

CHAPTER 353

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

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353.01 DEFINITIONS.

[For text of subs 1 and 2, see M.S.1986]

Subd. 2a. Included employees. The following persons are included in the meaning of "public employee":

- (a) Elected or appointed officers and employees of elected officers.
- (b) District court reporters.
- (c) Officers and employees of the public employees retirement association.
- (d) Employees of the League of Minnesota Cities.
- (e) Officers and employees of public hospitals, owned or operated by or an integral part of, any governmental subdivision or governmental subdivisions.
- (f) Employees of a school district who receive separate salaries for driving their own buses.
- (g) Employees of the Association of Minnesota Counties.
- (h) Employees of the Metropolitan Inter-County Association.
- (i) Employees of the Minnesota Municipal Utilities Association.
- (j) Employees of the metropolitan airports commission if employment initially commences on or after July 1, 1979.
- (k) Employees of the Minneapolis employees retirement fund, if employment initially commences on or after July 1, 1979.
- (l) Employees of the Range Association of Municipalities and Schools.
- (m) Employees of the soil and water conservation districts.
- (n) Employees of a county historical society who are county employees.
- (o) Employees of an economic development authority created under sections 458C.01 to 458C.23.
- (p) Employees of the department of military affairs of the state of Minnesota who are full-time firefighters.

Subd. 2b. Excluded employees. The following persons are excluded from the meaning of "public employee":

- (a) Persons employed for professional services where such service is incidental to regular professional duties. Service is incidental if compensation for it amounts to no more than 25 percent of a person's total annual gross earnings for all professional duties.
- (b) Election officers.
- (c) Independent contractors and their employees.

(d) Patient and inmate help in governmental subdivision charitable, penal and correctional institutions.

(e) Members of boards, commissions, bands and others who serve the governmental subdivision intermittently.

(f) Employees who hold positions of an essentially temporary or seasonal character, provided such employment does not continue for a period in excess of 120 working days in any calendar year or in any school year for school employees. Immediately following the expiration of such 120 working days if such employees continue in public service and earn in excess of \$325 in any one calendar month, the department heads must then report all such employees for membership and must cause employee contributions to be made on behalf of such employees in accordance with section 353.27, subdivision 4, and they shall remain members until termination of public service.

(g) Part-time employees who receive monthly compensation not exceeding \$325, and part-time employees and elected officials whose annual compensation is stipulated in advance, in writing, to be not more than \$3,900 per calendar year or per school year for school employees for employment expected to be of a full year's duration or more than the prorated portion of \$3,900 per employment period for employment expected to be of less than a full year's duration, except that members shall continue their membership until termination of public service.

(h) Persons who first occupy an elected office after March 1, 1978, the compensation for which does not exceed \$325 per month.

(i) Emergency employees who are employed by reason of work caused by fire, flood, storm, or similar disaster.

(j) Employees who by virtue of their employment as an officer or employee of a governmental subdivision are required by law to be a member of and to contribute to the state employees retirement fund, the teachers retirement fund, the state patrol retirement fund, the Duluth teachers retirement fund association, the Minneapolis teachers retirement fund association, the St. Paul teachers retirement fund association, the Minneapolis employees retirement fund, the Minnesota state retirement system correctional officers retirement plan or any police or firefighters relief association governed by section 69.77 which has not consolidated with the public employees police and fire fund and for which the employee has not elected coverage by the public employees police and fire fund benefit plan as provided in sections 353A.01 to 353A.10, other than as an act of the legislature has specifically enabled participation by employees of a designated governmental subdivision in a plan supplemental to the public employees retirement association. This clause shall not prevent a person from being a member of and contributing to the public employees retirement association and also belonging to or contributing to another public pension fund for other service occurring during the same period of time.

(k) Police matrons employed in a police department of any city who are transferred to the jurisdiction of a joint city and county detention and corrections authority.

(l) Persons who are excluded from coverage under the federal old age, survivors, disability and health insurance program for the performance of service as specified in United States Code, title 42, section 410(a) (8) (A), as amended through January 1, 1987.

(m) Full-time students who are enrolled and are regularly attending classes at an accredited school, college, or university; provided, no person employed full time by a governmental subdivision shall be exempt under this paragraph.

(n) Resident physicians, medical interns and pharmacist interns who are serving in public hospitals.

(o) Appointed or elected officers, paid entirely on a fee basis, and who were not members on June 30, 1971.

(p) Nothing in Laws 1973, chapter 753 shall be interpreted to impair or revoke any option exercised under Laws 1963, chapter 793.

(q) Town, city, or county assessors elected or appointed pursuant to chapter 273

who do not receive compensation in excess of \$325 per month from any one employing governmental subdivision or who are employed pursuant to an employment contract which sets forth the total compensation to be paid and the length of service, not to exceed three months in duration, required for the performance of the contract and which was entered into in advance of the commencement of employment.

(r) Persons holding a part-time adult supplementary vocational technical school license who render part-time teaching service in a vocational technical school if (1) the service is incidental to the person's regular nonteaching occupation; and (2) the applicable vocational technical school stipulates annually in advance that the part-time teaching service will not exceed 300 hours in a fiscal year; and (3) the part-time teaching service actually does not exceed 300 hours in a fiscal year.

(s) Persons exempt from licensure pursuant to section 125.031.

[For text of subds 3 and 4, see M.S.1986]

Subd. 6. Governmental subdivision. "Governmental subdivision" means a county, city, town, school district within this state, or a department or unit of state government, or any public body whose revenues are derived from taxation, fees, assessments or from other sources, but does not mean any municipal housing and redevelopment authority organized under the provisions of sections 469.001 to 469.047; or any port authority organized pursuant to sections 469.048 to 469.068; or any hospital district organized or reorganized prior to July 1, 1975, pursuant to sections 447.31 to 447.37.

