CHAPTER 7905
MINNESOTA STATE RETIREMENT SYSTEM DEFERRED COMPENSATION PLAN

7905.0100 DEFINITIONS.

Subpart 1. **Scope.** Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided.

[For text of subps 2 to 4, see M.R. 1983]

Subp. 5. **Compensation.** "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as federal gross income.

[For text of subp 6, see M.R. 1983]

Subp. 7. **Deferred compensation account.** "Deferred compensation account" means the account established for the investment of deferred compensation. It shall include the supplemental investment account and the fixed and variable annuity account.

[For text of subps 8 to 10, see M.R. 1983]

Subp. 11. **Fixed or variable annuity account.** "Fixed or variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, subdivision 2.

Subp. 12. **Includable compensation.** "Includable compensation" means the compensation remaining after any deferrals through this plan and any amount of compensation excluded from federal gross income as a result of contributions made for the benefit of an employee under a tax-sheltered annuity pursuant to section 403(b), mutual fund shares held in a custodial account pursuant to section 403(b)(7), or employee contributions to a retirement plan excluded under section 414(h)(2), of the Internal Revenue Code of 1954, as amended through December 31, 1982.

Subp. 13. **Normal retirement age.** "Normal retirement age" means:

A. an age not earlier than that for attainment of eligibility by the participant to commence receiving normal, i.e. unreduced, retirement benefits from one of the retirement systems enumerated in Minnesota Statutes, section 356.20, subdivision 2, or other Minnesota public employee pension plan of which participant is a member nor later than age 70-1/2; or

B. if the participant is not a member of one of the retirement systems, not later than age 70-1/2.

[For text of subps 14 and 15, see M.R. 1983]

Subp. 16. **Pay date.** "Pay date" means the date the participant receives payment of compensation.

Subp. 17. **Plan.** "Plan" means the Minnesota public employee's deferred compensation plan as set forth in this chapter and as it may be amended from time to time.

Subp. 18. **Prior plan.** "Prior plan" means the Minnesota deferred compensation plan approved by the attorney general and filed with the secretary of state and the commissioner of administration November 24, 1975 and any plans established thereunder by political subdivisions of the state of Minnesota.

Subp. 19. **Supplemental investment account.** "Supplemental investment account" means the Minnesota supplemental investment fund as established by Minnesota Statutes, section 11A.17 and managed by the board.

Subp. 20. **Separation from service.** "Separation from service" means the permanent severance of the participant's employment relationship with the employer by means of: retirement; discharge (provided all appellate processes have been exhausted or tolled); resignation (provided seniority or continuous service is interrupted); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; death; or such other form of permanent severance as may be provided by appropriate law, contract, or rules. For purposes of this definition, a break in employment for a period of less than 30 days shall not be considered a separation from service.

[For text of subp 21, see M.R. 1983]

Subp. 22. **Unforseeable emergency.** "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but in any case payment will not be made to the extent that such hardship is, or may be relieved, through reimbursement or compensation by insurance or otherwise by liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship or by cessation of deferrals under the plan.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.0300 PURPOSE OF PLAN.

The purpose of this plan is to allow employees to designate a portion of their compensation to be withheld each pay period by the employer and invested at the discretion of and in a manner approved by the director for the employer until separation from service, financial hardship, or death of the employee. Any compensation deferred by employees may be invested by the director, for the employer, but there is no requirement for the director or employer to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.1000 ENROLLMENT.

Any employee eligible to participate in accordance with part 7905.0900 may become a participant by agreeing with the employer in writing, on a form approved by the director, to a deferment of his or her compensation in accordance with parts 7905.1100 and 7905.1200. The deferment will commence with the first pay date following 30 days from the date the application is properly completed by the employee and accepted by the employer or director acting for the employer. The application shall also specify an investment preference for the deferred compensation.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.1200 MAXIMUM DEFERRAL.

The total amount of deferred compensation during any taxable year shall not exceed the limits provided in items A and B.

