requiring Members to Pay Omitted Deductions Under 61 Days. The policy issue is the appropriateness of mandating retirement plan members to pay omitted member deductions when the omission is no more than 60 days. Currently, four plans with omitted deduction provisions lack any requirement for plan members to pay omitted deductions, with the employer immediately responsible for all omitted deductions in TRA and the three first class city teacher retirement fund associations. If some retirement plans require members to pay omitted deductions for up to 60 days while others immediately shift the burden to employers, some plan members are treated more advantageously than others are and some employers are treated less advantageously than others. If there is a rational basis for that disparate treatment, then the differential treatment is not problematic. However, the differential treatment in this instance does not appear to have any clear policy basis or policy advantage.
3. Appropriateness of Imposing the Employer Payment Requirement for Omitted Deductions. The policy issue is the appropriateness of requiring some employers to newly bear the burden of paying omitted member contribution deductions. Currently, the Department of Public Safety, the Department of Natural Resources, and the Department of Corrections with respect to State Patrol Retirement Plan members, the City of Minneapolis, the Metropolitan Airports Commission, the Metropolitan Council, and the Minnesota State Colleges and Universities System with respect to MERF members, and the Judicial Branch with respect to judges are not required to ever pay an omitted member deduction amount no matter how the error occurred or for how long the error continued. Since plan members have little or no control over the member contribution deduction process, but employers do, it would appear to be appropriate to give employing units a financial incentive to perform the deduction process properly or to correct errors in the process quickly. Also, since all employing units are obligated to pay omitted member contributions for at least some employees (i.e. the Department of Public Safety would owe omitted member deductions for its MSRS-General covered employees even if it does not owe them for state troopers), making employing units obligated for all omitted member deductions is not an unprecedented step and achieves some consistency.
4. Appropriateness of Delaying Some Employer Omitted Member Deduction Payments. The policy issue is the appropriateness of postponing the imposition of the employer obligation to pay omitted member deductions for teacher retirement plans. The four teacher retirement plans currently have immediate requirements for the employer payment of omitted member deductions, but the payment requirement would be delayed to after 60 days of omission, consistent with the other plans. As a general rule, absent some more overriding policy concerns that the Commission staff is unable to identify, consistent treatment for all employing units for all employees seems to be an appropriate course of action in this matter.
5. Appropriateness of Imposing a Three-Year Limitation on the Recovery of Omitted Member Deductions. The policy issue is the appropriateness of imposing a three-year limitation on the recovery of omitted member deductions. Currently, MSRS-General and TRA do not have any limit on the recovery of omitted member deductions, while most other retirement plans have a three-year limitation. Omitted member deduction recoveries constitute a service credit purchase at a reduced (subsidized) contribution rate if the recovery is delayed beyond a limited period of time. Consistency would argue for the imposition of a uniform limit unless there are overriding contrary policy concerns.

Senator Betzold introduced—

S. F. No. 435 Referred to the Committee on State & Local Government Operations

1 A bill for an act

2 relating to retirement; statewide and major local
3 retirement plans; updating and clarifying omitted
4 salary deduction provisions; amending Minnesota
5 Statutes 2004, sections 352.04, subdivision 8;
6 352B.02, by adding a subdivision; 353.27, subdivisions
7 12, 12a, 12b; 353E.01, subdivision 4; 354.51,
8 subdivision 5; 354A.12, subdivision 1a; 422A.10, by
9 adding a subdivision; 490.123, by adding a subdivision.

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

11 Section 1. Minnesota Statutes 2004, section 352.04,
12 subdivision 8, is amended to read:

13 Subd. 8. [DEPARTMENT REQUIRED TO PAY OMITTED SALARY
14 DEDUCTIONS.] (a) If a department fails to take deductions past
15 due for a period of 60 days or less from an employee's salary as
16 provided in ~~this-section~~ subdivision 4, those deductions must be
17 taken on later payroll abstracts.

18 (b) If a department fails to take deductions past due for a
19 period in excess of 60 days from an employee's salary as
20 provided in ~~this-section~~ subdivision 4, the department, and not
21 the employee, must pay on later payroll abstracts the employee
22 and employer contributions and an amount equivalent to 8.5
23 percent of the total amount due in lieu of interest, or if the
24 delay in payment exceeds one year, 8.5 percent compound annual
25 interest from the date on which the deduction was due until the
26 date that payment is made.

