



S.F. xxxx

H.F. 1894
(McNamar)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-General
Relevant Provisions of Law: Minnesota Statutes, Section 353.01
General Nature of Proposal: Coverage for Stevens County HRA employees.
Date of Summary: February 6, 2014

Specific Proposed Changes

- Grandparents into PERA-General coverage the employees of the Housing and Redevelopment Authority of Stevens County who were employed before May 1, 2014, by including in PERA-General coverage future (post-May 1, 2014) Stevens County HRA employees, and by validating past PERA-General retirement coverage for and retirement fund contributions by or on behalf of Stevens County HRA employees.

Policy Issues Raised by the Proposed Legislation

1. Nature of the coverage error and the appropriateness of ratifying past coverage.
2. Status of the Stevens County HRA as a governmental subdivision.
3. Appropriateness of the alternative resolution; refund of PERA-General member and employer contributions, plus interest, and service credit cancellation.
4. Appropriateness of potential double pension coverage.
5. Appropriateness of continuing an exclusion for other Minnesota housing and redevelopment authorities.
6. Need to compel greater PERA enforcement of its membership inclusions and exclusions.

Potential Amendments

No suggested amendments by Commission staff.

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TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director
RE: S.F. xxxx; H.F. 1894 (McNamar): PERA-General; Coverage for Stevens County Housing and Redevelopment Authority
DATE: February 6, 2014

Summary of S.F. xxxx; H.F. 1894 (McNamar)

S.F. xxxx; H.F. 1894 (McNamar) amends Minnesota Statutes, Section 353.01, Subdivisions 2a and 6, portions of the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) that define the retirement plan inclusions and the governmental subdivisions covered by the retirement plan, grandparenting into PERA-General coverage the employees of the Housing and Redevelopment Authority of Stevens County (informally known as the Stevens County HRA) who were employed before May 1, 2014, by including in PERA-General coverage future (post-May 1, 2014) Stevens County HRA employees, and by validating past PERA-General retirement coverage for and retirement fund contributions by or on behalf of Stevens County HRA employees.

Background Information on Relevant Topics

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

- **Attachment A:** Background information on the Housing and Redevelopment Authority of Stevens County.
- **Attachment B:** Background information on PERA-General membership inclusions and exclusions.
- **Attachment C:** Background information on the U.S. Department of Housing and Urban Development retirement plans.

Discussion and Analysis

S.F. xxxx; H.F. 1894 (McNamar) resolves a public pension coverage problem for the employees of the Housing and Redevelopment Authority of Stevens County (informally known as the Stevens County HRA), who have made member contributions and have had retirement coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), but who recently have been notified that they are ineligible for PERA-General membership and coverage, resulting in a refund of member and employer contributions and investment returns on those amounts forthcoming, by grandparenting the existing Stevens County HRA employees in PERA-General retirement coverage, making the Stevens County HRA a governmental subdivision included in PERA-General coverage for future (post-May 1, 2014) employee retirement coverage, and validating past retirement contributions to and pension plan membership in PERA-General for the current employees.

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

1. Nature of the Coverage Error and the Appropriateness of Ratifying Past Coverage. The policy issue is the nature of the error that resulted in covering the employees of the Stevens County HRA by PERA-General and the appropriateness of ratifying their inclusion in PERA-General retroactively to November 7, 1984. Municipal housing and redevelopment authority employees were included in the federal Old Age, Survivors and Disability Insurance Program (Social Security) in 1955 (Laws 1955, Ch. 684, Sec. 1). Municipal housing and redevelopment authority employees have been excluded from PERA-General retirement coverage since 1959 (Laws 1959, Ch. 650, Sec. 2). Social Security coverage was not extended to public employees covered by PERA-General until 1963 (Laws 1963, Ch. 793, Sec. 1-11) for public hospital employees and, after much controversy and even state court litigation, until 1967 (Laws 1967, Ch. 687, Sec. 10-21) for other PERA-General covered employment positions. While the Commission office does not have records contemporaneous with the 1959 exemption of housing and redevelopment authority employees from PERA-General, it is likely that the 1959 PERA-General exclusion was a function of the presence of Social Security coverage for housing and redevelopment authority employees in 1959 and the nature of PERA-General in 1959 as a

basic program, without any accommodation for Social Security coverage, and not for any other apparent pension policy consideration. For either an unknown or an undisclosed reason, a decision was made sometime between 1977 and 1984 at the county level, housing and redevelopment authority level, or PERA agency level to cover or not to undo the coverage of the Stevens County HRA employees in the PERA General Employees Retirement Plan as if they were county employees. The housing and redevelopment authority employee or employees hired in 1984 could have previously been a county employee with PERA-General retirement coverage and the decision might have been made to avoid disrupting the continuity of that coverage. The routine administrative functions of the Stevens County HRA were performed by, or in conjunction with, the county administration and PERA-General coverage might have occurred by inertia. In any event, PERA appears to have failed to discover the excluded status of the Stevens County HRA employees for almost 30 years. The Commission may wish to inquire of the Stevens County HRA officials, Stevens County human resources officials, or PERA of their understanding of the genesis of this error and whether the error has caused any revision in procedures to insure against its reoccurrence.

2. Status of the Stevens County HRA as a Governmental Subdivision. The policy issue is whether or not the Stevens County HRA is a kindred public entity to other entities which have PERA-General retirement coverage and appropriately could fit within the broad parameters of the definition of “governmental subdivision” in PERA-General law, Minnesota Statutes, Section 353.01, Subdivision 6, Paragraph (a). That definition includes departments, units, or instrumentalities of state or local government or any public bodies established under state or local authority that has a government purpose and is under public control, employs and pays employee salaries, and receives a major portion of revenues from taxation, fees, assessments, or other public sources. The Stevens County HRA is created under state law, is either an instrumentality of the State of Minnesota or of Stevens County or is a public body established under state law, is under the control of a board that is publicly appointed, is a regular employer, and receives some of its revenues from taxes and governmental grants. The Stevens County HRA is broadly analogous to the Metropolitan Airports Commission, the various local government economic development authorities, and the St. Paul River Centre Convention and Visitors Authority, the Red Wing Port Authority, the St. Paul Port Authority, and the Seaway Port Authority of Duluth, which are all current governmental subdivisions specifically added to coverage by PERA-General. The sole potential difference between these entities and the Stevens County HRA is a function of the housing and redevelopment authority as a recipient of federal money and the restrictions on the use of that federal money and the retirement coverage which it could fund by the U.S. Department of Housing and Urban Development (HUD). Current HUD rules, as set forth in Attachment B, permit the use of Internal Revenue Code Section 401(a) retirement plans, of which PERA-General is an example, but only permit those types of plans if they established and operated by the housing and redevelopment authority, which would not include PERA-General.
3. Appropriateness of the Alternative Resolution; Refund of PERA-General Member and Employer Contributions, Plus Interest, and Service Credit Cancellation. The policy issue is the appropriateness of the alternative resolution of the Stevens County HRA/PERA-General coverage inclusion error under current law. Since the current Stevens County HRA employees are specifically excluded from PERA-General Retirement Plan coverage and have been since 1959, before the creation of the Stevens County HRA, if no remedial legislation is enacted, PERA-General is obligated to refund member and employer contributions related to the current Stevens County HRA employees and any former Stevens County HRA employees, plus four percent interest, under Minnesota Statutes, Section 353.27, Subdivision 7, for affected authority employees and former employees with initial erroneous deductions after December 31, 1989, but will continue in PERA-General Retirement Plan coverage affected port authority employees and former employees where the erroneous deductions predate January 1, 1990, if the person’s subsequent service was in the same position for which the erroneous deductions were taken. The 1990 break-point date in Minnesota Statutes, Section 353.27, Subdivision 7, was enacted at the request of PERA as part of the 1993 PERA administrative changes (see Laws 1993, Ch. 307, Art. 4, Sec. 17). The refund of deductions and contributions for any affected Stevens County HRA employees would trigger an automatic forfeiture of any credited allowable service and any potential future retirement annuity, potentially including for individuals who may be drawing a retirement annuity or receiving deferred annuity augmentation.
4. Appropriateness of Potential Double Pension Coverage. The policy issue is the appropriateness of permitting retirement coverage by PERA-General if the Stevens County HRA, akin to many or all housing and redevelopment authorities, also had an employer-sponsored defined contribution retirement plan. As Attachment B indicates, the retirement coverage regulations that the federal HUD Department impose on housing and redevelopment authorities generally permit defined contribution type retirement plans, usually with a private sector insurance company connection. If the Stevens County HRA has in place a HUD-style defined contribution retirement plan in addition to the PERA-General retirement coverage and if that HUD-style retirement plan is more substantial than the supplemental retirement plans currently permitted for Minnesota public employees, the double

pension coverage that this proposed legislation would ratify may be inappropriately excessive public employer-funded retirement coverage.

