State of Minnesota \ LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT

H.F. 2266
(Lanning)

S.F. 1891
(Rosen)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA; Statewide and major Minnesota public pension plans
Relevant Provisions of Law: Minn. Stat. Sec. 353.01, 353.50, 356.611
General Nature of Proposal: PERA Administrative Bill
Date of Summary: February 13, 2012

Specific Proposed Changes

- Revises the PERA allowable service provision by correcting a cross-reference.
- Revises the MERF account contribution provision by clarifying the dates for supplemental employer contributions and the actuarial valuations upon which the contributions are based.
- Revises a federal compensation limit provision applicable to all plans by stating that any differential wage payment must be treated as compensation for purposes of determining whether wages for pension purposes have been exceeded.

Policy Issues Raised by the Proposed Legislation

1. The need for specification of the procedure determining MERF supplemental employer contribution amounts and billing procedures *(Section 2)*.
2. Proper effective date *(Section 3)*.
3. Whether the proposed revision to restrict salary for pension purposes has been reviewed by administrators of other plans *(Section 3)*.

Potential Amendments

If the Commission wishes to remove any of the three sections in the bill, that could be done by verbal amendment.

H2266-1A is a technical amendment which revises the form of federal Internal Revenue Code references for consistency.

H2266-2A revises the effective date from January 1, 2009, to a date to be specified.

H2266-3A amends Section 353.656, Subdivision 2, a provision coordinating PERA-P&F disability benefits with workers' compensation benefits.

State of Minnesota | LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director EB

RE: H.F. 2266 (Lanning); S.F. 1891 (Rosen): PERA; Administrative Provisions

DATE: February 16, 2012

Summary of H.F. 2266 (Lanning); S.F. 1891 (Rosen)

H.F. 2266 (Lanning); S.F. 1891 (Rosen) revises the Public Employees Retirement Association (PERA) allowable service provision by correcting a cross-reference; revises the Minneapolis Employees Retirement Fund (MERF) account contribution provision for the merged MERF plan by clarifying the dates for supplemental employer contributions and the actuarial valuations upon which the contributions are based; and revises a federal compensation limit provision applicable to all plans by stating that any differential wage payment must be treated as compensation for purposes of determining whether wages for pension purposes have been exceeded.

Discussion and Analysis

The account contribution provision in Section 2 for the merged MERF plan clarifies dates for supplemental employer contributions, billing procedures, and the actuarial valuations upon which the contributions are based.

The federal compensation limit provision in Section 3 (Minn. Stat. Sec. 356.611, Subd. 2), restricting salary for pension purposes, is revised by adding a paragraph specifying treatment of differential wage payments. The provision being amended is in Minnesota Statutes, Chapter 356, *Retirement Systems, Generally*, and the provision applies to all defined benefit pension plans in the Minnesota State Retirement System (MSRS), PERA, the Teachers Retirement Association (TRA), and the first class city teacher plan systems, plus the Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified). The new language states that a differential wage payment must be treated as compensation for purposes of determining whether limits are exceeded. For Minnesota public plan purposes, differential wage payments are payments made to a public employee by the Minnesota public employer while that employee is serving in active military or uniformed service. The purpose is to avoid completely, or at least lessen, financial harm to the person providing the uniformed service. The differential wage payment increases the person's total wage so that differential wage payment, when combined with amounts received for the uniformed service, approaches or equals the salary the individual would have received if the person was not providing uniformed service and had instead continued to provide service to the Minnesota public employer.

Excerpts from materials from Ice Miller, a large Indianapolis legal firm, and from an Internal Revenue Service Bulletin are attached. These materials were provided by PERA and indicate a need to revise public pension law to give recognition to differential wage payments. The revised state law provisions are to apply to years after December 31, 2008, and need to be adopted before the end of calendar year 2012.

TRA is currently undergoing an Internal Revenue Service review to determine whether procedures and statutes governing TRA are consistent with federal requirements needed to retain qualified plan status. Based on that review, the TRA administrative bill (H.F. 1987 (Lanning); S.F. 1692 (Rosen)), also on the February 21, 2012, agenda, contains several changes to federal compliance provisions found in Minnesota Statutes, Chapter 356. It would seem logical to have included Section 3 of H.F. 2266 (Lanning); S.F. 1891 (Rosen) in the TRA administrative bill. However, Mary Vanek, Executive Director of PERA, said that this was discussed with TRA administrators and it was decided to put the provision in PERA's bill because PERA administrators were more knowledgeable about this specific provision.