A. 33-1/3 percent of includable compensation or $7,500 whichever is less; or

B. for each of three taxable years preceding the year in which he or she will attain normal retirement age, a participant may defer an amount equal to the limits set forth in item A plus an additional amount equal to the difference between the amount of compensation which could have been deferred under this plan, and the amount which was deferred for years after December 31, 1978 In no event, however, can the deferral exceed $15,000 for any taxable year.

The participant may designate and utilize this catch-up provision only once whether or not it is utilized in less than all of the three taxable years ending before attaining normal retirement age and whether or not the participant or former participant rejoins the plan. The participant may not utilize this catch-up provision if participant joins this plan after retirement from and utilization of the catch-up provision in another eligible plan.

If a participant also participates in or has amounts contributed by the employer for the purchase of a tax-sheltered annuity or mutual fund shares held in a custodial account, and part or all of such contributions are excludable from taxable income, the contributions reduce the maximums established in items A and B.

In no event can deferrals exceed an employee's compensation less deductions for FICA, any other taxes, pension contributions, and other mandatory deductions.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.1300 MODIFICATIONS TO AMOUNT DEFERRED.

The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's application. That amount, subject to the limits of part 7905.1200 may be increased or decreased only by proper application to the employer or to the director acting for employer. The change shall take effect the first pay date following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in part 7905.1400) may be made each taxable year.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.1400 REVOCATION OF DEFERRAL.

Any participant may revoke his or her election to have compensation deferred by so notifying the employer or the director acting for the employer in writing. The participant's full compensation on a nondeferred basis will then be restored beginning with the first pay date following 30 days from the date notification was received; however, the participant's deferred compensation account shall be paid only as provided in parts 7905.1700 to 7905.2500. The participant will not again be eligible to defer compensation until the next taxable year.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.1500 DURATION OF ELECTION TO DEFER COMPENSATION.

Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's separation from service, unless the participant modifies the amount in accordance with part 7905.1300, or revokes the deferred compensation in accordance with part 7905.1400.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.1600 DEFERRAL ADJUSTMENTS.

[For text of subps 1 to 3, see M.R. 1983]

Subp. 4. **Maximum deduction.** The employer shall attempt to ensure compliance with the maximum deferment set forth in part 7905.1200. If the amount deducted exceeds the maximum deferment set forth in part 7905.1200, the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferment allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded. A participant is responsible for any tax consequences to the participant which may arise as a result of his or her deferrals under this plan which exceed the maximum amounts allowable.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

PARTICIPANTS' ACCOUNTS, INVESTMENTS, AND DISTRIBUTIONS

7905.1700 DEFERRED COMPENSATION ACCOUNTS AND VALUATION.

Subpart 1. **Participants' accounts.** An investment account shall be established for each participant which shall be the basis for any distributions payable to the participants under parts 7905.2000 to 7905.2300. Each participant's account shall be credited with the amount of any compensation deferred and received less the administrative charge set forth in subpart 4 and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments pursuant to 7905.1900, credited or debited with any investment expenses, if applicable, debited for the amount of any distribution, and credited initially with the value, on December 19, 1983, of any bookkeeping account maintained under the prior plan.

Subp. 2. **Financial responsibility of employer.** The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minnesota Statutes, section 352.96, subdivision 2, until distributed in accordance with parts 7905.2000 to 7905.2300.

The employer shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the employer be required to replace any loss whatsoever which may result from said investments.

[For text of subp 3, see M.R 1983]

Subp. 4. **Administrative expense.** One and one-half percent shall be deducted each pay period from the deferred compensation invested in the supplemental investment account to pay administrative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly after review of the necessity for the charge by the legislative auditor.

Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the board pursuant to Minnesota

Statutes, section 352.96.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.1900 INVESTMENT OF FUNDS.

Subpart 1. **Investment allowed.** Any compensation deferred by employees may be invested by the director for the employer but there is no requirement to do so.

Subp. 2. **Investment options.** The participant may select an investment preference from among the options provided in the deferred compensation account.

