

CHAPTER 353

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

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353.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the following terms, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. **Public employee.** "Public employee" means an employee performing personal services for a governmental subdivision under subdivision 6, whose salary is paid, in whole or in part, from revenue derived from taxation, fees, assessments, or from other sources. The term also includes special classes of persons listed in subdivision 2a, but excludes special classes of persons listed in subdivision 2b for purposes of membership in the association. Public employee does not include independent contractors and their employees.

Subd. 2a. **Included employees.** Public employees whose salary from one governmental subdivision exceeds \$425 in any month shall participate as members of the association. If the salary of an employee is less than \$425 in a subsequent month, the employee retains membership eligibility. The following persons are considered public employees:

(1) employees whose annual salary from one governmental subdivision exceeds a stipulation prepared in advance, in writing, to be not more than \$5,100 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 \$5,100 per employment period

expected to be of less than a full year's duration. If compensation from one governmental subdivision to an employee under this clause exceeds \$5,100 per calendar year or school year after being stipulated in advance not to exceed that amount, the stipulation is no longer valid and contributions must be made on behalf of the employee under section 353.27, subdivision 12, from the month in which the employee's salary first exceeded \$425;

(2) employees whose total salary from concurrent nontemporary positions in one governmental subdivision exceeds \$425 in any month;

(3) elected officers for service to which they were elected by the public-at-large, or persons appointed to fill a vacancy in an elective office, who elect to participate by filing an application for membership, but not for service on a joint or regional board that is a governmental subdivision under subdivision 6, paragraph (a), unless the salary earned for that service exceeds \$425 in any month. The option to become a member, once exercised, may not be withdrawn during the incumbency of the person in office;

(4) members who are appointed by the governor to be a state department head and elect not to be covered by the Minnesota state retirement system under section 352.021;

(5) employees of elected officers;

(6) persons who elect to remain members under section 136C.75, or 480.181, subdivision 2;

(7) employees of a school district who receive separate salaries for driving their own buses;

(8) employees of the Minnesota association of townships when the board of the association, at its option, certifies to the executive director that its employees are to be included for purposes of retirement coverage, in which case coverage of all employees of the association is permanent;

(9) employees of a county historical society who are county employees;

(10) employees of a county historical society located in the county whom the county, at its option, certifies to the executive director to be county employees for purposes of retirement coverage under this chapter, which status must be accorded to all similarly situated county historical society employees and, once established, must continue as long as a person is an employee of the county historical society and is not excluded under subdivision 2b; and

(11) employees who became members before July 1, 1988, based on the total salary of positions held in more than one governmental subdivision.

Subd. 2b. Excluded employees. The following public employees shall not participate as members of the association:

(1) elected public officers, or persons appointed to fill a vacancy in an elective office, who do not elect to participate in the association by filing an application for membership;

(2) election officers;

(3) patient and inmate personnel who perform services in charitable, penal, or correctional institutions of a governmental subdivision;

(4) employees who are hired for a temporary position under subdivision 12a, and employees who resign from a nontemporary position and accept a temporary position within 30 days in the same governmental subdivision, but not those employees who are hired for an unlimited period but are serving a probationary period. If the period of employment extends beyond six consecutive months and the employee earns more than \$425 from one governmental subdivision in any one calendar month, the department head shall report the employee for membership and require employee deductions be made on behalf of the employee under section 353.27, subdivision 4.

Membership eligibility of an employee who resigns or is dismissed from a temporary position and within 30 days accepts another temporary position in the same governmental subdivision is determined on the total length of employment rather than on each separate position. Membership eligibility of an employee who holds concurrent

temporary and nontemporary positions in one governmental subdivision is determined by the length of employment and salary of each separate position;

(5) employees whose actual salary from one governmental subdivision does not exceed \$425 per month, or whose annual salary from one governmental subdivision does not exceed a stipulation prepared in advance, in writing, that the salary must not exceed \$5,100 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 \$5,100 per employment period for employment expected to be of less than a full year's duration;

(6) employees who are employed by reason of work emergency caused by fire, flood, storm, or similar disaster;

(7) employees who by virtue of their employment in one governmental subdivision are required by law to be a member of and to contribute to any of the plans or funds administered by the Minnesota state retirement system, the teachers retirement association, the Duluth teachers retirement fund association, the Minneapolis teachers retirement association, the St. Paul teachers retirement fund association, the Minneapolis employees retirement fund, or any police or firefighters relief association governed by section 69.77 that has not consolidated with the public employees retirement association, or any police or firefighters relief association that has consolidated with the public employees retirement association but whose members have not elected the type of benefit coverage provided by the public employees police and fire fund under sections 353A.01 to 353A.10. This clause must not be construed to prevent a person from being a member of and contributing to the public employees retirement association and also belonging to and contributing to another public pension fund for other service occurring during the same period of time. A person who meets the definition of "public employee" in subdivision 2 by virtue of other service occurring during the same period of time becomes a member of the association unless contributions are made to another public retirement fund on the salary based on the other service or to the teachers retirement association by a teacher as defined in section 354.05, subdivision 2;

(8) 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, if no irrevocable election of coverage has been made under section 3121(r) of the Internal Revenue Code of 1954, as amended;

(9) full-time students who are enrolled and are regularly attending classes at an accredited school, college, or university and who are part-time employees as defined by a governmental subdivision;

(10) resident physicians, medical interns, and pharmacist residents and pharmacist interns who are serving in a degree or residency program in public hospitals;

(11) students who are serving in an internship or residency program sponsored by an accredited educational institution;

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

(13) foreign citizens working for a governmental subdivision with a work permit of less than three years, or an H-1b visa valid for less than three years of employment. Upon notice to the association that the work permit or visa extends beyond the three-year period, the foreign citizens are eligible for membership from the date of the extension;

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

(15) except as provided in section 353.86, volunteer ambulance service personnel, as defined in subdivision 35, but persons who serve as volunteer ambulance service personnel may still qualify as public employees under subdivision 2 and may be members of the public employees retirement association and participants in the public employees

retirement fund or the public employees police and fire fund on the basis of compensation received from public employment service other than service as volunteer ambulance service personnel; and

(16) except as provided in section 353.87, volunteer firefighters, as defined in subdivision 36, engaging in activities undertaken as part of volunteer firefighter duties; provided that a person who is a volunteer firefighter may still qualify as a public employee under subdivision 2 and may be a member of the public employees retirement association and a participant in the public employees retirement fund or the public employees police and fire fund on the basis of compensation received from public employment activities other than those as a volunteer firefighter.

Subd. 2c. [Repealed, 1989 c 319 art 3 s 26]

Subd. 3. **Head of department.** "Head of department" means the head of any department, institution, office, or branch of service of any governmental subdivision which directly pays salaries out of its revenue or is empowered to authorize the payment of such salaries.

Subd. 4. **Accumulated deductions.** "Accumulated deductions" means the total of the amounts deducted from the salary of a member, exclusive of interest, and the total of the amounts paid by a member in lieu of such deductions and credited to the member's individual account in the retirement fund.

Subd. 5. [Repealed, 1971 c 106 s 40]

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

(b) Governmental subdivision also means the public employees retirement association, the league of Minnesota cities, the association of metropolitan municipalities, public hospitals owned or operated by, or an integral part of, a governmental subdivision or governmental subdivisions, the association of Minnesota counties, the metropolitan intercounty association, the Minnesota municipal utilities association, the metropolitan airports commission, and the Minneapolis employees retirement fund for employment initially commenced after June 30, 1979, the range association of municipalities and schools, soil and water conservation districts, and economic development authorities created or operating under sections 469.090 to 469.108.

(c) Governmental subdivision 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 under sections 469.048 to 469.068; or any hospital district organized or reorganized prior to July 1, 1975, under sections 447.31 to 447.37 or the successor of the district, nor the Minneapolis community development agency.

Subd. 7. **Member.** "Member" means a person who accepts employment as a "public employee" under subdivision 2, is an employee under subdivision 2a, and is not covered by the plan established in chapter 353D. A person who is a member remains a member while performing services as a public employee and while on an authorized leave of absence or an authorized temporary layoff.

Subd. 7a. **Former member.** "Former member" means a member of the association who terminates public service under subdivision 11a or membership under subdivision 11b.

Subd. 8. **Association.** "Association" means the public employees retirement association.

Subd. 9. [Repealed, 1957 c 935 s 27]

Subd. 10. **Salary.** (a) "Salary" means:

(1) periodic compensation of a public employee, before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs, and also means "wages" and includes net income from fees; and

(2) for a public employee who has prior service covered by a local police or fire-

fighters' relief association that has consolidated with the public employees retirement association and who has elected coverage under the public employees police and fire fund benefit plan under section 353A.08 following the consolidation, "salary" 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 by law and by bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure and the actual periodic compensation of the public employee after the effective date of consolidation.

(b) Salary does not mean:

(1) fees paid to district court reporters, unused annual or sick leave payments, in lump-sum or periodic payments, severance payments, reimbursement of expenses, lump-sum settlements not attached to a specific earnings period, or workers' compensation payments;

(2) employer-paid amounts used by an employee toward the cost of insurance coverage, employer-paid fringe benefits, flexible spending accounts, cafeteria plans, health care expense accounts, day care expenses, or any payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage and certain amounts determined by the executive director to be ineligible;

(3) the amount equal to that which the employing governmental subdivision would otherwise pay toward single or family insurance coverage for a covered employee when, through a contract or agreement with some but not all employees, the employer:

(i) discontinues, or for new hires does not provide, payment toward the cost of the employee's selected insurance coverages under a group plan offered by the employer;

(ii) makes the employee solely responsible for all contributions toward the cost of the employee's selected insurance coverages under a group plan offered by the employer, including any amount the employer makes toward other employees' selected insurance coverages under a group plan offered by the employer; and

(iii) provides increased salary rates for employees who do not have any employer-paid group insurance coverages; and

(4) except as provided in section 353.86 or 353.87, compensation of any kind paid to volunteer ambulance service personnel or volunteer firefighters, as defined in subdivisions 35 and 36.

Subd. 11. Public service. "Public service" means service as an officer or employee of a governmental subdivision.

Subd. 11a. Termination of public service. "Termination of public service" occurs when a member resigns or is dismissed from public service by the employing governmental subdivision, as evidenced by appropriate written record transmitted to the association, and does not within 30 days of resignation or dismissal return to a nontemporary employment position in the same governmental subdivision.

Subd. 11b. Termination of membership. "Termination of membership" occurs:

(1) upon termination of public service under subdivision 11a;

(2) when a member who is a part-time employee is excluded from membership as a full-time student under subdivision 2b, clause (9);

(3) when a member does not return to work within 30 days of the expiration of an authorized temporary layoff under subdivision 12 or an authorized leave of absence under subdivision 31. If the employee subsequently returns to a position in the same governmental subdivision, the employee shall not again be required to earn a salary in excess of \$425 per month, unless the employee has taken a refund of accumulated employee deductions plus interest under section 353.34, subdivision 1; or

(4) when a person files a written election to discontinue employee deductions under section 353.27, subdivision 7, paragraph (a), clause (1).

Subd. 12. Authorized temporary layoff. "Authorized temporary layoff," including seasonal leave of absence, means a suspension of public service authorized by the

employing governmental subdivision for a period not exceeding three months in any calendar year, as evidenced by appropriate record of the employer and promptly transmitted to the association.