H.F. 2266 (Lanning); S.F. 1891 (Rosen) raises a number of pension and related public policy issues for consideration by and possible discussion by the Commission, as follows:

1. Need for MERF Account Supplemental Employer Contribution Provision. The policy issue is the need for this specification of the procedure for determining supplemental employer contribution amounts and billing procedures. Commission members may wish to hear brief testimony from PERA

and/or MERF employing units regarding this need, and to ensure that the procedure creates no unintended harm to employing units. *(Section 2)*

2. Retroactive Effective Date. The policy issue is whether the effective date is appropriate. This section is retroactive from January 1, 2009. This matter was discussed above. If the Commission wishes to revise the effective date, an amendment is attached. *(Section 3)*

3. Review and Agreement by Administrators from Other Plans. The policy issue is whether the proposed revision to the federal compensation limits provision for pension purposes has been shared with administrators of other plans, and whether they agree that the specific change is necessary and appropriate. Apparently, this matter has been discussed the TRA, but the Commission may wish to seek through brief testimony assurances from directors of other plans that they concur with this proposal. *(Section 3)*

Potential Amendments for Commission Consideration

If the Commission wishes to remove any of the three sections in the bill, that could be done by verbal amendment.

H2266-1A is a technical amendment which revises the form of federal Internal Revenue Code references for consistency.

H2266-2A revises the effective date from January 1, 2009, to a date to be specified by the Commission.

H2266-3A adds a section to the bill amending Minnesota Statutes, Section 353.656, Subdivision 2, a provision coordinating Public Employees Police and Fire Retirement Plan (PERA-P&F) disability benefits with workers' compensation benefits. The section restructures the provision for clarity and clarifies that the provision applies to all forms of PERA-P&F disability benefits.

Internal Revenue Code § 3401

§ 3401. DEFINITIONS

.....

(h) Differential wage payments to active duty members of the uniformed services

(1) In general

For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

(2) Differential wage payment

For purposes of paragraph (1), the term "differential wage payment" means any payment which—

(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and

(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

Internal Revenue Code § 414(u)(12)

§ 414. DEFINITIONS AND SPECIAL RULES

.....

(u) Special rules relating to veterans' reemployment rights under USERRA and to differential wage payments to members on active duty

.....

(12) Treatment of differential wage payments

(A) In general

Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation, and

(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

(B) Special rule for distributions

(i) In general. Notwithstanding subparagraph (A)(i), for purposes of section 401 (k)(2)(B)(i)(I), 403 (b)(7)(A)(ii), 403 (b)(11)(A), or 457 (d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401 (h)(2)(A).

(ii) Limitation. If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(C) Nondiscrimination requirement

Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (o)) performing service in the uniformed services described in section 3401 (h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410 (b) shall apply.

(D) Differential wage payment

For purposes of this paragraph, the term "differential wage payment" has the meaning given such term by section 3401 (h)(2).

IRS Issues New Guidance on HEART Act Changes

January 22, 2010

The Internal Revenue Service (IRS) issued Notice 2010-15 on January 20, 2010, which provides guidance regarding certain provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act). Of particular interest to administrators of employee benefit plans are the notice's guidance on survivor and disability payments with respect to qualified military service, the treatment of differential wage payments, distributions from retirement plans to individuals called to active duty, and remedial amendment periods.

....

Differential Wage Payments and Distributions from Retirement Plans

The notice makes several clarifications with respect to differential wage payments (voluntary payments by an employer of some or all of the wages that a service member would have received but for the military service) and distributions on severance from employment, including the following:

- Differential wage payments are not required to be treated as compensation for purposes of determining contributions and benefits under a plan, but they must be treated as compensation under Code Section 415(c)(3) and Treas. Reg. § 1.415(c)-2(d).
- For a plan that is subject to Code Section 414(s), if a plan's definition of compensation excludes differential wage payments for purposes of determining benefits and contributions under the plan, such definition will not fail to satisfy Code Section 414(s).
- Contributions and benefits provided under a plan as a result of differential wage payments do not need to be included in the plan's nondiscrimination testing. However, if such contributions and benefits are taken into account, they must not cause the plan to fail the nondiscrimination requirements.
- Code Section 414(u)(12)(B) treats an individual as having been severed from employment while he or she is performing service in the uniformed services. The notice clarifies that this provision applies to all individuals on active duty for a period of more than 30 days, regardless of whether they are receiving differential wage payments.
- Code Section 414(u)(12)(B) applies only for purposes of the provisions of Code Sections 401(k), 403(b), and 457(d) that permit distributions on severance from employment. Thus, if an individual is treated as severed from employment under Code Section 414(u)(12)(B), such individual is not necessarily treated as severed from employment under sections of the Code *other than* Sections 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), and 457(d)(1)(A)(ii) which permit distributions upon severance from employment.
    - A plan may, but is not required to, provide for distributions upon a "deemed severance" from employment under Code Section 414(u)(12)(B). However, if a plan includes such a provision, the plan must also provide that an individual receiving the distribution may not make an elective deferral or employee contribution during the six month period beginning on the date of the distribution.
    - Section 414(u)(12)(B) does not affect the status of an individual who is on active duty for more than 30 days and who has actually had a severance from employment. For example, if such an individual receives a distribution from a retirement plan under Section 401(k)(2)(B)(i)(I) and returns to employment within six months, he or she would still be permitted to make elective deferrals or employee contributions to the plan before the end of the six month period.
- If a plan provides for both qualified reservist distributions and distributions on deemed severance from employment under Code Section 414(u)(12)(B), a distribution to an individual that could be either type of distribution will be treated as a qualified reservist distribution and, as such, would *not* be subject to the six month restriction on elective deferrals or the 10 percent additional tax under Code Section 72(p) for distributions prior to age 50½.
- A distribution made in accordance with Code Section 414(u)(12)(B) is an eligible rollover distribution under Code Section 402(c)(4).

Remedial Amendment Periods for Certain Sections of the HEART Act

The notice clarifies that the remedial amendment period for all of the HEART Act sections discussed above is the same. This means a plan will be deemed to be in compliance with plan terms if an amendment is made to comply with these HEART Act sections on or before the last day of the first plan year beginning on or after January 1, 2010 (January 1, 2012, for governmental plans). Likewise, the remedial amendment period for Code Section 72(t)(2)(G) (which removes the expiration date for the special rules applicable to qualified reservist distributions) is extended so that it ends no earlier than the last day of the first plan year beginning on or after January 1, 2010 (January 1, 2012, for governmental plans).

The notice also addresses contributions of military death gratuities to Roth IRAs and Coverdell education savings accounts, and employer credit for differential wage payments to employees who are active duty members of the uniformed services.

Internal Revenue Bulletin: 2010-6

February 8, 2010

Notice 2010-15, *Miscellaneous HEART Act Changes*

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III. Section 105 of the HEART Act

In the case of employees who are called to active duty, some employers have paid some or all of the compensation that a service member would have received from the employer during the service member's period of active duty had the employee not been called to active duty. Prior to the enactment of the HEART Act, these payments, commonly referred to as "differential wage payments," were not treated as wages for Federal employment tax purposes, pursuant to Rev. Rul. 69-136, 1969-1 C.B. 252.

Section 105(a) of the HEART Act amends § 3401 of the Code to treat differential wage payments as wages for income tax withholding purposes. The term "differential wage payment" is defined in § 3401(h) as any payment which (1) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and (2) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer. This amendment applies to remuneration paid after December 31, 2008. See Rev. Rul. 2009-11, 2009-18 I.R.B. 896, for guidance relating to § 3401(h).

Section 105(b)(1)(A) of the Act adds § 414(u)(12)(A) to the Code, which provides that, for purposes of applying the Code to retirement plans subject to § 414(u), (1) an individual receiving a differential wage payment is treated as an employee of the employer making the payment, (2) the differential wage payment is treated as compensation, and (3) the plan is not treated as failing to meet the requirements of any provisions described in § 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment. The provisions described in § 414(u)(1)(C) include various nondiscrimination requirements, including requirements under §§ 401(a)(4), 401(k)(3), and 401(m).

Section 105(b)(1)(A) of the Act also adds § 414(u)(12)(B) to the Code, under which, notwithstanding the treatment of an individual receiving differential wage payments as an employee, an individual is treated for purposes of distributions (including distributions from a designated Roth account under § 402A) under §§ 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), and 457(d)(1)(A)(ii) as having been severed from employment during any period the individual is performing service in the uniformed services described in § 3401(h). Section 414(u)(12)(B)(ii) provides that, if an individual elects to receive a distribution under this provision, the plan must provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. For purposes of the 6-month restriction, the definition of "elective deferral" under § 414(u)(2)(C) applies, which includes any deferral of compensation under an eligible deferred compensation plan under § 457(b).

Section 105(b)(2) of the Act amends § 219(f)(1) of the Code to provide that, for purposes of determining the limitation on contributions to an IRA, the term "compensation" includes differential wage payments.

The amendments made by section 105(b) of the Act apply to years beginning after December 31, 2008.