5. Appropriateness of Continuing an Exclusion for Other Minnesota Housing and Redevelopment Authorities. The policy issue is the appropriateness of including the Stevens County HRA in retirement coverage by PERA-General while not addressing the situation of the other housing and redevelopment authorities that remain excluded from PERA-General coverage. There appear to be almost 200 housing and redevelopment authority-type entities in Minnesota, all of which are excluded from PERA-General coverage (except the Stevens County HRA if this proposed legislation is approved). Adding employing units to PERA coverage one by one, at their election, is not a very efficient process from a legislative standpoint. If there is no overarching policy reason for excluding housing and redevelopment authorities from PERA-General coverage, and when there could be employment interchanges with other PERA-General covered employing units, it may be more appropriate to include all housing and redevelopment authorities in future PERA-General retirement coverage at large. Requesting a reaction from housing and redevelopment authority representatives may be appropriate before undertaking any broadening of the special pension legislation. Also, any inclusions of housing and redevelopment authority employees in PERA-General retirement coverage would likely need to be conditioned on the approval by the U.S. Department of Housing and Urban Development of PERA-General contributions as a legitimate expenditure of housing and redevelopment authority funds.

6. Need to Compel Greater PERA Enforcement of Its Membership Inclusions and Exclusions. The policy issue arising from this proposed special legislation to resolve a membership issue with the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) is the apparent inability of PERA to comply with a state law mandate for vigilant monitoring of compliance with PERA membership inclusions and exclusions. Minnesota Statutes, Section 353.27, Subdivisions 7, 7a, 7b, 10, 11, 12, and 14, relate to monitoring membership inclusions and exclusions and the correction of member and employer contribution underpayments and overpayments. If PERA was diligently monitoring membership inclusions and exclusions for its largest retirement plan, PERA-General, this erroneous inclusion that apparently dates to June 30, 1988, the similar situation of the Red Wing Port Authority that arose in 2011, the St. Cloud Metropolitan Transit Commission bus driver unsanctioned exclusion dating from 1986 (and addressed in S.F. xxxx; H.F. 1873 (O'Driscoll)), and dozens and dozens of PERA-General service credit purchase bills arising from erroneous exclusions over the years would not have occurred. Annually, the PERA administrator apologizes for the agency's failure on membership errors giving rise to corrective legislation, but PERA does not appear to be resolving its membership determination and reporting deficiencies. Embarrassment over repeated errors and omissions does not appear to be sufficient impetus to prompt greater PERA efforts to resolve these issues.

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Background Information on the Housing and Redevelopment Authority of Stevens County

The Housing and Redevelopment Authority of Stevens County, Minnesota (informally known as the Stevens County HRA), was organized by the Stevens County Board of Commissioners in 1977. The Stevens County HRA is governed by a five-member board of commissioners who are appointed by the Stevens County Board. The Stevens County HRA commissioners are selected from throughout the whole of Stevens County and the current board is comprised of Barb Tomoson, board chair, representing the Alberta area, Bruce Malo, board vice-chair, representing the Hancock area, Dick Bluth, board secretary-treasurer, representing the Morris area, Algene Larson, representing the Donnelly area, and Hugh Reimers, representing the Chokio area.

The Stevens County HRA is intended to build better neighborhoods by providing comprehensive housing and business opportunities for qualified individuals and families through creative and professional service in partnership with the greater community, by ensuring that all Stevens County residents have access to decent, safe, sanitary, and affordable housing, by revitalizing and maintaining neighborhoods, by forming effective partnerships to maximize social and economic opportunities, and by providing business and economic development opportunities. The Stevens County HRA is intended to be a fiscally responsible, creative organization committed to excellence in public service that complies fully with all Federal, State, and local nondiscrimination laws and with the rules and regulations governing Fair Housing and Equal Opportunity in housing and employment.

The Stevens County HRA administers several Federal, State, and local housing programs, which are:

1. Section 8 Rental Assistance. This Federal program provides monthly Housing Assistance Payments directly to landlords of qualified low income participant renters. Rental units must have reasonable rents (as determined by the HRA), and must meet the Housing Quality Standards of the federal Housing and Urban Development Department (HUD).
2. Owner-Occupied Housing Repair. The HRA administers several different home repair programs for persons who own their home. Depending on the location of their home and their total household income, applicants may be eligible to finance home repairs with a combination of loans and deferred loans.
3. Rental Repair. State and Federal grant and loan funds may be available for repairs to rental properties where the owner agrees to maintain the unit in compliance with HUD's Housing Quality Standards and Fair Market Rents.
4. Affordable Rental Units. The HRA owns Wildwoods Apartments, a 14-unit Section 42 rental building located in Morris. Residents must have documented household income which is no more than 60% of the Area Median Income as defined by HUD.
5. Revolving Loan Fund. A small pool of funds provided by the Otto Bremer Foundation allows the HRA to make loans for rental security deposits or utility deposits to low and moderate income persons.
6. Development Tools. Tax Increment Financing, Revenue Bonds, and other financing tools for business and housing development are available through the HRA. Examples of the work performed with these tools include the business expansion at Superior Equipment, the Service Option for Seniors housing units, and the Stevens County Courthouse and Law Enforcement Center.

Currently, the Stevens County HRA employs at least three employees, a director and two housing specialists.

According to the most recent audit of Stevens County by the State Auditor, Stevens County does not provide any funding to the Stevens County HRA.

Any pension coverage provided by the Stevens County HRA must comply with HUD requirements.

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Background Information on PERA-General Membership Inclusions and Exclusions

1. Current Membership Inclusions. The General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) includes in its retirement coverage employees of governmental subdivisions and public officers performing personal services for a governmental subdivision where salary is paid in whole or in part from revenue derived from taxation, fees, assessments, or other sources, with some specific inclusions, with some optional memberships exercised either by the governmental entity or by the individual employee, and with some specific exclusions.

Specific inclusions are governmental subdivision employees with salary that exceeds \$425 in any month from either one subdivision position or a number of subdivision positions, employees with governmental functions such as town or city clerks or treasurers, county auditors, treasurers or recorders, city managers, or emergency management directors, physicians in public employment, full-time employees of the Dakota county Agricultural Society, and Minneapolis Police Relief Association or Minneapolis Firefighters Relief Association employees.

2. Current Optional Memberships. Optional PERA-General membership by action of the individual are employees of public sector labor organizations, persons in elected or appointed positions other than local governing body positions, PERA-General members appointed by the governor as a state department head who decline coverage by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), city managers, and pre-2003 St. Paul Port Authority employees who were over age 44 in 2003. Optional PERA-General membership by action of the employing entity are employees of the Minnesota Association of Townships, county historical societies, or Hennepin Healthcare Systems, Inc. employees.
3. Current Membership Exclusions. Exclusions from PERA-General membership are persons with salary from a governmental subdivision that never exceeds \$425 in any month, public officers on the governing body of a governmental subdivision, election judges and officers, patient or inmate personnel, temporary employees, fire, flood, storm, or disaster emergency employees of a governmental subdivision, persons required by law to be a member of another Minnesota retirement plan by virtue of their governmental subdivision employment, religion order members, employees under age 23 who are full-time students, physician residents, medical interns, and pharmacy residents, part-time technical college instructors with a part-time adult supplementary technical college license, foreign citizens with short-term work permits or visas, public hospital employees electing not to participate before 1972 and in 1988, volunteer ambulance personnel, volunteer firefighters, various local government trades personnel, seasonal employees, supported employment employees, work study employees, independent contractors and their employees, reemployed annuitants, and governmental subdivision board or commission members.