27 (c) If a department fails to take deductions past due for a

1 period of 60 days or less and the employee is no longer in state
2 service ~~so-that~~ and the required deductions cannot be taken from
3 the salary of the employee, the department must nevertheless pay
4 the required employer contributions. If any department fails to
5 take deductions past due for a period in excess of 60 days and
6 the employee is no longer in state service, the omitted
7 contributions must be recovered as provided under paragraph (b).

8 (d) If an employee from whose salary required deductions
9 were past due for a period of 60 days or less leaves state
10 service before the payment of the omitted deductions and
11 subsequently returns to state service, the unpaid amount is
12 considered the equivalent of a refund. The employee accrues no
13 right by reason of the unpaid amount, except that the employee
14 may pay the amount of omitted deductions as a refund repayment
15 as provided in section 352.23.

16 (e) The recovery of omitted deductions is not permitted
17 after the expiration of three calendar years after the calendar
18 year in which the deductions and contributions were due, but
19 were omitted, unless the system has already commenced an action
20 to recover the omitted deductions and contributions. An action
21 to recover omitted deductions and contributions commences on the
22 date that the system mails any written correspondence to the
23 employing unit requesting information from the employing unit
24 upon which to determine whether or not omitted deductions
25 occurred.

26 Sec. 2. Minnesota Statutes 2004, section 352B.02, is
27 amended by adding a subdivision to read:

28 Subd. 1f. [OMITTED SALARY DEDUCTIONS.] If a department
29 fails to take deductions in a timely manner, the omitted salary
30 deductions must be recovered as provided in section 352.04,
31 subdivision 8.

32 Sec. 3. Minnesota Statutes 2004, section 353.27,
33 subdivision 12, is amended to read:

34 Subd. 12. [OMITTED SALARY DEDUCTIONS; OBLIGATIONS.] (a) In
35 the case of an omission of required deductions from the salary
36 of an employee, the department head or designee shall

1 immediately, upon discovery, report the employee for membership
2 and ~~deduct~~ make the employee deductions under subdivision 4
3 during the current pay period or during the pay period
4 immediately following the discovery of the omission. Payment
5 for the omitted obligations may only be made in accordance with
6 the reporting procedures and methods established by the
7 executive director.

8 (b) When the entire omission period of an employee does not
9 exceed 60 days, the governmental subdivision ~~may~~ must report and
10 submit payment of the omitted employee deductions and the
11 omitted employer contributions through the reporting processes
12 under subdivision 4.

13 (c) When the omission period of an employee exceeds 60
14 days, the governmental subdivision shall furnish to the
15 association sufficient data and documentation upon which the
16 obligation for the omitted employee and employer contributions
17 can be calculated. The omitted employee deductions must be
18 deducted from the employee's subsequent salary payment or
19 payments and must be remitted to the association. The employee
20 shall pay omitted employee deductions due for the 60 days prior
21 to the end of the last pay period in the omission period during
22 which salary was earned. The employer shall pay any remaining
23 omitted employee deductions and any omitted employer
24 contributions, plus cumulative interest at an annual rate of 8.5
25 percent compounded annually, from the date or dates each omitted
26 employee contribution was first payable on the date that payment
27 is made.

28 (d) An employer shall not hold an employee liable for
29 omitted employee deductions beyond the pay period dates under
30 paragraph (c), nor attempt to recover from the employee those
31 employee deductions paid by the employer on behalf of the
32 employee. Omitted deductions due under paragraph (c) which are
33 not paid by the employee constitute a liability of the employer
34 that failed to ~~deduct~~ make the omitted deductions from the
35 employee's salary. The employer shall make payment with
36 interest at an annual rate of 8.5 percent compounded annually.

1 Omitted employee deductions are no longer due if an employee
2 terminates public service before making payment of the omitted
3 employee deductions to the association, but the employer remains
4 liable to pay omitted employer contributions plus interest at an
5 annual rate of 8.5 percent compounded annually from the date the
6 contributions were first payable to the date that payment is
7 made.

