



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director **EB**
RE: Amendment LCPR10-005-18A: Various Plans; Correcting Plan Coverage Errors
DATE: February 9, 2010

Introduction

During the discussion of the Minnesota State Retirement System (MSRS) administrative bill draft (LCPR10-005) at the November 12, 2009, Legislative Commission on Pensions and Retirement meeting, Senator Betzold indicated a preference to create a uniform procedure for correcting errors in plan coverage. The most recent effort to create this procedure is Amendment LCPR10-005-18A, replacing Amendment LCPR10-005-12A, which was in Commission members' packets at the last meeting. Amendment LCPR10-005-18A is drawn to the MSRS administrative bill draft.

Summary of Amendment LCPR10-005-18A

Amendment LCPR10-005-18A revises plan erroneous deduction provisions found in the various plan laws by restricting erroneous plan coverage treatment under those provisions to cases where the erroneous contributions were made to a defined benefit plan while the correct plan is a defined contribution plan, and by creating a new procedure to be coded in Chapter 356, Retirement Systems Generally, as Section 356.99, to handle situations where the erroneous plan and the correct plan are both defined benefit plans. When applicable, the new procedure corrects errors in plan coverage involving active plan members in defined benefit plans in the MSRS system, the Public Employees Retirement Association (PERA) system, the Teachers Retirement Association (TRA), and the first class city teacher plans. Under the procedure, in all cases the erroneous plan coverage is corrected for prospective service. Coverage for past service must be corrected if the error first occurred within the current fiscal year or prior two fiscal years. If the erroneous plan coverage began earlier than that, the individual's past service remains covered by the erroneous plan.

In more detail, when a plan coverage error for an active plan member is detected:

1. Plan coverage is corrected for prospective service by having the employer stop remitting contributions to the wrong plan and report the individual for coverage in the proper plan;
2. Coverage for past service is corrected if the error first occurred within the current fiscal year or prior two fiscal years. Contributions for the past service in the erroneous plan are transmitted to the proper plan, based on the employee and employer contribution rates required in law for that proper plan. The transfers are without interest. If the transferred amounts are insufficient (because the contribution rates for the proper plan are in excess of contribution rates for the erroneous plan) the employer must make an additional payment to the proper plan covering the shortfall. That payment is without interest providing payment is received within 30 days. If the prior employee and employer contributions to the erroneous plan are in excess of those required by the proper plan, the past excess employee contributions must be refunded to the employee with whatever rate of interest is required by the general employee refund provision in law applicable to the erroneous plan. Any prior excess employer contribution is remitted to the employer without interest through a credit against future contributions payable by the employer; and
3. Any transfers between plans which could cause a plan to fail to meet qualified plan requirements under Section 401(a) of Internal Revenue Code must not be made. Instead, the employer is required to make a payment to the correct fund equal to the required transfer amount. The employer is reimbursed by a credit against future contributions to the erroneous plan.

The new procedure is effective July 1, 2010.

Discussion and Analysis

The procedure for correcting defined benefit plan coverage errors contained in LCPR10-005-18A was developed by the MSRS, PERA, TRA, and first class city teacher plan administrators. Its chief merit is simplicity.

The procedure raises a few policy issues, as follows:

1. Length of Past Service Period Subject to Correction. Past service coverage will be corrected if the error is detected no more than two fiscal years before the current fiscal year. Assuming a July 1 to June 30 fiscal year, if a plan coverage error is detected on July 1 the error can be corrected if the erroneous coverage began no more than two years earlier. On the other hand, if the plan coverage error is detected on June 30, the error can be corrected if the erroneous coverage began no more than three years earlier. This treatment creates different treatment of similar individuals. If this treatment is adopted into law, in the future the Commission is likely to receive requests to change this law, or to provide special law exemptions to the treatment. This is likely to occur if the plan which should have provided coverage has a higher accrual rate (multiplier) than the plan which erroneously provided the coverage.

In correspondence with Mary Vanek, PERA's Executive Director, she claims that the permissible correction period in this draft is as prescribed by the Internal Revenue Service in situations where plan administrators discover a coverage error. The Commission may wish to hear testimony from Ms. Vanek on this matter. If the Commission is not comfortable with the specification of the permission period for correcting past errors, it may wish to consider an amendment.