[For text of subds 7 and 8, see M.S.1986]

Subd. 10. Salary. "Salary" means the periodical compensation of any public employee, before deductions for deferred compensation or supplemental retirement plans, and also means "wages" and includes net income from fees. Fees paid to district court reporters shall not be considered a salary. Lump sum annual leave payments and severance payments shall not be deemed to be salary. Prior to the time that all sick leave has been used, amounts paid to an employee pursuant to a disability insurance policy or program where the employer paid the premiums shall be considered salary, and after all sick leave has been used, the payment shall not be considered salary. Workers' compensation payments shall not be considered salary. For any public employee who has prior service covered by a local police or firefighters relief association which has consolidated with the public employees police and fire fund and who has elected coverage by the public employees police and fire fund benefit plan as provided in section 353A.08 following the consolidation, the term means the rate of salary upon which member contributions to the special fund of the relief association were made prior to the effective date of the consolidation as specified in the applicable general law, special law, and bylaw provisions governing the relief association as of the date of the initiation of the consolidation procedure and the actual periodical compensation of the public employee after the effective date of the consolidation.

[For text of subds 11 and 12, see M.S.1986]

Subd. 14. Actuarial equivalent. "Actuarial equivalent" means the condition of one annuity or benefit having an equal actuarial present value as another annuity or benefit, determined as of a given date with each actuarial present value based on the appropriate mortality table adopted by the board of trustees based on the experience of the fund as recommended by the actuary retained by the legislative commission on pensions and retirement and using the applicable preretirement or postretirement interest rate assumption specified in section 356.215, subdivision 4d.

[For text of subd 15, see M.S.1986]

Subd. 16. Allowable service. "Allowable service" means:

(1) Service during years of actual membership in the course of which employee contributions were currently made; periods covered by payments in lieu of salary

deductions made as provided in section 353.35, and service in years during which the public employee was not a member but for which the member later elected, while a member, to obtain credit by making payments to the fund as permitted by any law then in effect.

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

(3) Any period of authorized leave of absence without pay which does not exceed one year, and during or for which a member obtained credit by payments to the fund made in lieu of salary deductions, provided that such payments are made in an amount or amounts based on the member's average salary on which deductions were paid (a) for the last six months of public service, or (b) that portion of the last six months while the member was in public service, to apply to the period in either case immediately preceding commencement of such leave of absence; provided, however, that if the employee elects to pay employee contributions for the period of any leave of absence without pay, or for any portion thereof, the employee shall also, as a condition to the exercise of such election, pay to the fund an amount equivalent to both the required employer and additional employer contributions therefor, such payment to be made currently or within one year from the date the leave of absence terminates, unless the employer by appropriate action of its governing body and made a part of its official records, prior to the date of the first payment of such employee contribution, certifies to the association in writing that it will cause to be paid such employer and additional employer contributions from the proceeds of a tax levy made pursuant to section 353.28. Payments under this clause shall include interest at the rate of six percent per annum from the date of the termination of the leave of absence to the date payment is made.

(4) Any period during which a member is on an authorized sick leave of absence, without pay limited to one year, or an authorized temporary layoff.

(5) Any period during which a member is on an authorized leave of absence to enter military service, provided that the member returns to public service upon discharge from military service pursuant to section 192.262, and pays into the fund employee contributions based upon the employee's salary at the date of return from military service. After June 30, 1983, payment must be made within five years of the date of discharge from the military service. The amount of these contributions shall be in accord with the contribution rates and salary limitations, if any, in effect during such leave, plus interest thereon at six percent per annum compounded annually from the date of return to public service to the date payment is made. In such cases the matching employer contribution and additional employer contribution provided in section 353.27, subdivisions 3 and 3a, shall be paid by the department employing such member upon return to public service and the governmental subdivision involved is hereby authorized to appropriate money therefor. Such member shall not receive credit for any voluntary extension of military service at the instance of the member beyond the initial period of enlistment, induction or call to active duty.

(6) For calculating benefits under sections 353.30, 353.31, 353.32, and 353.33 for state officers and employees displaced by the community corrections act, Minnesota Statutes 1984, chapter 401, and transferred into county service under Minnesota Statutes 1984, section 401.04, allowable service means combined years of allowable service as defined in Minnesota Statutes 1984, section 352.01, subdivision 11, and Minnesota Statutes 1984, section 353.01, subdivision 16, paragraphs (1) to (5).

(7) For any public employee who has prior service covered by a local police or firefighters relief association which has consolidated with the public employees police and fire fund, and who has elected coverage by the public employees police and fire fund benefit plan as provided in section 353A.08 following the consolidation, any period of service credited by the local police or firefighters relief association as of the effective date of the consolidation based on the applicable general law, special law, and bylaw provisions governing the relief association as of the date of the initiation of the consolidation procedure.

[For text of subds 17 to 19, see M.S.1986]

Subd. 20. Surviving spouse. "Surviving spouse" means the unremarried spouse of a deceased member who had the same legal residence as the member at the time of death, or at the time the member became totally and permanently disabled.

[For text of subds 23 to 33, see M.S.1986]

History: 1987 c 49 s 9; 1987 c 259 s 25; 1987 c 284 art 5 s 1,2; 1987 c 291 s 215; 1987 c 296 s 1-3; 1987 c 372 art 1 s 5

353.03 BOARD OF TRUSTEES.

[For text of subds 1 to 2, see M.S.1986]

Subd. 3. Duties and powers of the board. (a) The board shall elect a president and vice-president. The board shall approve the staffing complement necessary to administer the fund. The cost of administering this chapter must be paid by the fund.

(b) The board shall adopt bylaws for its own government and for the management of the fund consistent with the laws of the state and may modify them at pleasure. It shall adopt, alter, and enforce reasonable rules consistent with the laws of the state for the administration and management of the fund, for the payment and collection of payments from members, and for the payment of withdrawals and benefits. It shall pass upon and allow or disallow all applications for membership in the fund and shall allow or disallow claims for withdrawals, pensions, or benefits payable from the fund. It shall adopt an appropriate mortality table based on experience of the fund as recommended by the association actuary, with interest set at the rate specified in section 356.215, subdivision 4, clause (4). It shall provide for the payment out of the fund of all necessary expenses for the administration of the fund and of all claims for withdrawals, pensions, or benefits allowed. The board shall approve or disapprove all recommendations and actions of the executive director made subject to its approval or disapproval by subdivision 3a.