4. Historical Development of PERA-General Inclusions and Exclusions.

- In 1931 (Laws 1931, Ch. 307, Sec. 1-2), when the Public Employees Retirement Association (PERA) was established, the term “public employee” was defined as any person holding an elective or appointive position as an employee or officer of a county, as an employee or officer of any city of the first class, city of the second class, or city of the third class, whether governed by home rule charter or otherwise, as an employee or officer of any village with a population of more than 7,000, or public school employee or officer with a salary paid from taxation or from public revenues. The term excluded temporary employees and employees with an average period of employment under six months, with membership optional for public employees having that status on April 24, 1931, to be elected before July 1, 1933, and with membership mandatory for public employees accepting public employment after April 23, 1931.
- In 1933 (Laws 1933, Ch. 374, Sec. 1-2), the definition of the term “public employee” was revised to apply to any person who holds a position by election, appointment, or contract with a county, a city, a village, or a school district if the salary is paid in whole or in part through taxation, fees, assessments, or governmental subdivision revenue. The term was defined to also mean a person appointed as a district court reporter, but was indicated that it did not include persons by employment were required to contribute to another retirement fund established under law and did not include temporary employees. The definition of “public employee” was extended to include any incorporated city and any incorporated village with a population of more than 5,000. The definition distinguished between “present public employees” (a public employee who was receiving salary from a governmental subdivision which accepted coverage by PERA on the date of that acceptance) and “new public employees” (a public employee who entered public employment by a governmental subdivision which accepted PERA coverage after the date of that acceptance). Present public employees in governmental subdivisions accepting PERA coverage

were permitted to elect PERA membership until July 1, 1935, with the membership of an elected official who elected coverage remaining binding during the person's future incumbency, and with the membership in the retirement plan not terminated by resignation or termination of governmental subdivision employment.

- In 1935 (Laws 1935, Ch. 106, Sec. 1), the retirement plan membership provision was modified to accommodate employees of governmental subdivisions at the time of its accepting plan coverage after May 1, 1935, and were given the option of becoming plan members during the two years following the acceptance.
- In 1937 (Ch. 466, Sec. 1-2), the definition of "public employee" was augmented to exclude any period of time for coverage when the person was eligible for membership or was a member of another Minnesota public retirement plan. The covered governmental subdivisions provision was expanded to include any common school district or special school district. The plan membership provision was amended to provide that any person who is appointed to fill an elective office vacancy may exercise a membership option under the same terms and condition as apply to the admission of elective officers.
- In 1941 (Laws 1941, Ch. 285, Sec. 1-2), the definition of "public employee" was modified to exclude temporary employees, and was further refined in excluding individuals for periods of employment when they were covered by a Minnesota public retirement plan and specifically included district court reporters. "Temporary employee" was defined to mean persons who are employed by a governmental subdivision for a period that did not exceed six months in any 12-month period, was a substitute for another employee on a leave of absence, was considered temporary in character, but not seasonal, or is employed part time with annual compensation under \$301 unless the person is in the classified civil service of the employing unit.
- In 1947 (Laws 1947, Ch. 18, Sec. 1-2), the definition of "present public employee" was redefined as employees of governmental subdivisions as of June 1, 1947, for subdivisions which became subject to the retirement plan effective on June 1, 1947. The definition of "new public employee" was redefined as persons who become employees of governmental subdivisions becoming subject to the retirement plan after June 1, 1947. The plan membership provision was separated into subdivisions, with new subdivisions governing the membership process for employees and elected public officials becoming such after June 1, 1947, with a two-year deadline for the exercise of the option back to June 1, 1947.
- In 1949 (Laws 1949, Ch. 84, Sec. 1), the language of the prior exclusion of persons who are members of another public retirement plan was simplified.
- In 1951 (Laws 1951, Ch. 22, Sec. 1-7, 10-13), the definition of "public employee" was substantially revised, newly set as any person performing personal services for a governmental subdivision as an officer or employee whose salary is paid wholly or partially through taxation, fees, assessments, or other public revenue, as a district court reporter, or as an officer or employee of PERA, the definition of "governmental subdivision" was expanded to include boroughs and towns. The term "non-employee member" was defined as a person who continues PERA membership after ceasing to be a public employee. The term "contributory membership" was defined as membership during which contributions are made by salary deduction. The term "new public employee" was redefined as a person who becomes a public employee after the date on which the governmental subdivision accepted PERA coverage. The specification of membership eligibility was totally revised, requiring every public employee who is not already covered by PERA on or after July 1, 1951, to become a PERA member by accepting or continuing in public employment unless an elected official or an appointee to an elected official position, is already age 60, is required to contribute to another public retirement plan by virtue of employment, or is an employee of a governmental subdivision that had not adopted PERA coverage. The public officers membership provision was totally revised, made optional, and continuing during the incumbency of the person in office. A provision specifying optional membership for employees at or over age 60 on July 1, 1951, was added, and a provision governing the commencement of membership on July 1, 1951, was added.
- In 1955 (Laws 1955, Ch. 815, Sec. 1-2, 11), the membership provisions were modified to add elected members of the Legislature as members and to make PERA membership mandatory for non-member public employees on July 1, 1955, and for newly employed public employees after June 30, 1955, by virtue of the continuation in employment or the acceptance of employment.
- In 1957 (Laws 1957, Ch. 815, Sec. 1; and Ch. 935, Sec. 1, 6), the plan membership provisions were amended to include in coverage the chief clerk of the Minnesota House of Representatives, the Secretary of the Minnesota Senate, and any employee of the League of Minnesota Municipalities.

Plan membership provisions were amended to add or clarify exceptions from coverage, set as:

- persons rendering professional duties and compensation is on a per diem basis;

- election officers;
- persons who are employed by contractors under an authorized contract;
- patient and inmate help rendered to governmental unit;
- members of boards, commissions, volunteer fire departments, bands, and others employed in intermittent governmental subdivision service and paid on a per diem or for-free basis;
- temporary, emergency, and seasonal employees as defined by PERA board rule; and
- public employees required to contribute by virtue of employment to another Minnesota public retirement plan.

Plan membership provisions were amended to also exclude:

- persons over age 60 with less than six years of allowable service credit as of June 30, 1957, and any post-June 30, 1957, hire unless the person has allowable service credit equal to the number of years in excess of age 55;
 - elected public officials and appointees to elected positions had the option to be covered by the retirement plan within six months of taking office, continuing for the duration of incumbency in the office held when membership was elected; and
 - any public employee who was not eligible for PERA coverage but who was not eligible for federal Social Security coverage, was made eligible for PERA coverage, retroactive to July 1, 1957.
- In 1959 (Laws 1959, Ch. 650, Sec. 1-3, 30, 56), employees of a public elected officer or of governmental subdivision departments were made eligible for PERA coverage. Municipal housing and redevelopment authority employees, seaway port authority employees, soil conservation district employees, and certain hospital district employees were excluded from PERA coverage. PERA membership was limited to periods while engaged in public employee services, and PERA membership was specified to include leaves of absence of less than six months, temporary layoffs of less than six months, authorized sick leaves, and authorized job training leave. Nonemployee PERA membership was abolished as of August 1, 1959, with refunds paid to any former nonemployee PERA member. Former PERA members who are elected officials or employees of a municipality that is not covered by PERA were permitted to continue in PERA membership.
 - In 1961 (Laws 1961, Ch. 482, Sec. 1; and Ch. 746, Sec. 1), police matrons who were transferred to county correctional facilities were excluded from PERA coverage and the prior seaway port authority exclusion was corrected as a port authority exclusion from PERA.
 - In 1963 (Laws 1963, Ch. 641, Sec. 3-4, 16-17), the independent contractor exclusion from PERA coverage was clarified. The prior other retirement plan or relief association contributor exclusion was modified to not apply to local police or fire relief association members with dues but no pension contributions less than \$13 in any calendar year. The prior extension of membership to leave of absence periods limited to an aggregate of 12 months during the person's entire coverage period rather than six months and the prior extension of membership to temporary layoff or authorized job training leave was limited to periods authorized by the employer transmitted promptly to PERA and not to exceed 3.5 months in any calendar year.
 - In 1965 (Laws 1965, Ch. 880, Sec. 1), employees of probate judges or municipal judges were included in PERA coverage. The prior temporary, emergency, and seasonal employee exclusion from PERA membership was replaced by an exclusion of employees in essentially temporary or seasonal positions that do not continue beyond 90 working days in any calendar year and the exemption expires if a former temporary or seasonal employee continues beyond 90 days and earns in excess of \$75 in any calendar month. Part-time employees with less than \$75 in monthly compensation were excluded from PERA membership, along with emergency employees hired by reason of fire, flood, storm, or disaster and with students occasionally employed part time by a governmental subdivision in any capacity.
 - In 1967 (Extra Sess. Laws 1967, Ch. 37, Sec. 1), the prior exclusion for part-time employees with earnings under \$75 per month was clarified by eliminating the prior exception for probationary employees with civil service merit system rights. The prior student part-time employee exclusion was expanded to include full-time school or college students.
 - In 1969 (Laws 1969, Ch. 940, Sec. 1), the inclusion in PERA membership of persons employed by probate judges was eliminated, and a grammatical error relating to the exclusion of election officers was corrected. The exclusion of public employees covered by another public retirement fund by virtue of their public employment was modified to not apply to volunteer fire relief association members if the relief association does not determine benefits or contributions based on a firefighter's compensation or salary, and the religious organization exemption was modified with respect to the required annuity or benefit waiver.
 - In 1971 (Laws 1971, Ch. 106, Sec. 1, 39; and Ch. 503, Sec. 1), the inclusion in PERA membership of the secretary of the Minnesota Senate and the chief clerk of the Minnesota House of Representatives was eliminated, and the inclusion in PERA coverage of Minnesota legislators was limited to persons first elected before December 31, 1969. The broad exclusion from PERA coverage of volunteer fire