2. Implications of Failure to Provide Interest on Transfers. The procedure does not include interest on any amounts transferred to the correct plan. This has several consequences. Blame for the plan coverage error rests with the employer and the erroneous coverage plan, in some combination. The employer is responsible for reporting the individual to the right plan. The erroneous coverage plan administrators may also have some blame for not checking that the coverage was appropriate when the individual was enrolled in that plan. Under the procedure as drafted in this amendment, the employer has no additional incentive to reduce errors in reporting employees to the proper plan, while the plan which incorrectly covered the individual receives a windfall. It gets to keep any investment returns it earned on the erroneous contributions. Meanwhile, the correct plan is harmed. It receives the transferred contributions, but without the investment earnings it would have received on those contributions if no error had occurred and the contributions had been sent to the plan's fund in a timely manner.
3. Implications of Restricting Focus to Defined Benefit Plans. Amendment LCPR10-005-18A is almost entirely restricted to coverage errors between defined benefit plans. The amendment does not address coverage errors between two defined contribution plans, while coverage errors where a defined benefit plan erroneously provided coverage and coverage should have been by a defined contribution plan are covered in a very limited sense, and only if supported by a given plan administrator. While this means that LCPR10-005-18A does not cover all possibilities, it may not be practical to attempt to significantly expand the scope of covered plan types.

Potential Amendments to LCPR10-005-18A for Commission Consideration

Given the policy issues raised by amendment LCPR10-005-18A, the Commission may wish to consider various amendments to the amendment. Any of the following amendments can be used alone or in combination.

- **Amendment LCPR10-005-19A** expands the scope of defined contribution plans to which contributions can be sent to correct coverage errors if the erroneous plan is a defined benefit plan. For defined benefit plans which have current law permitting this type of correction to a defined contribution plan or plan, the amendment permits these corrections to be sent to MSRS-Unclassified, the PERA Defined Contribution Plan, the Higher Education Individual Retirement Account Plan (IRAP), or the Historical Society IRAP, whichever is applicable. The justification for the amendment is that if it is permissible to send prior erroneous contributions to a defined contribution plan, then there seems to be no basis for excluding some defined contribution plans from this treatment.

Existing law for several of these plan systems permits past contributions to be sent to a defined contribution plan to correct errors. For example, lines 1.4 to 1.26 of LCPR10-005-18A revise MSRS-General law. Most of the changes in that provision are technical. The language being stricken on lines 1.15 to 1.19 is language which allows erroneous coverage situations to be corrected by transmitting past contributions, without interest, to any plan included in the combined service annuity provision or to the Higher Education IRAP plan. The plans included in the combined service annuity provision are the defined benefit plans of MSRS, PERA, TRA, the first class city teacher plans, and the Minneapolis Employees Retirement Fund (MERF). The MSRS-Unclassified Program, a defined contribution plan, is included in the combined service annuity provision. Therefore, the MSRS-General current law language permits erroneous coverage situations to be corrected if the correct

coverage plan is a defined benefit plan, or if the other plan is either of two defined contribution plans, MSRS-Unclassified or the Higher Education IRAP.

Lines 1.20 to 1.25 of LCPR10-005-18A contains new language which will allow corrections if the other plan is any of the defined benefit plans covered by the new procedure to be coded as Section 356.99, or if the other plan is MSRS-Unclassified, the Higher Education IRAP, or the Historical Society IRAP plan. Including the Historical Society IRAP plan in this treatment is an expansion beyond current law, but one that seems reasonable. However, there is still one defined contribution plan not included in this authority, the Public Employees Defined Contribution Plan. Amendment **LCPR10-005-19A**, line 1.3, would add the Public Employees Defined Contribution Plan. Similarly, line 1.4 would revise the PERA deductions and contributions transmitted in error provision to include MSRS-Unclassified and the Historical Society IRAP, in addition to those already included, the Public Employees Defined Contribution Plan and the Higher Education IRAP. Line 1.5 would revise the TRA erroneous salary deductions provision to include the four defined contribution plans, rather than just the Higher Education IRAP.