Q-9. Must differential wage payments be treated as compensation for purposes of determining contributions and benefits under a plan?
A-9. No. Differential wage payments are not required to be treated as compensation for purposes of determining contributions and benefits under a plan. However, such payments are treated as compensation for purposes of applying the Code. Accordingly, these payments must be treated as compensation under § 415(c)(3) and § 1.415-2(d).

Q-10. Will a plan's definition of compensation fail to satisfy § 414(s) if differential wage payments are excluded from the plan's definition of compensation for purposes of determining benefits and contributions under the plan?
A-10. No. A plan's definition of compensation will not fail to satisfy § 414(s) merely because differential wage payments are excluded from the plan's definition of compensation for purposes of determining benefits and contributions.

Q-11. Is the rule in § 414(u)(12)(B) which treats an individual as severed from employment while performing service in the uniformed services limited to individuals receiving differential wage payments?
A-11. No. Section 414(u)(12)(B) applies to all individuals on active duty for a period of more than 30 days, regardless of whether they are receiving differential wage payments. Thus, for purposes of applying rules that permit distributions upon severance from employment under §§ 401(k), 403(b), and 457(d), an individual is treated as having been severed from employment during any period the individual is performing service in the uniformed services while on active duty for a period of more than 30 days.

Q-12. Is a plan required to provide for distributions to an individual who is treated as severed from employment while performing service in the uniformed services pursuant to § 414(u)(12)(B)?
A-12. No. Just as a plan may, but is not required to, provide for distributions under § 401(k), 403(b), or 457(d) upon actual severance from employment, a plan may, but is not required to, provide for distributions upon a deemed severance from employment under § 414(u)(12)(B). Thus, for example, a plan that provides for distributions upon severance from employment may, but is not required to, also provide for distributions upon a

deemed severance from employment under § 414(u)(12)(B). If a plan provides for a distribution upon a deemed severance from employment under § 414(u)(12)(B), the plan must also provide that an individual receiving the distribution may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

Q-13. How does the deemed severance rule of § 414(u)(12)(B) affect other rules applicable to plan distributions?
A-13. Section 414(u)(12)(B) applies only for purposes of the provisions of §§ 401(k), 403(b), and 457(d) that permit distributions on severance from employment. Thus, for example, in the event an individual is treated as severed from employment under § 401(k)(2)(B)(i)(I), the individual may receive a distribution otherwise subject to the distribution restrictions of § 401(k)(2)(B). On the other hand, merely because an individual is treated as severed from employment under § 414(u)(12)(B) does not cause such individual to be treated as severed from employment under sections of the Code other than §§ 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), and 457(d)(1)(A)(ii).

Q-14. Does § 414(u)(12)(B) apply to individuals who have an actual severance from employment or who otherwise are eligible to take a distribution of plan benefits?
A-14. No. Section 414(u)(12)(B) does not affect the status of an individual who is on active duty for a period of more than 30 days and who has, in fact, had a severance from employment. Thus, for example, if such an individual receives a distribution from a retirement plan under § 401(k)(2)(B)(i)(I) and returns to employment within six months, § 414(u)(12)(B)(ii) would not preclude the individual from making elective deferrals (as defined under § 414(u)(2)(C)) or employee contributions to the plan before the end of the 6-month period.

Section 414(u)(12)(B) also does not affect a plan's ability to make other in-service distributions to the extent permitted under other applicable rules and plan terms. Thus, for example, a § 401(k) plan may distribute a participant's elective deferrals when the participant attains age $59^1/_2$, or under other circumstances listed in § 401(k)(2)(B), and the distribution would not be subject to the 6-month restriction on elective deferrals under § 414(u)(12)(B) (although a 6-month restriction may apply under § 401(k) to a distribution on account of a financial hardship under § 401(k)(2)(B)(i)(IV)).

Q-15. If an individual is eligible under a plan to receive a distribution under § 401(k)(2)(B)(i)(I) as a result of a deemed severance from employment under § 414(u)(12)(B), and is also eligible under the plan to receive a qualified reservist distribution within the meaning of § 72(t)(2)(G)(iii), as permitted under § 401(k)(2)(B)(i)(V), what treatment applies to a distribution that could be made under § 401(k)(2)(B)(i)(I) or under § 401(k)(2)(B)(i)(V)?
A-15. If an individual receives a distribution that meets the definition of a qualified reservist distribution under § 72(t)(2)(G)(iii), the distribution will be treated as a qualified reservist distribution, even if the distribution would also have been permitted as a result of a deemed severance of employment under § 414(u)(12)(B). For example, if a plan provides for qualified reservist distributions and for distributions on deemed severance under § 414(u)(12)(B), a distribution to an individual that could be either type of distribution will be treated as a qualified reservist distribution. In that case, the distribution would not be subject to the 6-month restriction on elective deferrals or to the 10-percent additional income tax of § 72(t). The rules applicable to qualified reservist distributions are discussed in Section IV, below.