department members was eliminated, and the exclusion from PERA membership of temporary or seasonal employees was modified as to its continuation from more than 90 working days to 120 working days. The exclusion from PERA coverage of persons with other retirement plan coverage was modified to not apply where legislation specifically authorized supplemental plan coverage, and the exclusion from PERA membership was modified with respect to medical interns and resident physicians to apply only if they are full-time graduate degree candidates.

- In 1973 (Laws 1973, Ch. 753, Sec. 3-5, 79), the PERA membership inclusion was modified to eliminate employees of elected or appointed officers or municipal judges and to eliminate state legislators.

Specific PERA membership inclusions were added, indicated as:

- elected or appointed officers and their employees,
- district court reporters,
- PERA officers and employees,
- League of Minnesota Municipalities employees,
- public hospital officers and employees, and
- school district employees who drive their own buses.

Fifteen specific PERA membership exclusions were added, indicated as:

- persons employed for their regular professional duties,
 - election officers,
 - independent contractors,
 - patient and inmate help in charitable, penal, and correctional institutions,
 - boards, commissions, and band with intermittent service,
 - temporary or seasonal employees up to 120 working days annually and earning less than \$75 per month,
 - part-time employees with monthly compensation under \$75 or annual compensation stipulated under \$900 annually,
 - post-February 1, 1969, elected officials with compensation under \$75 per month,
 - emergency fire, flood, storm, or disaster employees,
 - persons required to be a member of another primary retirement plan by virtue of their employment,
 - public matrons,
 - persons applying for exemption based on religious organization membership,
 - students who are occasional part-time employees and full-time students,
 - resident physicians, medical interns, and pharmacist interns, and
 - appointed or elected officers paid on a fee basis who were not members on June 30, 1971.
- In 1974 (Laws 1974, Ch. 229, Sec. 1), the earnings threshold for membership for temporary employees, seasonal employees, part-time employees, and elected officials was increased from \$75 per month to \$150 per month (or \$1,800 annually if stipulated for part-time employees).
 - In 1976 (Laws 1976, Ch. 329, Sec. 12), the religious organization exemption from PERA membership was amended to require the religious organization to confirm that public retirement membership is forbidden by its religious beliefs, customs, or rites. The student exemption from PERA membership was amended to make it inapplicable to full-time public employees for all applicable personnel effective July 1, 1976.
 - In 1977 (Laws 1977, Ch. 347, Sec. 52; and Ch. 429, Sec. 19-20), the name for the League of Minnesota Cities was corrected and employees of the Association of Minnesota Counties, the Metropolitan Inter-County Council, and the Minnesota Municipal Utilities Association were added to the PERA membership inclusion provision. The temporary, seasonal, and part-time employee minimum salary threshold for inclusion in PERA coverage was increased from \$150 per month to \$250 per month (or from \$1,800 to \$3,000 if stipulated in advance for part-time employees). The religious organization exclusion from PERA membership was replaced by an exclusion for chaplains and nuns taking a vow of poverty as a religious order member, and the occasionally employed part-time exclusion from PERA membership for students was eliminated.
 - In 1978 (Laws 1978, Ch. 471, Sec. 1; Ch. 720, Sec. 6; Ch. 796, Sec. 23), the PERA membership exclusion provision was modified by:
 - increasing the salary threshold figure from \$150 per month to \$250 per month for elected officials after March 1, 1978,
 - adding an exclusion for participants in the federal Comprehensive Employment and Training Act,
 - clarifying that the other pension plan coverage exclusion applied only if the other plan coverage was coincidental with the potential PERA membership, and
 - excluding from PERA membership town, city, or county assessors if their salary or compensation from any one employer did not exceed \$250 per month or if the employment contract sets the total compensation in advance and specifies in advance that the service will not exceed three months in duration.

- In 1979 (Laws 1979, Ch. 216, Sec. 1; Ch. 303, Art. 6, Sec. 5), the PERA membership inclusion provision was expanded to include post-1979 Minneapolis city officers and employees, post-1979 Metropolitan Airports Commission employees, post-1979 Minneapolis Employees Retirement Fund employees, and post-1979 Special School District No. 1 employees, and the PERA membership exclusion provision was modified by clarifying that the part-time employee exclusion does not apply to firefighters, by excluding volunteer firefighters who are stipulated in advance and who do not receive compensation greater than \$3,000 annually, by clarifying that the full-time student exclusion does not apply to full-time employees of governmental subdivisions, and by removing an obsolete effective date.
- In 1980 (Laws 1980, Ch. 609, Art. 5, Sec. 20), the PERA membership exclusion provision was expanded by adding persons with part-time adult supplementary vocational-technical school licenses rendering incidental service up to 300 hours annually, and by adding area vocational technical school instructors rendering less than six hours of teaching service per quarter.
- In 1981 (Laws 1981, Ch. 68, Sec. 15), the PERA coverage inclusion provision was expanded with the addition of Range Association of Municipalities and Schools employees and Soil and Water Conservation District employees. The PERA coverage exclusion provision was modified by an increase in the salary threshold for membership for temporary or seasonal employees, part-time employees, and elected officials from \$250 per month to \$325 per month (or from \$3,000 to \$3,900 per annum for part-time employees if stipulated in advance).
- In 1982 (Laws 1982, Ch. 404, Sec. 1-2, 10; Ch. 424, Sec. 115), the PERA membership inclusion provision was amended to eliminate the specific inclusions of Minneapolis city elected officials and employees and Minneapolis public schools employees, and to correct the name of the Metropolitan Inter-County Association. The PERA membership exclusion provision was amended to remove the exception of firefighters in the part-time employees with monthly compensation under \$325 exclusion and the specific volunteer firefighter exclusion. The specific definition of a volunteer firefighter was repealed.
- In 1985 (Laws 1985, Ch. 261, Sec. 3), the PERA coverage inclusion provision was expanded with the addition of a specific inclusion for employees of a county historical society.
- In 1986 (Laws 1986, Ch. 399, Art. 2, Sec. 9; Ch. 400, Sec. 9; Ch. 458, Sec. 11; and 1st Spec. Sess. Laws 1986, Ch. 3, Art. 2, Sec. 41), the PERA membership inclusion provision was expanded to specifically include employees of economic development authorities and was amended by modifying the 1985 inclusion of county historical society employees by specifying that those employees also must be county employees.
- In 1987 (Laws 1987, Ch. 49, Sec. 9; Ch. 284, Art. 5, Sec. 1; Ch. 296, Sec. 1; and Ch. 372, Art. 1, Sec. 5), the PERA coverage inclusion provision was expanded to specifically include full-time firefighters who are employed by the Minnesota Department of Military Affairs.