- **Amendment LCPR10-005-20A** addresses payment of interest when a transfer is made to a defined contribution plan. While current MSRS, PERA, and TRA law permits erroneous contributions to the applicable defined benefit plan to be sent to one or more eligible defined contribution plans to correct a coverage error, the transfers are without interest. This harms the individual by the loss of up to three years investment earnings, compared to the situation where no coverage error occurred. Thus, harm is created by the employer and/or erroneous plan administration, but the cost of the harm is borne by the individual. LCPR10-005-20 requires, when contributions are sent to a defined contribution plan to correct a coverage error, that those contributions include 0.71 percent monthly interest (the equivalent of 8.5 percent annual interest), with annual compounding, from the first day of the month after the coverage error occurred until the end of the month in which the transfer is made to correct the error.
- **Amendment LCPR10-005-21A** revises the period in which an error of past coverage can be corrected by eliminating the variable period and requiring a fixed length of time. Instead of requiring correction of past coverage if the error occurred within the current fiscal year or the prior two fiscal years, the error must be corrected if the error occurred two years or less before the date the error is detected. This would set a consistent time period to be applied in all cases while still giving sufficient time to find coverage errors. If the Commission desires to set a different fixed period, this could be done by verbal amendment to this amendment.
- **Amendment LCPR10-005-22A** revises the interest treatment when transfers are required from the employer or are made between defined benefit plans. Rather than making payments or transfers without interest, all payments or transfers will include 0.71 percent monthly interest (the equivalent of 8.5 percent annual interest), with annual compounding, from the first day of the month after the coverage error occurred until the end of the month in which the transfer is made to correct the error.
- **Amendment LCPR10-005-23A** is an amendment drafted at PERA's request. The amendment provides an exception for individuals who are plan members when this provision would become effective (July 1, 2010) to the cutoff for correcting past service coverage errors. Under this amendment if the plan member notifies and substantiates before July 1, 2011, that a plan coverage error occurred, the past service can be transferred even if the error occurred in the indefinite past, any time prior to July 1, 2008. If the Commission gives consideration to this amendment, it may wish to hear testimony from Mary Vanek regarding why the amendment is necessary and appropriate. The amendment seems to contradict the new treatment specified in the LCPR10-005-18A amendment (past coverage is corrected if identified no more than two fiscal years before the current fiscal year), which Ms. Vanek has indicated that the IRS recommends or requires pension funds to follow. If Amendment LCPR10-005-23A is used, the Commission should also be aware that it places considerably more harm on the plan which should have provided the coverage, and provides a considerably larger windfall to the plan which erroneously provided coverage, because the contribution transfer does not include investment earnings on those transferred assets unless the Commission chooses to also adopt amendment LCPR10-005-22A.

- 1.1 moves to amend the LCPR10-005-18A amendment to S.F. No.;
- 1.2 H.F. No., Document LCPR10-005, as follows:

- 1.3 Page 1, line 23, before "354B" insert "353D,"
- 1.4 Page 2, line 12, delete "353D or 354B" and insert "352D, 353D, 354B, or 354D"
- 1.5 Page 3, line 11, delete "354B" and insert "352D, 353D, 354B, or 354D"

1.1 moves to amend the LCPR10-005-18A amendment to S.F. No.;
1.2 H.F. No., Document LCPR10-005, as follows:

1.3 Page 1, line 24, delete ", without interest,"

1.4 Page 1, line 25, before the period insert ", with interest at the rate of 0.71 percent
1.5 per month, compounded annually, from the first day of the month following the month in
1.6 which coverage should have commenced in the defined contribution plan until the end of
1.7 the month in which the transfer occurs"

1.8 Page 2, line 14, strike ", without interest"

1.9 Page 2, line 15, after the period insert "The transfer to the applicable defined
1.10 contribution plan account must include interest at the rate of 0.71 percent per month,
1.11 compounded annually, from the first day of the month following the month in which
1.12 coverage should have commenced in the defined contribution plan until the end of the
1.13 month in which the transfer occurs."

