

**SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION**

S.F. No. 1454

(SENATE AUTHORS: PAPPAS)

DATE	D-PG	OFFICIAL STATUS
02/25/2021	560	Introduction and first reading Referred to State Government Finance and Policy and Elections See SF1712, Art. 2, Sec. 1-2 See SF3540

1.1 A bill for an act

1.2 relating to retirement; Minnesota State Retirement System; Public Employees

1.3 Retirement Association; amending eligibility to include foreign citizens employed

1.4 by public employers on an H-1B, H-1B1, or E-3 visa; authorizing payment of

1.5 retroactive employee and employer contributions; amending Minnesota Statutes

1.6 2020, sections 352.01, subdivision 2b; 353.01, subdivision 2b.

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

1.8 Section 1. Minnesota Statutes 2020, section 352.01, subdivision 2b, is amended to read:

1.9 Subd. 2b. **Excluded employees.** "State employee" does not include:

1.10 (1) persons who are:

1.11 (i) students employed by the University of Minnesota, or within the Minnesota State

1.12 Colleges and Universities system, unless approved for coverage by the Board of Regents

1.13 of the University of Minnesota or the Board of Trustees of the Minnesota State Colleges

1.14 and Universities, whichever applies;

1.15 (ii) employed as interns for a period not to exceed six months unless included under

1.16 subdivision 2a, paragraph (a), clause (8);

1.17 (iii) employed as trainee employees unless included under subdivision 2a, paragraph

1.18 (a), clause (8); or

1.19 (iv) employed in the student worker classification as designated by Minnesota

1.20 Management and Budget;

1.21 (2) employees who are:

2.1 (i) eligible for membership in the state Teachers Retirement Association, unless the
2.2 person is an employee of the Department of Education who elected to be covered by the
2.3 general state employees retirement plan of the Minnesota State Retirement System instead
2.4 of the Teachers Retirement Association;

2.5 (ii) employees of the state who, in any year, were credited with 12 months of allowable
2.6 service as a public school teacher and, as such, are members of a retirement plan governed
2.7 by chapter 354 or 354A unless the employment is incidental employment as a state employee
2.8 that is not covered by a retirement plan governed by chapter 354 or 354A;

2.9 (iii) employees of the state who are employed by the Board of Trustees of the Minnesota
2.10 State Colleges and Universities in an unclassified position that is listed in section 43A.08,
2.11 subdivision 1, clause (9);

2.12 (iv) persons employed by the Board of Trustees of the Minnesota State Colleges and
2.13 Universities who elected retirement coverage other than by the general state employees
2.14 retirement plan of the Minnesota State Retirement System under Minnesota Statutes 1994,
2.15 section 136C.75;

2.16 (v) officers or enlisted personnel in the National Guard or in the naval militia who are
2.17 assigned to permanent peacetime duty and who are or are required to be members of a
2.18 federal retirement system under federal law;

2.19 (vi) persons employed by the Department of Military Affairs as full-time firefighters
2.20 and who, as such, are members of the public employees police and fire retirement plan;

2.21 (vii) members of the State Patrol retirement plan under section 352B.011, subdivision
2.22 10;

2.23 (viii) off-duty police officers while employed by the Metropolitan Council and persons
2.24 employed as full-time police officers by the Metropolitan Council and who, as such, are
2.25 members of the public employees police and fire retirement plan; and

2.26 (ix) employees of the state who have elected to transfer account balances derived from
2.27 state service to the unclassified state employees retirement program under section 352D.02,
2.28 subdivision 1d;

2.29 (3) employees of the University of Minnesota who are excluded from coverage by action
2.30 of the Board of Regents;

2.31 (4) election judges and persons who are employed solely to administer elections;

2.32 (5) persons who are:

3.1 (i) engaged in public work for the state but who are employed by contractors when the
3.2 performance of the contract is authorized by the legislature or other competent authority;

3.3 (ii) employed to perform professional services where the service is incidental to the
3.4 person's regular professional duties and where compensation is paid on a per diem basis;