Q-16. Is a distribution made pursuant to § 414(u)(12)(B) an eligible rollover distribution within the meaning of § 402(c)(4)?
A-16. Yes. A distribution made pursuant to § 414(u)(12)(B) is an eligible rollover distribution within the meaning of § 402(c)(4), except to the extent one of the exceptions listed under § 402(c)(4) (other than the exception for hardship distributions under § 401(k)(2)(B)(i)(IV)) applies. A distribution made pursuant to § 414(u)(12)(B) is not treated as a hardship distribution ineligible for rollover. An eligible rollover distribution that is paid to an employee (rather than directly rolled over) is subject to 20-percent mandatory withholding under § 3405(c).

Q-17. May the contributions and benefits provided as a result of differential wage payments be included in a plan's nondiscrimination testing?
A-17. Yes. Under § 414(u)(12)(A), a qualified plan is not treated as failing to meet the requirements of any nondiscrimination provision described in § 414(u)(1)(C) by reason of any contribution or benefit based on a differential wage payment, as long as the differential wage payment and the ability to make contributions based on the differential wage payment are provided on reasonably equivalent terms. Accordingly, the contributions and benefits provided under a plan as a result of differential wage payments need not be included in the plan's nondiscrimination testing. On the other hand, § 414(u)(1)(C) does not prevent such contributions and benefits from being taken into account, as long as they do not cause the plan to fail the nondiscrimination requirements. If such contributions and benefits are included in the plan's nondiscrimination testing for any employee, they must be taken into account for all employees.
....

Section 105(b)(2) of the Act provides that the statutory changes made by section 105(b) of the Act apply to years beginning after December 31, 2008. Section 105(c) of the Act adds that a plan subject to these new provisions is treated as being operated in accordance with the terms of the plan if a plan amendment is made pursuant to section 105(b)(1) of the Act and is made on or before the last day of the first plan year beginning on or after January 1, 2010 (January 1, 2012, for governmental plans).

..... moves to amend H.F. No. 2266; S.F. No. 1891, as follows:

Page 7, line 6, strike "Internal Revenue Code" and insert "section" and before "on" insert "of the Internal Revenue Code"

..... moves to amend H.F. No. 2266; S.F. No. 1891, as follows:

Page 7, line 14, delete "retroactively from January 1, 2009" and insert "

....."

..... moves to amend H.F. No. 2266; S.F. No. 1891, as follows:

Page 6, after line 31, insert:

"Sec. 3. Minnesota Statutes 2010, section 353.656, subdivision 2, is amended to read:

Subd. 2. **Benefits paid under workers' compensation law.** (a) If a member~~, as described in subdivision 1, is injured under circumstances which entitle the member to receive benefits under the~~ becomes disabled and receives a disability benefit as specified in this section and is also entitled to receive lump sum or periodic benefits under workers' compensation ~~law, the member shall receive the same benefits as provided in subdivision 1, with disability benefits paid reimbursed and future benefits reduced by all periodic or lump-sum amounts, other than those amounts excluded under paragraph (b), paid to the member under the workers' compensation law, after deduction of amount of attorney fees, authorized under applicable workers' compensation laws, paid by a disabilitant if the total of~~ laws, the single life annuity actuarial equivalent disability benefit amount and the workers' compensation ~~benefit exceeds:~~ amount must be added. The computation must exclude any attorney fees paid by the disabilitant as authorized under applicable workers' compensation laws. The computation must also exclude permanent partial disability payments provided under section 176.101, subdivision 2a, and retraining payments under section 176.102, subdivision 11, if the permanent partial disability or retraining payments are reported to the executive director in a manner specified by the executive director.

(b) The equivalent salary is the amount determined under clause (1) or (2), whichever is greater:

(1) the salary the disabled member received as of the date of the disability; or

(2) the salary currently payable for the same employment position or ~~an employment position~~ substantially similar ~~to the one the person held as of the date of the disability, whichever is greater. The disability benefit must be reduced to that amount which, when added to the workers' compensation benefits, does not exceed the greater of the salaries described in clauses (1) and (2)~~ positions in the applicable government subdivision.