1.14 Page 3, line 13, strike "without interest"

1.15 Page 3, line 15, after the stricken period insert "The transfer to the applicable defined
1.16 contribution plan account must include interest at the rate of 0.71 percent per month,
1.17 compounded annually, from the first day of the month following the month in which
1.18 coverage should have commenced in the defined contribution plan until the end of the
1.19 month in which the transfer occurs."

1.1 moves to amend the LCPR10-005-18A amendment to S.F. No.;
1.2 H.F. No., Document LCPR10-005, as follows:

1.3 Page 5, line 12, delete "two fiscal"

1.4 Page 5, delete lines 13 and 14

1.5 Page 5, line 15, delete "year" and insert "two years before the date on which the
1.6 error was determined by the chief administrative officer. If the reporting error began no
1.7 more than two years before the date the error was detected"

1.1 moves to amend the LCPR10-005-18A amendment to S.F. No.;
1.2 H.F. No., Document LCPR10-005, as follows:

1.3 Page 5, line 34, delete "under laws for recovering"

1.4 Page 5, delete line 35

1.5 Page 6, delete line 1

1.6 Page 6, line 2, delete everything before the period

1.7 Page 6, line 7, delete ", without interest,"

1.8 Page 6, after line 14, insert:

1.9 "Subd. 6. **Interest treatment.** Any transfer under subdivision 5 from an employer
1.10 to a plan fund or from a plan fund to another plan fund must include interest, at the rate of
1.11 0.71 percent per month, compounded annually, from the first day of the month following
1.12 the month in which coverage should have commenced in the proper plan until the end of
1.13 the month in which the transfer occurs."

1.1 moves to amend the LCPR10-005-18A amendment to S.F. No.;
1.2 H.F. No., Document LCPR10-005, as follows:

1.3 Page 5, line 5, before "Upon" insert "(a) Except as provided in clause (b),"

1.4 Page 5, after line 9, insert:

1.5 "(b) If a person who is a plan member on July 1, 2010, notifies and substantiates to
1.6 the chief administrative officer before July 1, 2011, that past service credited before July
1.7 1, 2008, in an erroneous plan should be by another covered pension plan, the erroneous
1.8 plan coverage for that past service must be corrected as provided in subdivision 5."

1.1 moves to amend S.F. No.; H.F. No., Document LCPR10-005,
1.2 as follows:

1.3 Page 3, after line 20, insert:

1.4 "Sec. 3. Minnesota Statutes 2008, section 352.04, subdivision 9, is amended to read:

1.5 Subd. 9. **Erroneous deductions, canceled warrants.** (a) Deductions taken from the
1.6 salary of an employee for the retirement fund in ~~error~~ excess of required amounts must,
1.7 upon discovery and verification by the department making the deduction, be refunded to
1.8 the employee.

1.9 (b) If a deduction for the retirement fund is taken from a salary warrant or check,
1.10 and the check is canceled or the amount of the warrant or check returned to the funds of
1.11 the department making the payment, the sum deducted, or the part of it required to adjust
1.12 the deductions, must be refunded to the department or institution if the department applies
1.13 for the refund on a form furnished by the director. The department's payments must
1.14 likewise be refunded to the department.

1.15 ~~(c) Employee deductions and employer contributions taken in error may be directly~~
1.16 ~~transferred, without interest, to another Minnesota public employee retirement plan by~~
1.17 ~~which the employee is actually covered.~~

1.18 ~~For purposes of this subdivision, a Minnesota public pension plan means a plan~~
1.19 ~~specified in section 356.30, subdivision 3, or the plan governed by chapter 354B.~~

1.20 (c) If erroneous employee deductions and employer contributions are caused by an
1.21 error in plan coverage involving the plan and any other plans specified in section 356.99,
1.22 that section applies. If the employee should have been covered by the plan governed
1.23 by chapter 352D, 354B or 354D, the employee deductions and employer contributions
1.24 taken in error must be directly transferred, without interest, to the applicable employee's
1.25 account in the proper plan.

1.26 **EFFECTIVE DATE.** This section is effective July 1, 2010."