3.5 or

3.6 (iii) compensated on a fee payment basis or as an independent contractor;

3.7 (6) persons who are employed:

3.8 (i) on a temporary basis by the house of representatives, the senate, or a legislative
3.9 commission or agency under the jurisdiction of the Legislative Coordinating Commission;

3.10 (ii) as a temporary employee on or after July 1 for a period ending on or before October
3.11 15 of that calendar year for the Minnesota State Agricultural Society or the Minnesota State
3.12 Fair, or as an employee at any time for a special event held on the fairgrounds;

3.13 (iii) by the executive branch as a temporary employee in the classified service or as an
3.14 executive branch temporary employee in the unclassified service if appointed for a definite
3.15 period not to exceed six months, and if employment is less than six months, then in any
3.16 12-month period;

3.17 (iv) by the adjutant general if employed on an unlimited intermittent or temporary basis
3.18 in the classified service or in the unclassified service for the support of Army or Air National
3.19 Guard training facilities;

3.20 (v) by a state or federal program for training or rehabilitation as a temporary employee
3.21 if employed for a limited period from an area of economic distress and if other than a skilled
3.22 or supervisory personnel position or other than a position that has civil service status covered
3.23 by the retirement system; and

3.24 (vi) by the Metropolitan Council or a statutory board of the Metropolitan Council where
3.25 the members of the board are appointed by the Metropolitan Council as a temporary employee
3.26 if the appointment does not exceed six months;

3.27 (7) receivers, jurors, notaries public, and court employees who are not in the judicial
3.28 branch as defined in section 43A.02, subdivision 25, except referees and adjusters employed
3.29 by the Department of Labor and Industry;

3.30 (8) patient and inmate help who perform services in state charitable, penal, and
3.31 correctional institutions, including a Minnesota Veterans Home;

3.32 (9) employees of the Sibley House Association;

4.1 (10) persons who are:

4.2 (i) members of any state board or commission who serve the state intermittently and are
4.3 paid on a per diem basis, the secretary, secretary-treasurer, and treasurer of those boards if
4.4 their compensation is \$5,000 or less per year, or, if they are legally prohibited from serving
4.5 more than three years, and the board of managers of the State Agricultural Society and its
4.6 treasurer unless the treasurer is also its full-time secretary;

4.7 (ii) examination monitors employed by a department, agency, commission, or board of
4.8 the state to conduct examinations that are required by law; or

4.9 (iii) appointees serving as a member of a fact-finding commission or an adjustment
4.10 panel, an arbitrator, or a labor referee under chapter 179;

4.11 (11) emergency employees who are in the classified service, but if an emergency
4.12 employee, within the same pay period, becomes a provisional or probationary employee on
4.13 other than a temporary basis, the employee must be considered a "state employee"
4.14 retroactively to the beginning of the pay period;

4.15 (12) persons who are members of a religious order who are excluded from coverage
4.16 under the federal Old Age, Survivors, Disability, and Health Insurance Program for the
4.17 performance of service as specified in United States Code, title 42, section 410(a)(8)(A),
4.18 as amended, if no irrevocable election of coverage has been made under section 3121(r) of
4.19 the Internal Revenue Code of 1986, as amended;

4.20 (13) members of trades who are employed by the successor to the Metropolitan Waste
4.21 Control Commission, who have trade union pension plan coverage under a collective
4.22 bargaining agreement, and who are first employed after June 1, 1977;

4.23 (14) for the first three years of employment, foreign citizens who are employed under
4.24 a work permit of less than three years or under an H-1b visa or a J-1 visa that is initially
4.25 valid for less than three years of employment, unless notice of a visa extension which allows
4.26 them to work for three or more years as of the date that the extension is granted and is
4.27 supplied to the retirement plan, in which case the person is eligible for coverage from the
4.28 date of the extension state employees under subdivision 2 or included employees under
4.29 subdivision 2a, unless the foreign citizen is:

4.30 (i) an H-1B, H-1B1, or E-3 status holder;

4.31 (ii) an employee legally authorized to work in the United States for three years or more;

4.32 or

4.33 (iii) an employee otherwise required to participate under federal law; and

5.1 (15) reemployed annuitants of the general state employees retirement plan, the military
5.2 affairs personnel retirement plan, the transportation department pilots retirement plan, the
5.3 state fire marshal employees retirement plan, or the correctional state employees retirement
5.4 plan during the course of that reemployment.

