# State of Minnesota \ LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT

**S.F. 2427**
(Pappas)

**H.F. 2790**
(Murphy, M.)

## Executive Summary of Commission Staff Materials

| | |
|---|---|
| *Affected Pension Plan(s):* | PERA-General, PERA-P&F |
| *Relevant Provisions of Law:* | Uncoded provision |
| *General Nature of Proposal:* | Permits Duluth and Duluth Airport Authority employees to purchase salary credit for certain amounts which PERA excluded from salary for pension purposes. |
| *Date of Summary:* | March 17, 2014 |

## Specific Proposed Changes

- To comply with a Court of Appeals ruling, PERA will permit Duluth and Duluth Airport Authority employees to purchase salary credit for certain salary supplement amounts paid by the employer into deferred compensation accounts and which PERA excluded from salary for pension purposes. The employees choosing to make payment will pay the deficient employee contribution amount, and if made, the employer will pay corresponding employer contribution amounts. Both are without interest. PERA has already begun accepting these contributions and revising benefits. Prior actions consistent with the terms of the bill are ratified.

## Policy Issues Raised by the Proposed Legislation

1. Whether the procedure and process provided under the bill is a proper or best response to the court ruling.
2. Harm to PERA plans caused by the payment terms.
3. Question of whether PERA caused harm to employees, and inconsistency between payment terms (contributions without interest) and the typical terms used by the Commission in situations involving employee harm.
4. Whether the employing units deserve to be subsidized, as they are under the bill.
5. Ratification of past PERA actions: Implications of PERA's implementation of the bill's procedures prior to passage of the bill.
6. Precedent concerns.
7. Local approval concerns.

## Potential Amendments

S2427-1A requires 8.5% interest on the employee and employer contributions.

S2427-2A, an alternative to both other amendments, requires 8.5% interest on the employee contributions, the employer is charged the remainder of a portion of the full actuarial value to be determined by the Commission, and local approval clauses are removed. Any required amounts not paid by the employer would be withheld from state aids.

S2427-3A removes the local approval clauses and collects any unpaid employer amounts by withholding state aids, if necessary, due to nonpayment. This amendment is not needed if the -2A amendment is adopted.

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# 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: S.F. 2427 (Pappas); H.F. 2790 (Murphy, M.): PERA; City of Duluth and Duluth Airports Authority Employees and Retirees; Permitting Purchase of Salary Credit to Comply with Appeals Court Decision

DATE: March 17, 2014

Summary of S.F. 2427 (Pappas); H.F. 2790 (Murphy, M.)

S.F. 2427 (Pappas); H.F. 2790 (Murphy, M.) permits current or former employees of the City of Duluth and Duluth Airport Authority, employed between August 1, 2007 and December 31, 2011, to make payment of employee equivalent contributions without interest on salary supplemental payments which the employer provided and which were deposited in employee deferred compensation accounts. If the employee equivalent contribution is made, the current or former employee receives additional salary credit. Individual who are already retired or the survivor may make the employee equivalent contribution, and the annuity will be adjusted retroactive to the benefit effective date. If the employee or annuitant makes the employee equivalent contribution, the employer is billed for the corresponding employer contributions without interest. Past PERA actions consistent with the requirements of this bill are ratified.

Background Information on Relevant Topics

The following attachments provide background information on topics relevant to the proposed legislation:

- **Attachment A**: Background information on the 2012 Minnesota Court of Appeals decision on PERA salary determinations.
- **Attachment B**: Background information on special law service credit purchases.

Discussion and Analysis

a. Recent History and Reasons for Current Bill. Since the mid-1990s, the City of Duluth and its employees have included in their collective bargaining agreements the practice of making salary supplemental payments. Some salary supplemental payments were deposited in deferred compensation accounts, while some was used as insurance supplemental payments and applied to the purchase of group health insurance. From 1995 until 2007, Duluth reported both the salary supplemental payments and the insurance supplement payments to PERA as covered salary and made member deductions and employer contributions on both supplemental amounts, reportedly after obtaining prior PERA guidance. In 2007, Duluth stopped reporting salary supplemental compensation and insurance supplement payments to PERA and deducting or making PERA contributions on those amounts, apparently based on new PERA guidance.

   PERA's decision in 2007 to exclude the Duluth supplemental salary amounts from salary for pension purposes was disputed by Duluth employees and/or employers. In 2008, PERA and Duluth conducted a joint investigation of the treatment of supplemental salary. Following that joint investigation, PERA's board continued to hold the view that the pre-2007 treatment of Duluth supplemental salary was incorrect, and that the applicable employee and employer contributions from that period ought to be revised to eliminate the contributions based on the supplemental salary, with corresponding downward revisions to benefits. The matter was again disputed and brought before an administrative law judge, who concluded that PERA's interpretation of the statute with respect to salary supplement payments was not properly promulgated as an interpretation rule, but that PERA's interpretation of the statute with respect to insurance supplement payments was consistent with the plain meaning of the statute and was an interpretive rule. The matter was further appealed and submitted to the Court of Appeals.

   The Court of Appeals in 2012, addressing questions arising from the Duluth salary supplemental payments and insurance supplemental payments, concluded that PERA's treatment of insurance supplemental payments was justified and proper. But in the matter of salary supplemental payments deposited in deferred compensation accounts, the Court of Appeals concluded that PERA's salary definition was ambiguous with respect to these payments and that PERA's decision to exclude these salary supplemental payments from salary for pension purposes was not justified by the plain meaning

of the statute. The Court of Appeals directed PERA to ensure that these supplemental payments in the deferred compensation accounts are included in salary for pension purposes for the applicable Duluth employees. Since contributions to PERA based on the supplemental salary amounts deposited in deferred compensation accounts had been excluded by PERA beginning some time in 2007, this would require PERA to obtain back payment of employee and employer contributions based on those supplemental salary amounts and adjust any benefits for those who commenced benefit receipt. Under this bill, PERA is seeking specific authority in law to permit PERA to make the necessary employee and employer contribution adjustments and benefit adjustments.