1.27 Page 4, after line 21, insert:

1.28 "Sec. 5. Minnesota Statutes 2008, section 352.91, is amended by adding a subdivision
1.29 to read:

1.30 Subd. 6. **Correction of plan coverage errors.** If erroneous employee deductions
1.31 and employer contributions are caused by an error in plan coverage involving the
1.32 correctional state employees retirement plan and any other plan specified in section
1.33 356.99, that section applies.

1.34 **EFFECTIVE DATE.** This section is effective July 1, 2010."

1.35 Page 8, delete section 9

2.1 Page 9, after line 36, insert:

2.2 "Sec. 12. Minnesota Statutes 2008, section 352B.02, is amended by adding a
2.3 subdivision to read:

2.4 Subd. 3. **Correction of plan coverage errors.** If erroneous employee deductions
2.5 and employer contributions are caused by an error in plan coverage involving the state
2.6 patrol retirement plan and any other plan specified in section 356.99, that section applies.

2.7 **EFFECTIVE DATE.** This section is effective July 1, 2010.

2.8 Sec. 13. Minnesota Statutes 2008, section 353.27, subdivision 7a, is amended to read:

2.9 Subd. 7a. **Deductions or contributions transmitted by error.** (a) If employee
2.10 deductions and employer contributions were erroneously transmitted to the association,
2.11 but should have been transmitted to ~~another Minnesota public pension~~ a plan covered
2.12 by chapter 353D or 354B, the executive director shall transfer the erroneous employee
2.13 deductions and employer contributions to the appropriate retirement fund or individual
2.14 account, as applicable, without interest. The time limitations specified in subdivisions 7
2.15 and 12 do not apply.

2.16 ~~(b) For purposes of this subdivision, a Minnesota public pension plan means a~~
2.17 ~~plan specified in section 356.30, subdivision 3, or the plans governed by chapters 353D~~
2.18 ~~and 354B.~~

2.19 ~~(c)~~ (b) A potential transfer under paragraph (a) that is reasonably determined to
2.20 cause the plan to fail to be a qualified plan under section 401(a) of the federal Internal
2.21 Revenue Code, as amended, must not be made by the executive director of the association.
2.22 Within 30 days after being notified by the Public Employees Retirement Association of
2.23 an unmade potential transfer under this paragraph, the employer of the affected person
2.24 must transmit an amount representing the applicable salary deductions and employer
2.25 contributions, without interest, to the retirement fund of the appropriate Minnesota public
2.26 pension plan, or to the applicable individual account if the proper coverage is by a defined
2.27 contribution plan. The association must provide the employing unit a credit for the amount
2.28 of the erroneous salary deductions and employer contributions against future contributions
2.29 from the employer. If the employing unit receives a credit under this paragraph, the
2.30 employing unit is responsible for refunding to the applicable employee any amount that
2.31 had been erroneously deducted from the person's salary.

2.32 (c) If erroneous employee deductions and employer contributions reflect a plan
2.33 coverage error involving any Public Employees Retirement Association plan specified in
2.34 section 356.99 and any other plan specified in that section, section 356.99 applies.

3.1 **EFFECTIVE DATE.** This section is effective July 1, 2010.

3.2 Sec. 14. Minnesota Statutes 2008, section 354.42, subdivision 7, is amended to read:

3.3 Subd. 7. **Erroneous salary deductions or direct payments.** (a) Any deductions
3.4 taken from the salary of an employee for the retirement fund in ~~error~~ excess of amounts
3.5 required must be refunded to the employee upon the discovery of the error and after the
3.6 verification of the error by the employing unit making the deduction. The corresponding
3.7 excess employer contribution and excess additional employer contribution amounts
3.8 attributable to the erroneous salary deduction must be refunded to the employing unit.