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

5.6 Sec. 2. Minnesota Statutes 2020, section 353.01, subdivision 2b, is amended to read:

5.7 Subd. 2b. **Excluded employees.** (a) The following public employees are not eligible to
5.8 participate as members of the association with retirement coverage by the general employees
5.9 retirement plan, the local government correctional employees retirement plan under chapter
5.10 353E, or the public employees police and fire retirement plan:

5.11 (1) persons whose annual salary from one governmental subdivision never exceeds an
5.12 amount, stipulated in writing in advance, of \$5,100 if the person is not a school district
5.13 employee or \$3,800 if the person is a school year employee. If annual compensation from
5.14 one governmental subdivision to an employee exceeds the stipulated amount in a calendar
5.15 year or a school year, whichever applies, after being stipulated in advance not to exceed the
5.16 applicable amount, the stipulation is no longer valid and contributions must be made on
5.17 behalf of the employee under section 353.27, subdivision 12, from the first month in which
5.18 the employee received salary exceeding \$425 in a month;

5.19 (2) public officers who are elected to a governing body, city mayors, or persons who
5.20 are appointed to fill a vacancy in an elected office of a governing body, whose term of office
5.21 commences on or after July 1, 2002, for the service to be rendered in that elected position;

5.22 (3) election judges and persons employed solely to administer elections;

5.23 (4) patient and inmate personnel who perform services for a governmental subdivision;

5.24 (5) except as otherwise specified in subdivision 12a, employees who are employed solely
5.25 in a temporary position as defined under subdivision 12a, and employees who resign from
5.26 a nontemporary position and accept a temporary position within 30 days of that resignation
5.27 in the same governmental subdivision;

5.28 (6) employees who are employed by reason of work emergency caused by fire, flood,
5.29 storm, or similar disaster, but if the person becomes a probationary or provisional employee
5.30 within the same pay period, other than on a temporary basis, the person is a "public
5.31 employee" retroactively to the beginning of the pay period;

6.1 (7) employees who by virtue of their employment in one governmental subdivision are
6.2 required by law to be a member of and to contribute to any of the plans or funds administered
6.3 by the Minnesota State Retirement System, the Teachers Retirement Association, or the St.
6.4 Paul Teachers Retirement Fund Association, but this exclusion must not be construed to
6.5 prevent a person from being a member of and contributing to the Public Employees
6.6 Retirement Association and also belonging to and contributing to another public pension
6.7 plan or fund for other service occurring during the same period of time, and a person who
6.8 meets the definition of "public employee" in subdivision 2 by virtue of other service occurring
6.9 during the same period of time becomes a member of the association unless contributions
6.10 are made to another public retirement plan on the salary based on the other service or to the
6.11 Teachers Retirement Association by a teacher as defined in section 354.05, subdivision 2;

6.12 (8) persons who are members of a religious order and are excluded from coverage under
6.13 the federal Old Age, Survivors, Disability, and Health Insurance Program for the performance
6.14 of service as specified in United States Code, title 42, section 410(a)(8)(A), as amended, if
6.15 no irrevocable election of coverage has been made under section 3121(r) of the Internal
6.16 Revenue Code of 1954, as amended;

6.17 (9) persons who are:

6.18 (i) employed by a governmental subdivision who have not reached the age of 23 and
6.19 who are enrolled on a full-time basis to attend or are attending classes on a full-time basis
6.20 at an accredited school, college, or university in an undergraduate, graduate, or
6.21 professional-technical program, or at a public or charter high school;

6.22 (ii) employed as resident physicians, medical interns, pharmacist residents, or pharmacist
6.23 interns and are serving in a degree or residency program in a public hospital or in a public
6.24 clinic; or