(c) In passing upon all applications and claims, the board may summon, swear, hear, and examine witnesses and, in the case of claims for disability benefits, may require the claimant to submit to a medical examination by a physician of the board's choice, at the expense of the fund, as a condition precedent to the passing on the claim, and, in the case of all applications and claims, may conduct investigations necessary to determine their validity and merit. The board shall establish procedures to assure that a benefit applicant and recipient may have a review of a benefit eligibility or benefit amount determination affecting the applicant or recipient. The review procedure may afford the benefit applicant or benefit recipient an opportunity to present views at any review proceeding conducted, but is not a contested case under chapter 14.

(d) The board may continue to authorize the sale of life insurance to members under the insurance program in effect on January 1, 1985, but must not change that program without the approval of the commissioner of finance. The association shall not receive any financial benefit from the life insurance program beyond the amount necessary to reimburse the association for costs incurred in administering the program. The association shall not engage directly or indirectly in any other activity involving the sale or promotion of goods or services, or both, whether to members or nonmembers.

(e) The board shall establish procedures governing reimbursement of expenses to board members. These procedures shall define the types of activities and expenses that qualify for reimbursement, shall provide that all out-of-state travel must be authorized by the board, and shall provide for independent verification of claims for expense reimbursement. The procedures must comply with applicable rules and policies of the department of finance, the department of administration, and the department of employee relations.

(f) The board may purchase fiduciary liability insurance and official bonds for the

officers and members of the board of trustees and employees of the association and may purchase property insurance or may establish a self-insurance risk reserve including, but not limited to, data processing insurance and "extra-expense" coverage.

Subd. 3a. Executive director. (a) **Appointment.** The board shall appoint, with the advice and consent of the senate, an executive director on the basis of education, experience in the retirement field, and leadership ability. The executive director shall have had at least five years' experience in an executive level management position, which has included responsibility for pensions, deferred compensation, or employee benefits. The executive director serves at the pleasure of the board. The salary of the executive director is as provided by section 15A.081, subdivision 1.

(b) **Duties.** The management of the association is vested in the executive director who shall be the executive and administrative head of the association. The executive director shall act as adviser to the board on all matters pertaining to the association and shall also act as the secretary of the board. The executive director shall:

- (1) attend all meetings of the board;
- (2) prepare and recommend to the board appropriate rules to carry out the provisions of this chapter;
- (3) establish and maintain an adequate system of records and accounts following recognized accounting principles and controls;
- (4) designate an assistant director, with the approval of the board, who shall serve in the unclassified service and whose salary is set in accordance with section 43A.18, subdivision 3, appoint a confidential secretary in the unclassified service, and appoint employees to carry out this chapter, who are subject to chapters 43A and 179A in the same manner as are executive branch employees;
- (5) organize the work of the association as the director deems necessary to fulfill the functions of the association, and define the duties of its employees and delegate to them any powers or duties, subject to the control of, and under such conditions as, the executive director may prescribe;
- (6) with the approval of the board, contract for the services of an approved actuary, professional management services, and any other consulting services as necessary to fulfill the purposes of this chapter. All contracts are subject to chapter 16B. The commissioner of administration shall not approve, and the association shall not enter into, any contract to provide lobbying services or legislative advocacy of any kind. Any approved actuary retained by the executive director shall function as the actuarial advisor of the board and the executive director and may perform actuarial valuations and experience studies to supplement those performed by the actuary retained by the legislative commission on pensions and retirement. Any supplemental actuarial valuations or experience studies shall be filed with the executive director of the legislative commission on pensions and retirement. Copies of professional management survey reports shall be transmitted to the secretary of the senate, the chief clerk of the house of representatives, and the legislative reference library as provided by section 3.195, to the executive director of the commission and to the legislative auditor at the same time as reports are furnished to the board. Only management firms experienced in conducting management surveys of federal, state, or local public retirement systems shall be qualified to contract with the director hereunder;
- (7) with the approval of the board provide in-service training for the employees of the association;
- (8) make refunds of accumulated contributions to former members and to the designated beneficiary, surviving spouse, legal representative or next of kin of deceased members or deceased former members, as provided in this chapter;
- (9) determine the amount of the annuities and disability benefits of members covered by the association and authorize payment of the annuities and benefits beginning as of the dates on which the annuities and benefits begin to accrue, in accordance with the provisions of this chapter;
- (10) pay annuities, refunds, survivor benefits, salaries, and necessary operating expenses of the association;

(11) prepare and submit to the board and the legislature an annual financial report covering the operation of the association, as required by section 356.20;

(12) prepare and submit biennial and annual budgets to the board for its approval and submit the approved budgets to the department of finance for approval by the commissioner; and

(13) with the approval of the board, perform such other duties as may be required for the administration of the association and the other provisions of this chapter and for the transaction of its business.

[For text of subds 4 and 5, see M.S.1986]

History: 1987 c 259 s 26; 1987 c 284 art 5 s 3

353.15 NONASSIGNABILITY AND EXEMPTION OF ANNUITIES AND BENEFITS FROM JUDICIAL PROCESS.

Subdivision 1. Exemption; exceptions. No money, annuity, or benefit provided for in this chapter is assignable or subject to any state estate tax, or to execution, levy, attachment, garnishment, or legal process, except as provided in subdivision 2 or section 518.58, 518.581, or 518.611.

Subd. 2. Automatic deposits. The association may pay an annuity, benefit or refund to a trust company, qualified under chapter 48, that is trustee for a person eligible to receive such annuity, benefit or refund. Upon the request of a retired, disabled or former member, the association may mail the annuity, benefit or refund check to a banking institution, savings association or credit union for deposit to such person's account or joint account with a spouse. The association may prescribe the conditions under which such payment will be made.

Subd. 3. Payment to public bodies. If in the judgment of the executive director conditions so warrant, payment may be made to a public body in behalf of an annuitant, disabilitant, or survivor upon such terms as the executive director may prescribe.