~~(b) Permanent partial disability payments provided for in section 176.101, subdivision 2a, and retraining payments provided for in section 176.102, subdivision 11, must not be offset from disability payments due under paragraph (a) if the amounts of the permanent partial or retraining payments are reported to the executive director in a manner specified by the executive director.~~

(c) If the amount determined under paragraph (a) exceeds the equivalent salary determined under paragraph (b), the disability benefit amount must be reduced to that amount which, when added to the workers' compensation benefits, equals the equivalent salary.

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

Renumber the sections in sequence

Amend the title accordingly

State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2266

02/15/2012 Authored by Lanning
The bill was read for the first time and referred to the Committee on Government Operations and Elections

A bill for an act

relating to retirement; Public Employees Retirement Association; making changes of an administrative nature by revising a cross-reference; specifying the timing of annual employer supplemental contributions for the MERF division; revising a compensating limit provision to comply with federal law; amending Minnesota Statutes 2010, sections 353.50, subdivision 7; 356.611, subdivision 2; Minnesota Statutes 2011 Supplement, section 353.01, subdivision 16.

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

Section 1. Minnesota Statutes 2011 Supplement, section 353.01, subdivision 16, is amended to read:

Subd. 16. **Allowable service; limits and computation.** (a) "Allowable service" means:

(1) service during years of actual membership in the course of which employee deductions were withheld from salary and contributions were made at the applicable rates under section 353.27, 353.65, or 353E.03;

(2) periods of service covered by payments in lieu of salary deductions under sections 353.27, subdivision 12, and 353.35;

(3) service in years during which the public employee was not a member but for which the member later elected, while a member, to obtain credit by making payments to the fund as permitted by any law then in effect;

(4) a period of authorized leave of absence with pay from which deductions for employee contributions are made, deposited, and credited to the fund;

(5) a period of authorized personal, parental, or medical leave of absence without pay, including a leave of absence covered under the federal Family Medical Leave Act, that does not exceed one year, and for which a member obtained service credit for each

month in the leave period by payment under section 353.0161 to the fund made in place of salary deductions. An employee must return to public service and render a minimum of three months of allowable service in order to be eligible to make payment under section 353.0161 for a subsequent authorized leave of absence without pay. Upon payment, the employee must be granted allowable service credit for the purchased period;

(6) a periodic, repetitive leave that is offered to all employees of a governmental subdivision. The leave program may not exceed 208 hours per annual normal work cycle as certified to the association by the employer. A participating member obtains service credit by making employee contributions in an amount or amounts based on the member's average salary, excluding overtime pay, that would have been paid if the leave had not been taken. The employer shall pay the employer and additional employer contributions on behalf of the participating member. The employee and the employer are responsible to pay interest on their respective shares at the rate of 8.5 percent a year, compounded annually, from the end of the normal cycle until full payment is made. An employer shall also make the employer and additional employer contributions, plus 8.5 percent interest, compounded annually, on behalf of an employee who makes employee contributions but terminates public service. The employee contributions must be made within one year after the end of the annual normal working cycle or within 30 days after termination of public service, whichever is sooner. The executive director shall prescribe the manner and forms to be used by a governmental subdivision in administering a periodic, repetitive leave. Upon payment, the member must be granted allowable service credit for the purchased period;

(7) an authorized temporary or seasonal layoff under subdivision 12, limited to three months allowable service per authorized temporary or seasonal layoff in one calendar year. An employee who has received the maximum service credit allowed for an authorized temporary or seasonal layoff must return to public service and must obtain a minimum of three months of allowable service subsequent to the layoff in order to receive allowable service for a subsequent authorized temporary or seasonal layoff;

(8) a period during which a member is absent from employment by a governmental subdivision by reason of service in the uniformed services, as defined in United States Code, title 38, section 4303(13), if the member returns to public service with the same governmental subdivision upon discharge from service in the uniformed service within the time frames required under United States Code, title 38, section 4312(e), provided that the member did not separate from uniformed service with a dishonorable or bad conduct discharge or under other than honorable conditions. The service must be credited if the member pays into the fund equivalent employee contributions based upon the contribution rate or rates in effect at the time that the uniformed service was performed multiplied by