3.9 (b) If salary deductions and employer contributions were erroneously transmitted to
3.10 the retirement fund and should have been transmitted to ~~another Minnesota public pension~~
3.11 the plan covered by chapter 354B, the executive director must transfer these salary
3.12 deductions and employer contributions to the account of the appropriate public pension
3.13 fund person under the applicable plan without interest. ~~For purposes of this paragraph,~~
3.14 ~~a Minnesota public pension plan means a plan specified in section 356.30, subdivision~~
3.15 ~~3, or the plan governed by chapter 354B.~~

3.16 (c) A potential transfer under paragraph (b) that would cause the plan to fail to
3.17 be a qualified plan under section 401(a) of the Internal Revenue Code, as amended,
3.18 must not be made by the executive director. Within 30 days after being notified by the
3.19 Teachers Retirement Association of an unmade potential transfer under this paragraph,
3.20 the employer of the affected person must transmit an amount representing the applicable
3.21 salary deductions and employer contributions, without interest, to the ~~retirement fund of~~
3.22 ~~the appropriate Minnesota public pension plan fund~~ account of the applicable person under
3.23 the appropriate plan. The retirement association must provide a credit for the amount of
3.24 the erroneous salary deductions and employer contributions against future contributions
3.25 from the employer.

3.26 (d) If a salary warrant or check from which a deduction for the retirement fund was
3.27 taken has been canceled or the amount of the warrant or if a check has been returned to
3.28 the funds of the employing unit making the payment, a refund of the amount deducted,
3.29 or any portion of it that is required to adjust the salary deductions, must be made to the
3.30 employing unit.

3.31 (e) Erroneous direct payments of member-paid contributions or erroneous salary
3.32 deductions that were not refunded during the regular payroll cycle processing must be
3.33 refunded to the member, plus interest computed using the rate and method specified in
3.34 section 354.49, subdivision 2.

4.1 (f) Any refund under this subdivision that would cause the plan to fail to be a
 4.2 qualified plan under section 401(a) of the Internal Revenue Code, as amended, may not
 4.3 be refunded and instead must be credited against future contributions payable by the
 4.4 employer. The employer is responsible for refunding to the applicable employee any
 4.5 amount that was erroneously deducted from the salary of the employee, with interest as
 4.6 specified in paragraph (e).

4.7 (g) If erroneous employee deductions and employer contributions are caused by an
 4.8 error in plan coverage involving the plan and any other plan specified in section 356.99,
 4.9 that section applies.

4.10 **EFFECTIVE DATE.** This section is effective July 1, 2010.

4.11 Sec. 15. Minnesota Statutes 2008, section 354A.12, is amended by adding a
 4.12 subdivision to read:

4.13 **Subd. 6a. Erroneous salary deductions or direct payments.** If erroneous
 4.14 employee deductions and employer contributions reflect a plan coverage error involving
 4.15 any plan covered by the this chapter and any plan specified in section 356.99, that section
 4.16 applies.

4.17 **EFFECTIVE DATE.** This section is effective July 1, 2010."

4.18 Page 12, after line 17, insert:

4.19 **"CORRECTION OF PLAN COVERAGE ERRORS**

4.20 Sec. 18. **[356.99] CORRECTION OF ERRONEOUS DEFINED BENEFIT PLAN**
 4.21 **COVERAGE.**

4.22 **Subdivision 1. Definitions.** (a) For purposes of this section, the terms in paragraphs
 4.23 (b) to (e) have the meanings given them.

4.24 (b) "Chief administrative officer" means the person selected or elected by the
 4.25 governing board of a covered pension plan with primary responsibility to administer the
 4.26 covered pension plan, or that person's designee or representative.

4.27 (c) "Covered pension plan" means a plan enumerated in section 356.30, subdivision
 4.28 3, except clauses (3), (5), (6), and (11).

4.29 (d) "Governing board" means the governing board of the Minnesota State Retirement
 4.30 System, the Public Employees Retirement Association, the Teachers Retirement
 4.31 Association, the Duluth Teachers Retirement Fund Association, or the St. Paul Teachers
 4.32 Retirement Fund Association.

4.33 (e) "Member" means an active plan member in a covered pension plan.

5.1 Subd. 2. Treatment of Terminated Employee Coverage Error. Any person
5.2 who terminated the erroneously covered service before a chief administrative officer
5.3 determined the covered pension plan coverage was in error retains the coverage with the
5.4 plan that originally credited the service.