History: 1987 c 157 s 5

353.27 PUBLIC EMPLOYEES RETIREMENT FUND.

[For text of subds 1 to 3a, see M.S.1986]

Subd. 4. Employers reporting requirements; contributions; member status. The head of each department is hereby directed to cause employee contributions to be deducted from the salary of each member and to issue or approve one voucher payable to the state treasurer for the aggregate amount so deducted from such salaries, and at the same time to issue or approve one voucher for the aggregate amount of the employer contributions and the additional employer contributions for the same period of employment as that covered by the employee contributions, and to cause the same to be received not later than 20 calendar days thereafter in the office of the association. The head of each department shall, for each pay period in which employee contributions are deducted, submit to the association a salary deduction report, in the form prescribed by the executive director, showing (a) the legal names and the association membership numbers, listed in alphabetical order, of all members; (b) the legal names of all new public employees and the effective dates of appointment; (c) the amount of each salary deduction; (d) the amount of salary from which each deduction was made; (e) effective dates of all terminations of public service on account of members and if such terminations were caused by death or retirement, there shall be inserted after such date the applicable status code as set by the association; (f) effective dates of all temporary layoffs and leaves of absence and if such leaves are sick leaves, there shall be inserted after such date the applicable status code as set by the association; and (g) the beginning and ending dates of the payroll period covered and the date of actual payment. Additionally, reports of contributions shall be accompanied by a membership

enrollment form for each new employee in the form prescribed by the executive director, and it shall be the responsibility of department heads to obtain such enrollment forms from new employees to be submitted to the association within 30 days following the date of employment. The employers shall furnish such additional reports on magnetic media or other form of report as may be requested by the association executive director.

[For text of subds 7 to 9, see M.S.1986]

Subd. 10. Employers; furnish copies of payroll abstracts. The head of each department is required to furnish the executive director with a carbon or duplicate copy of the departmental payroll abstracts for the last pay period during the months of March and October, respectively, in each year. It shall be the duty of said executive director to check the copies of all such payroll abstracts against the membership records of the association to ascertain whether or not any omissions have been made by any department head in the reporting of any new public employees for membership.

[For text of subd 11, see M.S.1986]

Subd. 12. Omitted salary deductions; obligations. In the case of omission of required deductions from salary of an employee, past due for a period of 60 days or less, the head of the department shall deduct from the employee's next salary payment and forthwith remit to the executive director the amount of the employee's contribution delinquency, with cumulative interest thereon at the rate of six percent per annum, compounded annually, from the date or dates each delinquent employee contribution was first payable, such interest to be paid by the employer. To the extent that any such omitted required deductions are not paid by the employee, they shall constitute a liability of the governmental subdivision which failed to make said required deductions, with interest thereon as hereinbefore specified. After July 1, 1973, any such omitted required deductions, past due for a period in excess of 60 days, shall become the sole obligation of the governmental subdivision from the time such deductions were first payable, together with interest thereon as hereinbefore specified. Any amount so due, together with employer and additional employer contributions at the rates and in the amounts specified in subdivisions 3 and 3a, with interest thereon at the rate of six percent compounded annually from the date they were first payable, shall be paid from the proceeds of a tax levy made pursuant to section 353.28, or from other funds available to the employer. Unless otherwise indicated, this subdivision shall have both retroactive and prospective application, and the governmental subdivision is liable retroactively and prospectively for all amounts due hereunder. No action for the recovery of delinquent employee and employer contributions or interest on contributions may be commenced and no payment of delinquent contributions may be made or accepted unless the association has already commenced action for recovery of delinquent contributions, after the expiration of three calendar years next following the calendar year in which the contributions were omitted.

[For text of subd 13, see M.S.1986]

History: 1987 c 284 art 5 s 4-6

353.271 PARTICIPATION IN MINNESOTA POSTRETIREMENT INVESTMENT FUND.

Subdivision 1. Authorization. The public employees retirement association, including the public employees police and fire fund but excluding the various local relief association consolidation accounts, is authorized to participate in the Minnesota postretirement investment fund. There shall be one general participation in the Minnesota postretirement investment fund for all purposes by the public employees retirement fund and one general participation in the Minnesota postretirement investment fund for all purposes by the public employees police and fire fund.

Subd. 2. Valuation of assets; adjustment of benefits. (1) The required reserves for

retirement annuities payable as provided in this chapter other than those payable from the various local relief association consolidation accounts, as determined in accordance with the appropriate mortality table adopted by the board of trustees based on the experience of the fund as recommended by the actuary retained by the legislative commission on pensions and retirement, and using the postretirement interest assumption specified in section 356.215, subdivision 4d, shall be transferred to the Minnesota postretirement investment fund as of the last business day of the month in which the retirement annuity begins.

(2) Annuity payments other than those payable from the various local relief association consolidation accounts shall be adjusted in accordance with the provisions of section 11A.18.

(3) Notwithstanding section 356.18, increases in payments pursuant to this section or from the various local relief association consolidation accounts, if applicable, will be made automatically unless the intended recipient files written notice with the executive director of the public employees retirement association requesting that the increase shall not be made.

History: 1987 c 259 s 27; 1987 c 296 s 4

353.28 FINANCING OF EMPLOYER CONTRIBUTIONS.

[For text of subd 1, see M.S.1986]

Subd. 5. Any amount which becomes due and payable pursuant to this section or section 353.27, subdivision 4, shall bear compound interest at the rate of six percent per year from the date due for the next five calendar days, and compound interest at the rate of ten percent per year for amounts past due in excess of five calendar days until the date payment is actually received in the office of the association, with a minimum charge of \$10.

[For text of subds 6 and 8, see M.S.1986]

History: 1987 c 284 art 5 s 7

353.29 RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC SERVICE.

Subdivision 1. **Age and allowable service requirements.** Upon separation from public service any person who has attained the age of at least 65 years and who received credit for not less than five years of allowable service is entitled upon application to a retirement annuity. Such retirement annuity is known as the "normal" retirement annuity.

Subd. 2. **Average salary.** In calculating the annuity under subdivision 3, "average salary" means an amount equivalent to the average of a member's highest salary upon which employee contributions were paid for any five successive years of allowable service, based on dates of salary periods as listed on salary deduction reports. The five successive years average salary may not include any reduced salary paid during a period in which the employee is entitled to benefit payments from workers' compensation for temporary disability, unless the average salary is higher, including this period.