The PERA coverage exclusion provision was modified by:

- defining incidental service by persons rendering professional services as less than 25% of total gross annual earnings,
 - including alternatively a school year for a calendar year for the exclusion of temporary or seasonable school district employees or part-time school district employees, with a threshold maximum salary of prorated portion of \$3,900 written stipulated earnings,
 - eliminating the federal Comprehensive Employment and Training Act exclusion,
 - specifying the other retirement plans that trigger an exclusion rather than a more generic exclusion, and
 - replacing the chaplain and nun exclusion with an exclusion indexed to the federal Social Security law religious organization exemption law.
- In 1988 (Laws 1988, Ch. 709, Art. 2, Sec. 1; Art. 5, Sec. 1), the PERA membership inclusion provision was expanded by including county historical society employees located in a county that certifies the employees as its employees for retirement purposes.

The PERA membership exclusion provision was modified by:

- reorganizing the provision into paragraphs and clauses,
- revising the language style of the incidental service determination for professional service employees,
- replacing the former temporary or seasonal employee exclusion with an exclusion for employment not expected to continue for more than six consecutive months,
- increasing the threshold compensation figure for part-time employees and elected officials from \$325 per month to \$425 per month (from \$3,900 to \$5,100 annually if stipulated in advance),
- moving to a separate paragraph the exception in the other retirement plan membership exclusion for multiple plan coverage for different service during the same time period,
- eliminating a 1963 savings clause relating to membership option exercises, and
- eliminating the modestly compensation town, city, or county assessor exclusion.

- In 1989 (Laws 1989, Ch. 209, Art. 2, Sec. 36; Ch. 319, Art. 3, Sec. 1-2; Art. 5, Sec. 1; and Ch. 335, Art. 3, Sec. 5), the PERA coverage inclusion provision was expanded:
 - with the addition of Association of Metropolitan Municipalities employees and of Minnesota Association of Townships employees if the association certifies its exercise of the coverage option for all permanent employees,
 - the continuation in membership of pre-July 1, 1988, employees who met the compensation threshold based on total salary from all positions held in multiple governmental subdivisions and court employees who became state employees and elected a continuation of coverage, and
 - correcting statutory cross-references for economic development authority employees.

The PERA coverage exclusion provision was modified to:

- update without apparent substantive change the language style and usage of several provisions,
 - provide an exception to the under-six-months employment exclusion for probationary periods preceding a permanent position, and by repositioning procedures applicable to employees who continue beyond six months or hold concurrent part-time positions and earn more than \$425 monthly,
 - clarify the other retirement plan membership exclusion based on the plan administrative system,
 - to except from the other retirement plan exclusion concurrent membership based on different employment occurring at the same time,
 - add exclusions for pharmacist residents serving in a degree or residency program and for students serving in an internship or residency sponsored by an accredited educational institution,
 - simplify the part-time adult supplementary technical institute license exemption,
 - exclude volunteer ambulance service personnel unless they render compensated service other than as ambulance personnel,
 - exclude volunteer firefighters unless they render compensated service other than service covered by the volunteer fire relief association, and
 - exclude Minneapolis Community Development Agency employees.
- In 1990 (Laws 1990, Ch. 570, Art. 11, Sec. 1), the PERA coverage exclusion provision was modified to exempt from the board and commission member exclusion individuals where membership was a result of public employment by the same employer. The under-six-consecutive-month employment exclusion was revised to clarify that the person must be hired for a position of less than six months in duration and to except from the exclusion employees hired to an unlimited period employment position with a probationary period. The exclusion provision was modified to revise the part time under the threshold salary exclusion as applicable to any employment under \$425 per month (or \$5,100 annually stipulated in advance).
 - In 1991 (Laws 1991, Ch. 341, Sec. 1), the PERA membership exclusion for members of religious orders was modified with the inclusion of a statutory cross-reference for a Social Security coverage election option.
 - In 1992 (Laws 1992, Ch. 432, Art. 2, Sec. 2), the PERA coverage exclusion provision was amended to make various apparently non-substantive language style and usage modifications.
 - In 1993 (Laws 1993, Ch. 307, Art. 4, Sec. 1-3, 5-6, 11), the general definition of “public employee” was modified to specify that independent contractors and their employees are not eligible for PERA coverage. The PERA membership inclusion provision:
 - was reconfigured and revised to specify that exceeding the \$425 per month salary threshold in any month requires membership in the association for all subsequent months,
 - clarified the inclusion of employees in concurrent non-temporary positions with one governmental subdivision that exceeds the salary threshold,
 - clarified that the elected official inclusion applies to officials elected by the public at large or appointed to fill an elective office vacancy who elected to be a member and who met the salary threshold,
 - added governor-appointed state department heads who elected not to be covered by MSRS, and
 - eliminated a number of specific former inclusions for employing units included in the definition of the term “governmental subdivision.”

The PERA membership exclusion provision was revised by:

- adding elected public officers who did not elect PERA coverage, replacing the prior membership election procedure contained in the definition of the term “member,”
- eliminating the exclusion of professional service personnel,
- eliminating the board and commission intermittent service exclusion,
- adding an exclusion for non-temporary employees who resign that position and accept a temporary position within 30 days in the same governmental subdivision,
- eliminating the exclusion for certain police matrons,
- eliminating the exclusion of fee-basis paid officers,
- eliminating the exclusion for technical college instructors with teaching license exemptions for teaching less than 61 hours per year,
- eliminating the exclusion for Minneapolis Community Development Agency,
- adding an exclusion for foreign citizens working under a short-term work permit or visa, and

- adding exclusion for public hospital employees who failed to elect PERA coverage before 1972 and again in 1988.
- In 1994 (Laws 1994, Ch. 572, Sec. 5), the PERA coverage inclusion provision was expanded to include former area vocational technical college employees who became MnSCU employees and elected to retain PERA membership.
- In 1997 (Laws 1997, Ch. 241, Art. 2, Sec. 1), the PERA membership exclusion provision was amended to clarify that it applied to both PERA-General and PERA-P&F and to exclude St. Paul public school pipefitters and associated trades personnel hired after May 1, 1997, or who elected exclusion if employed before May 2, 1997.
- In 1998 (Laws 1998, Ch. 254, Art. 1, Sec. 87), the 1994 inclusion of former area vocational technical college employees in MnSCU employment who elected to retain PERA membership by statutory cross-reference was eliminated following the 1995 repeal of the cited statute in a Revisor’s bill.
- In 1999 (Laws 1999, Ch. 222, Art. 4, Sec. 4), the local police and fire relief association membership exclusion from PERA coverage was modified to accommodate the former police and fire consolidation account members who were covered by the consolidation account merger into PERA-P&F.
- In 2000 (Laws 2000, Ch. 461, Art. 3, Sec. 7; Art. 7, Sec. 1), the general definition of the term “public employee” was modified with the addition that reemployed annuitants are not included in coverage by virtue of the reemployment and the PERA membership exclusion provision was expanded with the exclusion of various electrical workers, plumbers, carpenters, and associated trades personnel employed by the St. Paul School District or the City of St. Paul employed after May 1, 2000, or who elect to be excluded if employed before May 2, 2000.
- In 2001 (1st Spec. Sess. Laws 2001, Ch. 10, Art. 10, Sec. 1-2; Art. 11, Sec. 2-5), the general definition of the term “public employee” was revised to include an optional membership provision and the specific exclusions of independent contractors and reemployed annuitants were removed. The PERA membership inclusion provision was expanded by adding full-time Dakota County Agricultural Society employees and was totally revised by requiring all persons meeting the general definition of “public employee” to be a member of the applicable PERA-administered retirement plan as a condition of employment from the first day of employment unless specifically excluded, or do not exercise an individual option for coverage when applicable, or was employed by a governmental subdivision that did not exercise a group option for coverage when applicable and continuing all members having that status as of June 30, 2002, as members.

The PERA membership exclusions provision was revised by:

- excluding all elected public officials first taking office after July 1, 2002, other than county sheriffs,
- excluding election judges,
- eliminating patient or inmate personnel for all government subdivisions, not just charitable, penal, or correctional institutions,
- limiting the temporary position employees to persons other than temporary employees filling permanent positions or unspecified period positions,
- eliminating the under \$425 per month salary threshold exclusion,
- clarifying the full-time student exclusion as any education exclusion if the employment is predicated on the individual’s student status, by adding an exclusion for post-2002 employees limited in duration to 185 calendar days or less,
- adding an exclusion for supported employment or work study positions limited to less than three years’ duration,
- adding an exemption for independent contractors, and
- adding reemployed PERA annuitants.