The supplemental investment account shall provide the options of the income share account, the growth share account, or the fixed return account.

The fixed or variable annuity account shall provide the options of a fixed annuity or a variable annuity.

A participant may select a combination of these five investment account preferences by specifying on the application the amount to be deferred under each investment preference. A participant may select the account options of only one of the companies approved by the board at any one time. The amount to be deferred cannot be less than $10 per pay period per account selected.

Subp. 3. **Investment preference requests for future compensation.** A participant shall, at the time of enrollment, make an investment preference request on an application provided for that purpose. Once made, an investment request shall continue for any deferments unless later changed by the participant.

A participant may, twice in any taxable year, change his or her investment preference request for future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred for the first pay date following 30 days from receipt of the request.

Subp. 4. **Investment preference requests for past deferred compensation.** A participant may also, twice in any taxable year, at the same time as a change is requested under subpart 3, or in lieu of a change thereunder, change his or her investment preference request with respect to all or part of previously deferred compensation. If a partial transfer is made, a minimum of $1,000 must be transferred and a minimum balance of $1,000 must remain in the prior investment preference option. Changes are limited to a change within the fixed or variable annuity account according to the terms of the annuity contracts or within the supplemental investment account but not between the annuity accounts and the supplemental investment account, nor between companies approved by the board. These changes in investment preference shall be effected as soon as practical as cash flow to an account permits, but not later than six months after the requested change.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.2000 DISTRIBUTION EVENTS.

A participant's deferred compensation account may begin to be distributed in accordance with parts 7905.1300 to 7905.1500 following the occurrence of one of the following events: separation from service; death; unforeseeable emergency; distribution date as provided in part 7905.2200; or attainment of age 70-1/2.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.2100 METHODS OF DISTRIBUTION.

Subpart 1. **Election in general.** Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the date of distribution determined in accordance with part 7905.2200. Elections by a participant as authorized herein shall be made on forms approved by the director.

Subp. 2. **Supplemental investment account.** A participant in the supplemental investment account will have deferred compensation distributed over a period of 60 months, unless at least 30 days prior to the commencement of distribution the participant elects to have distribution made in one of the following methods:

A. in a lump sum;

B. in a lump sum purchase by the director of a fixed or variable annuity contract with one of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, subdivision 2 which contract shall include the availability of the options set forth in subpart 3; or

C. in monthly installments distributed over a period of months specified by the participant not to exceed 240 months, but in no event exceeding the life expectancy of the participant or beneficiary if the beneficiary is the spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

The monthly installment payment from the supplemental investment account shall be determined by dividing the number of shares held by the months to be paid in accordance with the withdrawal period selected. Should such computation result in a quotient of less than ten, then ten shares shall be redeemed and distributed to the employee or beneficiary each month until the deferred compensation is depleted in its entirety. If the deferred compensation has been invested in shares of more than one investment account, shares will be redeemed in whole units proportionately to the extent possible. Fixed return investment payments shall also include payment of annual interest on the invested balance. If the value of the participant's account is $1,000 or less, distribution shall be made in a lump sum.

Subp. 3. **Fixed or variable annuity account.** A participant in the fixed or variable annuity account will have deferred compensation distributed in the form of monthly annuity payments unless, prior to commencement of distribution, the participant elects a lump sum distribution. The annuity payments shall be based on one of the following methods, as selected by the participant at least 30 days before distribution commences:

A. the life of the participant;

B. the joint lifetime of the participant and spouse; or

C. a period certain not to exceed the life expectancy of the participant or the life expectancy of the beneficiary if the beneficiary is the participant's surviving spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

If no election is made, the participant's deferred compensation will be paid on the basis of a five-year period certain annuity.

Notwithstanding any other rule to the contrary, if a fixed or variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum within 60 days following the close of the taxable year during which the distribution event occurs.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to the end of a period certain, any remaining distributions will be paid to the beneficiary determined under part 7905.2400. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not any other beneficiary.

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.2200 DATE OF DISTRIBUTION.