[For text of subds 3 and 4, see M.S.1986]

Subd. 6. **Retirement before eligibility for social security benefits.** Any member who retires before becoming eligible for social security retirement benefits may elect to receive an optional retirement annuity from the association which provides for different annuity amounts over different periods of retirement. The election of this optional retirement annuity shall be exercised by making application to the board of trustees. The optional annuity shall take the form of an annuity payable for the period before the annuitant becomes eligible for social security old age retirement benefits in a greater amount than the amount of the annuity calculated under subdivisions 2 and 3 on the

basis of the age of the annuitant at retirement but equal insofar as possible to the social security old age retirement benefit and the adjusted retirement annuity amount payable immediately after the annuitant becomes eligible for social security old age retirement benefits in an amount less than the amount of the annuity calculated under subdivisions 2 and 3 on the basis of the age of the annuitant at retirement. The social security leveling option may be calculated based on broad average social security old age retirement benefits. The optional annuity shall be the actuarial equivalent of the normal retirement annuity computed on the basis of age at retirement. This greater amount shall be paid until the annuitant reaches the age of 62, at which time the payment from the association shall be reduced. The method of computing the optional retirement annuity under this subdivision shall be established by the board of trustees. In establishing the method of computing the optional retirement annuity, the board of trustees shall obtain the written recommendation of the commission-retained actuary. The recommendations shall be a part of the permanent records of the board of trustees.

[For text of subd 7, see M.S.1986]

Subd. 8. Annuities; payment; evidence of receipt. Payment of any annuity or benefit for a given month shall be mailed by the association to the annuitant, recipient of a disability benefit, or survivor, during the first week of that month. Evidence of receipt of warrants issued by the association in payment of an annuity or benefit shall be submitted by the payee thereof to the association periodically at times specified by the board of trustees, together with a written declaration that the annuitant or recipient of a disability benefit has or has not returned to public service; that the surviving dependent spouse has or has not remarried; and shall be furnished on forms provided by the executive director thereof, before the association shall pay to the disability recipient or survivor for the next ensuing month, the benefit to which the person otherwise may be entitled. In lieu of the evidence of receipt of warrants for recipients of an annuity or a benefit, the board may contract for professional services to identify deceased annuitants and benefit recipients through a review of nationally maintained death records.

History: 1987 c 259 s 28; 1987 c 284 art 5 s 8; 1987 c 372 art 9 s 10,11

353.30 ANNUITIES UPON RETIREMENT.

[For text of subs 1 to 1b, see M.S.1986]

Subd. 1c. Any person who has received credit for at least 30 years of allowable service or any person who has attained the age of at least 55 years but not more than 65 years, and who received credit for at least five years of allowable service is entitled upon application to a retirement annuity in an amount equal to the normal annuity provided in section 353.29, subdivisions 2 and 3, reduced by one-quarter of one percent for each month that the member is under age 65 at the time of retirement, except that for any member who has 30 or more years of allowable service the reduction shall be applied only for each month that the member is under age 62 at the time of retirement.

Subd. 3. Optional retirement annuity forms. The board of trustees shall establish optional annuities which shall take the form of a joint and survivor annuity. The optional annuity forms shall be actuarially equivalent to the forms provided in section 353.29 and subdivisions 1, 1a, 1b, and 1c of this section. In establishing those optional forms, the board shall obtain the written recommendation of the commission-retained actuary. The recommendations shall be a part of the permanent records of board. A member or former member may select an optional form of annuity in lieu of accepting any other form of annuity which might otherwise be available.

[For text of subd 4, see M.S.1986]

History: 1987 c 259 s 29; 1987 c 372 art 9 s 12

353.32 REFUNDS AFTER DEATH OF MEMBER OR FORMER MEMBER.*[For text of subd 1, see M.S.1986]*

Subd. 1a. **Surviving spouse optional annuity.** If a member or former member who has attained the age of at least 50 years and has credit for not less than five years of allowable service, or who has credit for not less than 30 years of allowable service, regardless of age attained, dies before the annuity or disability benefit has become payable, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive, in lieu of a refund with interest provided in subdivision 1, or survivor benefits otherwise payable pursuant to section 353.31, an annuity equal to the 100 percent joint and survivor annuity which the member could have qualified for had the member terminated service on the date of death. The surviving spouse may apply for the annuity at any time after the date on which the deceased employee would have attained the required age for retirement based on the employee's allowable service. The annuity shall be computed as provided in sections 353.29, subdivisions 2 and 3; and 353.30, subdivisions 1, 1a, 1b and 1c. Sections 353.34, subdivision 3, and 353.71, subdivision 2, apply to a deferred annuity payable under this subdivision. No payment shall accrue beyond the end of the month in which entitlement to the annuity has terminated. An amount equal to the excess, if any, of the accumulated contributions which were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse shall be paid to the deceased member's last designated beneficiary or, if none, to the legal representative of the estate of the deceased member. Any member may specify in writing that this subdivision shall not apply and that payment shall be made only to the designated beneficiary, as otherwise provided by this chapter.

*[For text of subds 2 to 9, see M.S.1986]***History:** 1987 c 372 art 9 s 13**353.33 TOTAL AND PERMANENT DISABILITY BENEFITS.**

Subdivision 1. **Age, service and salary requirements.** Any member who becomes totally and permanently disabled before age 65 and after five years of allowable service shall be entitled to a disability benefit in an amount provided in subdivision 3. If such disabled person's public service has terminated at any time, at least three of the required five years of allowable service must have been rendered after last becoming a member. Any member whose average salary is less than \$75 per month shall not be entitled to a disability benefit. No repayment of a refund otherwise authorized pursuant to section 353.34 and no purchase of prior service or payment made in lieu of salary deductions otherwise authorized pursuant to section 353.01, subdivision 16, 353.017, subdivision 4, or 353.36, subdivision 2, may be made after the occurrence of the disability for which an application pursuant to this section is filed.

[For text of subds 2 to 4, see M.S.1986]

Subd. 5. **Benefits paid under workers' compensation law.** Disability benefits paid shall be reimbursed and future benefits shall be reduced by any amounts received or receivable, including temporary total, permanent total, temporary partial or permanent partial benefits, in either periodic or lump sum payments from the employer under applicable workers' compensation laws, after deduction of amount of attorney fees, authorized under applicable workers' compensation laws, paid by a disablitant if the total of the single life annuity actuarial equivalent disability benefit and the workers' compensation benefit exceeds: (1) the salary the disabled member received as of the date of the disability or (2) the salary currently payable for the same employment position or an employment position substantially similar to the one the person held as of the date of the disability, whichever is greater. The disability benefit must be reduced to that amount which, when added to the workers' compensation benefits, does not exceed the greater of the salaries described in clauses (1) and (2).