Subd. 12a. **Temporary position.** (1) "Temporary position" means an employment position predetermined by the employer at the time of hiring to be a period of six months or less or an employment position occupied by a person hired by the employer for a predetermined period of six months or less.

(2) "Temporary position" does not mean an employment position for an unlimited period in which a person serves a probationary period or works an irregular schedule.

Subd. 13. [Repealed, 1963 c 641 s 38]

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.

Subd. 15. **Dependent child.** For the purpose of survivor benefit eligibility under sections 353.31, subdivision 1, and 353.657, subdivision 3, "dependent child" means a biological or adopted child of a deceased member who is unmarried, and under the age of 18, or age 18 to 23, so long as the child submits evidence of full-time enrollment in an accredited educational institution. "Dependent child" also includes a child of the member conceived during the member's lifetime and born after the member's death. It also means a dependent child who is the subject of adoption proceedings filed by a member, and who within two years after death of the member, by judgment and decree duly entered, is adjudged to be the adopted child of the deceased member; subject, however, to the qualifying conditions of age and dependency under this subdivision. The dependency of the child dates from the decree of adoption. "Dependent child" also includes a child age 18 to 23 who had submitted evidence of full-time enrollment in an accredited educational institution but was determined to be medically unable to continue school on a full-time basis. The board of trustees shall adopt written procedures to make determinations regarding eligibility based on a student being medically unable to continue school, and may not continue a benefit for medical reasons for a period greater than one year.

Subd. 15a. **Dependent child.** For the purpose of survivor benefit eligibility under section 353.32, subdivision 1c, "dependent child" means any biological or adopted child of a deceased member who has not reached the age of 20 and is dependent for more than one-half of support upon the member. It also includes any child of the member conceived during the member's lifetime and born after the member's death.

Subd. 16. **Allowable service.** (a) "Allowable service" means service during years of actual membership in the course of which employee contributions were made, periods covered by payments in lieu of salary deductions under 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.

(b) "Allowable service" also means a period of authorized leave of absence with pay from which deductions for employee contributions are made, deposited, and credited to the fund.

(c) "Allowable service" also means a period of authorized leave of absence without pay that does not exceed one year, and during or for which a member obtained credit by payments to the fund made in place of salary deductions, provided that the payments are made in an amount or amounts based on the member's average salary on which deductions were paid for the last six months of public service, or for 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 the leave of absence. If the employee elects to pay employee contributions for the period of any leave of absence without pay, or for any portion of the leave, the employee shall also, as a condition to the exercise of the election, pay to the fund an amount equivalent to both the required employer and additional employer contributions for the employee. The payment must be made within one year from the expiration of the leave of absence or within 20 days after termination of public service under subdivision 1 la. The employer by appropriate action of its governing body, made a part of its official records, before the date of the first payment of the employee contribution, may certify to the association in writing its commitment to pay the employer and additional employer contributions from the proceeds of a tax levy made under section 353.28. Payments under this paragraph must include interest at an annual rate of 8.5 percent compounded annually from the date of the termination of the leave of absence to the date payment is made. An employee shall return to public service and receive a minimum of three months of allowable service to be eligible to pay employee and employer contributions for a subsequent authorized leave of absence without pay.

(d) "Allowable service" also means a periodic, repetitive leave that is offered to all employees of a governmental subdivision. The leave program may not exceed 208 hours per annual normal work cycle as certified to the association by the employer. A participating member obtains service credit by making employee contributions in an amount or amounts based on the member's average salary that would have been paid if the leave had not been taken. The employer shall pay the employer and additional employer contributions on behalf of the participating member. The employee and the employer are responsible to pay interest on their respective shares at the rate of 8.5 percent a year, compounded annually, from the end of the normal cycle until full payment is made. An employer shall also make the employer and additional employer contributions, plus 8.5 percent interest, compounded annually, on behalf of an employee who makes employee contributions but terminates public service. The employee contributions must be made within one year after the end of the annual normal working cycle or within 20 days after termination of public service, whichever is sooner. The association shall prescribe the manner and forms to be used by a governmental subdivision in administering a periodic, repetitive leave.

(e) "Allowable service" also means a period during which a member is on an authorized sick leave of absence, without pay, limited to one year. An employee who has received one year of allowable service shall return to public service and receive a minimum of three months of allowable service to receive allowable service for a subsequent authorized sick leave of absence.

(f) "Allowable service" also means an authorized temporary layoff under subdivision 12, limited to three months allowable service per authorized temporary layoff in one calendar year. An employee who has received the maximum service allowed for an authorized temporary layoff shall return to public service and receive a minimum of three months of allowable service to receive allowable service for a subsequent authorized temporary layoff.

(g) Notwithstanding any law to the contrary, "allowable service" also means a parental leave. The association shall grant a maximum of two months service credit for a parental leave, within six months after the birth or adoption, upon documentation from the member's governmental subdivision or presentation of a birth certificate or other evidence of birth or adoption to the association.

(h) "Allowable service" also means a 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 under section 192.262 and pays into the fund employee contributions based upon the employee's salary at the date of return from military service. Payment must be made within five years of the date of discharge from the military service. The amount of these contributions must be in accord with the contribution rates and salary limitations, if any, in effect during the leave, plus interest at an annual rate of 8.5 percent compounded annually from the date

of return to public service to the date payment is made. The matching employer contribution and additional employer contribution under section 353.27, subdivisions 3 and 3a, must be paid by the governmental subdivision employing the member upon return to public service if the member makes the employee contributions. The governmental subdivision involved may appropriate money for those payments. A member may not receive credit for a voluntary extension of military service at the instance of the member beyond the initial period of enlistment, induction, or call to active duty.

(i) 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, chapter 401, and transferred into county service under section 401.04, "allowable service" means combined years of allowable service as defined in paragraphs (a) to (i) and section 352.01, subdivision 11.

(j) For a public employee who has prior service covered by a local police or firefighters relief association that has consolidated with the public employees retirement association, and who has elected the type of benefit coverage provided by the public employees police and fire fund under section 353A.08 following the consolidation, "applicable service" is a period of service credited by the local police or firefighters relief association as of the effective date of the consolidation based on law and on bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure.

Subd. 17. **Approved actuary.** "Approved actuary" means any actuary who is a fellow of the society of actuaries or who has at least 15 years of service to major public employee funds or any firm retaining such an actuary on its staff.

Subd. 18. **Year of allowable service.** "Year of allowable service" means any 12 calendar months not necessarily consecutive in which a public employee received compensation from the governmental subdivision or was eligible to credit for service. It also means 12 months credit each year for employees who are paid on a yearly basis and who may or may not receive compensation in every calendar month in the year.

Subd. 19. **Total and permanent disability.** "Total and permanent disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to be of long-continued and indefinite duration. Long-continued and indefinite duration means that the disability has been or is expected to be for a period of at least one year.

Subd. 20. **Surviving spouse.** "Surviving spouse" means the spouse of a deceased member or disabilitant who was legally married to the member at the time of death.

Subd. 21. [Repealed, 1971 c 106 s 40]

Subd. 22. [Repealed, 1971 c 106 s 40]

Subd. 23. **Retirement annuity.** "Retirement annuity" means the amount paid or payable by the fund to a former member after retirement.

Subd. 24. **Optional annuity.** "Optional annuity" means the allowance paid or payable by the fund to the designated optional annuity beneficiary of a member or former member, pursuant to an optional annuity form selected at or before retirement, or to the spouse of a deceased member under section 353.32, subdivision 1a.

Subd. 25. [Repealed, 1973 c 753 s 85]

Subd. 26. [Repealed, 1971 c 106 s 40]

Subd. 27. **Benefit.** "Benefit" means a monthly survivor benefit paid or payable by the fund to a surviving spouse or a dependent child and also includes a monthly disability benefit paid or payable by the fund to a member who is totally and permanently disabled.

Subd. 28. **Retirement.** (a) "Retirement" means the commencement of payment of an annuity based on a date designated by the board of trustees. This date determines the rights under this chapter which occur either before or after retirement. A right to retirement is subject to termination of public service under subdivision 11a or termination of membership under subdivision 11b, the earlier of which will determine the date

membership and coverage cease. A right to retirement must not accrue without a complete and continuous separation for 30 days from employment as a public employee under subdivision 2.

A former member of the basic or police and fire fund who becomes a coordinated member upon returning to eligible, nontemporary public service, terminates employment before obtaining six months' allowable service under subdivision 16, paragraph (a), in the coordinated fund, and is eligible to receive an annuity the first day of the month after the most recent termination date shall not accrue a right to a retirement annuity under the coordinated fund. An annuity otherwise payable to the former member must be based on the laws in effect on the date of termination of the most recent service under the basic or police and fire fund and shall be retroactive to the first day of the month following that termination date or one year preceding the filing of an application for retirement annuity as provided by section 353.29, subdivision 7, whichever is later. The annuity payment must be suspended or reduced under the provisions of section 353.37, if earned compensation for the reemployment equals or exceeds the amounts indicated under that section. The association will refund the employee deductions made to the coordinated fund, with interest under section 353.34, subdivision 2, return the accompanying employer contributions, and remove the allowable service credits covering the deductions refunded.

(b) Notwithstanding the 30-day separation requirement, a member of the defined benefit plan under this chapter, who also participates in the public employees defined contribution plan under chapter 353D for other public service, may be paid, if eligible, a retirement annuity from the defined benefit plan while participating in the defined contribution plan.

Subd. 29. Designated beneficiary. "Designated beneficiary" means the person or organization designated by a member, former member, disabilitant, or retired member in writing, signed and filed with the association before the death of the member, former member, disabilitant, or retired member, to receive a refund of the balance of the member's accumulated deductions after death.

Subd. 30. Designated optional annuity beneficiary. "Designated optional annuity beneficiary" means the person designated by a former member to receive a joint and survivor annuity or a modified joint and survivor annuity.

Subd. 31. Authorized leave of absence. "Authorized leave of absence" means any period during which a member is authorized by an employer to refrain from active employment, with or without pay, evidenced by appropriate record of the employer and promptly transmitted to the association.

Subd. 32. Coordinated member. "Coordinated member" means any public employee, including any public hospital employee, covered by any agreement or modification made between the state and the Secretary of Health, Education and Welfare, making the provisions of the federal Old Age, Survivors and Disability Insurance Act applicable to the member if membership eligibility criteria are met under this chapter. Coordinated member also means a basic member who terminates public service under subdivision 11a, reenters public service in a nontemporary position, and meets the membership eligibility criteria under this chapter.

Subd. 33. Basic member. "Basic member" means any public employee, including any public hospital employee, not covered by any agreement or modification made between the state and the Secretary of Health, Education and Welfare.

Subd. 34. [Repealed, 1982 c 404 s 10]

Subd. 35. Volunteer ambulance service personnel. "Volunteer ambulance service personnel," for purposes of this chapter, are basic and advanced life support emergency medical service personnel employed by or providing services for any public ambulance service or privately operated ambulance service that receives an operating subsidy from a governmental entity.

Subd. 36. Volunteer firefighter. For purposes of this chapter, a person is considered a "volunteer firefighter" for all service for which the person receives credit in an association or fund operating under chapter 424A.