A PERA optional membership provision was added, with an individual option for labor organization employees, elected officials, state department heads appointed by the governor, and city managers and with a group-basis election by the applicable governmental subdivision for the Minnesota Association of Townships and county historical society employees.

- In 2002 (Laws 2002, Ch. 392, Art. 3, Sec. 1-2), the PERA coverage inclusion provision was amended to add a \$425 per month minimum salary threshold for PERA membership. The PERA coverage exclusion provision was amended by adding an under \$425 per month salary threshold exclusion, by adding an age 23 limit on the full-time student exclusion, by excepting Hennepin County employees from the under-three-year student exclusion, and by excepting Hennepin County employees from the under-three-year work permit or visa foreign citizen exclusion.
- In 2003 (1st Spec. Sess. Laws 2003, Ch. 12, Art. 4, Sec. 1), the PERA optional membership provision was amended to add an individual option for the St. Paul Port Authority.
- In 2004 (Laws 2004, Ch. 267, Art. 1, Sec. 2), the PERA membership exclusion provision was modified to eliminate the \$425 per month salary threshold for temporary employees.

- In 2005 (Laws 2005, Ch. 10, Art. 5, Sec. 1; Ch. 125, Art. 3, Sec. 1-2), the general definition of the term “public employee” was augmented by providing that it includes full-time Dakota County Agricultural Society. The PERA membership exclusion provision was modified to except the Hennepin Healthcare System from the under-three-year work permit or visa foreign citizen exclusions. The optional PERA membership provision was amended with respect to the group option for the Hennepin Healthcare, Inc., for employees other than paramedics, emergency medical technicians, and protection officers if the corporation establishes an alternative retirement plan.
- In 2006 (Laws 2006, Ch. 271, Art. 3, Sec. 5-6), the PERA coverage inclusion provision was amended to also include physicians employed by governmental subdivisions who did not elect coverage under the PERA Defined Contribution Plan. The PERA optional membership provision was amended to clarify the maximum age on the Port Authority of St. Paul optional membership individual election and to clarify the conditions on the optional membership for the three group election provisions.
- In 2007 (Laws 2007, Ch. 134, Art. 1, Sec. 4; Art. 2, Sec. 13-14), the PERA membership inclusion provision was amended to clarify that the \$425 per year minimum salary threshold applies to one or multiple public employment positions and clarifies the participation duration for pre-2002 PERA members is until incumbency ends for elected officials and until termination of public employment broadly. The PERA membership exclusion provision was amended to eliminate the pre-2002 elected official membership grandparent duration language moved to the inclusion provision and the other retirement plan coverage exclusion provision was amended to eliminate an obsolete reference to the Minneapolis Teachers Retirement Fund Association.
- In 2008 (Laws 2008, Ch. 349, Art. 5, Sec. 14), the PERA coverage exclusion provision was amended by expanding the resident physician, medical intern, and pharmacist resident and intern exception to apply to clinics as well as hospitals.
- In 2009 (Laws 2009, Ch. 169, Art. 12, Sec. 4-5), the general definition of the term “public employee” and the PERA membership inclusion provision were amended by moving the Dakota County Agricultural Society full-time employee inclusion from the general definition of the term “public employee.” The PERA membership inclusion provision was amended by moving the Dakota County Agricultural Society full-time employee inclusion from the general definition to the inclusion provision and by adding Minneapolis Firefighters Retirement Association (MFRA) and Minneapolis Police Retirement Association (MPRA) employees not otherwise excluded by law.
- In 2010 (Laws 2010, Ch. 359, Art. 5, Sec. 1-4; Art. 11, Sec. 1-2), the general definition of the term “public employee” had a reference to “public officer” added and the language style and usage of the provision were modified in an apparent non-substantive nature. The PERA coverage inclusion provision was modified by:
 - clarification of the mandatory nature of membership for included employees and a specification of the date on which membership commences,
 - setting forth three additional specific inclusions, persons meeting the salary threshold from one or more positions in a governmental subdivision, persons performing the functions of town or city clerk or treasurer, county auditor, treasure or recorder, city manager, or emergency management director, and elected county sheriffs,
 - specifically providing that membership continues for all months of public service once the threshold is first met,
 - including pre-2003 elected officials in the 2002 PERA member grandparenting provision,
 - including MERF members in membership of the MERF Division of PERA, and
 - making various language style and usage changes.

The PERA coverage exclusion provision was modified by:

- clarifying that employees who never exceed the minimum salary threshold are never eligible for membership,
 - clarifying the application of the public office holder exclusion applying to city mayors and not applying to county sheriffs,
 - simplifying the language usage and style of the short-term work permit or visa foreign citizen exclusion,
 - specifically excluding board or commission appointees,
 - not excluding from membership as independent contractors persons performing clerk, treasurer, recorder, city manager, or emergency management director functions under a contract, and
 - making various language style and usage updates.
- In 2011 (1st Spec. Sess. Laws 2011, Ch. 8, Art. 1, Sec. 1-2), employees of the Red Wing Port Authority who were first employed by the port authority before May 1, 2011, were included in coverage.

Background Information on the U.S. Department of Housing and Urban Development Retirement Plans

The federal Housing and Urban Development Department (HUD) indicates that a Housing and Redevelopment Agency may consider adopting one or more of the following types of private retirement plans (except as noted):

1. **Internal Revenue Code (IRC) Sec. 401(a) Plan.** This is the traditional form of qualified plan provided pursuant to IRC Sec. 401(a). Most Housing Agency plans will be of the defined contribution type. Large Housing Agencies may adopt a defined benefit plan if actuarially practical. Most plans are provided through an insurance company's prototype plan. In some cases, an independent sponsor may provide a master or prototype plan or similar arrangement.
2. **IRC Sec. 401(k) Deferred Compensation Plan.** As governmental entities, Housing Agencies may not establish Sec. 401(k) plans after May 6, 1986. Sec. 401(k) plans established by Housing Agencies before this date may be continued, and the effective dates for some of the changes in the Sec. 401(k) requirements are delayed two years for such plans (TRA'86 Sec. 1116(f)).
3. **IRC Sec. 403(b) Tax-Sheltered Annuity.** Employees of certain tax-exempt organizations that meet the requirements of IRC Sec. 501(c)(3) are eligible under IRC Sec. 403(b) to exclude from their current gross income amounts paid by their Housing Agencies (through salary reduction or otherwise) towards the purchase of annuities or deposits in special custodial accounts in a regulated investment company. The total excludable contribution is limited by law. A tax-sheltered annuity plan may be used as a primary employee-provided retirement benefit program or with Housing Agency contributions as well. Amounts excludable from income through salary reduction remain subject to FICA taxes.
4. **IRC Sec. 408(a) Individual Retirement Account.** In the event a Housing Agency does not have a retirement plan for its employees, it may inform them that an individual retirement account or annuity (IRA) is available. No deductible IRA contribution can be made by active participants or their spouses in an employer-sponsored retirement plan, if their income is above a certain level. A married person with income less than \$10,000, filing separately, whose spouse is covered by a retirement plan, can contribute to a deductible IRA. "Active participant" is defined as one who participated, whether vested or not, in a private or public employer-sponsored retirement plan for any part of the plan year ending within the individual's taxable year. This includes tax-sheltered annuities and Simplified Employee Pensions, but not IRC Sec. 457 plans. Spousal IRAs are available even if the spouse earns up to \$250. Individuals who cannot make a deductible IRA contribution may make a nondeductible IRA contribution of up to \$2,000. Those who cannot make the full \$2,000 deductible IRA contribution may contribute the remainder of the \$2,000 on a nondeductible basis. Earnings on the account will be tax-deferred. IRAs are subject to the same 10 percent tax on early distributions that applies to qualified plans (see paragraph 2-22). Qualified Voluntary Employee Contributions are no longer permitted. These IRA provisions are effective January 1, 1987. Information on IRAs is available through local banks, thrift institutions and insurance companies. 2-1 1/97
5. **IRC Sec. 408(k) Simplified Employee Pension.** Under a Simplified Employee Pension (SEP), a Housing Agency contributes to an IRA for each participant (IRC Sec. 408(k) as amended by TRA'86 Sec. 1108 and 1898(a)(5)). Thus, a SEP is a kind of defined contribution plan very similar to a Sec. 401(a) plan. A SEP can be an attractive alternative to a Sec. 401(a) plan, particularly for a small Housing Agency. A SEP requires no plan document other than IRS Form 5305-SEP, Simplified Employee Pension -- Individual Retirement Accounts Contribution Agreement, no IRS approval, no summary plan description, no annual IRS Form 5500, no summary annual report, no attorney, no actuary and no consultant. The maximum Housing Agency contribution under a SEP is the lesser of \$30,000 or 15 percent. A SEP maintained by a governmental entity (i.e., a Housing Agency) cannot permit elective salary reduction deferrals for any of the difference between the Housing Agency contribution and the maximum SEP contribution permitted by law (i.e., the lesser of \$30,000 or 15 percent). In tax years beginning after 1986, TRA'86 provides that, as an "active participant" in an employer-maintained retirement plan (the SEP), individuals may make nondeductible contributions to an IRA (which may be the SEP-IRA subject to the applicable IRA deduction limits of IRC Sec. 219(g) (as added by TRA'86 Sec. 1101). Earnings on nondeductible contributions are not subject to Federal tax until they are withdrawn, but when withdrawn the pro rata basis recovery rule applies (see paragraph 2-23). A SEP must cover every employee who has attained age 21, has performed service for the Housing Agency in at least three of the preceding five years, and receives at least \$300 of compensation in the current year. More liberal participation is permitted. A SEP has full and immediate vesting. Employees are free to withdraw their contributions under a SEP at any time without restrictions but penalties for early withdrawal apply. A copy of each Form 5305-SEP shall be retained in the Housing Agency's files. Form 5305-SEP is not filed with IRS.
6. **IRC Sec. 414(h)(2) Employer "Pick-up" Plan.** Sec. 414(h)(2) permits a governmental entity (i.e., a HA) to "pick-up" mandatory employee contributions and deem such contributions to be employer contributions. These contributions are not taxable to the employee until received. For Federal income tax purposes, the employee's W-2 wages are reduced by the amount of the picked-up contribution. Rulings from the Social Security Administration have indicated that those funds which are obtained through a reduction in employee wages will