Subd. 5a. **Recovery of disability overpayments.** An overpayment of disability benefits must be recovered by the executive director by suspending or reducing the payment of disability benefits, survivor benefits, survivor annuities, refunds, or retirement annuities until all overpaid money has been recovered.

Subd. 5b. **Benefits paid under workers' compensation law.** A disabled member who is eligible to receive a disability benefit under subdivision 5 as of June 30, 1987, and whose disability benefit amount had been reduced prior to July 1, 1987, as a result of the receipt of workers' compensation benefits, must have the disability benefit payment amount restored, as of July 1, 1987, calculated in accordance with subdivision 5. However, a disabled member is not entitled to receive retroactive repayment of any disability benefit amounts lost before July 1, 1987, as a result of the reduction required before that date because of the receipt of workers' compensation benefits.

Any disability benefit overpayments made before July 1, 1987, and occurring because of the failure to reduce the disability benefit payment to the extent required because of the receipt of workers' compensation benefits, may be collected by the association through the reduction of disability benefit or annuity payment made on or after July 1, 1987, until the overpayment is fully recovered.

[For text of subds 6 to 11, see M.S.1986]

History: 1987 c 284 art 5 s 9; 1987 c 372 art 9 s 14-16

353.34 TERMINATION OF PUBLIC SERVICE.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. **Deferred annuity; eligibility; computation.** Any person with at least five years of allowable service when termination of public service occurs shall have the option of leaving the accumulated deductions in the fund and thereby be entitled to a deferred retirement annuity commencing at age 65 or for a deferred early retirement annuity pursuant to section 353.30, subdivision 1, 1a, 1b or 1c. The deferred annuity shall be computed in the manner provided in section 353.29, subdivisions 2 and 3, on the basis of the law in effect on the date of termination of public service and shall be augmented as provided in section 353.71, subdivision 2. Any person qualified to apply for a deferred retirement annuity may revoke this option at any time prior to the commencement of deferred annuity payments by making application for a refund. The person shall be entitled to a refund of accumulated member contributions within 30 days following date of receipt of the application by the executive director.

[For text of subds 3a to 6, see M.S.1986]

Subd. 7. **Sick leave.** A member who is on an authorized sick leave and has received a maximum of one year of allowable service in accordance with section 353.01, subdivision 16, paragraph (4), and who does not return to public service for at least 120 calendar days following the year of allowable service may elect to receive a refund of accumulated deductions as provided in subdivision 2. Application for a refund may not be made before the expiration of 120 calendar days following the end of one year of allowable service for employees on authorized sick leave.

History: 1987 c 284 art 5 s 10; 1987 c 372 art 9 s 17

353.36 PURCHASES OF PRIOR SERVICE CREDIT.

Subd. 2. **Employee contributions; interest; matching payment.** A member who has at least one year of allowable service with the association, whose public service terminated before July 1, 1982, and who has prior public service on which salary deductions were not taken for the retirement fund and who does not have the required minimum number of years of allowable service credit to qualify for an annuity, may apply for an annuity if otherwise qualified, and within 90 days thereafter purchase whatever period of the member's prior public service which is necessary to bring the

member's total allowable service credit to the minimum, provided that the most recent period of prior uncredited public service shall be purchased first. The member may gain allowable service credit by paying on the salary covered under the law in effect at the time that the prior public service was performed. The applicable member contribution percentage, if the member is a basic member, is eight percent, and if the member is a coordinated member, is four percent. An amount equal to the employer and employer additional contributions specified in section 353.27, subdivisions 3 and 3a, plus interest on the total amount representing employee, employer and employer additional contributions at the rate of six percent per annum compounded annually from the date first payable to the date payment is made, shall also be paid. The employer, at its sole discretion, may agree to pay the amount representing the employer and employer additional contributions pursuant to subdivision 2a. An annuity shall accrue as provided in section 353.29, subdivision 7, but no annuity shall be paid until the applicant's payment is made in full for the prior public service. If payment is not made within such 90 days, the application for retirement shall be void.

[For text of subds 2a to 2c, see M.S.1986]

History: 1987 c 284 art 5 s 11

353.64 MEMBERSHIP; QUALIFICATIONS; POLICE OFFICER, FIREFIGHTER.

Subdivision 1. Police and fire fund membership. Any person who prior to July 1, 1961, was a member of the police and fire fund, by virtue of being a police officer or firefighter, shall as long as the person remains in either position, be deemed to continue membership in the fund. Any person who was employed by a governmental subdivision as a police officer and was a member of the police and fire fund on July 1, 1978, by virtue of being a police officer as defined by this section on that date shall be entitled, if employed by the same governmental subdivision in a position in the same department in which the person was employed on that date, to continue membership in the fund whether or not that person has the power of arrest by warrant after that date. Any person who was employed by a governmental subdivision as a police officer or a firefighter, whichever applies, was an active member of the local police or salaried firefighters relief association located in that governmental subdivision by virtue of that employment as of the effective date of the consolidation as authorized by sections 353A.01 to 353A.10, and has elected coverage by the public employees police and fire fund benefit plan, shall be considered to be a member of the police and fire fund after that date if employed by the same governmental subdivision in a position in the same department in which the person was employed on that date. Any other employee serving on a full-time basis as a police officer or firefighter on or after July 1, 1961, shall become a member of the public employees police and fire fund. Any employee serving on less than a full-time basis as a police officer shall become a member of the public employees police and fire fund only after a resolution stating that the employee should be covered by the police and fire fund is adopted by the governing body of the governmental subdivision employing the person declaring that the position which the person holds is that of a police officer. Any employee serving on less than a full-time basis as a firefighter, other than a volunteer firefighter, shall become a member of the public employees police and fire fund only after a resolution stating that the employee should be covered by the police and fire fund is adopted by the governing body of the governmental subdivision employing the person declaring that the position which the person holds is that of a firefighter. Any police officer or firefighter, other than a volunteer firefighter, employed by a governmental subdivision who by virtue of that employment is required by law to be a member of and to contribute to any police or firefighter relief association governed by section 69.77 which has not consolidated with the public employees police and fire fund and for which the employee has not elected coverage by the public employees police and fire fund benefit plan as provided in sections 353A.01 to 353A.10 other than a volunteer firefighters relief association to which sections 69.771 to 69.776 apply shall not be a member of this fund.