The current bill is an effort to respond to a Court of Appeals determination that these salary supplemental payments made to City of Duluth and Duluth Airport Authority employees should have been considered by the Public Employees Retirement Association (PERA) as salary for pension purposes. The bill covers the period from August 1, 2007 through the end of calendar year 2011. August 2007 was when the supplemental salary amounts were first excluded from the contributions by and on behalf of the Duluth employees. After 2011, these supplemental salary amounts changed somewhat in nature and were then considered part of a "cafeteria" benefit offering, which is clearly excludable under PERA law defining salary for pension purposes.

b. Recent and Current Duluth Legislation. The Commission should be aware that this is the third time in recent years that PERA has sought legislative solutions to address problems created by Duluth salary or supplemental salary procedures and PERA's determinations regarding whether these amounts are salary for purposes of pension plan contributions and benefit computations. The first two attempts (Laws 2009, Ch. 169, Art. 4, Sec. 49, and Laws 2011, First Spec. Sess., Ch. 8, Art. 1, Sec. 4) were efforts to revise the pre-August 2007 Duluth contributions and resulting impact on benefits by removing the contributions related to supplemental salary, because PERA had concluded that the inclusion of contributions based on that supplemental salary was contrary to its statutes. Partial employee and employer refunds were to be given to correct the matter, along with a downward revision of any benefits that were in part based on the supplemental salary. The 2009 legislation, despite apparent local support expressed at the Commission hearing, did not become effective because it was not approved locally. The 2011 legislation, virtually identical, does appear to have received local approval, but PERA suspended action to implement the legislation because the matter of proper treatment of the Duluth supplemental salary amounts was before the Court of Appeals.

   The end result was that neither the 2009 nor the 2011 legislation was ever implemented. The first failed by lack of local approval, while the second was never implemented because PERA concluded, based on the determinations of the Court of Appeals, that implementation would contradict the conclusions reached by the Court. Thus, no further legislative action should be necessary to address the pre-August 2007 Duluth situation. The current bill is an effort to bring the post-July 2007 treatment into compliance with the court's conclusions. Contributions were not made to PERA based on the supplemental salary because PERA had directed the Duluth employers to remove supplemental salary from the calculation of contributions to PERA. The Court decided that supplemental salary that had been deposited in deferred compensation accounts should have been included in those contributions.

c. Recent PERA Actions. The Commission should be aware that PERA has already taken action consistent with the requirements stated in S.F. 2427 (Pappas); H.F. 2790 (Murphy, M.), including accepting contributions without interest and adjusting benefits for those in benefit receipt. Thus, the bill serves in significant part to ratify PERA actions which have already occurred. PERA's jumping the gun on this matter puts the Commission and the PERA board in a difficult position. Commission members may feel hampered in fully exploring alternatives to the treatment specified in the bill because substantive amendments might, in turn, put PERA in a difficult position. If, for example the Legislature concludes that the employee contributions should include interest, PERA would have to partially reverse its course, billing those who have recently submitted employee contribution equivalent payments for an additional amount to cover the interest. Recently revised benefits would have to be suspended, rolled back to the previous level, until the retiree or survivor makes a further payment to cover interest. PERA could have an even worse problem if the Legislature approves the bill, even without amendments, but the bill fails to receive local approval. All amounts already received by PERA under the terms of the bill would need to be refunded and monthly benefits returned to prior levels, with an additional need to recapture the benefit overpayments that have occurred. But such an action would appear to be in direct contradiction to the conclusions of the court.

d. Formulating Proper Treatment. The Court of Appeals decision directs PERA, without further specifics, to take action to allow a certain class of City of Duluth and Duluth Airport Authority employees to obtain additional salary credit, the salary credit they did not have because PERA concluded, incorrectly in the view of the Court of Appeals, that salary supplement payments deposited in deferred compensation accounts were not salary for pension purposes. The specific terms and

procedures under which the applicable individuals could receive that salary credit, as specified in this bill, where formulated by PERA administrators and the PERA Board, not by the Court. A general issue for the Commission is whether those terms are sufficiently consistent with similar laws and with Commission policy.

Due to the results of the Court of Appeals case, PERA's executive director and board concluded that PERA caused harm, and that the terms of the bill, notably the lack of any interest charges on the employee and employer contribution equivalent payments, is appropriate to redress that harm. In addition to which parties, if any, have been harmed, the Commission may wish to consider the proposed interest treatment. Treatment of special law purchases of service and/or salary credit may provide some guidance. The Legislature has enacted 269 of these laws since 1957, and many more have been introduced but not enacted. While the bill currently before the Commission charges no interest on the employee and employer equivalent contributions that will or have already been collected, the procedure generally used by the Commission requires that the employee pay interest on the employee contribution, even no cases where the employee was harmed by another party. Usually, that other party is the employer. When the Commission concludes that an employer caused harm, as when that employer fails to report an individual for PERA coverage in a timely manner, the general procedure is to require that the individual pay to PERA the employee contributions which should have been made if deducted from pay in a timely manner, plus 8.5% interest. The employer is required to pay the remainder of the full actuarial value. This process keeps the pension fund whole because the pension fund receives the full actuarial value through the combined payments from the individual and employer.

The justification for charging interest on the employee contribution, despite being harmed by another party, is to treat the individual as similarly as possible to comparable employees for whom no error occurred. Employee contributions should have been deducted from pay but were not. Instead, payment of the applicable contributions does not occur until required by a special law, many years later. The individual receives the same salary and service credit as though the employee contributions had been deducted from pay in a timely manner, and if interest is not changed, the individual is also receiving an interest free loan of the applicable amounts from the time the deductions should have been made until they are finally made. The Commission is trying to treat the individual as comparable as possible to similar employees for which no error occurred, not better than those comparable employees. If it is appropriate to charge the employee with interest when the employer causes harm, it would not be unreasonable to use that same procedure if the pension plan caused harm. This bill does not do that.

An example of a pension plan administration causing harm to a member, rather than employer-caused harm, was addressed in 2013. S.F. 279 (Sieben; H.F. 347 (Kahn), which passed in the Commission's omnibus bill as Laws 2013, Chapter 111, Article 7, Section 9, involved a person first employed by the state as a temporary status laborer on June 19, 1989, a position that did not qualify for Minnesota State Retirement System General Plan (MSRS-General) coverage due to the temporary, intermittent nature of the employment. The person transitioned to an unlimited status laborer general position and MSRS-General coverage commenced. When the individual began to consider retirement from MSRS-General, he was repeatedly told through mailings and in MSRS counseling sessions that he qualified for the "Rule of 90," and he relied on that information. Unfortunately, he did not qualify for a "Rule of 90" benefit, because he was not a plan member prior to July 1, 1989, the cut-off date for eligibility, although he was a state employee prior to that date. The solution contained in the legislation required him to pay the employee and employer contributions that would have been made if that early employment had qualified for coverage, plus 8.5% interest on the employee and employer contributions. While MSRS received less than the full actuarial value of purchase, as is appropriate given the errors and harm caused by MSRS, the individual did not get interest free loans, as would have resulted if no interest were charged.