the full and fractional years being purchased and applied to the annual salary rate. The annual salary rate is the average annual salary, excluding overtime pay, during the purchase period that the member would have received if the member had continued to be employed in covered employment rather than to provide uniformed service, or, if the determination of that rate is not reasonably certain, the annual salary rate is the member's average salary rate, excluding overtime pay, during the 12-month period of covered employment rendered immediately preceding the period of the uniformed service. Payment of the member equivalent contributions must be made during a period that begins with the date on which the individual returns to public employment and that is three times the length of the military leave period, or within five years of the date of discharge from the military service, whichever is less. If the determined payment period is less than one year, the contributions required under this clause to receive service credit may be made within one year of the discharge date. Payment may not be accepted following 30 days after termination of public service under subdivision 11a. If the member equivalent contributions provided for in this clause are not paid in full, the member's allowable service credit must be prorated by multiplying the full and fractional number of years of uniformed service eligible for purchase by the ratio obtained by dividing the total member contributions received by the total member contributions otherwise required under this clause. The equivalent employer contribution, and, if applicable, the equivalent additional employer contribution must be paid by the governmental subdivision employing the member if the member makes the equivalent employee contributions. The employer payments must be made from funds available to the employing unit, using the employer and additional employer contribution rate or rates in effect at the time that the uniformed service was performed, applied to the same annual salary rate or rates used to compute the equivalent member contribution. The governmental subdivision involved may appropriate money for those payments. The amount of service credit obtainable under this section may not exceed five years unless a longer purchase period is required under United States Code, title 38, section 4312. The employing unit shall pay interest on all equivalent member and employer contribution amounts payable under this clause. Interest must be computed at a rate of 8.5 percent compounded annually from the end of each fiscal year of the leave or the break in service to the end of the month in which the payment is received. Upon payment, the employee must be granted allowable service credit for the purchased period; or

(9) a period specified under ~~subdivision 40~~ section 353.0162.

(b) For calculating benefits under sections 353.30, 353.31, 353.32, and 353.33 for state officers and employees displaced by the Community Corrections Act, chapter 401, and transferred into county service under section 401.04, "allowable service" means the

combined years of allowable service as defined in paragraph (a), clauses (1) to (6), and section 352.01, subdivision 11.

(c) For a public employee who has prior service covered by a local police or firefighters relief association that has consolidated with the Public Employees Retirement Association under chapter 353A or to which section 353.665 applies, and who has elected the type of benefit coverage provided by the public employees police and fire fund either under section 353A.08 following the consolidation or under section 353.665, subdivision 4, "allowable service" is a period of service credited by the local police or firefighters relief association as of the effective date of the consolidation based on law and on bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure.

(d) No member may receive more than 12 months of allowable service credit in a year either for vesting purposes or for benefit calculation purposes. For an active member who was an active member of the former Minneapolis Firefighters Relief Association on the day prior to the effective date of consolidation under Laws 2011, First Special Session chapter 8, article 6, section 19, "allowable service" is the period of service credited by the Minneapolis Firefighters Relief Association as reflected in the transferred records of the association up to the effective date of consolidation under Laws 2011, First Special Session chapter 8, article 6, section 19, and the period of service credited under paragraph (a), clause (1), after the effective date of consolidation under Laws 2011, First Special Session chapter 8, article 6, section 19. For an active member who was an active member of the former Minneapolis Police Relief Association on the day prior to the effective date of consolidation under Laws 2011, First Special Session chapter 8, article 7, section 19, "allowable service" is the period of service credited by the Minneapolis Police Relief Association as reflected in the transferred records of the association up to the effective date of consolidation under Laws 2011, First Special Session chapter 8, article 7, section 19, and the period of service credited under paragraph (a), clause (1), after the effective date of consolidation under Laws 2011, First Special Session chapter 8, article 7, section 19.

(e) MS 2002 [Expired]

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

Sec. 2. Minnesota Statutes 2010, section 353.50, subdivision 7, is amended to read:

Subd. 7. **MERF division account contributions.** (a) After June 30, 2010, the member and employer contributions to the MERF division account are governed by this subdivision.

(b) An active member covered by the MERF division must make an employee contribution of 9.75 percent of the total salary of the member as defined in section 353.01, subdivision 10. The employee contribution must be made by payroll deduction by the member's employing unit under section 353.27, subdivision 4, and is subject to the provisions of section 353.27, subdivisions 7, 7a, 7b, 12, 12a, and 12b.

(c) The employer regular contribution to the MERF division account with respect to an active MERF division member is 9.75 percent of the total salary of the member as defined in section 353.01, subdivision 10.

(d) The employer additional contribution to the MERF division account with respect to an active member of the MERF division is 2.68 percent of the total salary of the member as defined in section 353.01, subdivision 10, plus the employing unit's share of $3,900,000 that the employing unit paid or is payable to the former Minneapolis Employees Retirement Fund under Minnesota Statutes 2008, section 422A.101, subdivision 1a, 2, or 2a, during calendar year 2009, as was certified by the former executive director of the former Minneapolis Employees Retirement Fund.