Subd. 37. Normal retirement age. "Normal retirement age" means age 65 for a person who first became a public employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989. For a person who first becomes a public employee after June 30, 1989, "normal retirement age" means the higher of age 65 or "retirement age," as defined in United States Code, title 42, section 416(l), as amended.

History: (254-23) 1931 c 307 s 1; 1933 c 374 s 1; 1937 c 466 s 1; 1941 c 285 s 1; 1945 c 78 s 1; 1947 c 18 s 1; 1949 c 84 s 1; 1951 c 22 s 1-8; 1953 c 78 s 1; 1955 c 815 s 11; 1957 c 815 s 1; 1957 c 935 s 1-5; 1959 c 650 s 1-7, 39, 43, 58; 1961 c 482 s 1; 1961 c 595 s 1; 1961 c 746 s 1; 1963 c 440 s 1; 1963 c 641 s 3-12; 1965 c 104 s 1; 1965 c 880 s 1, 2; Ex1967 c 26 s 1; Ex1967 c 37 s 1; 1969 c 940 s 1, 2; 1971 c 106 s 1-8; 1971 c 503 s 1, 2; 1973 c 123 art 5 s 7; 1973 c 753 s 3-18; 1974 c 229 s 1-8; 1975 c 102 s 1-3; 1975 c 359 s 23; 1976 c 329 s 12-15; 1977 c 347 s 52, 53; 1977 c 429 s 19-22, 63; 1978 c 471 s 1; 1978 c 720 s 6; 1978 c 796 s 23-26; 1979 c 216 s 1-4, 21; 1979 c 303 art 6 s 5; 1980 c 609 art 5 s 20; 1981 c 68 s 16-18; 1981 c 180 s 1; 1981 c 224 s 73-75; 1981 c 298 s 11; 1982 c 404 s 1-4; 1982 c 424 s 64, 115, 125; 1983 c 286 s 6; 1985 c 261 s 3; 1Sp1985 c 7 s 12; 1986 c 399 art 2 s 9; 1986 c 400 s 9; 1986 c 444; 1986 c 458 s 11; 1Sp1986 c 3 art 2 s 41; 1987 c 49 s 9; 1987 c 258 s 12; 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; 1988 c 709 art 2 s 1; art 5 s 1-7; 1989 c 209 art 2 s 36; 1989 c 246 s 2; 1989 c 319 art 3 s 1-6; art 5 s 1; art 13 s 29; 1989 c 335 art 3 s 5; 1990 c 556 s 7; 1990 c 570 art 8 s 1; art 11 s 1-3; art 12 s 19; 1991 c 269 art 2 s 5; 1991 c 341 s 1-6; 1992 c 432 art 2 s 2-5; 1992 c 598 art 2 s 1; 1993 c 307 art 4 s 1-15; 1993 c 336 art 6 s 5, 6; 1994 c 528 art 2 s 1-4; 1994 c 572 s 5

NOTE: The amendment to subdivision 2a, clause (6), by Laws 1994, chapter 572, section 5, is effective July 1, 1995. See Laws 1994, chapter 572, section 13.

353.011 BOARD OF TRUSTEE TERMS.

Notwithstanding section 353.03, in January 1993, the governor shall appoint two persons to the board of trustees of the public employees retirement association to one-year terms expiring in January 1994, one person to a three-year term expiring in January 1996, and two persons to four-year terms expiring in January 1997. Thereafter, persons appointed to the board of trustees serve four-year terms under section 353.03, subdivision 1.

History: 1992 c 432 art 2 s 50

353.015 [Repealed, 1973 c 753 s 85]

353.016 [Repealed, 1977 c 429 s 65]

353.017 EMPLOYEES OF LABOR ORGANIZATIONS.

Subdivision 1. Qualifications. Unless specifically exempt under section 353.01, subdivision 2b, a coordinated member of the association who is on an authorized leave of absence, and who is an employee of a labor organization that represents public employees who are association members may elect, under subdivision 2, to continue to be a coordinated member with respect to employment by the labor organization subject to the limitations set forth in subdivisions 4 and 7.

Subd. 2. Election. A person described in subdivision 1 is covered by the association if written election to be covered is delivered to the association within six months of employment by the labor organization or within six months after July 1, 1993, whichever is applicable.

Subd. 3. Contributions. The employee, employer and additional employer contributions are the obligation of the employee who elects coverage herein in accord with this chapter; provided, however, the employer, labor organization may pay the employer and additional employer contributions. The employer shall, in any event, deduct the necessary contributions from the employee's salary, subject to the limitations under subdivision 6, and remit all contributions to the public employees retirement association under section 353.27, subdivisions 4, 7, 10, 11, and 12.

Subd. 4. [Repealed, 1982 c 404 s 10]

Subd. 4. **Termination of membership for retirement eligibility.** A retirement annuity is only payable, if the person has met any other applicable requirements, upon the termination by the person who elected coverage under subdivision 1 of employment by the labor organization. The reemployed annuitant earnings limitation set forth in section 353.37, subdivision 1, applies in the event that the person who elected coverage under subdivision 1 retires and is subsequently reemployed while an annuitant by the labor organization or by any other entity employing persons who are covered by the public employees retirement association by virtue of that employment.

Subd. 5. **Board membership excluded.** Persons who become association members pursuant to this section shall not be eligible for election to the board of trustees.

Subd. 6. **Reemployment of annuitant.** The annuity of a person otherwise eligible for an annuity under this chapter is subject to the provisions of section 353.37.

Subd. 7. **Limitations on salary and contributions.** The covered salary for a labor organization employee who qualifies for membership under this section is limited to the lesser of:

(1) the employee's actual salary as defined under section 353.01, subdivision 10; or

(2) 75 percent of the salary of the governor as set under section 15A.082.

The limited covered salary determined under this subdivision must be used in determining employee and employer contributions under section 353.27, subdivisions 2, 3, and 3a, and in determining retirement annuities and other benefits under this chapter and chapter 356.

History: 1975 c 102 s 4; 1978 c 796 s 27; 1979 c 216 s 5; 1986 c 444; 1993 c 307 art 4 s 16; 1994 c 528 art 2 s 5; art 4 s 4-7

353.018 [Repealed, 1977 c 429 s 65]

353.019 [Repealed, 1977 c 429 s 65]

353.02 [Repealed, 1957 c 935 s 27]

353.022 [Repealed, 1981 c 68 s 46]

353.023 [Repealed, 1982 c 404 s 10]

353.024 EMPLOYEES OF SUBURBAN PUBLIC HEALTH NURSING SERVICE, INCORPORATED.

From and after June 1, 1981, employees of the Suburban Public Health Nursing Service, Incorporated, shall become members of the public employees retirement association unless specifically exempt under section 353.01, subdivision 2b, and the Suburban Public Health Nursing Service, Incorporated, shall be deemed to be a governmental subdivision for the purpose of this chapter.

Retirement coverage by the public employees retirement association shall be provided by the appropriate retirement program as follows:

(a) an employee who was a basic member of the public employees retirement association prior to December 2, 1977, and who chose to be excluded from federal old age, survivors, disability and health insurance coverage during an authorized referendum for the period from December 2, 1977, to June 1, 1981, shall be deemed to be a basic member and shall be entitled to coverage by the basic retirement program; and

(b) an employee who was either a basic member or a coordinated member prior to December 2, 1977, and who chose to be included in federal old age, survivors, disability and health insurance coverage during an authorized referendum for the period December 2, 1977, to June 1, 1981, or an employee who was a coordinated member prior to December 2, 1977, and who chose to be excluded from federal old age, survivors, disability and health insurance coverage during an authorized referendum for the period from December 2, 1977, to June 1, 1981, shall be deemed to be a coordinated member and shall be entitled to coverage by the coordinated retirement coverage.

History: 1981 c 68 s 19

353.025 RANGE ASSOCIATION OF MUNICIPALITIES AND SCHOOLS.

From and after January 1, 1982, employees of the Range Association of Municipalities and Schools hereinafter referred to as the association, shall become coordinated members of the public employees retirement association unless specifically exempt under section 353.01, subdivision 2b, and the association shall be deemed to be a governmental subdivision for the purposes of this chapter.

History: 1981 c 68 s 20

353.026 COVERAGE FOR CERTAIN MUNICIPAL AND SCHOOL DISTRICT EMPLOYEES.

Any person who was employed by the city of Minneapolis, Special School District No. 1, or public corporation as defined in section 422A.01, subdivision 9, on or after July 1, 1978 and prior to July 1, 1979, and who was excluded from retirement coverage by the coordinated program of the Minneapolis municipal employees retirement fund pursuant to section 422A.09, subdivision 3, shall be entitled to retirement coverage by the public employees retirement association unless specifically excluded pursuant to section 353.01, subdivision 2b, from and after May 19, 1981.

History: 1981 c 224 s 77

353.027 RETENTION OF COVERAGE FOR CERTAIN MUNICIPAL COURT EMPLOYEES.

Any person employed on January 1, 1975, by a municipal court established pursuant to Minnesota Statutes 1957, section 488.03 and located in the cities of New Brighton, Roseville, Maplewood, North Saint Paul, White Bear Lake or St. Paul shall be eligible for membership in the public employees retirement association and shall retain any rights or benefits the person had attained as a member of the association on January 1, 1975, so long as the person remains an employee of the municipal court of Ramsey county.

History: 1981 c 224 s 78

353.028 CITY MANAGERS; ELECTION; DEFERRED COMPENSATION.

Subdivision 1. **Definitions.** For purposes of this section "city manager" means (1) a person duly appointed to and holding the position of city manager in a Plan B statutory city or in a home rule city operating under the "council-manager" form of government, or (2) a person appointed to and holding the position of chief administrative officer of a home rule charter city or a statutory city pursuant to a charter provision, ordinance, or resolution establishing such a position and prescribing its duties and responsibilities. "Governing body" means the city council of the city employing the city manager. "Election" means the election described in subdivision 2.

Subd. 2. **Election.** A city manager may elect to be excluded from membership in the association. The election of exclusion must be made within six months following the commencement of employment, in writing on a form prescribed by the executive director, and must be approved by a resolution of the governing body of the city. The election of exclusion is not effective until it is filed with the executive director. Membership of a city manager in the association ceases on the date the written election is received by the executive director or upon a later date specified. The election to be excluded from membership must include a provision agreeing that the person will not at any time in the future seek authorization to purchase service credit for any period of excluded service and is irrevocable. Employee and employer contributions made on behalf of a person exercising the option to be excluded from membership under this section must be refunded in accordance with section 353.27, subdivision 7.

Subd. 3. **Deferred compensation; city contribution.** If an election of exclusion is made, and if the city manager and the governing body of the city agree in writing that the additional compensation is to be deferred and shall be contributed on behalf of the city manager to a deferred compensation program which meets the requirements of sec-

tion 457 of the Internal Revenue Code of 1954, as amended through December 31, 1980, the governing body may compensate the city manager, in addition to the salary allowed under any limitation imposed on salaries by law or charter, in an amount equal to the employer contribution which would be required by section 353.27, subdivision 3, if the city manager were a member of the association.

Subd. 4. Refunds; deferred annuity. A city manager who makes an election to be excluded from membership is entitled to a refund of accumulated deductions or, if otherwise qualified, a deferred annuity in the manner provided by section 353.34, at the option of the manager.