Another issue is altering benefits of current Duluth retirees and certain survivors. The Commission has had special law requests to alter benefits of a retiree or survivor, but in recent decades no more than a few bills brought forward on behalf of a retiree have been enacted, and a one or more of those may be due to floor amendments rather than Commission action. In general, the Commission has taken the view that if an employee has a claim to being harmed, remedy for that harm should be addressed before termination of service. Leaving employment and retiring signifies that the person accepts the terms of his or her pension. Regarding survivors, Commission staff is aware of no special law cases where a survivor has been receiving a survivor benefit and that benefit has been revised. In contrast, the bill currently before the Commission would permit revision of retirement and survivor benefits for individuals who are retired, and for individuals who currently are the survivors of individuals who were City of Duluth or Duluth Airport Authority employees during the applicable time period. Although request of this type have very rarely been approved, the Commission might conclude that unusual action is necessary to comply with the court decision.

S.F. 2427 (Pappas); H.F. 2790 (Murphy, M.) permits current or former employees of the City of Duluth and Duluth Airport Authority, employed between August 1, 2007 and December 31, 2011, to make payment of employee contributions without interest on salary supplemental payments which the employer provided and which were deposited in employee deferred compensation accounts. If the employee contribution is made, the current or former employee receives additional salary credit. If the individual is already retired, the annuity is adjusted retroactive to the benefit effective date. If the employee contribution is made, the employer is billed for the corresponding employer contributions without interest. Past PERA actions consistent with the requirements of this bill are ratified.

The proposed legislation raises a number of pension and related public policy issues for consideration and possible discussion by the Commission, as follows:

1. Need for the Bill. An issue is whether any bill is needed to permit PERA to implement the directives from the Court of Appeals. Given the decision from the Court of Appeals, perhaps a justifiable argument can be made that PERA must respond to that directive and has sufficient authority to take steps which the PERA board deems reasonable address the situation, even if those procedures differ from those typically found in PERA-General law. PERA may have felt it had that authority. That might explain why PERA has already started taking contributions and adjusting benefits in over 250 cases. However, Attorney General staff assigned to assist the PERA board recommended that PERA seek specific legislation to authorize PERA's actions, resulting in the bill now before the Commission.

2. Interpretation of Court Decision. The court concluded that contributions should have been made on the salary supplemental amounts deposited in the deferred income accounts. Given that conclusion, an argument can be made that PERA should now take action to ensure the resulting additional PERA contribution amounts should be made by, or on behalf, of all individuals who were employed by the City of Duluth or Duluth Airport Authority between August 1, 2007 and December 31, 2011. However, the bill does not do that. Given the bill's permissive language as it applies to employees, only a subset will make the contributions, those who will create more liability in PERA than PERA receives in contributions. Only individuals for whom the applicable years, August 1, 2007 and December 31, 2011, or some portion of that period, falls in the person's high-five average salary years will make payment. Employees where those years are not in their high-five, and that will be most of the employees actually working for these employers during the applicable period, will choose not be make payment. The reason is that those additional contributions, if made, will have no impact whatsoever on the person's eventual benefit amount, although those contributions would have helped add assets to PERA pension funds.

3. Past PERA Actions; Implications for Commission Action. The issue is the practical restraints placed on the Commission and Legislature by the actions PERA has already taken. As noted above, PERA has already started accepting contributions and adjusting benefits under the terms specified in the bill, which complicates Commission consideration of alternatives to the treatment specified in the bill language.

4. Inconsistency with Commission Policy. The issue is the inconsistency between the contribution treatment specified in the bill (the lack of any interest on these contributions, the lack of any full actuarial value payments) and treatments usually used by the Commission to address cases of harm.

5. Question of Harm. The issue is what parties, if any, have been harmed and what treatment is appropriate if harm has occurred. The Commission may wish to consider whether individuals employed during the August 2007 to December 31, 2011, period by these Duluth public employers have been harmed. Even if they have, permitting payment of the additional employee contributions without interest is unusual and inconsistent with Commission policy. In service/salary credit purchase situations where the employee has been harmed by the employer or by the pension fund, the Commission almost always requires the eligible person to pay, at a minimum, the employee contribution plus interest. Failing to charge interest goes beyond making the individual whole, it makes the person whole plus it provides an interest free loan. The Commission may wish to consider whether the employers are in any sense a harmed party. In the bill, the employers are treated as a harmed party by extending to the employers the same treatment as the employees. The employer contributions are made without interest. The Commission may wish to ask PERA to defend that treatment. Rather than being a harmed party, a case can be made that the employing units share some blame in any harm that has been caused, and that considerably harsher payment terms ought to be required. For a few decades the Duluth employers, through their policies, were pushing the boundaries of what is and is not salary for pension purposes. But under the proposed legislation, the employers are charged not with penalties, but are instead provided with interest free loans. Alternatives are to amend the bill to require interest payments by the employees and employers, and possibly harsher terms for the employers. One alternative is to have the employee pay the employee contribution plus interest, with the employer paying whatever additional amounts are necessary to cover some percentage, to be specified by the Commission, of the full actuarial value. Unfortunately,

revising the payment terms will require PERA to go back and request additional amounts from the over 200 individuals who have already paid amounts requested by PERA, and would require PERA to temporarily suspend the additional benefits which annuitants have begun receiving, pending receipt by PERA of the interest charges.

6. Benefit Adjustments, Retirees and Survivors. The issue is the adjustments permitted under the bill to those already in retirement status. As noted in previous discussion, such action is highly unusual, but may be necessary in this circumstance to fully comply with the court ruling.

7. Payment Terms, Retirees and Survivors. The issue is the payment terms, employee equivalent contributions without interest, extended to retirees and survivors, and how these amounts are to be collected. The bill language (page 2, lines 27 and 28) requires payment of any employee equivalent contributions to be "in full and in a lump sum." No further specification is provided. The Commission may wish to ask PERA whether it has already, or intends, to permit retirees and survivors to make payment by deduction from the benefit being paid, and if the bill language is sufficient to permit that treatment. A related question is whether the requirement that the payment be made in a lump sum will be a hardship on a person receiving a survivor benefit, when that monthly benefit may be very small, but it an important part of that survivor's income.

8. Precedent. The Commission may choose to be concerned that this legislation could serve as precedent and a model for handling any similar future situation.

9. Local Approval Issues. The bill has local approval language, and an issue is whether local approval language is appropriate given the rather unique circumstance addressed by the bill. Because the bill is an attempt to implement a solution ordered by the Court of Appeals, the local approval provisions have the effect of giving the local employers an ability to thwart that effort.