(e) Annually after June 30, 2012, the employer supplemental contribution to the MERF division account by the city of Minneapolis, Special School District No. 1, Minneapolis, a Minneapolis-owned public utility, improvement, or municipal activity, Hennepin county, the Metropolitan Council, the Metropolitan Airports Commission, and the Minnesota State Colleges and Universities system is the larger of the following:

(1) the amount by which the total actuarial required contribution determined under section 356.215 by the approved actuary retained by the Public Employees Retirement Association in the most recent actuarial valuation of the MERF division and based on a June 30, 2031, amortization date, after subtracting the contributions under paragraphs (b), (c), and (d), exceeds $22,750,000 or $24,000,000, whichever applies; or

(2) the amount of $27,000,000, but the total supplemental contribution amount plus the contributions under paragraphs (c) and (d) may not exceed $34,000,000. Each employing unit's share of the total employer supplemental contribution amount is equal to the applicable portion specified in paragraph ~~(g)~~ (h). The initial total actuarial required contribution after June 30, 2012, must be calculated using the mortality assumption change recommended on September 30, 2009, for the Minneapolis Employees Retirement Fund by the approved consulting actuary retained by the Minneapolis Employees Retirement Fund board.

(f) Before January 31, each employing unit must be invoiced for its share of the total employer supplemental contribution amount under paragraph (e). The amount is payable by the employing unit in two parts. The first half of the amount due is payable

on or before the July 31 following the date of the invoice, and the second half of the amount due is payable on or before December 15. Each invoice must be based on the actuarial valuation report prepared under section 356.215 and the standards for actuarial work promulgated by the Legislative Commission on Pensions and Retirement as of the valuation date occurring 18 months earlier.

~~(f)~~ (g) Notwithstanding any provision of paragraph (c), (d), or (e) to the contrary, as of August 1 annually, if the amount of the retirement annuities and benefits paid from the MERF division account during the preceding fiscal year, multiplied by the factor of 1.035, exceeds the market value of the assets of the MERF division account on the preceding June 30, plus state aid of $9,000,000, $22,750,000, or $24,000,000, whichever applies, plus the amounts payable under paragraphs (b), (c), (d), and (e) during the preceding fiscal year, multiplied by the factor of 1.035, the balance calculated is a special additional employer contribution. The special additional employer contribution under this paragraph is payable in addition to any employer contribution required under paragraphs (c), (d), and (e), and is payable on or before the following June 30. The special additional employer contribution under this paragraph must be allocated as specified in paragraph ~~(g)~~ (h).

~~(g)~~ (h) The employer supplemental contribution under paragraph (e) or the special additional employer contribution under paragraph ~~(f)~~ (g) must be allocated between the city of Minneapolis, Special School District No. 1, Minneapolis, any Minneapolis-owned public utility, improvement, or municipal activity, the Minnesota State Colleges and Universities system, Hennepin County, the Metropolitan Council, and the Metropolitan Airports Commission in proportion to their share of the actuarial accrued liability of the former Minneapolis Employees Retirement Fund as of July 1, 2009, as calculated by the approved actuary retained under section 356.214 as part of the actuarial valuation prepared as of July 1, 2009, under section 356.215 and the Standards for Actuarial Work adopted by the Legislative Commission on Pensions and Retirement.

~~(h)~~ (i) The employer contributions under paragraphs (c), (d), ~~and~~ (e), and (g) must be paid as provided in section 353.28.

~~(i)~~ (j) Contributions under this subdivision are subject to the provisions of section 353.27, subdivisions 4, 7, 7a, 7b, 11, 12, 12a, 12b, 13, and 14.

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

Sec. 3. Minnesota Statutes 2010, section 356.611, subdivision 2, is amended to read:

Subd. 2. **Federal compensation limits.** (a) For members of a covered pension plan enumerated in section 356.30, subdivision 3, and of the plan established under chapter 353D, compensation in excess of the limitation specified in section 401(a)(17) of the

Internal Revenue Code, as amended, for changes in the cost of living under section 401(a)(17)(B) of the Internal Revenue Code, may not be included for contribution and benefit computation purposes.

(b) Notwithstanding paragraph (a), for members specified in paragraph (a) who first contributed to a plan specified in that paragraph before July 1, 1995, the annual compensation limit specified in Internal Revenue Code 401(a)(17) on June 30, 1993, applies if that provides a greater allowable annual compensation.

(c) To the extent required by the federal Internal Revenue Code, sections 3401(h) and 414(u)(12), an individual receiving a differential wage payment as defined in section 3401(h)(2) of the federal Internal Revenue Code from an employer shall be treated as employed by that employer, and the differential wage payment will be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the federal Internal Revenue Code.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2009.