be considered covered wages for FICA purposes. This means that employees do not lose Social Security coverage. At least three contribution accounts must be maintained and the following conditions observed:

- (1) Employee contributions made before the date of the Housing Agency pick-up. These must include interest earned. These contributions are paid from after-tax dollars and are not taxable to the employee upon distribution. These are fully vested.
- (2) Employee contributions which are picked-up by the Housing Agency. These contributions have been paid from before-tax dollars and, together with interest thereon, are taxable to the employee when received. Since these contributions are derived from employee mandatory contributions, they are fully vested.
- (3) Housing Agency contributions, together with interest thereon, are taxable when received. The appropriate vesting schedule will apply (see paragraph 2-18).
- (4) Additional accounts will be required to segregate contributions where more than one type of investment media is provided.
- (5) See paragraph 2-23 for treatment of after-tax employee contributions. 1/97 2-2

Since the employee mandatory contributions that have been picked-up by the Housing Agency are maintained in a segregated account and treated as though they were Housing Agency contributions, it is possible to provide the prerequisite 100 percent vesting on these contributions without a complex formula. Furthermore, by proper definition of wages, it is possible to consider the employee contributions which are picked-up by the Housing Agency to be part of basic compensation. This means that there will not have to be adjustments to employee-Housing Agency contribution rates to the retirement plan. In addition, other pay related benefits (e.g., life insurance) can be based on total pay including the Housing Agency's pick-up of employee contributions.

7. IRC Sec. 457 Public Employee Deferred Compensation Plan. IRC Sec. 457 provides for Public Employee Deferred Compensation (PEDC) plans on a tax-favored basis (IRC Sec. 457 as amended by TRA'86 Sec. 1107). A Housing Agency may adopt a PEDC program for full or part-time employees. There are no age or service requirements and participation is strictly voluntary. A PEDC plan may not use any age later than 70-1/2 for retirement purposes. Employees may voluntarily elect to defer a portion of their compensation to some later date (usually normal retirement age under the plan). Only employee contributions are involved. Before making PEDC contributions, an employee must enter into a participation agreement with the Housing Agency. The Housing Agency reduces the employee's salary by the designated amount and remits the payment to the insurer. (Note: Only the Housing Agency may remit contributions on behalf of a participant to a qualified PEDC arrangement.) With the exception of a "catch up" rule, the normal annual maximum contribution is 25 percent of compensation (before salary reduction), not to exceed \$7,500 (TRA'86 Sec. 1107). Under the catch up rule, in each of the last three years before the year normal retirement age is reached under the plan, the plan may permit a catch up amount in addition to the regular maximum amount to be deferred. An eligible employee may participate in a PEDC, a qualified pension plan, a SEP and an IRA (to the extent allowable). By law, the Housing Agency is the owner and sole beneficiary under the terms of the PEDC contract. Also, all amounts deferred must remain assets of the Housing Agency and are subject to the claims of its general creditors. The employee must file a beneficiary designation with the Housing Agency. While contributions generally reduce a participant's gross income for Federal income tax purposes, FICA and FUTA taxes on the contributions must be paid. According to current legislation, benefits become available upon (1) separation from service; (2) retirement; (3) death; or (4) an unforeseeable emergency beyond the participant's control which creates a financial hardship as defined by IRS regulations. IRS does not permit loans. Distributions from Sec. 457 plans are treated as ordinary income and do not benefit from taxation of lump-sum distributions.

2-3. EXPENSES. Routine operating expenses for the administration of the plan may be paid from the basic contribution allowances or from forfeitures, dividends, or other plan assets. Routine operating expenses normally include record keeping, investment expense, commissions or other contract loading, and corporate trustee or administrator fees. The Housing Agency may pay for non-routine unusual expenses which are not covered by the insurance company or plan administrator as part of its routine service function. Nonroutine expenses may include an actuary's or legal counsel's fee, IRS user fees, fiduciary bonding, auditing expenses and one-time setup charges. Any such payment shall be subject to prior written approval of the appropriate HUD Field Office and funds must be available or otherwise budgeted. An officer or employee of a Housing Agency serving as a trustee-administrator should serve without compensation (but may be reimbursed by the plan for any necessary travel expenses). An individual cannot be the trustee of an IRA. 2-3 1/97

2-4. EFFECTIVE DATE. The effective date of a plan should coincide with the collection of required employee contributions. Any Housing Agency contribution will be subject to HUD budget approval, but may be made in advance of final approval where the Housing Agency has entered into an escrow agreement (see paragraph 2-30).

2-5. UNDERWRITING. In order to preserve and maintain the retirement plan's assets, it is recommended that the following guidelines be followed. The retirement plan will be underwritten on an accepted actuarial basis. Retirement plan assets will be managed only by a professional money manager, which may include a life insurance company, a corporate fiduciary such as an investment bank, or a regulated investment company such as a mutual fund. Plan assets will be deposited in an eligible investment medium. Upon retirement or other termination of employment, unless a lump-sum settlement option is elected, benefits will be guaranteed by a life insurance company or retirement association through the purchase of individual or group policies.

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1894

01/13/2014 Authored by McNamar
The bill was referred to the Committee on Government Operations

1.1 A bill for an act
1.2 relating to retirement; providing that employees of the Stevens County Housing
1.3 and Redevelopment Authority are included in the Public Employees Retirement
1.4 Association; amending Minnesota Statutes 2013 Supplement, section 353.01,
1.5 subdivisions 2a, 6.