   If the local approval provisions can be justified, an issue is whether there is local support. If not, the bill may not be worthy of Commission consideration. Even with an expression of local support, the Commission may continue to have reservations. Although the Commission heard testimony in 2009 suggesting strong local support for the 2009 Duluth legislation, the employers subsequently failed to provide local approval. For the current bill, failing to obtain local approval would create difficulties for PERA and the employing units. Given that PERA has already started collecting employee and employer equivalent contributions under the terms of this bill, it does appear that one, and hopefully both employers support the legislation, because they appear to be already implementing it. The employers ought to support the bill, because they also want a resolution to this matter and the terms of the bill are very favorable to them. But to avoid any chance of failure to obtain local approval, the Commission may wish to consider amending the bill to modify employer contribution language slightly and to eliminate the local approval clauses. The amendment would make the employer contribution language permissive rather than mandatory, but if the employer does not make the specified contribution, the amount would instead be withheld from future state aid to the employer and redirected to PERA. This is the approach that the Commission has used for well over a decade when considering special law service/salary credit bills where the Commission concludes that the employer caused harm. Rather than permitting a local employer to thwart what the Commission has concluded is a fair solution to address harm, the Commission uses permissive language, permitting, but not mandating, the specified employer contribution, with a deduction from future state aid if payment is not made.

10. Scope of the Problem/Cost to PERA Plans. The issue is the number of individuals impacted by the bill and the cost implications to PERA of the specified treatment. Presumably, PERA has information to share with the Commission on this issue, including information on the number of cases PERA has already handled and the number of additional cases PERA expects to handle, and the expected cost to PERA plans.

11. PERA Actuarial Condition. The issue is the actuarial condition of PERA-General and PERA-P&F and the funds' ability to absorb any liabilities imposed by the bill. Below is an actuarial summary of the actuarial valuation results for PERA-General and PERA-P&F as of July 1, 2013.

| | PERA-General FY2013 | PERA-P&F FY2013 |
|---|---|---|
| Membership | | |
| Active Members | 139,763 | 10,940 |
| Service Retirees | 67,861 | 6,583 |
| Disabilitants | 3,683 | 1,131 |
| Survivors | 7,539 | 1,865 |
| Deferred Retirees | 45,946 | 1,388 |
| Nonvested Former Members | 119,509 | 988 |
| Total Membership | 384,301 | 22,895 |

| | PERA-General FY2013 | | PERA-P&F FY2013 | |
|---|---|---|---|---|
| Funded Status | | | | |
| Accrued Liability | | $19,379,769,000 | | $7,304,032,000 |
| Current Assets | | $14,113,295,000 | | $5,932,945,000 |
| Unfunded Accrued Liability | | $5,266,474,000 | | $1,371,087,000 |
| Funding Ratio | 72.82% | | 81.23% | |
| Financing Requirements | | | | |
| Covered Payroll | | $5,256,798,000 | | $822,003,000 |
| Benefits Payable | | $1,051,591,000 | | $431,726,000 |
| Normal Cost | 6.25% | $328,513,000 | 18.90% | $155,358,000 |
| Administrative Expenses | 0.19% | $9,988,000 | 0.09% | $740,000 |
| Amortization | 8.14% | $427,903,000 | 10.90% | $89,598,000 |
| Total Requirements | 14.58% | $766,404,000 | 29.89% | $245,696,000 |
| Employee Contributions | 6.25% | $328,565,000 | 9.90% | $81,378,000 |
| Employer Contributions | 7.25% | $381,142,000 | 14.85% | $122,067,000 |
| Employer Add'l Cont. | 0.00% | $0 | 1.41% | $11,559,000 |
| Direct State Funding | 0.00% | $0 | 1.09% | $9,000,000 |
| Other Govt. Funding | 0.00% | $0 | 0.00% | $0 |
| Administrative Assessment | 0.00% | $0 | 0.00% | $0 |
| Total Contributions | 13.50% | $709,707,000 | 27.25% | $224,004,000 |
| Total Requirements | 14.58% | $766,404,000 | 29.89% | $245,696,000 |
| Total Contributions | 13.50% | $709,707,000 | 27.25% | $224,004,000 |
| Deficiency (Surplus) | 1.08% | $56,697,000 | 2.64% | $21,692,000 |

Potential Amendments for Commission Consideration

**S2427-1A** revises the interest procedure. Under the amendment, 8.5% interest would be charged on the employee and employer contribution amounts, rather than no interest being charged.

**S2427-2A**, an alternative to both other amendments, would charge the employee with 8.5% interest, while the employer would pay an amount which, when added to the amount paid by the employee, would equal a specified percent of the full actuarial value of the salary credit purchase, with that percentage to be determined by the Commission. The amendment also makes the employer contribution language permissive, but any amounts not paid will be covered by deduction from state aid or a levy, and the local approval clauses are removed.

**S2427-3A** makes the employer contribution language permissive, with any employer amounts not paid being covered by deduction from state aid or a levy, and the local approval clauses are removed. This amendment is unnecessary if amendment S2427-3A is adopted.

# Background Information on the 2012 Minnesota Court of Appeals Decision on PERA Salary Determinations (A11-1330)

1. Introduction. Since 2008, there has been a dispute arising in the City of Duluth over the inclusion of certain city payments in the salaries of Duluth employees reported to the Public Employees Retirement Association (PERA) since 1995. The dispute followed the statewide retirement plan's administrative appeal procedure, culminating in an appeal to the Minnesota Court of Appeals.

2. Facts Underlying the Litigation. The General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) has had a definition of salary since 1941 (Laws 1941, Ch. 285, Sec. 1), initially for contribution purposes and, after 1956, for retirement annuity computation. As the compensation system of governmental subdivision employees acquired more elements and became more complicated, the PERA statutory definition of salary became more complicated. In interpreting the statutory definition, PERA has fashioned an internal working definition of the term and, since at least the early 1980s, has issued a manual for employers clarifying various practices and procedures, including what constitutes covered salary and how to report salary amounts.

   Since the mid-1990s, the City of Duluth and its employees have included in their collective bargaining agreements the practice of making supplemental compensation payments and, subsequently, to apply the supplemental compensation payments to the purchase of group health insurance. From 1995 until 2007, Duluth reported both the salary supplemental payments and the insurance supplement payments to PERA as covered salary and made member deductions and employer contributions on both supplemental amounts, reportedly after obtaining prior PERA guidance. In 2007, Duluth stopped reporting salary supplemental compensation and insurance supplement payments to PERA and deducting or making PERA contributions, apparently based on new PERA guidance. In 2008, PERA and Duluth conducted a joint investigation of the salary issue, requiring adjustments in retiree benefits and member and employer contributions. Upon an administrative review of the question, and an administrative law judge (ALJ) concluded that PERA's interpretation of the statute with respect to salary supplement payments was not properly promulgated as an interpretation rule, but that PERA's interpretation of the statute with respect to insurance supplement payments was consistent with the plain meaning of the statute and was an interpretive rule. The PERA board modified some of the ALJ's findings, rejected some of the ALJ's conclusions of law, and accepted in part the ALJ's recommendations.