Subd. 2. Before a governing body may declare a position to be that of a police officer, the duties of the person so employed shall, as a minimum, include services as an officer of a designated police department or sheriff's office or person in charge of a designated police department or sheriff's office whose primary job it is to enforce the law, who is licensed by the Minnesota board of peace officer standards and training under sections 626.84 to 626.855, who is engaged in the hazards of protecting the safety and property of others and who has the power to arrest by warrant.

[For text of subds 3 and 4, see M.S.1986]

Subd. 6. [Repealed, 1987 c 284 art 5 s 18]

[For text of subd 7, see M.S.1986]

Subd. 8. **Pension coverage for certain state military affairs department firefighters.** A person who is employed as a full-time firefighter on or after the first day of the first payroll period after June 10, 1987, by the department of military affairs of the state of Minnesota and who is not eligible for coverage under the agreement signed between the state and the secretary of the federal Department of Health and Human Services making the provisions of the federal Old Age, Survivors, and Disability Insurance Act applicable to state employees because the person's position is excluded from application under United States Code, title 42, sections 418(d)(5)(A) and 418(d)(8)(D) and section 355.07, is a member of the public employees police and fire fund and is considered to be a firefighter within the meaning of this section. The state department of military affairs shall make the employee contribution deduction from the salary of each full-time military affairs department firefighter as required by section 353.65, subdivision 2, shall make the employer contribution with respect to each firefighter as required by section 353.65, subdivision 3, and shall meet the employer recording and reporting requirements in section 353.65, subdivision 4.

History: 1987 c 284 art 5 s 12,13; 1987 c 296 s 5; 1987 c 372 art 1 s 6

353.65 CONTRIBUTIONS.

Subdivision 1. There is a special fund known as the "public employees police and fire fund." In that fund there shall be deposited employee contributions, employer contributions and other amounts authorized by law including all employee and employer contributions of members transferred. Within the public employees police and fire fund are accounts for each municipality known as the "local relief association consolidation accounts," which are governed by section 353A.09.

[For text of subds 2 to 6, see M.S.1986]

History: 1987 c 296 s 6

353.651 RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC SERVICE.

Subdivision 1. **Age and allowable service requirements.** Upon separation from public service, any police officer or firefighter member who has attained the age of at least 55 years and who received credit for not less than five years of allowable service is entitled upon application to a retirement annuity. Such retirement annuity is known as the "normal" retirement annuity.

Subd. 2. **Average salary.** In calculating the annuity under subdivision 3, "average salary" means an amount equivalent to the average of the highest salary earned as a police officer or firefighter upon which employee contributions were paid for any five successive years of allowable service.

The five successive years average salary may not include any reduced salary paid during a period in which the employee is entitled to benefit payments from workers' compensation for temporary disability unless the average salary is higher, including this period.

[For text of subd 3, see M.S.1986]

History: 1987 c 372 art 9 s 18,19

353.656 DISABILITY BENEFITS.

[For text of subds 1 and 1a, see M.S.1986]

Subd. 2. Benefits paid under workers' compensation law. If a member, as described in subdivision 1, is injured under circumstances which entitle the member to receive benefits under the workers' compensation law, the member shall receive the same benefits as provided in subdivision 1, with disability benefits paid reimbursed and future benefits reduced by all periodic or lump sum amounts paid to the member under the workers' compensation law, after deduction of amount of attorney fees, authorized under applicable workers' compensation laws, paid by a disabilitant if the total of the single life annuity actuarial equivalent disability benefit and the workers' compensation benefit exceeds: (1) the salary the disabled member received as of the date of the disability or (2) the salary currently payable for the same employment position or an employment position substantially similar to the one the person held as of the date of the disability, whichever is greater. The disability benefit must be reduced to that amount which, when added to the workers' compensation benefits, does not exceed the greater of the salaries described in clauses (1) and (2).

Subd. 2a. A disabled member who is eligible to receive a disability benefit under subdivision 2 as of June 30, 1987, and whose disability benefit amount had been reduced prior to July 1, 1987, as a result of the receipt of workers' compensation benefits, must have the disability benefit payment amount restored, as of July 1, 1987, calculated in accordance with subdivision 2. However, a disabled member is not entitled to receive retroactive repayment of any disability benefit amounts lost before July 1, 1987, as a result of the reduction required before that date because of the receipt of workers' compensation benefits.

Any disability benefit overpayments made before July 1, 1987, and occurring because of the failure to reduce the disability benefit payment to the extent required because of the receipt of workers' compensation benefits, may be collected by the association through the reduction of disability benefit or annuity payment made on or after July 1, 1987, until the overpayment is fully recovered.

Subd. 3. Nonduty disability benefit. Any member who becomes disabled after not less than five years of allowable service, before reaching the age of 55, because of sickness or injury occurring while not on duty as a police officer or firefighter, and by reason of that sickness or injury the member is unable to perform duties as a police officer or firefighter, shall be entitled to receive a disability benefit. The benefit shall be in the same amount and paid in the same manner as if the member were 55 years of age at the date of disability and the benefit were paid pursuant to section 353.651. If a disability under this subdivision occurs after five but in less than ten years of allowable service, the disability benefit shall be the same as though the member had at least ten years service. For any member who is employed as a full-time firefighter by the department of military affairs of the state of Minnesota, allowable service as a full-time state military affairs department firefighter credited by the Minnesota state retirement system may be used in meeting the minimum allowable service requirement of this subdivision.