Subd. 5. Election; other employment. If a city manager who has made an election to be excluded accepts employment in another governmental subdivision or accepts employment other than as a city manager in the same city, the election shall be deemed to have been rescinded on the effective date of employment.

History: 1981 c 254 s 1; 1988 c 709 art 5 s 8

353.03 BOARD OF TRUSTEES.

Subdivision 1. Management; composition; election. The management of the public employees retirement fund is vested in an 11-member board of trustees consisting of ten members and the state auditor who may designate a deputy auditor with expertise in pension matters as the auditor's representative on the board. The governor shall appoint five trustees to four-year terms, one of whom shall be designated to represent school boards, one to represent cities, one to represent counties, one who is a retired annuitant, and one who is a public member knowledgeable in pension matters. The membership of the association, including recipients of retirement annuities and disability and survivor benefits, shall elect five trustees, one of whom must be a member of the police and fire fund and one of whom must be a former member who met the definition of public employee under section 353.01, subdivisions 2 and 2a, for at least five years prior to terminating membership or a member who receives a disability benefit, for terms of four years. Except as provided in this subdivision, trustees elected by the membership of the association must be public employees and members of the association. For seven days beginning October 1 of each year preceding a year in which an election is held, the association shall accept at its office filings in person or by mail of candidates for the board of trustees. A candidate shall submit at the time of filing a nominating petition signed by 25 or more members of the fund. No name may be withdrawn from nomination by the nominee after October 15. At the request of a candidate for an elected position on the board of trustees, the board shall mail a statement of up to 300 words prepared by the candidate to all persons eligible to vote in the election of the candidate. The board may adopt policies to govern form and length of these statements, timing of mailings, and deadlines for submitting materials to be mailed. These policies must be approved by the secretary of state. The secretary of state shall resolve disputes between the board and a candidate concerning application of these policies to a particular statement. A candidate who:

- (1) receives contributions or makes expenditures in excess of \$100; or
- (2) has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100 for the purpose of bringing about the candidate's election, shall file a report with the ethical practices board disclosing the source and amount of all contributions to the candidate's campaign. The ethical practices board shall prescribe forms governing these disclosures. Expenditures and contributions have the meaning defined in section 10A.01. These terms do not include the mailing made by the association board on behalf of the candidate. A candidate shall file a report within 30 days from the day that the results of the election are announced. The ethical practices board shall maintain these reports and make them available for public inspection in the same manner as the board maintains and makes available other reports filed with it. By January 10 of each year in which elections are to be held the board shall distribute by mail to the members ballots listing the candidates. No member may vote for more than one candidate for each board position to be filled. A ballot indi-

cating a vote for more than one person for any position is void. No special marking may be used on the ballot to indicate incumbents. The last day for mailing ballots to the fund is January 31. Terms expire on January 31 of the fourth year, and positions are vacant until newly elected members are qualified. The ballot envelopes must be so designed and the ballots counted in a manner that ensures that each vote is secret.

The secretary of state shall supervise the elections. The board of trustees and the executive director shall undertake their activities consistent with chapter 356A.

Subd. 1a. **Vacancy, how filled.** Any vacancy on the board caused by death, resignation, or removal of any trustee, or occurring because an elected trustee ceases to be a public employee and an active member of the association, must be filled by the board for trustees elected by members, and by the governor for other trustees, for the unexpired portion of the term in which the vacancy occurs.

Subd. 2. **No compensation expenses.** The members of the board of trustees shall serve without compensation, but shall be reimbursed out of the retirement fund for expenses actually and necessarily paid or incurred in the performance of their duties. Members of the board of trustees shall suffer no loss of compensation from a public employer by reason of service on or for the board or on any authorized committee thereof.

Subd. 2a. [Repealed, 1977 c 429 s 65]

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, with the approval of the board, up to two persons 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;

(13) reduce all or part of the accrued interest payable under section 353.27, subdivisions 12, 12a, and 12b, or 353.28, subdivision 5, upon receipt of proof by the association of an unreasonable processing delay or other extenuating circumstances of the employing unit. The executive director shall prescribe and submit for approval by the board the conditions under which such interest may be reduced; and

(14) 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.

Subd. 4. Offices. The commissioner of administration shall make provision for suitable office space in the state capitol or other state office buildings, or at such other location in St. Paul as is determined by the commissioner for the use of the board of trustees and its executive director. The commissioner shall give the board at least four months notice for any proposed removal from their present location. Any and all rental charges shall be paid by the trustees from the public employees retirement fund.

Subd. 5. Application of laws. Laws applicable to state agencies and agencies with statewide jurisdiction shall apply to the association.

History: (254-25) 1931 c 307 s 3; 1949 c 84 s 2; 1951 c 22 s 16; 1959 c 650 s 8,58; 1963 c 641 s 13; 1967 c 641 s 1; 1969 c 940 s 3; 1971 c 106 s 10,11; 1973 c 753 s 19,20; 1974 c 229 s 9; 1975 c 102 s 5-8; 1976 c 329 s 17,18; 1977 c 429 s 18; 1978 c 796 s 28; 1979 c 216 s 6,7; 1981 c 180 s 2-4; 1981 c 224 s 79; 1984 c 462 s 27; 1985 c 11 s 5-10; 1986 c 444; 1987 c 259 s 26; 1987 c 284 art 5 s 3; 1988 c 709 art 5 s 9; 1989 c 319 art 8 s 16; 1991 c 341 s 7; 1994 c 528 art 2 s 6,7

353.04 [Repealed, 1957 c 935 s 27]

353.05 CUSTODIAN OF FUNDS.

The state treasurer shall be ex officio treasurer of the retirement funds of the association and the treasurer's general bond to the state shall be so conditioned as to cover all liability for acts as treasurer of these funds. All moneys of the association received by the treasurer shall be set aside in the state treasury to the credit of the proper fund. The treasurer shall transmit monthly to the executive director a detailed statement of all amounts so received and credited to the fund. Payments out the fund shall be made only on warrants issued by the commissioner of finance, upon abstracts signed by the executive director; provided that abstracts for investment may be signed by the secretary of the state board of investment.

History: (254-27) 1931 c 307 s 5; 1959 c 650 s 58; 1971 c 106 s 12; 1974 c 229 s 10; 1975 c 102 s 6; 1986 c 444

353.06 STATE BOARD OF INVESTMENT TO INVEST FUNDS.

The executive director shall from time to time certify to the state board of investment for investment such portions of the retirement fund as in its judgment may not be required for immediate use. Assets from the public employees retirement fund shall be transferred to the Minnesota postretirement investment fund as provided in section 11A.18. The state board of investment shall thereupon invest and reinvest the sum so

certified, or transferred, in such securities as are duly authorized as legal investments for state employees retirement fund and shall have authority to sell, convey, and exchange such securities and invest and reinvest the securities when it deems it desirable to do so and shall sell securities upon request of the board of trustees when such funds are needed for its purposes. All of the provisions regarding accounting procedures and restrictions and conditions for the purchase and sale of securities for the state employees retirement fund shall apply to the accounting, purchase and sale of securities for the public employees retirement fund.

History: (254-28) 1931 c 307 s 6; 1959 c 650 s 58; 1961 c 380 s 5; 1965 c 305 s 5; 1973 c 753 s 21; 1975 c 102 s 6; 1980 c 607 art 14 s 45 subd 2; s 46

353.07 [Repealed, 1973 c 753 s 85]

353.08 LEGAL ADVISER, ATTORNEY GENERAL; VENUE.

The attorney general shall be the legal adviser of the board of trustees. The board may sue or be sued in the name of the board of trustees of the public employees retirement association and, in all actions brought by it or against it, the board shall be represented by the attorney general. The venue of all actions against and by the public employees retirement association shall be Ramsey county.

History: (254-30) 1931 c 307 s 8; 1933 c 374 s 1; 1959 c 650 s 58; 1973 c 753 s 22; 1975 c 102 s 9

353.09 [Repealed, 1957 c 935 s 27]

353.10 [Repealed, 1957 c 935 s 27]

353.11 [Repealed, 1957 c 935 s 27]

353.12 [Repealed, 1957 c 935 s 27]

353.13 [Repealed, 1973 c 753 s 85]

353.14 BENEFITS FROM OTHER FUNDS.

No annuity or benefit provided by this chapter shall be affected, diminished, or impaired by any pension, benefit, or annuity which any member or survivor is entitled to receive from a tax supported public retirement system authorized by any other law, for different service for which the member or survivor is entitled to receive benefit or annuity from the public employees retirement association.

History: 1963 c 641 s 1; 1973 c 753 s 23; 1986 c 444

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 or send by electronic transfer 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: (254-40) 1931 c 307 s 18; 1955 c 815 s 9; 1971 c 789 s 5; 1973 c 753 s 24; 1975 c 102 s 6, 10; 1976 c 329 s 19; 1978 c 772 s 62; 1979 c 303 art 3 s 29; 1981 c 180 s 5; 1984 c 547 s 6; 1986 c 444; 1987 c 157 s 5; 1990 c 570 art 11 s 4

353.16 AUDIT OF BOOKS AND ACCOUNTS; INSURANCE LAWS NOT APPLICABLE.

None of the laws of this state regulating insurance or insurance companies shall apply to the retirement association or any of its funds. The books and accounts of the association and the retirement fund shall be examined and audited annually, if funds and personnel permit, by the legislative auditor of the state and a full and detailed report thereof made to the board of trustees. The cost of any examination shall be paid by the retirement association in accordance with the provisions of section 16A.127, subdivision 7, and for the purposes of this section the public employees retirement association shall be considered a state agency as referred to in section 16A.127, subdivision 7.

History: (254-41) 1931 c 307 s 19; 1933 c 374 s 1; 1959 c 645 s 1; 1959 c 650 s 58; 1971 c 106 s 15; 1974 c 229 s 11; 1979 c 50 s 45; 1981 c 224 s 80

353.17 [Repealed, 1971 c 106 s 40]

353.18 RULES.

All matters and administrative details not specifically provided for in this chapter shall be governed by rules issued and promulgated by the board of trustees. The final power to determine the status of any individual in the employ of any governmental subdivision, for the purposes of this chapter, is hereby vested in the board, and such determination shall not be disturbed unless found to be arbitrary and capricious.

History: (254-44) 1931 c 307 s 22; 1941 c 285 s 9; 1959 c 650 s 58; 1973 c 753 s 25; 1985 c 248 s 70

353.19 PENALTIES FOR FALSE INFORMATION.

Any person who shall give any false information to the board of trustees or any officer or agent of the retirement association, or any person who shall willfully fail or refuse to perform or discharge any duty prescribed by this chapter shall, upon conviction thereof, be guilty of a gross misdemeanor.

History: (254-45) 1931 c 307 s 23; 1959 c 650 s 58; 1973 c 753 s 26

353.20 [Repealed, 1955 c 815 s 12]

353.21 [Repealed, 1957 c 935 s 27]

353.26 Subdivision 1. [Repealed, 1973 c 753 s 85]

Subd. 2. [Repealed, 1973 c 753 s 85]

Subd. 3. [Repealed, 1973 c 753 s 85]

Subd. 4. [Repealed, 1959 c 650 s 57]

Subd. 5. [Repealed, 1973 c 753 s 85]

Subd. 6. [Repealed, 1973 c 753 s 85]

353.27 PUBLIC EMPLOYEES RETIREMENT FUND.

Subdivision 1. **Income; disbursements.** There is a special fund known as the "public employees retirement fund," the "retirement fund," or the "fund," which shall include all the assets of the association. This fund shall be credited with all contributions, all interest and all other income authorized by law. From this fund there is appropriated the payments authorized by this chapter in the amounts and at such time provided herein, including the expenses of administering the fund, and including the proper share of the Minnesota postretirement investment fund.