3. Appeals Court Decision. In the judicial appeal of the PERA board's decision on the Duluth salary issue, the Court of Appeals addressed the following four questions:

   1) Did PERA engage in improper rulemaking in interpreting PERA law to exclude from covered salary Duluth's salary supplement payments?
   2) Did PERA engage in improper rulemaking in interpreting PERA law to exclude from covered salary Duluth's insurance supplement payments?
   3) Did PERA's decision fail to meet the statute of limitations, was it barred by estoppel, or did it violate Duluth PERA member's constitutional rights?
   4) Did PERA err in not awarding attorney fees to the Duluth PERA members?

- The Court of appeals apparently decided that PERA did not properly promulgate under Minnesota Statutes, Chapter 14, an administrative rule with respect to either the Duluth salary supplement payments or the Duluth insurance supplement payments, so in neither situation does PERA's determinations with respect to Duluth have the force and effect of law.
- The Court of Appeals found that the PERA salary definition was ambiguous with respect to the salary supplement payments in the Duluth situation and the PERA determination on salary supplement payments was not justified by the plain meaning of the statute.
- The Court of Appeals also decided that the PERA determination on the Duluth salary supplement payments was not a longstanding interpretation because it was of uncertain origin and duration, is unwritten and indefinite, and is impossible to discern.
- The Court of Appeals did decide that the PERA determination on the Duluth insurance supplement payments was justified because it was consistent with the plan meaning of the statute.
- The Court of Appeals found that the PERA determinations did not fail any statute of limitations, since PERA law since 1990 authorizes benefit adjustments at any time and judicial action statutes of limitations do not apply to administrative agencies.
- The Court of Appeals rejected constitutional challenges, finding no impairment of any contract, and finding that no right to have insurance supplement payments be included in PERA salary calculations to have been established and protected from a taking of private property.
- With respect to an award of attorney fees to the PERA members who challenged the PERA determination, the Court of Appeals remanded the question to the PERA board since the PERA members were partially successful on appeal.

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-1330**

In the Matter of the PERA Salary
Determinations Affecting Retired and
Active Employees of the City of Duluth.

**Filed August 6, 2012**
**Affirmed in part, reversed in part, and remanded**
**Johnson, Chief Judge**

Public Employees Retirement Association of Minnesota

Elizabeth A. Storaasli, Dryer Storaasli Knutson & Pommerville, Ltd., Duluth, Minnesota (for relators)

Lori Swanson, Attorney General, Julie Ann Leppink, Assistant Attorney General, St. Paul, Minnesota (for respondent Public Employees Retirement Association)

Considered and decided by Johnson, Chief Judge; Chutich, Judge; and Crippen, Judge.*

**S Y L L A B U S**

The Public Employees Retirement Association's interpretation of Minn. Stat. § 353.01, subd. 10, as it concerns the city's salary-supplement payments, is invalid because the interpretation is an improper promulgation of a new rule. The association's interpretation of that statute is subject to the rulemaking requirements of the Minnesota Administrative Procedure Act, is inconsistent with the plain meaning of the statute, and is not a longstanding interpretation of the statute.

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*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

The Public Employees Retirement Association's interpretation of Minn. Stat. § 353.01, subd. 10(b)(2), as it concerns the city's insurance-supplement payments, is not an improperly promulgated new rule. The association's interpretation of that statute is consistent with the plain meaning of the statute.

## OPINION

**JOHNSON**, Chief Judge

In March 2009, the Public Employees Retirement Association (PERA) notified 485 active and retired employees of the City of Duluth that PERA intended to make adjustments to their defined-benefit retirement plans. PERA decided that adjustments were necessary because it determined that the city had, for more than a decade, miscalculated the amounts of contributions to its employees' retirement plans. PERA's adjustments would result in smaller retirement annuity payments for retired city employees.

Some of the persons who received PERA's notices challenged the decision, which led to contested-case proceedings before an administrative law judge. At the culmination of those proceedings, the PERA Board of Trustees reaffirmed the decision to make adjustments to the affected retirement plans. We are asked to review the PERA board's decision by way of a writ of certiorari. We conclude that the PERA board's decision is correct with respect to one form of compensation that the city paid to its employees because PERA's interpretation of the relevant statute is consistent with the plain meaning of the statute. But with respect to the other form of compensation that the city paid to its employees, we conclude that the PERA board's decision is erroneous because it is based on an improperly promulgated new rule that is inconsistent with the plain meaning of the

relevant statute and is not a longstanding interpretation of the statute. Therefore, we affirm in part, reverse in part, and remand to PERA for further proceedings.

## FACTS

### A. Overview of PERA

PERA administers several public-sector employee retirement plans. As a general rule, employees of municipalities are required to be members of PERA and to participate in one of its retirement plans. Minn. Stat. § 353.01, subd. 2a (2010). Both municipal employees and their municipal employers must contribute to an employee's retirement plan each pay period. Minn. Stat. §§ 353.27, subds. 2, 3, .65, subds. 2, 3 (2010).

Upon retirement, a member employee is entitled to receive a defined benefit from a PERA retirement plan in the form of monthly annuity payments. Minn. Stat. §§ 353.29, subd. 1, .651, subd. 1 (2010). The amount of the annuity payment is based on the employee's compensation before his or her retirement. Minn. Stat. §§ 353.29, subd. 3, .651, subd. 3. Both the employer and the employee must make periodic contributions to an employee's retirement plan, which also are based on the employee's compensation. Minn. Stat. §§ 353.27, subds. 2, 3, 4, .65, subds. 2, 3, .29, subd. 3, .651, subd. 3.

Not all types of compensation are considered for purposes of calculating contributions. The forms of compensation that are included in or excluded from an employee's so-called "PERA salary" are determined by statute. *See* Minn. Stat. § 353.01, subd. 10 (2010). If the employer makes an error in determining an employee's PERA salary, PERA is required by statute to make refunds of erroneous contributions. *Id.*, subd. 7(c) (2008). Furthermore, "[i]n the event that a retirement annuity . . . has been computed

## IV.

Relators last argue that the ALJ and the PERA board erred by not granting their requests for attorney fees. Relators requested attorney fees in their post-hearing submission to the ALJ and again in their exceptions to the ALJ's findings, but neither the ALJ nor the PERA board addressed the requests.