[For text of subds 4 and 5, see M.S.1986]

Subd. 6. Retirement status at age 55. All disability benefits payable under this section shall terminate when the disabled firefighter or police officer becomes 55 years of age. If the person is still disabled when the person attains the age of 55 years, the person shall be deemed to be a retired member and, if the person had elected an optional annuity pursuant to subdivision 1a, shall receive an annuity in accordance with the terms of the optional annuity previously elected, or, if the person had not

elected an optional annuity pursuant to subdivision 1a, may then elect to receive either a normal retirement annuity computed pursuant to section 353.651, or an optional annuity as provided in section 353.30, subdivision 3, or normal retirement annuity equal to the disability benefit paid before the person reached age 55. Any disabled person who becomes age 55 shall have the annuity computed in accordance with the law in effect upon attainment of age 55. Election of an optional annuity shall be made prior to the person attaining the age of 55 years. If an optional annuity is elected, the election shall be effective on the date on which the person attains the age of 55 years and the optional annuity shall begin to accrue on the first day of the month next following the month in which the person attains the age of 55 years.

Subd. 7. Disabled members. Notwithstanding the age 55 requirement of section 353.651, subdivision 1, a member of the police and fire fund age 55 or over who has five or more years of allowable service but less than ten years of allowable service and who becomes disabled may elect to draw a retirement annuity in accordance with section 353.651, subdivision 3, based on the actual years of allowable service.

History: 1987 c 284 art 5 s 14,15; 1987 c 372 art 1 s 7; 1987 c 372 art 9 s 20,21

353.657 SURVIVOR BENEFITS.

Subdivision 1. In the event any member of the police and fire fund shall die from any cause, the association shall grant survivor benefits to any surviving spouse who had the same legal residence as the member at the time of death and who was married to the member for a period of at least one year, except that if death occurs in the line of duty no time limit is required, and to a dependent child or children, unmarried and under the age of 18 years. The spouse and child or children shall be entitled to monthly benefits as provided in the following subdivisions.

Subd. 2. The spouse, for life or until remarriage, shall receive a monthly benefit equal to 30 percent of the member's average full-time monthly salary rate as a police officer or firefighter in effect over the last six months of allowable service preceding the month in which death occurred.

Subd. 2a. Death while eligible survivor benefit. If a member or former member who has attained the age of at least 50 years and has credit for not less than five years allowable service or who has credit for at least 30 years of allowable service, regardless of age attained, dies before public service has terminated, or if an employee who has filed a valid application for an annuity or disability benefit prior to termination of public service dies before the annuity or benefit has become payable, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive a death while eligible survivor benefit. The benefit shall be in lieu of a refund with interest provided in section 353.32, subdivision 1, or survivor benefits otherwise payable pursuant to subdivisions 1 and 2. The benefit must be an annuity equal to the 100 percent joint and survivor annuity which the member could have qualified for on the date of death, computed as provided in sections 353.651, subdivisions 2 and 3, and 353.30, subdivision 3. The surviving spouse may apply for the annuity at any time after the date on which the deceased employee would have attained the required age for retirement based on the employee's allowable service. Sections 353.34, subdivision 3, and 353.71, subdivision 2, apply to a deferred annuity payable under this subdivision. No payment shall accrue beyond the end of the month in which entitlement to such annuity has terminated. An amount equal to the excess, if any, of the accumulated contributions which were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse shall be paid to the deceased member's last designated beneficiary or, if none, to the legal representative of the estate of such deceased member. Any member may request in writing that this subdivision not apply and that payment be made only to the designated beneficiary, as otherwise provided by this chapter. For a member who is employed as a full-time firefighter by the department of military affairs of the state of Minnesota, allowable service as a full-time state military affairs department firefighter credited by the Minnesota state retirement system may be used in meeting the minimum allowable service requirement of this subdivision.

Subd. 3. Each dependent child, until the child reaches the age of 18 years, shall receive a monthly benefit equal to ten percent of the member's average full-time monthly salary rate as a police officer or firefighter in effect over the last six months of allowable service preceding the month in which death occurred. Payments for the benefit of any qualified dependent child under the age of 18 years shall be made to the surviving parent, or if there be none, to the legal guardian of the child or to any adult person with whom the child may at the time be living, provided only that the parent or other person to whom any amount is to be paid shall have advised the board in writing that the amount will be held or used in trust for the benefit of the child. The maximum monthly benefit for any one family shall not exceed an amount equal to 50 percent of the member's specified average monthly salary, and the minimum benefit per family shall not be less than 30 percent of the member's specified average monthly salary.

Subd. 4. If the member shall die under circumstances which entitle a surviving spouse and dependent children to receive benefits under the workers' compensation law, the amounts so received by them shall not be deducted from the benefits payable under this section.

History: 1987 c 284 art 5 s 16; 1987 c 372 art 1 s 8; art 9 s 22

353.659 LOCAL RELIEF ASSOCIATION CONSOLIDATION ACCOUNT BENEFITS.

For any person who has prior service covered by a local police or firefighters relief association which has consolidated with the public employee police and fire fund and who has elected coverage by the public employees police and fire fund benefit plan as provided in section 353A.08 following the consolidation, any retirement benefits payable shall be governed by the applicable provisions of this chapter. For any person who has prior service covered by a local police or firefighters relief association which has consolidated with the public employees police and fire fund and who has not elected coverage by the public employees police and fire fund benefit plan as provided in section 353A.08 following the consolidation, any retirement benefits payable shall be governed by the provisions of sections 353B.01 to 353B.13 which apply to the relief association.

History: 1987 c 296 s 7

353.71 COVERAGE BY MORE THAN ONE RETIREMENT SYSTEM; DEFERRED ANNUITY; AUGMENTATION.

Subdivision 1. **Eligibility.** Any person who has been a member of the public employees retirement association, or the Minnesota state retirement system, or the teachers retirement association, or any other public retirement system in the state of Minnesota having a like provision, except a fund providing benefits for police officers or firefighters governed by sections 69.77 or 69.771 to 69.776, shall be entitled when qualified to an annuity from each fund if the total allowable service in all funds or in any two of these funds totals five or more years, provided no portion of the allowable service upon which the retirement annuity from one fund is based is again used in the computation for benefits from another fund and provided further that the person has not taken a refund from any one of these funds since the person's membership in that association or system last terminated. The annuity from each fund shall be determined by the appropriate provisions of the law except that the requirement that a person must have at least five years of allowable service in the respective association or system shall not apply for the purposes of this section provided the combined service in two or more of these funds equals five or more years.

[For text of subs 2 to 5, see M.S. 1986]

History: 1987 c 372 art 9 s 23