Subpart 1. **Election in general.** A participant or beneficiary may irrevocably elect, on a form approved by the director at least 30 days prior to the time any amounts become payable, to defer payment of some or all of the amounts to a fixed or determinable future time, subject to the following rules.

Subp. 2. **Electing distribution date.** At any time prior to 30 days following the close of the taxable year in which separation from service occurs, a participant may designate a distribution date which cannot be later than the latest of:

A. 60 days after the close of the taxable year in which the participant attains or would have attained normal retirement age under the plan, or if the participant does not designate a normal retirement age, not later than 60 days after the close of the taxable year in which the participant attains age 70-1/2; or

B. 60 days after the close of the taxable year in which the participant separates from service.

Election of a date of distribution may be made only once and, once made, is irrevocable.

Subp. 3. **Death of participant.** If a participant should die prior to the distribution date or date of separation from service, the death will be treated as an event of distribution, and the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant. If a participant should die after distribution has commenced, distribution will continue under the method selected by the participant under part 7905.2100.

Subp. 4. **After payment starts.** Once payment has commenced, the method of distribution may not be changed, except in the event of an unforeseeable emergency, subject to the restrictions of the payment option the participant or beneficiary has selected.

Subp. 5. **When distribution begins.** Distribution may not begin prior to separation from service or death except for unforeseeable emergency distributions as provided in part 7905.2300.

Subp. 6. **No election.** If no distribution date is elected, then payment shall commence 60 days after the close of the taxable year in which separation from service occurs.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.2300 UNFORESEEABLE EMERGENCY.

Subpart 1. **Conditions permitting distribution.** A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced, unless the distribution is in the form of an annuity, shall be permitted in the event the participant is faced with an unforeseeable emergency. Deferrals under the plan shall cease as soon as possible for any participant seeking a distribution because of an unforeseeable emergency.

Subp. 2. **Showing of an emergency.** Any participant desiring a distribution by reason of an unforeseeable emergency must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency which is likely to cause the participant great financial hardship. The employer or director acting for the employer, shall have the authority to require such medical or other evidence as he may need to determine the necessity for participant's withdrawal request.

Subp. 3. **Amount and method of distribution.** The distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his or her deferred compensation account. Any remaining benefits shall be distributed in accordance with parts 7905.2000 to 7905.2200.

The allowed distribution shall be payable by a method determined by the employer or the director acting for the employer and commence as soon as possible after notice to the participant of approval.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.2400 DESIGNATION OF BENEFICIARY.

A participant may designate a beneficiary or beneficiaries to receive payment of the participant's deferred compensation in the event of his or her death. With respect to deferred compensation in the supplemental investment account, only a singular beneficiary may be designated. If the designated beneficiary predeceases the employee and a new beneficiary has not been named or the designated beneficiary dies before receiving payment, a lump sum payment shall be made to the participant's estate. Such beneficiary designation shall be in writing and must be filed with the director or company approved by the board pursuant to Minnesota Statutes, section 352.96, subdivision 2, as the case may be, prior to the death of the participant. If no designation of beneficiary is filed with the director, the beneficiary shall be the surviving spouse, or if none, a lump sum payment shall be made to the participant's estate.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.2500 LEAVE OF ABSENCE.

Any participant who is granted a leave of absence by the employer may continue to be a participant in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a separation from service under this plan.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*

7905.2550 SEPARATION FROM SERVICE BY INDEPENDENT CONTRACTORS.

Subpart 1. **Determining separation.** An independent contractor is considered separated from service with the employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration will not constitute a good faith and complete termination of the contractual relationship if the employer anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, an employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an employer is considered to intend to again contract for the services provided under an expired contract, if the employer's doing so is conditioned only upon the employer incurring a need for the services, or the availability of funds, or both.

Subp. 2. **When paid.** No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the employer, or in the case of more than one contract all such contracts expire, and no amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract or contracts and before that date, the participant performs services for the employer as an independent contractor or an employee.

Statutory Authority: *MS s 352.96 subd 4*

History: *8 SR 1403*