In a contested-case proceeding, if the prevailing party shows "that the position of the state was not substantially justified, the court or administrative law judge shall award fees and other expenses to the party unless special circumstances make an award unjust." Minn. Stat. § 15.472(a) (2010). Relators were not the prevailing parties in the administrative review proceedings that led to the PERA board's decision. But relators have prevailed, in part, in this court. In light of relators' partial success on appeal, the PERA board on remand should reconsider whether relators are entitled to attorney fees pursuant to section 15.472(a).[3]

## DECISION

The PERA board erred by adjusting relators' contributions and benefits and by recouping overpayments of benefits based on the city's salary-supplement payments. The

[3]Relators also contend that they are entitled to attorney fees on three other grounds, but each contention is without merit. (Rel. Br. at 46-49.) First, relators contend that they are entitled to fees under Minn. Stat. § 353.03, subd. 3(a)(7), which directs the PERA board to provide for the payment of costs to administer the plans. But that statute does not authorize the payment of attorney fees incurred by parties challenging an adjustment of contributions or benefits. Second, relators also contend that they are entitled to fees under the private attorney general statute, Minn. Stat. § 8.31, subd. 3a (2010). But that statute provides for recovery of attorney fees only in a "civil action" to enforce specifically enumerated consumer-protection statutes. This was an administrative proceeding, and none of the enumerated statutes was invoked. Third, relators further contend that they are entitled to fees under the federal Employee Retirement Income Security Act (ERISA). *See* 29 U.S.C. § 1132(g)(1) (2006). But this matter is not an action to enforce ERISA. Thus, relators' entitlement to attorney fees, if any, is based solely on section 15.472(a).

PERA board may not rely on its purported longstanding interpretation of the statute and, thus, may not make adjustments to contributions and benefits based on the salary-supplement payments. The PERA board did not err by adjusting relators' contributions and benefits and in recouping overpayments of benefits based on the city's insurance-supplement payments. On remand, the PERA board shall modify its adjustments to relators' contributions and benefits and shall modify its recoupment of overpayments of benefits so as to ensure that the city's salary-supplement payments to relators are included in the calculation of relators' so-called "PERA salary." The PERA board also shall reconsider whether relators are entitled to attorney fees.

**Affirmed in part, reversed in part, and remanded.**

# Background Information on Special Law Service Credit Purchases

In Minnesota, until 1999, there were few general law service credit purchase authorizations, and service credit purchase authorizations were generally special law provisions.

The primary general law service credit purchase authorization was Minnesota Statutes 2004, Section 354.51, enacted in 1931, when the Teachers Retirement Association (TRA) was a defined contribution retirement plan, which allows TRA members with 15 years of service who have pre-1953 out-of-state teaching service to purchase that service by making equivalent member contributions, plus interest at the rate of 8.5% per annum.

During the period 1957-2013, the Legislature has enacted 269 special laws authorizing one person or a small group of individuals to purchase prior service credit, distributed as follows:

| Year | # | Year | # | Year | # | Year | # | Year | # | Year | # |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1957 | 1 | 1974 | 5 | 1983 | 2 | 1992 | 6 | 2001 | 10 | 2010 | 1 |
| 1959 | 4 | 1975 | 10 | 1984 | 3 | 1993 | 7 | 2002 | 2 | 2011 | 2 |
| 1961 | 5 | 1976 | 4 | 1985 | 2 | 1994 | 8 | 2003 | 6 | 2012 | 2 |
| 1963 | 6 | 1977 | 9 | 1986 | 6 | 1995 | 7 | 2004 | 1 | 2013 | 3 |
| 1965 | 5 | 1978 | 9 | 1987 | 3 | 1996 | 6 | 2005 | 1 | | |
| 1967 | 1 | 1979 | 7 | 1988 | 7 | 1997 | 3 | 2006 | 14 | | |
| 1969 | 2 | 1980 | 4 | 1989 | 12 | 1998 | 9 | 2007 | 3 | | |
| 1971 | 2 | 1981 | 14 | 1990 | 10 | 1999 | 8 | 2008 | 4 | | |
| 1973 | 4 | 1982 | 16 | 1991 | 6 | 2000 | 8 | 2009 | 2 | | |

A majority of special prior service credit purchase laws relate to the three major general employees retirement plans, with 34 special laws relating to the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), with 88 special laws relating to the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), and with 54 special laws relating to TRA.

In considering special law service credit purchase requests, the Legislative Commission on Pensions and Retirement has generally followed its Principles of Pension Policy, which require:

1. Individual Review. The Commission considers each service credit purchase request separately, whether the request is proposed legislation for a single person or is proposed legislation relating to a group of similarly situated individuals.

2. Public Employment. The period requested for purchase should be a period of public employment or service that is substantially akin to public employment. This is consistent with the notion that public pension plans should be providing coverage for public employees for periods of time when they were serving the public through public employment or through quasi-public employment. Coverage for a period when an individual provided private sector employment is not consistent with this statement.

3. Minnesota Connection. The employment period to be purchased should have a significant Minnesota connection. This is consistent with the notion that Minnesota taxpayers support these public pension plans and bear the investment risk in amassing plan assets. Given the support that taxpayers provide, it is appropriate that the service have a Minnesota connection, reflecting services provided to the people in the state.

4. Presumption of Active Member Status at the Time of Purchase. The principle states that contributions should be made by the member or in combination by the member and by the employer. It is presumed that the individual covered by the service purchase request is an active employee, because retirees generally are not considered to be "members" of a plan and these individuals no longer have a public employer. If there are unresolved issues of whether an individual should have service credit for a given period, those issues should be resolved before the individual terminates from public service, and certainly before the individual retires. The act of retiring undermines a claim that there is sufficient need for the Legislature to consider the coverage issue. If there was considerable hardship caused by the lack of service credit, presumably the individual would not have retired. Entering retirement suggests that the associated pension benefit is adequate without any further increase in the benefit level due to a purchase. Only on rare occasions have the Commission and the Legislature authorized service credit purchases by retirees.

5. Presumption of Purchase in a Defined Benefit Plan. The prior service credit purchase contributions in total should match the associated actuarial liability. The specific procedures in Minnesota Statutes and law for computing service credit purchase amounts, Minnesota Statutes, Sections 356.55 and 356.551, presume that the purchase is in a defined benefit plan with a benefit based on the individual's high-five average salary. There is no process in law specifying a procedure for computing a "full actuarial value" purchase in a defined contribution plan, or even defining what that concept means in the context of a service purchase or service credit purchase in a defined contribution plan.

6. Full Actuarial Value Purchase. Within the context of a defined benefit plan, the pension fund should receive a payment from the employee, or from the employee and employer in combination, which equals the additional liability placed on the fund due to the purchase. This amount is referred to as the full actuarial value of the service credit purchase. The procedure used to compute this full actuarial value should be a methodology that

accurately estimates the proper amounts. When clear evidence indicates that the employing unit committed an error that caused the individual to not receive pension plan coverage, the Commission has permitted the employee to make the employee contribution for the relevant time period, plus 8.5% interest, and the employer has been mandated to cover the remainder of the computed full actuarial value payment. If the employer does not directly make the payment following notification that the employee has made his or her portion of the full payment, the Commission has required that a sufficient amount to cover the remainder of the full actuarial value be deducted from any state aids that would otherwise be transmitted to the employer. The Commission has purposely departed from the full actuarial value requirement when there is evidence that the pension plan administration created the lack of service credit coverage due to pension plan administration error. In situations of pension plan error, the employee may be required to pay the contributions that would have been required for the relevant time period, plus 8.5% interest to adjust for the time value of money, leaving any difference between that payment and the full actuarial value to be absorbed by the pension fund.