5.5 Subd. 3. Active employee correction of prospective service coverage. Upon
5.6 determination by a chief administrative officer that a member is covered by the wrong
5.7 pension plan, the employer must stop remitting the erroneous employee deductions and
5.8 employer contributions and report the employee to the correct covered pension plan for all
5.9 subsequent service.

5.10 Subd. 4. Active employee treatment of past service. Any plan member, with past
5.11 service credited in an erroneous plan, retains the coverage for that past service with the
5.12 plan that originally credited that service if the reporting error began earlier than two fiscal
5.13 years prior to the fiscal year in which the error was determined by the chief administrative
5.14 officer. If the reporting error began within two fiscal years prior to the current fiscal
5.15 year, the pension plan coverage for that past service must be corrected as provided in
5.16 subdivision 5.

5.17 Subd. 5. Past service transfer procedure. (a) For cases under subdivision 4
5.18 requiring correction of prior service coverage, on behalf of the applicable member the
5.19 chief administrative officer of the covered pension plan fund that has received erroneous
5.20 employee deductions and employer contributions must transfer to the appropriate covered
5.21 retirement plan fund an amount which is the lesser of all contributions made by or on
5.22 behalf of the member for the period of erroneous membership, or the specific amount
5.23 requested by the chief administrative officer of the other covered pension plan which
5.24 represents the employee deductions and employer contributions that would have been
5.25 made had the member been properly reported.

5.26 (b) If excess employee deductions remain in the member's account after the transfer
5.27 of funds, the remaining erroneous amount must be refunded to the person with interest at
5.28 the rate provided under the general refund law of the applicable covered pension plan. The
5.29 chief administrative officer must also return any remaining excess employer contributions
5.30 by providing a credit against future contributions payable by the employer.

5.31 (c) If the contributions transferred to the correct covered pension plan fund are
5.32 less than the amounts required for the period being corrected, the chief administrative
5.33 officer of the correct covered pension plan fund must collect the remaining employee
5.34 deductions and employer contributions from the employer under laws for recovering
5.35 deficient contributions applicable to the correct covered pension plan, except that no

6.1 interest is charged if the additional amounts due under this paragraph are received by the
6.2 chief administrative officer within 30 days of notifying the employer of the amount due.

6.3 (d) A potential transfer under this section that would cause a plan to fail to be a
6.4 qualified plan under section 401(a) of the Internal Revenue Code, as amended, must not be
6.5 made. Within 30 days after being notified by a chief administrative officer of an unmade
6.6 potential transfer under this section, the employer of the member must transmit an amount
6.7 representing the applicable salary deductions and employer contributions, without interest,
6.8 to the fund of the appropriate covered pension plan. The chief administrative officer of
6.9 the covered pension plan which erroneously provided coverage must provide a credit for
6.10 the amount of the erroneous salary deductions and employer contributions against future
6.11 contributions from the employer.

6.12 (e) Upon transfer of the required assets, or payment from the employer under
6.13 paragraph (d), whichever is applicable, allowable service and salary credit for the period
6.14 being transferred is forfeited in the erroneous plan and is granted in the correct plan.

6.15 **EFFECTIVE DATE.** This section is effective July 1, 2010.

6.16 Sec. 19. Minnesota Statutes 2008, section 490.123, is amended by adding a subdivision
6.17 to read:

6.18 Subd. 4. **Correction of contribution errors.** (a) If erroneous employee deductions
6.19 and employer contributions are caused by an error in plan coverage involving the judges
6.20 retirement plan and any other plan specified in section 356.99, that section applies.

6.21 (b) The provisions of section 352.04, subdivisions 8 and 9, apply to the judges'
6.22 retirement plan, except that if employee deductions or contributions are erroneously
6.23 transmitted to the judges' retirement fund for service provided after the service credit limit
6.24 under section 490.121, subdivision 22, has been attained, consistent with section 352D.04,
6.25 subdivision 2, no employer contributions shall transfer.

6.26 **EFFECTIVE DATE.** This section is effective July 1, 2010.

6.27 Sec. 20. **REPEALER.**

6.28 Minnesota Statutes 2008, sections 352.91, subdivision 5; and 353.88, are repealed."

6.29 Renumber the sections in sequence

6.30 Amend the title accordingly