8 (e) The association may not commence an action for the
9 recovery of omitted employee deductions and employer
10 contributions after the expiration of three calendar years after
11 the calendar year in which the contributions and deductions were
12 omitted. Except as provided under paragraph (b), no payment of
13 omitted deductions or contributions may be made or accepted
14 unless the association has already commenced an action for
15 recovery of omitted deductions. An action for recovery
16 commences on the date of the mailing of any written
17 correspondence from the association to the employing unit
18 requesting information from the governmental subdivision upon
19 which to determine whether or not omitted deductions occurred.

20 Sec. 4. Minnesota Statutes 2004, section 353.27,
21 subdivision 12a, is amended to read:

22 Subd. 12a. [TERMINATED EMPLOYEES: OMITTED DEDUCTIONS.] A
23 terminated employee who has a period of employment in which
24 previously omitted employer contributions were made under
25 subdivision 12 but for whom no, or only partial, omitted
26 employee contributions have been made, or a member who had prior
27 coverage in the association for which previously omitted
28 employer contributions were made under subdivision 12 but who
29 terminated service before required omitted employee deductions
30 could be withheld from salary, may pay the omitted employee
31 deductions for the period on which omitted employer
32 contributions were previously paid plus. The payment must
33 include interest at an annual rate of 8.5 percent compounded
34 annually from the date on which the contribution should have
35 been made until the date on which the payment is made. A
36 terminated employee ~~may~~ must pay the omitted employee deductions

1 plus interest at the rate of 8.5 percent per year within six
2 months of an initial notification from the association of
3 eligibility to pay those omitted deductions. If a terminated
4 employee is reemployed in a position covered under a public
5 pension fund under listed in section 356.30, subdivision 3, and
6 elects to pay the omitted employee deductions, payment must be
7 made no later than six months after a subsequent termination of
8 public service.

9 Sec. 5. Minnesota Statutes 2004, section 353.27,
10 subdivision 12b, is amended to read:

11 Subd. 12b. [TERMINATED EMPLOYEES: IMMEDIATE ELIGIBILITY.]
12 If deductions were omitted from salary adjustments or the final
13 salary ~~of~~ payable to a terminated employee who is immediately
14 eligible to draw a monthly benefit, the employer shall pay the
15 omitted employer and employer additional contributions plus
16 interest on both the employer and employee amounts due at an
17 annual rate of 8.5 percent compounded annually from the date on
18 which the contribution should have been made until the date on
19 which the payment is made. The employee shall pay the employee
20 deductions within six months of an initial notification from the
21 association of the employee's eligibility to pay omitted
22 deductions or the employee forfeits the right to make the
23 payment.

24 Sec. 6. Minnesota Statutes 2004, section 353E.01,
25 subdivision 4, is amended to read:

26 Subd. 4. [COLLECTION OF CONTRIBUTIONS.] The collection of
27 member and employer contributions is governed by section 353.27,
28 subdivisions 4, 7, 7b, 10, 11, and 12, 12a, and 12b.

29 Sec. 7. Minnesota Statutes 2004, section 354.51,
30 subdivision 5, is amended to read:

31 Subd. 5. [PAYMENT OF SHORTAGES.] (a) Except as provided in
32 paragraph (b), ~~in-the-event-that~~ if full required member
33 contributions are not deducted from the salary of a teacher,
34 payment must be made as follows:

35 (1) Payment of shortages in member deductions on salary
36 earned after June 30, 1957, and before July 1, 1981, may be made

1 any time before July 1, 2005, or retirement, whichever is
2 earlier. Payment must include interest at an annual rate of 8.5
3 percent compounded annually from the end of the fiscal year in
4 which the shortage occurred to the end of the month in which
5 payment is made and. The interest must be credited to the
6 fund. If payment of a shortage in deductions is not made, the
7 formula service credit of the member must be prorated under
8 section 354.05, subdivision 25, clause (3).

9 (2) Payment of shortages in member deductions on salary
10 earned after June 30, 1981, which are past due for a period of
11 60 days or less are payable by the teacher and the employing
12 unit must deduct the shortage amount from the teacher's
13 subsequent salary.