6.25 (iii) students who are serving for a period not to exceed five years in an internship or a
6.26 residency program that is sponsored by a governmental subdivision, including an accredited
6.27 educational institution;

6.28 (10) persons who hold a part-time adult supplementary technical college license who
6.29 render part-time teaching service in a technical college;

6.30 (11) for the first three years of employment, foreign citizens who are employed by a
6.31 governmental subdivision, except that the following foreign citizens ~~are~~ must be considered
6.32 included employees under subdivision 2a:

6.33 (i) H-1B, H-1B1, and E-3 status holders;

7.1 ~~(i)~~ (ii) employees of Hennepin County or Hennepin Healthcare System, Inc.;

7.2 ~~(ii)~~ (iii) employees legally authorized to work in the United States for three years or
7.3 more; and

7.4 ~~(iii)~~ (iv) employees otherwise required to participate under federal law;

7.5 (12) public hospital employees who elected not to participate as members of the
7.6 association before 1972 and who did not elect to participate from July 1, 1988, to October
7.7 1, 1988;

7.8 (13) except as provided in section 353.86, volunteer ambulance service personnel, as
7.9 defined in subdivision 35, but persons who serve as volunteer ambulance service personnel
7.10 may still qualify as public employees under subdivision 2 and may be members of the Public
7.11 Employees Retirement Association and participants in the general employees retirement
7.12 plan or the public employees police and fire plan, whichever applies, on the basis of
7.13 compensation received from public employment service other than service as volunteer
7.14 ambulance service personnel;

7.15 (14) except as provided in section 353.87, volunteer firefighters, as defined in subdivision
7.16 36, engaging in activities undertaken as part of volunteer firefighter duties, but a person
7.17 who is a volunteer firefighter may still qualify as a public employee under subdivision 2
7.18 and may be a member of the Public Employees Retirement Association and a participant
7.19 in the general employees retirement plan or the public employees police and fire plan,
7.20 whichever applies, on the basis of compensation received from public employment activities
7.21 other than those as a volunteer firefighter;

7.22 (15) employees in the building and construction trades, as follows:

7.23 (i) pipefitters and associated trades personnel employed by Independent School District
7.24 No. 625, St. Paul, with coverage under a collective bargaining agreement by the pipefitters
7.25 local 455 pension plan who were either first employed after May 1, 1997, or, if first employed
7.26 before May 2, 1997, elected to be excluded under Laws 1997, chapter 241, article 2, section
7.27 12;

7.28 (ii) electrical workers, plumbers, carpenters, and associated trades personnel employed
7.29 by Independent School District No. 625, St. Paul, or the city of St. Paul, with coverage
7.30 under a collective bargaining agreement by the electrical workers local 110 pension plan,
7.31 the plumbers local 34 pension plan, or the carpenters local 322 pension plan who were either
7.32 first employed after May 1, 2000, or, if first employed before May 2, 2000, elected to be
7.33 excluded under Laws 2000, chapter 461, article 7, section 5;

8.1 (iii) bricklayers, allied craftworkers, cement masons, glaziers, glassworkers, painters,
8.2 allied tradesworkers, and plasterers employed by the city of St. Paul or Independent School
8.3 District No. 625, St. Paul, with coverage under a collective bargaining agreement by the
8.4 bricklayers and allied craftworkers local 1 pension plan, the cement masons local 633
8.5 pension plan, the glaziers and glassworkers local 1324 pension plan, the painters and allied
8.6 trades local 61 pension plan, or the plasterers local 265 pension plan who were either first
8.7 employed after May 1, 2001, or if first employed before May 2, 2001, elected to be excluded
8.8 under Laws 2001, First Special Session chapter 10, article 10, section 6;

8.9 (iv) plumbers employed by the Metropolitan Airports Commission, with coverage under
8.10 a collective bargaining agreement by the plumbers local 34 pension plan, who were either
8.11 first employed after May 1, 2001, or if first employed before May 2, 2001, elected to be
8.12 excluded under Laws 2001, First Special Session chapter 10, article 10, section 6;