Subd. 2. **Employee contribution.** The employee contribution shall be an amount (a) for a "basic member" equal to 8.23 percent of total salary; and (b) for a "coordinated member" equal to 4.23 percent of total salary. These contributions shall be made by deduction from salary in the manner provided in subdivision 4. Where any portion of a member's salary is paid from other than public funds, such member's employee contribution shall be based on the total salary received from all sources.

Subd. 3. **Employer contribution.** The employer contribution shall be an amount equal to the employee contribution under subdivision 2. This contribution shall be made from funds available to the employing subdivision by the means and in the manner provided in section 353.28.

Subd. 3a. **Additional employer contribution.** An additional employer contribution shall be made equal to (a) 2-1/2 percent of the total salary of each "basic member"; and (b) one-quarter of one percent of the total salary of each "coordinated member." These contributions shall be made from funds available to the employing subdivision by the means and in the manner provided in section 353.28.

Subd. 4. **Employers reporting requirements; contributions; member status.** (a) The head of each department shall deduct employee contributions from the salary of each member and issue or approve one warrant for the aggregate amount of the employee contributions, the employer contributions and the additional employer contributions to be received within 20 calendar days 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 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 member terminations of public service accompanied by the applicable status code as set by the association for those terminations caused by death or retirement; (f) effective dates of all temporary layoffs and leaves of absence accompanied by 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. Reports of contributions must be accompanied by a membership enrollment form for each new employee in the form prescribed by the executive director. The enrollment forms from new employees must be collected by the employer and submitted to the association within 30 days following the date of employment. The employer shall furnish such additional reports on magnetic media on other forms as may be requested by the executive director.

(b) Notwithstanding paragraph (a), the association may provide for less frequent reporting and payments for small employers.

Subd. 5. [Repealed, 1973 c 753 s 85]

Subd. 5a. [Repealed, 1992 c 443 s 2]

Subd. 6. [Repealed, 1971 c 106 s 40]

Subd. 7. **Adjustment for erroneous receipts or disbursements.** (a) Except as provided in paragraph (b), erroneous employee deductions and erroneous employer contributions and additional employer contributions for a person, who otherwise does not qualify for membership under this chapter, are considered:

(1) valid if the initial erroneous deduction began before January 1, 1990. Upon determination of the error by the association, the person may continue membership in the association while employed in the same position for which erroneous deductions were taken, or file a written election to terminate membership and apply for a refund or defer an annuity under section 353.34; or

(2) invalid, if the initial erroneous employee deduction began on or after January 1, 1990. Upon determination of the error, the association shall require the employer to discontinue erroneous employee deductions and erroneous employer contributions and additional employer contributions. Upon discontinuance, the association shall refund all erroneous employee deductions to the person, with interest, under section 353.34, subdivision 2, and all erroneous employer contributions and additional employer contributions to the employer. No person may claim a right to continued or past membership in the association based on erroneous deductions which began on or after January 1, 1990.

(b) Erroneous deductions taken from the salary of a person who did not qualify for membership in the association by virtue of concurrent employment before July 1,

1978, which required contributions to another retirement fund or relief association established for the benefit of officers and employees of a governmental subdivision, are invalid. Upon discovery of the error, the association shall remove all service and refund all erroneous employee deductions to the person, with interest under section 353.34, subdivision 2, and all erroneous employer contributions to the employer. This paragraph has both retroactive and prospective application.

(c) Employer contributions and employee deductions taken in error from amounts which are not salary under section 353.01, subdivision 10, are invalid upon discovery by the association and may be refunded at any time.

(d) In the event a salary warrant or check from which a deduction for the retirement fund was taken has been canceled or the amount of the warrant or check returned to the funds of the department making the payment, a refund of the sum deducted, or a portion of it that is required to adjust the deductions, must be made to the department or institution.

Subd. 7a. Deductions or contributions transmitted by error. (a) If employee deductions and employer contributions were erroneously transmitted to the association, but should have been transmitted to another Minnesota public pension plan, the association shall transfer the erroneous employee deductions and employer contributions to the appropriate retirement fund without interest. The time limitations in subdivisions 7 and 12 do not apply.

(b) For purposes of this subdivision, a Minnesota public pension plan means a plan specified in section 356.30, subdivision 3, or the plan governed by chapter 354B.

Subd. 7b. Overpayments to members. In the event of an overpayment to a member, the executive director shall recover the overpayment by suspending or reducing the payment of a retirement annuity, refund, disability benefit, survivor benefit, or optional annuity under this chapter until all outstanding money has been recovered.

Subd. 8. District court reporters; salary deductions. Deductions from the salary of a district court reporter in a judicial district consisting of two or more counties shall be made by the auditor of the county in which the bond and official oath of such district court reporter are filed, from the portion of salary paid by such county.

Subd. 9. Fee officers; contributions; obligations of employers. Any appointed or elected officer of a governmental subdivision who was or is a "public employee" within the meaning of section 353.01 and was or is a member of the fund and whose salary was or is paid in whole or in part from revenue derived by fees and assessments, shall pay employee contribution in the amount, at the time, and in the manner provided in subdivisions 2 and 4. This subdivision shall not apply to district court reporters. The employer contribution as provided in subdivision 3, and the additional employer contribution as provided in subdivision 3a, and section 353.36, subdivision 2a, with respect to such service shall be paid by the governmental subdivision. This subdivision shall have both retroactive and prospective application as to all such members; and every employing governmental subdivision is deemed liable, retroactively and prospectively, for all employer and additional employer contributions for every such member in its employ. Delinquencies under this section shall be governed in all respects by section 353.28.

Subd. 10. Employer exclusion reports. The head of a department shall annually furnish the executive director with an exclusion report listing only those employees in potentially PERA-eligible positions who were not reported as members of the association and who worked during the school year for school employees and calendar year for nonschool employees. The department head must certify the accuracy and completeness of the exclusion report to the association. The executive director shall prescribe the manner and forms, including standardized exclusion codes, to be used by a governmental subdivision in preparing and filing exclusion reports. The executive director shall also check the exclusion report to ascertain whether any omissions have been made by a department head in the reporting of new public employees for membership. The executive director may delegate an association employee under section 353.03, subdivision 3a, paragraph (b), clause (5), to conduct a field audit to review the payroll records of a governmental subdivision.

Subd. 11. Employers; required to furnish requested information. All governmental subdivisions shall furnish promptly such other information relative to the employment status of all employees or former employees, including but not limited to payroll abstracts pertaining to all past and present employees, as may be requested by the association or its executive director, including schedules of salaries applicable to various categories of employment. In the event payroll abstract records have been lost or destroyed, for whatever reason or in whatever manner, so that such schedules of salaries cannot be furnished therefrom, the employing governmental subdivision, in lieu thereof, shall furnish to the association an estimate of the earnings of any employee or former employee for any period as may be requested by the association or its executive director. Should the association receive such schedules of estimated earnings, the executive director is hereby authorized to use the same as a basis for making whatever computations might be necessary for determining obligations of the employee and employer to the retirement fund. If estimates are not furnished by the employer pursuant to the request of the association or its executive director, the association may estimate the obligations of the employee and employer to the retirement fund based upon such records as are in its possession. Where payroll abstracts have been lost or destroyed, the governmental agency need not furnish any information pertaining to employment prior to July 1, 1963. The association shall make no estimate of any obligation of any employee, former employee, or employer covering employment prior to July 1, 1963.

Subd. 12. Omitted salary deductions; obligations. (a) In the case of omission of required deductions from the salary of an employee, the department head shall immediately, upon discovery, report the employee for membership and deduct the employee deductions under subdivision 4. Upon receipt of billing from the association, the omitted employee deductions must be deducted from the employee's next salary payment and remitted to the association. The employee shall pay omitted employee deductions due for the 60 days prior to the end of the last pay period in the omission period during which salary was earned. The employer shall pay any remaining omitted employee deductions and any omitted employer contributions, plus cumulative interest at an annual rate of 8.5 percent compounded annually, from the date or dates each omitted employee contribution was first payable.

(b) An employer shall not hold an employee liable for omitted employee deductions beyond the pay period dates under paragraph (a), nor attempt to recover from the employee those employee deductions paid by the employer on behalf of the employee. Omitted deductions due under paragraph (a) which are not paid by the employee constitute a liability of the employer that failed to deduct the omitted deductions from the employee's salary. The employer shall make payment with interest at an annual rate of 8.5 percent compounded annually. Omitted employee deductions are no longer due if an employee terminates public service before making payment of omitted employee deductions to the association, but the employer remains liable to pay omitted employer contributions plus interest at an annual rate of 8.5 percent compounded annually from the date the contributions were first payable.

(c) The association may not commence action for the recovery of omitted employee deductions and employer contributions after the expiration of three calendar years after the calendar year in which the contributions and deductions were omitted. No payment may be made or accepted unless the association has already commenced action for recovery of omitted deductions. An action for recovery commences on the date of the mailing of any written correspondence from the association requesting information from the governmental subdivision upon which to determine whether or not omitted deductions occurred.

Subd. 12a. A terminated employee who has a period of employment in which previously omitted employer contributions were made under subdivision 12 but for whom no, or only partial, omitted employee contributions have been made, or a member who had prior coverage in the association for which previously omitted employer contributions were made under subdivision 12 but who terminated service before required omitted employee deductions could be withheld from salary, may pay the omitted

employee deductions for the period on which omitted employer contributions were previously paid plus interest at an annual rate of 8.5 percent compounded annually. A terminated employee may pay the omitted employee deductions plus interest within six months of an initial notification from the association of eligibility to pay those omitted deductions. If a terminated employee is reemployed in a position covered under a public pension fund under section 356.30, subdivision 3, and elects to pay omitted employee deductions, payment must be made no later than six months after a subsequent termination of public service.

Subd. 12b. If deductions were omitted from salary adjustments or final salary of a terminated employee who is immediately eligible to draw a monthly benefit, the employer shall pay the omitted employer and employer additional contributions plus interest on both the employer and employee amounts due at an annual rate of 8.5 percent compounded annually. The employee shall pay the employee deductions within six months of an initial notification from the association of eligibility to pay omitted deductions or the employee forfeits the right to make the payment.

Subd. 13. **Certain warrants canceled.** A warrant payable from the retirement fund remaining unpaid for a period of six months must be canceled into the retirement fund and not into the general fund.