14 (3) Payment of shortages in member deductions on salary
15 earned after June 30, 1981, which are past due for a period of
16 more than 60 days are the sole obligation of the employing unit
17 and are payable by the employing unit upon notification by the
18 executive director of the shortage, with interest at an annual
19 rate of 8.5 percent compounded annually from the end of the
20 fiscal year in which the shortage occurred to the end of the
21 month in which payment is made and the interest must be credited
22 to the fund. ~~Effective-July-17-1986,~~ The employing unit shall
23 also pay the employer contributions as specified in section
24 354.42, subdivisions 3 and 5 for the shortages. If the shortage
25 payment is not paid by the employing unit within 60 days of
26 notification, the executive director shall certify the amount of
27 the shortage payment to the applicable county auditor, who shall
28 spread a levy in the amount of the shortage payment over the
29 taxable property of the taxing district of the employing unit if
30 the employing unit is supported by property taxes, or shall
31 certify the amount to the commissioner of finance, who shall
32 deduct the amount from any state aid or appropriation amount
33 applicable to the employing unit if the employing unit is not
34 supported by property taxes.

35 ~~(3)~~ (4) Payment may not be made for shortages in member
36 deductions on salary earned before July 1, 1957, for shortages

1 in member deductions on salary paid or payable under paragraph
2 (b), or for shortages in member deductions for persons employed
3 by the Minnesota State Colleges and Universities system in a
4 faculty position or in an eligible unclassified administrative
5 position and whose employment was less than 25 percent of a full
6 academic year, exclusive of the summer session, for the
7 applicable institution that exceeds the most recent 36 months.

8 (b) For a person who is employed by the Minnesota State
9 Colleges and Universities system in a faculty position or in an
10 eligible unclassified administrative position and whose
11 employment was less than 25 percent of a full academic year,
12 exclusive of the summer session, for the applicable institution,
13 upon the person's election under section 354B.21 of retirement
14 coverage under this chapter, the shortage in member deductions
15 on the salary for employment by the Minnesota State Colleges and
16 Universities system institution of less than 25 percent of a
17 full academic year, exclusive of the summer session, for the
18 applicable institution for the most recent 36 months and the
19 associated employer contributions must be paid by the Minnesota
20 State Colleges and Universities system institution, plus annual
21 compound interest at the rate of 8.5 percent from the end of the
22 fiscal year in which the shortage occurred to the end of the
23 month in which the Teachers Retirement Association coverage
24 election is made. If the shortage payment is not made by the
25 institution within 60 days of notification, the executive
26 director shall certify the amount of the shortage payment to the
27 commissioner of finance, who shall deduct the amount from any
28 state appropriation to the system. An individual electing
29 coverage under this paragraph shall repay the amount of the
30 shortage in member deductions, plus interest, through deduction
31 from salary or compensation payments within the first year of
32 employment after the election under section 354B.21, subject to
33 the limitations in section 16D.16. The Minnesota State Colleges
34 and Universities system may use any means available to recover
35 amounts which were not recovered through deductions from salary
36 or compensation payments. No payment of the shortage in member

1 deductions under this paragraph may be made for a period longer
2 than the most recent 36 months.

3 (c) The recovery of shortages is not permitted after the
4 expiration of three school years after the school year in which
5 the member deductions were due, but were unpaid, unless the
6 Teachers Retirement Association has already commenced an action
7 to recover the shortages. An action to recover shortages begins
8 on the date that the association mails any written
9 correspondence to the employing unit requesting information from
10 the employing unit upon which to determine whether or not
11 shortages occurred.

12 Sec. 8. Minnesota Statutes 2004, section 354A.12,
13 subdivision 1a, is amended to read:

14 Subd. 1a. [OBLIGATION FOR OMITTED SALARY DEDUCTIONS.] (a)
15 If the full required contributions are not deducted from the
16 salary of a teacher and are past due for a period of 60 days or
17 less, the omitted salary deductions are payable by the teacher,
18 and the employing unit must deduct the omitted amount from the
19 subsequent salary payments of the teacher.

20 (b) If the full required contributions are not deducted
21 from the salary of a teacher and are past due for a period of
22 more than 60 days, payment of the shortage in such deductions is
23 the sole obligation of the employing unit during the three-year
24 period following the end of the fiscal year in which the
25 shortage occurred. The shortage is payable by the employing
26 unit upon notification of the shortage by the executive director
27 of the applicable retirement fund association.