8.13 (v) electrical workers or pipefitters employed by the Minneapolis Park and Recreation
8.14 Board, with coverage under a collective bargaining agreement by the electrical workers
8.15 local 292 pension plan or the pipefitters local 539 pension plan, who were first employed
8.16 before May 2, 2015, and elected to be excluded under Laws 2015, chapter 68, article 11,
8.17 section 5;

8.18 (vi) laborers and associated trades personnel employed by the city of St. Paul or
8.19 Independent School District No. 625, St. Paul, who are designated as temporary employees
8.20 with coverage under a collective bargaining agreement by a multiemployer plan as defined
8.21 in section 356.27, subdivision 1, who were either first employed on or after June 1, 2018,
8.22 or if first employed before June 1, 2018, elected to be excluded under Laws 2018, chapter
8.23 211, article 16, section 13; and

8.24 (vii) employees who are trades employees as defined in section 356.27, subdivision 1,
8.25 first hired on or after July 1, 2020, by the city of St. Paul or Independent School District
8.26 No. 625, St. Paul, except for any trades employee for whom contributions are made under
8.27 section 356.24, subdivision 1, clause (8), (9), or (10), by either employer to a multiemployer
8.28 plan as defined in section 356.27, subdivision 1;

8.29 (16) employees who are hired after June 30, 2002, solely to fill seasonal positions under
8.30 subdivision 12b which are limited in duration by the employer to a period of six months or
8.31 less in each year of employment with the governmental subdivision;

8.32 (17) persons who are provided supported employment or work-study positions by a
8.33 governmental subdivision and who participate in an employment or industries program
8.34 maintained for the benefit of these persons where the governmental subdivision limits the

9.1 position's duration to up to five years, including persons participating in a federal or state
 9.2 subsidized on-the-job training, work experience, senior citizen, youth, or unemployment
 9.3 relief program where the training or work experience is not provided as a part of, or for,
 9.4 future permanent public employment;

9.5 (18) independent contractors and the employees of independent contractors;

9.6 (19) reemployed annuitants of the association during the course of that reemployment;

9.7 (20) persons appointed to serve on a board or commission of a governmental subdivision
 9.8 or an instrumentality thereof; and

9.9 (21) persons employed as full-time fixed-route bus drivers by the St. Cloud Metropolitan
 9.10 Transit Commission who are members of the International Brotherhood of Teamsters Local
 9.11 638 and who are, by virtue of that employment, members of the International Brotherhood
 9.12 of Teamsters Central States pension plan.

9.13 (b) Any person performing the duties of a public officer in a position defined in
 9.14 subdivision 2a, paragraph (a), clause (3), is not an independent contractor and is not an
 9.15 employee of an independent contractor.

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

9.17 **Sec. 3. MSRS; RETROACTIVE EMPLOYEE AND EMPLOYER CONTRIBUTIONS**
 9.18 **PERMITTED.**

9.19 (a) If an employee hired on or after October 1, 2020, was an excluded employee under
 9.20 Minnesota Statutes 2020, section 352.01, subdivision 2b, clause (14), but is now an included
 9.21 employee under the amendments made by section 1, the employee is eligible to receive
 9.22 service credit from the employee's date of hire, if the executive director of the Minnesota
 9.23 State Retirement System receives the employee and employer contributions described in
 9.24 paragraph (b).

9.25 (b) For the period beginning with the first payroll date after the date on which coverage
 9.26 for the included employee would have begun under the amendments made in section 1
 9.27 through the payroll date following final enactment, (1) the employee or the employer, on
 9.28 behalf of the employee, may, no later than August 31, 2021, make the missed employee
 9.29 contributions and (2) if the employee contributions are made, the employee's employer must
 9.30 make the missed employer contributions no later than September 30, 2021. Upon receipt
 9.31 of the employee and employer contributions, the executive director of the Minnesota State
 9.32 Retirement System must provide service credit for the period starting with the first day that

- 10.1 the employee would have been considered an included employee under the amendments in
- 10.2 section 1.