History: 1957 c 935 s 7; 1959 c 650 s 12,37,58; 1961 c 744 s 1; Ex1961 c 50 s 1; 1963 c 641 s 18; 1965 c 714 s 1-3; 1965 c 880 s 3; Ex1967 c 53 s 1-3; 1969 c 267 s 2; 1969 c 940 s 5; 1971 c 106 s 16,17; 1973 c 35 s 55; 1973 c 753 s 27-33; 1974 c 229 s 12,13; 1975 c 102 s 6; 1976 c 329 s 20; 1977 c 429 s 24; 1980 c 607 art 14 s 45 subd 2; 1981 c 180 s 6; 1982 c 404 s 5; 1983 c 73 s 1,2; 1983 c 286 s 7; 1984 c 564 s 21; 1Sp1985 c 7 s 13; 1986 c 444; 1987 c 284 art 5 s 4-6; 1988 c 709 art 5 s 10-15; 1989 c 319 art 3 s 7; art 13 s 30; 1990 c 570 art 11 s 5,6; 1991 c 341 s 8-14; 1992 c 432 art 2 s 6-8; 1992 c 513 art 4 s 40; 1992 c 598 art 2 s 2-4; 1993 c 307 art 4 s 17; 1994 c 508 art 1 s 2; 1994 c 528 art 2 s 8

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: 1969 c 399 s 1; 1969 c 999 s 4; 1971 c 414 s 9; 1973 c 753 s 34,35; 1980 c 607 art 14 s 45 subd 2; s 46; 1Sp1985 c 7 s 14; 1987 c 259 s 27; 1987 c 296 s 4

353.272 [Repealed, 1981 c 180 s 18]

353.28 FINANCING OF EMPLOYER CONTRIBUTIONS.

Subdivision 1. Each governmental subdivision shall secure its employer contributions and its additional employer contributions and shall pay these contributions to the retirement fund out of moneys collected from taxes or other revenue of the governmental subdivision, as its obligation for all members employed by such subdivision and these contributions shall be charged as administrative costs.

Subd. 2. [Repealed, 1973 c 753 s 85]

Subd. 3. [Repealed, 1973 c 753 s 85]

Subd. 4. [Repealed, 1973 c 753 s 85]

Subd. 5. Any amount due under this section or section 353.27, subdivision 4, is payable with interest at an annual rate of 8.5 percent compounded annually from the date due until the date payment is received by the association, with a minimum interest charge of \$10. Interest for past due payments of excess police state aid under section 69.031, subdivision 5, must be charged at an annual rate of 8.5 percent compounded annually.

Subd. 6. If the governmental subdivision fails to pay amounts due under chapters 353, 353A, 353B, 353C, and 353D or fails to make payments of excess police state aid to the public employees police and fire fund under section 69.031, subdivision 5, the executive director shall certify those amounts to the governmental subdivision for payment. If the governmental subdivision fails to remit the sum so due in a timely fashion, the executive director shall certify amounts to the county auditor for collection. The county auditor shall collect such amounts out of the revenue of the governmental subdivision, or shall add them to the levy of the governmental subdivision and make payment directly to the association. This tax shall be levied, collected, and apportioned in the manner other taxes are levied, collected, and apportioned.

Subd. 7. [Repealed, 1973 c 753 s 85]

Subd. 8. If the taxes authorized to be levied under this section cause the total amount of taxes levied to exceed any limitation upon the power of a county, city, town, or school district to levy taxes, the governmental subdivision concerned, if it is other than a school district, may levy taxes in excess of the limitation in such amount as is necessary to meet its obligations under this section. The expenditures authorized to be made under this chapter by any municipality are not included in computing the cost of government as defined in any home rule charter of any municipality which employs members covered by the retirement fund.

Subd. 9. [Repealed, 1973 c 753 s 85]

Subd. 10. [Repealed, 1973 c 753 s 85]

Subd. 11. [Repealed, 1971 c 106 s 40]

History: 1957 c 935 s 8; 1959 c 650 s 45,46,58; 1961 c 744 s 2; Ex1961 c 50 s 2; Ex1967 c 59 s 1; 1969 c 267 s 3; 1971 c 106 s 18; Ex1971 c 31 art 20 s 11; 1973 c 123 art 5 s 7; 1973 c 753 s 37,38; 1975 c 102 s 6; 1981 c 180 s 7; 1981 c 224 s 81,82; 1983 c 73 s 3; 1987 c 284 art 5 s 7; 1989 c 319 art 3 s 8,9; 1991 c 341 s 15; 1992 c 598 art 2 s 5

353.29 RETIREMENT ANNUITY UPON TERMINATION OF MEMBERSHIP.

Subdivision 1. **Age and allowable service requirements.** Upon termination of membership, a person who has attained normal retirement age and who received credit for not less than three years of allowable service is entitled upon application to a retirement annuity. The 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. Average sal-

ary must be based upon all allowable service if this service is less than five years. The 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.

Subd. 3. Retirement annuity formula. (a) This paragraph, in conjunction with section 353.30, subdivisions 1, 1a, 1b, and 1c, applies to any member who first became a public employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989, unless paragraph (b), in conjunction with section 353.30, subdivision 5, produces a higher annuity amount, in which case paragraph (b) will apply. The average salary as defined in subdivision 2, multiplied by two percent for each year of allowable service for the first ten years and thereafter by 2.5 percent per year of allowable service and completed months less than a full year for the "basic member," and one percent for each year of allowable service for the first ten years and thereafter by 1.5 percent per year of allowable service and completed months less than a full year for the "coordinated member," shall determine the amount of the "normal" retirement annuity.

(b) This paragraph applies to a member who has become at least 55 years old and first became a public employee after June 30, 1989, and to any other member whose annuity amount, when calculated under this paragraph and in conjunction with section 353.30, subdivision 5, is higher than it is when calculated under paragraph (a), in conjunction with section 353.30, subdivisions 1, 1a, 1b, and 1c. The average salary, as defined in subdivision 2, multiplied by 2.5 percent for each year of allowable service and completed months less than a full year for a basic member and 1.5 percent per year of allowable service and completed months less than a full year for a coordinated member, shall determine the amount of the normal retirement annuity.

Subd. 4. Application for annuity. Application for a retirement annuity may be made by a member or by a person authorized to act on behalf of the member. Every application for retirement must be made in writing on a form prescribed by the executive director and must be substantiated by written proof of the member's age and identity. The notarized signature of a member's spouse on a retirement annuity application acknowledging the member's annuity selection meets the notice requirement to the spouse under section 356.371, subdivision 3. An application for a retirement annuity is not complete until all necessary supporting documents are received by the executive director.

Subd. 5. [Repealed, 1959 c 650 s 57]

Subd. 6. Retirement before eligibility for social security benefits. A member or former member who retires before becoming eligible for social security retirement benefits may elect to receive an optional retirement annuity from the association that provides for different annuity amounts over different periods of retirement. The election of this optional retirement annuity must be exercised by making application to the board of trustees. The optional annuity must 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. The optional annuity must be the actuarial equivalent of the normal retirement annuity computed on the basis of age at retirement. This greater amount must be paid until the annuitant reaches age 62, at which time the payment from the association must be reduced. The board of trustees shall establish the method of computing the optional retirement annuity under this subdivision. In establishing the method of computing the optional retirement annuity, the board of trustees shall obtain the written approval of the commission-retained actuary. The recommendations must be a part of the permanent records of the board of trustees.

Subd. 7. Annuities; accrual. Except as to elected public officials, a retirement annuity granted under this chapter begins with the first day of the first calendar month after the date of termination of public service. The annuity must be paid in equal monthly installments and does not accrue beyond the end of the month in which entitlement to the annuity has terminated. If the annuitant dies prior to negotiating the check for

the month in which death occurs, payment must be made to the surviving spouse, or if none, to the designated beneficiary, or if none, to the estate.

An annuity granted to an elective public official accrues on the day following expiration of public office or expiration of the right to hold that office. The annuity for the month during which the expiration occurred is prorated accordingly. An annuity, once granted, must not be increased, decreased, or revoked except under this chapter. An annuity payment may be made retroactive for up to one year prior to that month in which a complete application is received by the executive director under subdivision 4.

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: 1957 c 935 s 9; 1959 c 650 s 13-16; 1963 c 639 s 1; 1965 c 714 s 4; 1965 c 880 s 4; Ex1967 c 53 s 4; 1971 c 106 s 19-21; 1973 c 753 s 39-42; 1974 c 229 s 14; 1975 c 102 s 6,11,12; 1976 c 329 s 21; 1977 c 429 s 25,26; 1978 c 471 s 2,3; 1979 c 216 s 8,9; 1981 c 180 s 8; 1981 c 224 s 83; 1983 c 73 s 4,5; 1986 c 444; 1987 c 259 s 28; 1987 c 284 art 5 s 8; 1987 c 372 art 9 s 10,11; 1988 c 709 art 5 s 16; 1989 c 319 art 3 s 10,11; art 13 s 31-33; 1990 c 570 art 12 s 20; 1991 c 341 s 16; 1992 c 432 art 2 s 9; 1993 c 307 art 4 s 18

353.30 ANNUITIES UPON RETIREMENT.

Subdivision 1. Upon separation from public service, any person who first became a public employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989, and who has become at least 58 years old but not more than normal retirement age and who received credit for not less than 20 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, paragraph (a), reduced by one-quarter of one percent for each month that the member is under normal retirement age at the time of retirement.

Subd. 1a. Any person who first became a public employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989, and whose attained age plus credited allowable service totals 90 years 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, paragraph (a), without any reduction in annuity by reason of such early retirement.

Subd. 1b. Any person who first became a public employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989, with 30 years or more of allowable service credit, who elects early retirement under subdivision 1, shall receive an annuity in an amount equal to the normal annuity provided under section 353.29, subdivisions 2 and 3, paragraph (a), reduced by one-quarter of one percent for each month that the member is under age 62 at the time of retirement.

Subd. 1c. Any person who first became a public employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989, and who has received credit for at least 30 years of allowable service or who has become at least 55 years old but not normal retirement age, and has received credit for at least three 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, paragraph (a), reduced by one-quarter of one percent for each month that the member is under normal retirement age 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. 2. [Repealed, 1971 c 106 s 40]

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. Except as provided in subdivision 3a, the optional annuity forms shall be actuarially equivalent to the forms provided in section 353.29 and subdivisions 1, 1a, 1b, 1c, and 5. 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 the 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.

Subd. 3a. **Bounce-back annuity.** (a) If a former member or disabilitant selects a joint and survivor annuity option under subdivision 3, the former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) A former member or disabilitant who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date.

(c) A former member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary dies first but has not died before July 1, 1989, shall have their annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.

Subd. 3b. **Bounce-back annuity.** (a) The board of trustees must provide a joint and survivor annuity option to members of the police and fire fund. Under this option, a former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) A former member or disabilitant of the police and fire fund who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date.

(c) A former member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary dies first but has not died before July 1, 1989, shall have their annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.

Subd. 3c. Effective date of bounce-back annuity. In the event of the death of the designated optional annuity beneficiary before the retired employee or disabilitant, the restoration of the normal single life annuity under subdivision 3a or 3b will take effect on the first of the month following the date of death of the designated optional annuity beneficiary or on the first of the month following one year before the date on which a certified copy of the death certificate is received in the office of the public employees retirement association, whichever date is later.