7. No Violation of Equitable Considerations. Purchases of service credit should not violate equitable considerations. Equity is a resort to general principles of fairness and justice whenever the existing law is inadequate. In general, any issue or factor associated with a service credit purchase request which can be viewed as lacking fairness or being less than impartial can be a basis for rejecting a request. Requests by existing retirees to purchase additional service credit and have their annuities recomputed could be viewed as being a situation that violated equity considerations. New requests on behalf of individuals who were covered by purchase of service credit authorizations passed by earlier Legislatures but who are dissatisfied with the purchase of service credit terms that were provided can be considered as violating equity considerations. Individuals requesting service credit purchases for periods specifically excluded from plan coverage under the applicable law could be considered as violating equity considerations, among other policy concerns relating to those considerations. Requests to purchase service credit for periods covered by another pension plan may raise equity concerns. Generally, a service credit purchase is intended to fill a gap in coverage, not to create double coverage. Long delays in seeking remedial action can also be considered a violation of equity considerations. Individuals tend to wait until late in their careers before seeking any remedial action for lost service credit. Prompt action, closer to the time period when the service credit problem occurred, would often result in a solution at a lower cost and would avoid efforts by the Commission to try to determine the factual situation many years, or even decades, after the event occurred.

Since it is assumed that the member requesting the purchase of service credit fully intends to retire under the system, the purchase payment requirement is the full actuarial value of the additional expected lifetime retirement benefits that result from the purchase. In other words, the required payment to receive the service credit is equal to the additional liability that the service credit places on the system. The purpose of this requirement is to avoid any subsidy of this purchase by other covered employees and employers. A subsidy from these groups would only be appropriate if the lack of existing service credit for the individual is due to some error or harm done to the individual by the pension plan administration. In that case, there is an argument for the employees and employer groups to pay part of the cost of redressing the harm, by permitting a purchase at less than full actuarial value.

Purchases of service credit at full actuarial value generally provide no net benefit to the individual making the purchase unless some third party is willing to cover part of the cost. The employer may be willing to cover part of the cost if the employee was harmed due to employer error or employer omission, and most special law service credit purchase provisions permit, but do not mandate, that the employer cover part of the purchase cost. Perhaps the employer harmed the individual by failing to enroll him or her in the pension plan, or mishandled contributions, or missed deadlines, which caused the individual to be ineligible to receive service credit. If the employer pays a portion of the full actuarial value, it is worthwhile for the individual to make the purchase. The purchase provides value to the employee greater than the amount contributed by the employee, but the pension fund is held harmless because it does receive the full actuarial value from the combined employee and employer contribution amounts. If the total were less than the full actuarial value, the pension plan would be covering part of the cost of someone else's error.

Any special purchase request takes up considerable Commission time, often on proposed language affecting only a single individual, and forces the Commission to act more as a judicial body than a legislative group. The Commission is not well equipped to hear testimony from various parties, review and weigh evidence, and determine a monetary award for damages. Authority permitting the employer to pay part of the service credit purchase cost has the effect of directing the situation back to the employer, permitting the employer to review the situation and to voluntarily provide restitution if that employer determines that restitution is appropriate.

In some cases, however, the employer has acknowledged through testimony or written materials presented to the Commission that the employer erred, or there is other strong evidence of employer-created harm. In these situations the Commission has sought to mandate that the employer cover part of the service credit purchase cost.

Efforts to mandate employer payments have been problematic, although in recent years the Commission appears to have found a solution. Special law having a financial impact on a unit of local government generally requires a local approval clause. Thus, in practice, language mandating a payment by a local unit of government is actually permissive, because the local unit of government must approve the legislation for it to be effective. In a few cases, the Commission attempted to mandate employer payment and did not included a local approval clause, but this lead to law suits or threatened suits from cities or counties based on the contention that such legislation, by its nature, must include a local approval clause. A solution which the Commission has used since the late 1990s is to allow the employing unit voluntarily to make the payment, but if that does not occur, language in the special law provision requires the necessary amount of money to be deducted from the next round of state aid that would otherwise be sent to the employing unit, and the amount is instead directed to the applicable pension fund.

..... moves to amend S.F. No. 2427; H.F. No. 2790, as follows:

Page 3, line 20, delete "Notwithstanding any provision in Minnesota "

Page 3, line 21, delete everything before "all"

Page 3, line 23, delete "fund are to be made without interest." and insert "and "

Page 3, line 24, delete everything after "section "

Page 3, delete lines 25 to 27 and insert "must include 8.5 percent annual compound interest, from the dates that each employee deduction would have made if deducted from pay, until paid."

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..... moves to amend S.F. No. 2427; H.F. No. 2790, as follows:

Page 2, line 28, after the period insert " The lump sum payment must include 8.5 percent annual compound interest, from the dates that each employee deduction would have been made if deducted from pay, until paid."

Page 2, line 31, delete "must make the corresponding" and insert "may choose to make the payment specified in this subdivision."

Page 2, delete lines 32 to 35

Page 3, delete lines 1 and 2

Page 3, before line 3, insert:

"(b) The applicable employer contribution is the amount which, when added to the employee equivalent contribution made in subdivision 3, equals ... percent of the full actuarial value of the salary credit purchase computed under the full actuarial value purchase procedure specified in Minnesota Statutes, section 356.551. The amount paid by the employer must not be less than the amount the employer would have paid, based on the employer-paid amounts referred to in subdivision 2 and the contribution rates applicable during the time period for regular employer contributions, and any employer supplemental and employer additional contribution rates, if applicable, plus 8.5 percent interest on these amounts, until paid."

Page 3, line 6, delete " These "

Page 3, line 7 delete "amounts are to" and insert " If the employer chooses to make the payment specified in this subdivision, payment shall "

Page 3, delete subdivision 7

Page 4, delete lines 5 to 14 and insert:

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

Renumber the subdivisions in sequence

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..... moves to amend S.F. No. 2427; H.F. No. 2790, as follows:

Page 2, line 31, delete "must" and insert "may"

Page 2, line 34, delete "required" and insert "specified"

Page 3, line 6, delete " These "

Page 3, line 7 delete "amounts are to" and insert " If the employer chooses to make the payment specified in this subdivision, payment shall "

Page 3, line 9, delete "may" and insert "shall"

Page 4, delete lines 5 to 14 and insert:

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

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# SENATE
## STATE OF MINNESOTA
## EIGHTY-EIGHTH SESSION

# S.F. No. 2427

**(SENATE AUTHORS: PAPPAS)**

| DATE | D-PG | OFFICIAL STATUS |
|---|---|---|
| 03/06/2014 | 6003 | Introduction and first reading<br>Referred to State and Local Government |

A bill for an act

relating to retirement; Public Employees Retirement Association; resolving city of Duluth and Duluth Airport Authority employee salary-supplement payments coverage following Court of Appeals decision; ratifying past actions.