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

1.7 Section 1. Minnesota Statutes 2013 Supplement, section 353.01, subdivision 2a,
1.8 is amended to read:

1.9 Subd. 2a. **Included employees; mandatory membership.** (a) Public employees
1.10 whose salary exceeds \$425 in any month and who are not specifically excluded under
1.11 subdivision 2b or who have not been provided an option to participate under subdivision
1.12 2d, whether individually or by action of the governmental subdivision, must participate as
1.13 members of the association with retirement coverage by the general employees retirement
1.14 plan under this chapter, the public employees police and fire retirement plan under this
1.15 chapter, or the local government correctional employees retirement plan under chapter
1.16 353E, whichever applies. Membership commences as a condition of their employment on
1.17 the first day of their employment or on the first day that the eligibility criteria are met,
1.18 whichever is later. Public employees include but are not limited to:

1.19 (1) persons whose salary meets the threshold in this paragraph from employment in
1.20 one or more positions within one governmental subdivision;

1.21 (2) elected county sheriffs;

1.22 (3) persons who are appointed, employed, or contracted to perform governmental
1.23 functions that by law or local ordinance are required of a public officer, including, but
1.24 not limited to:

1.25 (i) town and city clerk or treasurer;

- 2.1 (ii) county auditor, treasurer, or recorder;
- 2.2 (iii) city manager as defined in section 353.028 who does not exercise the option
- 2.3 provided under subdivision 2d; or
- 2.4 (iv) emergency management director, as provided under section 12.25;
- 2.5 (4) physicians under section 353D.01, subdivision 2, who do not elect public
- 2.6 employees defined contribution plan coverage under section 353D.02, subdivision 2;
- 2.7 (5) full-time employees of the Dakota County Agricultural Society;
- 2.8 (6) employees of the Red Wing Port Authority who were first employed by the
- 2.9 Red Wing Port Authority before May 1, 2011, and who are not excluded employees
- 2.10 under subdivision 2b; ~~and~~
- 2.11 (7) employees of the Seaway Port Authority of Duluth who are not excluded
- 2.12 employees under subdivision 2b; and
- 2.13 (8) employees of the Stevens County Housing and Redevelopment Authority who
- 2.14 were first employed by the Stevens County Housing and Redevelopment Authority before
- 2.15 May 1, 2014, and who are not excluded employees under subdivision 2b.
- 2.16 (b) A public employee or elected official who was a member of the association on
- 2.17 June 30, 2002, based on employment that qualified for membership coverage by the public
- 2.18 employees retirement plan or the public employees police and fire plan under this chapter,
- 2.19 or the local government correctional employees retirement plan under chapter 353E as of
- 2.20 June 30, 2002, retains that membership for the duration of the person's employment in that
- 2.21 position or incumbency in elected office. Except as provided in subdivision 28, the person
- 2.22 shall participate as a member until the employee or elected official terminates public
- 2.23 employment under subdivision 11a or terminates membership under subdivision 11b.
- 2.24 (c) If the salary of an included public employee is less than \$425 in any subsequent
- 2.25 month, the member retains membership eligibility.
- 2.26 (d) For the purpose of participation in the MERF division of the general employees
- 2.27 retirement plan, public employees include employees who were members of the former
- 2.28 Minneapolis Employees Retirement Fund on June 29, 2010, and who participate as
- 2.29 members of the MERF division of the association.

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

2.31 Sec. 2. Minnesota Statutes 2013 Supplement, section 353.01, subdivision 6, is

2.32 amended to read:

2.33 Subd. 6. **Governmental subdivision.** (a) "Governmental subdivision" means a

2.34 county, city, town, school district within this state, or a department, unit or instrumentality

2.35 of state or local government, or any public body established under state or local

3.1 authority that has a governmental purpose, is under public control, is responsible for the
 3.2 employment and payment of the salaries of employees of the entity, and receives a major
 3.3 portion of its revenues from taxation, fees, assessments or from other public sources.

3.4 (b) Governmental subdivision also means the Public Employees Retirement
 3.5 Association, the League of Minnesota Cities, the Association of Metropolitan
 3.6 Municipalities, charter schools formed under section 124D.10, service cooperatives
 3.7 exercising retirement plan participation under section 123A.21, subdivision 5, joint
 3.8 powers boards organized under section 471.59, subdivision 11, paragraph (a), family
 3.9 service collaboratives and children's mental health collaboratives organized under
 3.10 section 471.59, subdivision 11, paragraph (b) or (c), provided that the entities creating
 3.11 the collaboratives are governmental units that otherwise qualify for retirement plan
 3.12 membership, public hospitals owned or operated by, or an integral part of, a governmental
 3.13 subdivision or governmental subdivisions, the Association of Minnesota Counties, the
 3.14 Minnesota Inter-county Association, the Minnesota Municipal Utilities Association, the
 3.15 Metropolitan Airports Commission, the University of Minnesota with respect to police
 3.16 officers covered by the public employees police and fire retirement plan, the Minneapolis
 3.17 Employees Retirement Fund for employment initially commenced after June 30, 1979, the
 3.18 Range Association of Municipalities and Schools, soil and water conservation districts,
 3.19 economic development authorities created or operating under sections 469.090 to 469.108,
 3.20 the Port Authority of the city of St. Paul, the Seaway Port Authority of Duluth, the
 3.21 Red Wing Port Authority, the Stevens County Housing and Redevelopment Authority,
 3.22 the Spring Lake Park Fire Department, incorporated, the Lake Johanna Volunteer Fire
 3.23 Department, incorporated, the Red Wing Environmental Learning Center, the Dakota
 3.24 County Agricultural Society, and Hennepin Healthcare System, Inc.

3.25 (c) Governmental subdivision does not mean any municipal housing and
 3.26 redevelopment authority organized under the provisions of sections 469.001 to 469.047
 3.27 other than the Stevens County Housing and Redevelopment Authority; or any port authority
 3.28 organized under sections 469.048 to 469.089 other than the Port Authority of the city of St.
 3.29 Paul or the Seaway Port Authority of Duluth and other than the Red Wing Port Authority;
 3.30 or any hospital district organized or reorganized prior to July 1, 1975, under sections 447.31
 3.31 to 447.37 or the successor of the district; or the board of a family service collaborative
 3.32 or children's mental health collaborative organized under sections 124D.23, 245.491 to
 3.33 245.495, or 471.59, if that board is not controlled by representatives of governmental units.

3.34 (d) A nonprofit corporation governed by chapter 317A or organized under Internal
 3.35 Revenue Code, section 501(c)(3), which is not covered by paragraph (a) or (b), is not a
 3.36 governmental subdivision unless the entity has obtained a written advisory opinion from

4.1 the United States Department of Labor or a ruling from the Internal Revenue Service
 4.2 declaring the entity to be an instrumentality of the state so as to provide that any future
 4.3 contributions by the entity on behalf of its employees are contributions to a governmental
 4.4 plan within the meaning of Internal Revenue Code, section 414(d).

4.5 (e) A public body created by state or local authority may request membership on
 4.6 behalf of its employees by providing sufficient evidence that it meets the requirements in
 4.7 paragraph (a).

4.8 (f) An entity determined to be a governmental subdivision is subject to the reporting
 4.9 requirements of this chapter upon receipt of a written notice of eligibility from the
 4.10 association.

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

4.12 Sec. 3. **VALIDATION OF PAST RETIREMENT COVERAGE**
 4.13 **AND CONTRIBUTIONS FOR STEVENS COUNTY HOUSING AND**
 4.14 **REDEVELOPMENT AUTHORITY EMPLOYEES.**

4.15 (a) Retirement coverage by the general employees plan of the Public Employees
 4.16 Retirement Association, allowable service credit, and salary credit for employees of the
 4.17 Stevens County Housing and Redevelopment Authority who were so employed after
 4.18 November 7, 1984, and were first so employed before May 1, 2014, who had monthly
 4.19 salary in any month of at least \$325 until June 30, 1988, and who had monthly salary in
 4.20 any month of at least \$425 after June 30, 1988, who were not otherwise excluded under
 4.21 the applicable edition of Minnesota Statutes, section 353.01, subdivision 2b, and who had
 4.22 member deductions taken and transferred in a timely manner to the general employees
 4.23 retirement fund before the effective date of this section are hereby validated.

4.24 (b) Notwithstanding any provision of Minnesota Statutes, chapter 353, to the
 4.25 contrary, employee contributions deducted from employees of the Stevens County
 4.26 Housing and Redevelopment Authority described in paragraph (a) before the effective
 4.27 date of this section and associated employer contributions are valid assets of the general
 4.28 employees retirement fund and are not subject to refund or adjustment for erroneous
 4.29 receipt except as provided in Minnesota Statutes, section 353.32, subdivision 1 or 2;
 4.30 or 353.34, subdivisions 1 and 2.

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