Subd. 4. Monthly payments to which any person may be entitled under this chapter may be reduced upon application to the association, provided that the person shall first relinquish in writing all claim to that part of the full monthly payment which is the difference between the monthly payment which that person would be otherwise entitled to receive and the monthly payment which that person will receive. The reduced monthly payment shall be payment in full of all amounts due under this chapter for the month for which the payment is made and acceptance of the reduced monthly payment releases the retirement association from all obligation to pay to the person the difference between the amount of the reduced monthly payment and the full amount of the monthly payment which the person would otherwise have received. Upon application of the person who is entitled to such monthly payment, it may be increased prospectively to not more than the amount to which the person would have been entitled had no portion thereof been waived.

Subd. 5. Actuarial reduction for early retirement. This subdivision applies to a member who has become at least 55 years old and first became a public employee after June 30, 1989, and to any other member who has become at least 55 years old and whose annuity is higher when calculated under section 353.29, subdivision 3, paragraph (b), in conjunction with this subdivision than when calculated under section 353.29, subdivision 3, paragraph (a), in conjunction with subdivision 1, 1a, 1b, or 1c. An employee who retires before normal retirement age shall be paid the retirement annuity provided in section 353.29, subdivision 3, paragraph (b), reduced so that the reduced annuity is the actuarial equivalent of the annuity that would be payable to the employee if the employee deferred receipt of the annuity and the annuity amount were augmented at an annual rate of three percent compounded annually from the day the annuity begins to accrue until the normal retirement age.

History: 1957 c 935 s 10; 1959 c 650 s 17,18,58; 1971 c 106 s 22; 1973 c 753 s 43-45; 1976 c 329 s 22; 1978 c 796 s 29-31; 1981 c 224 s 84; 1982 c 519 s 1-3; 1983 c 286 s 8; 1984 c 564 s 22; 1986 c 444; 1987 c 259 s 29; 1987 c 372 art 9 s 12; 1989 c 319 art 13 s 34; art 17 s 11; 1990 c 570 art 12 s 21

353.31 SURVIVOR BENEFITS.

Subdivision 1. Benefits for surviving spouse and dependent children; before retirement. Upon the death of a basic member before retirement or upon the death of a basic member who was disabled and receiving disability benefits under section 353.33 at the time of death who has had at least 18 months of credited allowable service, the surviving spouse and dependent child or children of the member, as defined in section 353.01, subdivisions 15 and 20, are entitled to receive the monthly benefit provided below:

- | | |
|--------------------------|--|
| (a) Surviving spouse | 50 percent of the member's monthly average salary in effect over the last full six months of allowable service preceding the month in which death occurred |
| (b) Each dependent child | 10 percent of the member's monthly average salary in effect over the last full six months of allowable service preceding the month in which death occurred |

Notwithstanding the definition of surviving spouse under section 353.01, subdivision 20, a former spouse of the member, if any, is entitled to a portion of the monthly surviving spouse benefit if stipulated under the terms of a marriage dissolution decree that is filed with the association. If there is no surviving spouse or child or children, a former spouse may be entitled to a lump-sum refund payment under section 353.32, subdivision 1, if provided for in a marriage dissolution decree but not a monthly surviving spouse benefit even if required by the decree.

Subd. 1a. Maximum family benefit. Payments for the benefit of a dependent child or children, as defined in section 353.01, subdivision 15, must be made to the surviving parent, or to the legal guardian of the child. The maximum monthly benefit for a family must not exceed an amount equal to 70 percent of the member's specified average monthly salary, and the minimum benefit for a family including a 100 percent joint and survivor annuity under subdivision 1b, must not be less than 50 percent of the basic member's specified average monthly salary.

Subd. 1b. Joint and survivor option. (a) Prior to payment of a surviving spouse benefit under subdivision 1, the surviving spouse may elect to receive the 100 percent joint and survivor optional annuity under section 353.32, subdivision 1a, rather than a surviving spouse benefit.

(b) If there is a dependent child or children, and the 100 percent joint and survivor optional annuity for the surviving spouse, when added to the dependent children's benefit under subdivisions 1 and 1a, exceeds an amount equal to 70 percent of the member's specified average monthly salary, the 100 percent joint and survivor annuity under section 353.32, subdivision 1a, must be reduced by the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount under subdivision 1a.

(c) The 100 percent joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement fund adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

Subd. 1c. Coordinated members. Except for benefits provided under section 353.32, subdivisions 1 and 1a, no survivor benefits are payable to the surviving spouse or dependent children of a deceased coordinated member.

Subd. 2. [Repealed, 1973 c 753 s 85]

Subd. 3. [Repealed, 1973 c 753 s 85]

Subd. 4. [Repealed, 1973 c 753 s 85]

Subd. 5. [Repealed, 1973 c 753 s 85]

Subd. 6. [Repealed, 1973 c 753 s 85]

Subd. 7. [Repealed, 1973 c 753 s 85]

Subd. 8. Accrual of benefits. All benefits under this section and survivor benefits otherwise provided in this chapter when payable to persons qualifying therefor shall accrue on the first day following the death of a "basic member" or the first day of the month following the death of an annuitant or disabilitant. No payment may be made

retroactively for more than 12 months prior to that month in which the application is filed, and no benefit shall accrue beyond the end of the month in which entitlement to such benefits has terminated.

Subd. 9. Every claim or demand for a survivor benefit or spouse's annuity shall be initiated by written application in the manner and form prescribed by the executive director, filed in the office of the retirement association, showing compliance with the statutory conditions qualifying the applicant for such survivor benefit or spouse's annuity.

Subd. 10. [Repealed, 1973 c 753 s 85]

Subd. 11. [Repealed, 1977 c 429 s 65]

History: 1957 c 935 s 11; 1959 c 646 s 1; 1959 c 650 s 19,20,47; 1959 c 651 s 1; 1961 c 467 s 1-4; Ex1961 c 79 s 1; 1963 c 641 s 19-21; 1965 c 880 s 5; Ex1967 c 26 s 2; 1969 c 858 s 1; 1969 c 940 s 6; 1971 c 106 s 23-25; 1973 c 753 s 46,47; 1974 c 229 s 15; 1975 c 102 s 13; 1977 c 429 s 27; 1978 c 471 s 4; 1978 c 796 s 32; 1979 c 216 s 10; 1981 c 180 s 9; 1981 c 224 s 85,86; 1982 c 578 art 1 s 4; 1984 c 564 s 23; 1991 c 269 art 2 s 6; 1991 c 341 s 17; 1992 c 432 art 2 s 10

353.32 REFUNDS AFTER DEATH OF MEMBER OR FORMER MEMBER.

Subdivision 1. **Before retirement.** If a member or former member who terminated public service dies before retirement or before receiving any retirement annuity and no other payment of any kind is or may become payable to any person, a refund shall be paid to the designated beneficiary or, if there be none, to the surviving spouse, or, if none, to the legal representative of the decedent's estate. Such refund shall be in an amount equal to accumulated deductions plus interest thereon at the rate of six percent per annum compounded annually less the sum of any disability or survivor benefits, if any, that may have been paid by the fund; provided that a survivor who has a right to benefits pursuant to section 353.31 may waive such benefits in writing, except such benefits for a dependent child under the age of 18 years may only be waived pursuant to an order of the district court.

Subd. 1a. **Surviving spouse optional annuity.** (a) If a member or former member who has credit for not less than three years of allowable service and dies before the annuity or disability benefit begins to accrue under section 353.29, subdivision 7, or 353.33, subdivision 2, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive, instead of a refund with interest under subdivision 1, or surviving spouse benefits otherwise payable under section 353.31, an annuity equal to the 100 percent joint and survivor annuity that the member could have qualified for had the member terminated service on the date of death.

(b) If the member was under age 55 and has credit for at least 30 years of allowable service on the date of death, the surviving spouse may elect to receive a 100 percent joint and survivor annuity based on the age of the member and surviving spouse on the date of death. The annuity is payable using the full early retirement reduction under section 353.30, subdivisions 1b and 1c, to age 55 and one-half of the early retirement reduction from age 55 to the age payment begins.

(c) If the member was under age 55 and has credit for at least three years of allowable service on the date of death but did not qualify for retirement, the surviving spouse may elect to receive the 100 percent joint and survivor annuity based on the age of the member and surviving spouse at the time of death. The annuity is payable using the full early retirement reduction under section 353.30, subdivision 1, 1b, 1c, or 5, to age 55 and one-half of the early retirement reduction from age 55 to the age payment begins.

Notwithstanding the definition of surviving spouse in section 353.01, subdivision 20, a former spouse of the member, if any, is entitled to a portion of the monthly surviving spouse optional annuity if stipulated under the terms of a marriage dissolution decree filed with the association. If there is no surviving spouse or child or children, a former spouse may be entitled to a lump-sum refund payment under subdivision 1,

if provided for in a marriage dissolution decree but not a monthly surviving spouse optional annuity despite the terms of a marriage dissolution decree filed with the association.

The surviving spouse eligible for surviving spouse benefits under paragraph (a) 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 surviving spouse eligible for surviving spouse benefits under paragraph (b) or (c) may apply for an annuity any time after the member's death. The annuity must be computed under sections 353.29, subdivisions 2 and 3; 353.30, subdivisions 1, 1a, 1b, 1c, and 5; and 353.31, subdivision 3.

Sections 353.34, subdivision 3, and 353.71, subdivision 2, apply to a deferred annuity or surviving spouse benefit payable under this subdivision. No payment may accrue beyond the end of the month in which entitlement to the annuity has terminated or upon expiration of the term certain benefit payment under subdivision 1b. An amount equal to any excess of the accumulated contributions that were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse must be paid to the deceased member's last designated beneficiary or, if none, as specified under subdivision 1.

A member may specify in writing that this subdivision does not apply and that payment may be made only to the designated beneficiary as otherwise provided by this chapter.

Subd. 1b. Survivor coverage term certain. In lieu of the 100 percent optional annuity under subdivision 1a, or a refund under subdivision 1, the surviving spouse of a deceased member may elect to receive survivor coverage for a term certain of five, ten, 15, or 20 years, but monthly payments must not exceed 75 percent of the average high-five monthly salary of the deceased member. The monthly term certain annuity must be actuarially equivalent to the 100 percent optional annuity under subdivision 1a.

If a surviving spouse elects a term certain annuity and dies before the expiration of the specified term certain period, the commuted value of the remaining annuity payments must be paid in a lump sum to the survivor's estate.

Subd. 1c. Dependent child survivor coverage. If there is no surviving spouse eligible for benefits under subdivision 1a, a dependent child or children as defined in section 353.01, subdivision 15a, is eligible for monthly payments. Payments to a dependent child must be paid from the date of the member's death to the date the dependent child attains age 20 if the child is under age 15. If the child is 15 years or older on the date of death, payment must be made for five years. The payment to a dependent child is an amount actuarially equivalent to the value of a 100 percent optional annuity under subdivision 1a using the age of the member and age of the dependent child at the date of death in lieu of the age of the surviving spouse. If there is more than one dependent child, each dependent child shall receive a proportionate share of the actuarial value of the employee's account.

Subd. 2. After retirement. If a former member dies after retirement and no payment of any kind is or may become payable to any person, including any deferred benefit or annuity, there shall be paid to the same succession of payees set forth in subdivision 1, a refund of accumulated deductions, less the total payments of all kinds made by the fund to the former member during the former member's lifetime or to any authorized person after death, without interest.