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

Section 1. **PERMITTING THE PURCHASE OF SALARY CREDIT BY CERTAIN CURRENT AND FORMER CITY OF DULUTH OR DULUTH AIRPORT AUTHORITY EMPLOYEES COVERED BY THE GENERAL EMPLOYEES RETIREMENT PLAN OR THE PUBLIC EMPLOYEES POLICE AND FIRE RETIREMENT PLAN.**

Subdivision 1. **Authorization.** Due to a Court of Appeals determination that certain salary-supplement payments, provided to certain city of Duluth and Duluth Airport Authority employees and deposited in the employee's deferred compensation account, should have been considered salary for pension purposes, an eligible person is authorized to receive the treatment specified in this section if the eligible person chooses to make the employee contribution equivalent payment specified in this section.

Subd. 2. **Eligible person.** (a) An eligible person:

(1) is a current or former employee of the city of Duluth or the Duluth Airport Authority, employed by that governmental subdivision between August 1, 2007, and December 31, 2011;

(2) was a participating member of the general employees retirement plan of the Public Employees Retirement Association or the public employees police and fire retirement plan for that employment; and

(3) had employer-paid amounts made to the person's deferred compensation account for which contributions were not made to the applicable Public Employees Retirement Association plan fund between August 1, 2007, and December 31, 2011, or the date of the employee's termination of public service under Minnesota Statutes, section 353.01, subdivision 11a, whichever is earlier, due to an erroneous application of law under which the Public Employees Retirement Association executive director and board concluded that these employer-paid amounts were not salary for pension purposes under Minnesota Statutes, section 353.01, subdivision 10.

(b) A surviving spouse, as defined in this paragraph, is an eligible person for purposes of this section. A surviving spouse means:

(1) the surviving spouse of an eligible person as defined in paragraph (a) who, at the time of the eligible person's death, was a deferred annuitant of a Public Employees Retirement Association plan specified in this section;

(2) the surviving spouse of an eligible person as defined in paragraph (a) receiving benefits under a joint and survivor annuity from a Public Employees Retirement Association plan specified in this section; or

(3) the surviving spouse of an eligible person as defined in paragraph (a) receiving a survivor benefit under Minnesota Statutes, section 353.657.

Subd. 3. **Employee contributions.** An eligible person may make payment of an employee contribution equivalent amount to the fund of the general employees retirement plan of the Public Employees Retirement Association or the public employees police and fire retirement plan, whichever provided the coverage. The employee contribution equivalent amount is the amount of employee contributions that would have been made by the employee based on the employer-paid amounts made to the person's deferred compensation account for the period specified in subdivision 2, and the employee contribution rates to the applicable Public Employees Retirement Association plan during that period. If an employee contribution equivalent amount is paid, it must be made in full and in a lump sum.

Subd. 4. **Employer contributions.** (a) If an eligible person makes the employee equivalent contribution under subdivision 3, the city of Duluth or the Duluth Airport Authority, whichever is the applicable employing unit, must make the corresponding employer contributions, plus any employer supplemental and employer additional contributions required by law during the applicable time period.

(b) Any contributions required under this subdivision must be based on the employer-paid amounts referred to in subdivision 2, and the contribution rates applicable

during the time period for regular employer contributions, and any employer supplemental and employer additional contributions, if applicable.

(c) Within 30 days of receipt by the executive director of the Public Employees Retirement Association of employee equivalent contributions under subdivision 3, the executive director shall notify the city of Duluth or the Duluth Airport Authority, whichever is the applicable employer, of amounts due under this subdivision. These amounts are to be remitted by the applicable employer to the executive director for deposit in the applicable fund within 30 days of notification. If payment is not made in full within that time period, the executive director may collect the necessary amounts by applying Minnesota Statutes, section 353.28, subdivision 6.

Subd. 5. **Benefit adjustments.** Upon receipt of the applicable employee equivalent contribution under subdivision 3 from an eligible person, the executive director shall revise the records of the Public Employees Retirement Association and grant the person the additional salary credit. If a retirement, disability, or survivor annuity has commenced, the executive director must adjust the benefit being paid to include in the calculation the additional salary on which contributions were paid, and the adjusted benefit must be paid retroactive from the effective date of the initial benefit payment under the annuity.

Subd. 6. **Restrictions.** This section does not apply if service credit and other rights under the plan were forfeited by taking a refund.

Subd. 7. **Treatment of interest.** Notwithstanding any provision in Minnesota Statutes, chapter 353, to the contrary, all payments specified in this section made by an eligible person to the executive director for deposit in the applicable Public Employees Retirement Association fund are to be made without interest. Any payments required from the employer under this section are also without interest, provided the employer makes the payment to the executive director within 30 days of notification. Interest shall be charged, as specified in Minnesota Statutes, section 353.28, on any employer obligations not paid within the 30-day period.

Subd. 8. **Notification; counseling.** The executive director shall notify all active members, deferred members, retirees, and survivors to whom this section may apply and shall provide counseling regarding the implications of this section, including payment requirements and likely adjustments in current or future benefit amounts if employee equivalent contributions as specified in this section are made.

Subd. 9. **Expiration of salary credit purchase authority.** Payment of employee contribution equivalent amounts, as authorized under this section, is prohibited after 180 days following the date that local approval is provided by the applicable employing unit of the current or former employee.

Subd. 10. **Ratification.** Actions taken before the effective date of this section by the executive director and board of the Public Employees Retirement Association, the city of Duluth, the Duluth Airport Authority, and eligible persons which are otherwise consistent with this section are ratified.

**EFFECTIVE DATE.** (a) This section is effective the day after the Duluth city council and the chief clerical officer of the city of Duluth timely complete their compliance with Minnesota Statutes, section 645.021, subdivisions 2 and 3, for members who are, and former members who were, employees of the city of Duluth, and for the surviving spouses of former members.

(b) This section is effective the day after the Duluth Airport Authority and the chief clerical officer of the Duluth Airport Authority timely complete their compliance with Minnesota Statutes, section 645.021, subdivisions 2 and 3, for members who are, and former members who were, employees of the Duluth Airport Authority, and for the surviving spouses of former members.