28 (c) Under either paragraph (a) or (b), the employing unit
29 shall also pay any employer contributions related to the
30 shortage.

31 (d) The amount of the shortage in employee contributions
32 and associated employer contributions ~~is~~ are payable with
33 interest at the preretirement interest assumption for the
34 retirement fund as specified in section 356.215, subdivision 8,
35 stated as a monthly rate from the date due until the date
36 payment is received in the office of the association, with a

1 minimum interest charge of \$10.

2 (e) If the shortage payment and interest is not paid by the
3 employing unit under paragraph (b) within 60 days of
4 notification, the executive director or executive secretary
5 shall certify the amount of the shortage payment and interest to
6 the commissioner of finance, who shall deduct the amount from
7 any state aid or appropriation amount applicable to the
8 employing unit.

9 Sec. 9. Minnesota Statutes 2004, section 422A.10, is
10 amended by adding a subdivision to read:

11 Subd. 4. [OMITTED SALARY DEDUCTIONS.] (a) In the case of
12 an omission of required deductions from the salary of an
13 employee of the contributing class, the employing unit shall
14 immediately, upon discovery, make the employee deductions under
15 subdivision 1 during the current pay period or during the pay
16 period immediately following the discovery of the omission.

17 (b) When the entire omission period of an employee does not
18 exceed 60 days, the employing unit must report the omission and
19 submit the payment of the omitted employee deductions and the
20 omitted employer contributions.

21 (c) If the entire omission period of an employee exceeds 60
22 days, the employing unit shall furnish the retirement plan with
23 sufficient data and documentation upon which the obligation for
24 the omitted employee and employer contributions can be
25 calculated. The employing unit must pay the omitted employee
26 and employer contributions and an amount equivalent to 8.5
27 percent of the total amount due in lieu of interest, or if the
28 delay in payment exceeds one year, 8.5 percent compound annual
29 interest from the date on which the contribution was due to the
30 date on which the payment is made.

31 (d) The recovery of omitted deductions is not permitted
32 after the expiration of three calendar years after the calendar
33 year in which the deductions were due, but were omitted, unless
34 the retirement plan administration has already commenced an
35 action to recover the omitted deductions. An action to recover
36 omitted deductions commences on the date that the retirement

1 plan administration mails any written correspondence to the
2 employing unit requesting information from the employing unit
3 from which to determine whether or not omitted deductions
4 occurred.

5 Sec. 10. Minnesota Statutes 2004, section 490.123, is
6 amended by adding a subdivision to read:

7 Subd. 1f. [OMITTED SALARY DEDUCTIONS.] (a) In the case of
8 an omission of required deductions from the salary of a judge,
9 the state court administrator shall immediately, upon discovery,
10 make the member contribution deductions under subdivision 1a
11 during the current pay period or during the pay period
12 immediately following the discovery of the omission.

13 (b) When the entire omission period of a judge does not
14 exceed 60 days, the state court administrator must report the
15 omission and submit the payment of the omitted member
16 contribution deductions and the omitted employer contributions.

17 (c) If the entire omission period of a judge exceeds 60
18 days, the state court administrator shall furnish the Minnesota
19 State Retirement System with sufficient data and documentation
20 upon which the obligation for the omitted member and employer
21 contributions can be calculated. The state court administrator
22 must pay the omitted member and employer contributions and an
23 amount equivalent to 8.5 percent of the total amount due in lieu
24 of interest, or if the delay in payment exceeds one year, 8.5
25 percent compound annual interest from the date on which the
26 contribution was due to the date on which the payment is made.

27 (d) The recovery of omitted deductions is not permitted
28 after the expiration of three calendar years after the calendar
29 year in which the deductions were due, but were omitted, unless
30 the Minnesota State Retirement System has already commenced an
31 action to recover the omitted deductions. An action to recover
32 omitted deductions commences on the date that the Minnesota
33 State Retirement System mails any written correspondence to the
34 state court administrator requesting information from the
35 administrator from which to determine whether or not omitted
36 deductions occurred.

1 Sec. 11. [EFFECTIVE DATE.]

2 Sections 1 to 10 are effective July 1, 2005.