Subd. 3. Optional survivor annuities; designated beneficiary. If a former member selected an optional annuity by the terms of which an optional survivor's annuity was paid to a survivor after the former member's death, upon the death of the survivor there shall be paid to the former member's designated beneficiary a refund of accumulated deductions less the total payments of all kinds made by the fund to the former member during the former member's lifetime or to any authorized person after death. If said beneficiary should die before making application for such refund, the same shall be paid to the legal representative of the estate of the former member.

Subd. 4. Lack, or death, of beneficiary. If a member or former member dies without having designated a beneficiary or if the beneficiary should die before making application for refund, and if there is no surviving spouse, and if the legal representative of such member or former member does not apply for refund within five years from the date of death of the member or former member, the accumulated deductions to the member or former member's credit at the time of death shall be disposed of in the manner provided in section 353.34, subdivision 6.

Subd. 5. \$1,500 or less, limited. If a member or former member dies without having designated a beneficiary, or if the beneficiary should die before making application for refund of the sum to the credit of such decedent, and the amount of the refund is \$1,500 or less, the board of trustees may 90 days after the date of death, in the absence of probate proceedings, make payment to the surviving spouse of the decedent or, if none, to the decedent's personal representative or, if none, to the estate. A payment under this subdivision is a bar to recovery by any other person or persons. A retirement annuity or disability or survivor benefit that has accrued at the time of death of an annuitant, disabilitant, or survivor may be paid in the same manner.

Subd. 6. [Repealed, 1963 c 641 s 38]

Subd. 7. [Repealed, 1978 c 796 s 46]

Subd. 8. [Repealed, 1971 c 106 s 40]

Subd. 9. Payment to a minor. If a member or former member dies having named as beneficiary a person who is a minor at the time of the application for refund, the board may make payment (a) directly to the minor, (b) to any person who has legally qualified and is acting as guardian of the minor's person or property in any jurisdiction, or (c) to either parent of the minor or to any adult person with whom the minor 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 such minor. Any annuity or disability benefit payable at the time of death of an annuitant or recipient of a disability benefit, which is payable to a beneficiary who is a minor, may be paid in the same manner. Such payment shall be a bar to recovery by any other person or persons.

History: 1957 c 935 s 12; 1959 c 646 s 2; 1959 c 650 s 42,48,58; 1963 c 641 s 22-24; 1969 c 940 s 7-9; 1971 c 106 s 26-28; 1973 c 35 s 56; 1973 c 753 s 48-52; 1974 c 229 s 16,17; 1975 c 102 s 14; 1977 c 429 s 28; 1978 c 471 s 5; 1978 c 796 s 33,34; 1979 c 216 s 11-13; 1981 c 180 s 10; 1981 c 224 s 87; 1983 c 73 s 6; 1984 c 564 s 24,25; 1986 c 444; 1986 c 458 s 12; 1987 c 372 art 9 s 13; 1988 c 709 art 5 s 17,18; 1989 c 319 art 13 s 35,36; 1991 c 341 s 18; 1992 c 432 art 2 s 11; 1993 c 307 art 6 s 2; 1993 c 336 art 6 s 7-9

353.33 TOTAL AND PERMANENT DISABILITY BENEFITS.

Subdivision 1. Age, service, and salary requirements. A coordinated member who has at least three years of allowable service and becomes totally and permanently disabled before normal retirement age, and a basic member who has at least three years of allowable service and who becomes totally and permanently disabled is entitled to a disability benefit in an amount under subdivision 3. If the disabled person's public service has terminated at any time, at least two of the required three years of allowable service must have been rendered after last becoming a member. A repayment of a refund must be made within six months after the effective date of disability benefits under subdivision 2 or within six months after the date of the filing of the disability application, whichever is later. No purchase of prior service or payment made in lieu of salary deductions otherwise authorized under 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 under this section is filed.

Subd. 2. Applications; accrual of benefits. Every claim or demand for a total and permanent disability benefit must be initiated by written application in the manner and form prescribed by the executive director showing compliance with the statutory conditions qualifying the applicant for a total and permanent disability benefit and filed with

the executive director. A member or former member who became totally and permanently disabled during a period of membership shall file application for total and permanent disability benefits within three years next following termination of public service. This benefit begins to accrue the day following the commencement of disability, 90 days preceding the filing of the application, or, if annual or sick leave is paid for more than the 90-day period, from the date salary ceased, whichever is later. Payment must not accrue beyond the end of the month in which entitlement has terminated. If the disability benefit is terminated prior to negotiating the check for the month in which death occurs, payment is made to the surviving spouse, or if none, to the designated beneficiary, or if none, to the estate. An applicant for total and permanent disability benefits may file a retirement annuity application under section 353.29, subdivision 4, simultaneously with an application for total and permanent disability benefits. The retirement annuity application is void upon the determination of the entitlement for disability benefits by the executive director. If disability benefits are denied, the retirement annuity application must be initiated and processed.

Subd. 3. Computation of benefits. This disability benefit is an amount equal to the normal annuity payable to a member who has reached normal retirement age with the same number of years of allowable service and the same average salary, as provided in section 353.29, subdivisions 2 and 3.

A basic member shall receive a supplementary monthly benefit of \$25 to age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later.

If the disability benefits under this subdivision exceed the average salary as defined in section 353.29, subdivision 2, the disability benefits must be reduced to an amount equal to said average salary.

Subd. 3a. Optional annuity election. A disabled member may elect to receive the normal disability benefit or an optional annuity under section 353.30, subdivision 3. The election of an optional annuity must be made prior to the commencement of payment of the disability benefit. The optional annuity must begin to accrue on the same date as provided for the disability benefit.

(1) If a person who is not the spouse of a member is named as beneficiary of the joint and survivor optional annuity, the person is eligible to receive the annuity only if the spouse, on the disability application form prescribed by the executive director, permanently waives the surviving spouse benefits under sections 353.31, subdivision 1, and 353.32, subdivision 1a. If the spouse of the member refuses to permanently waive the surviving spouse coverage, the selection of a person other than the spouse of the member as a joint annuitant is invalid.

(2) If the spouse of the member permanently waives survivor coverage, the dependent children, if any, continue to be eligible for survivor benefits under section 353.31, subdivision 1, including the minimum benefit in section 353.31, subdivision 1a. The designated optional annuity beneficiary may draw the monthly benefit; however, the amount payable to the dependent child or children and joint annuitant must not exceed the 70 percent maximum family benefit under section 353.31, subdivision 1a. If the maximum is exceeded, the benefit of the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount.

(3) If the spouse is named as the beneficiary of the joint and survivor optional annuity, the spouse may draw the monthly benefits; however, the amount payable to the dependent child or children and the joint annuitant must not exceed the 70 percent maximum family benefit under section 353.31, subdivision 1a. If the maximum is exceeded, each dependent child will receive ten percent of the member's specified average monthly salary, and the benefit to the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount. The joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

Subd. 4. Procedure to determine eligibility. The applicant shall provide and authorize release of medical evidence, including all medical records and relevant information from any source, to support the application for total and permanent disability benefits. The medical adviser shall verify the medical evidence and, if necessary for disability determination, suggest referral of applicant to specialized medical consultants. The association shall also obtain from the employer, certification of the member's past public service, dates of paid sick leave and vacation beyond the last working day and whether or not sick leave or annual leave has been allowed. If upon consideration of the medical evidence received and the recommendations of the medical adviser, it is determined that the applicant is totally and permanently disabled within the meaning of the law, the association shall grant the person a disability benefit. The fact that an employee is placed on leave of absence without compensation because of disability does not bar the person from receiving a disability benefit.

Subd. 5. Benefits paid under workers' compensation law. Disability benefits paid shall be coordinated with any amounts received or receivable under workers' compensation law, such as temporary total, permanent total, temporary partial, permanent partial, or economic recovery compensation 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 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. 5a. [Repealed, 1991 c 341 s 51]

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.

Subd. 6. Continuing eligibility for benefits. The association shall determine eligibility for continuation of disability benefits and require periodic examinations and evaluations of disabled members as frequently as deemed necessary. The association shall require the disabled member to provide and authorize release of medical evidence, including all medical records and information from any source, relating to an application for continuation of disability benefits. Disability benefits are contingent upon a disabled person's participation in a vocational rehabilitation program if the executive director determines that the disabled person may be able to return to a gainful occupation. If a member is found to be no longer totally and permanently disabled and is reinstated to the payroll, payments must cease the first of the month following the reinstatement to the payroll.

Subd. 6a. Medical adviser. The executive director may contract with licensed physicians or physicians on the staff of the state commissioner of health, as designated by the commissioner, to be the medical adviser of the association.

Subd. 6b. Duties of the medical adviser. At the request of the executive director,

the medical adviser shall designate licensed physicians to examine applicants for disability benefits and review the medical reports based upon these examinations to determine whether an applicant is totally and permanently disabled as defined in section 353.01, subdivision 19, disabled as defined in section 353.656, or eligible for continuation of disability benefits under subdivision 6. The medical examiner shall also review, at the request of the executive director, all medical statements on behalf of an applicant for disability benefits, and shall report in writing to the executive director conclusions and recommendations on those matters referred for advice.

Subd. 7. Partial reemployment. If, following a work or non-work-related injury or illness, a disabled person resumes a gainful occupation from which earnings are less than the salary at the date of disability or the salary currently paid for similar positions, the board shall continue the disability benefit in an amount that, when added to the earnings and workers' compensation benefit, does not exceed the salary at the date of disability or the salary currently paid for similar positions, whichever is higher, provided the disability benefit does not exceed the disability benefit originally allowed, plus any postretirement adjustments payable after December 31, 1988, in accordance with section 11A.18, subdivision 10. No deductions for the retirement fund may be taken from the salary of a disabled person who is receiving a disability benefit as provided in this subdivision.

Subd. 8. Refusal of examination or medical evidence. If a person applying for or receiving a disability benefit refuses to submit to a medical examination under subdivision 6, or fails to provide or authorize the release of medical evidence under subdivisions 4 and 6, the association shall cease the application process or discontinue the payment of a disability benefit, whichever is applicable. Upon receipt of the requested medical evidence, the association shall resume the application process or the payment of a disability benefit upon approval for the continuation, whichever is applicable.

Subd. 9. Return to public service. Any person receiving a disability benefit who is restored to active public service except persons receiving benefits as provided in subdivision 7, shall have deductions taken for the retirement fund and upon subsequent retirement have the retirement annuity payable based upon all allowable service including that upon which the disability benefits were based.

Subd. 10. [Repealed, 1973 c 753 s 85]

Subd. 11. Coordinated member retirement status. No person is entitled to receive disability benefits and a retirement annuity at the same time. The disability benefits paid to a coordinated member must terminate when the person reaches normal retirement age. If the coordinated member is still totally and permanently disabled upon attaining normal retirement age, the coordinated member is deemed to be on retirement status. If an optional annuity is elected under subdivision 3a, the coordinated member shall receive an annuity under the terms of the optional annuity previously elected, or, if an optional annuity is not elected under subdivision 3a, the coordinated member may elect to receive a normal retirement annuity under section 353.29 or an annuity equal to the disability benefit paid before the coordinated member reaches normal retirement age, whichever amount is greater, or elect to receive an optional annuity under section 353.30, subdivision 3. The annuity of a disabled coordinated member who attains normal retirement age must be computed under the law in effect upon attainment of normal retirement age. Election of an optional annuity must be made before the coordinated member attains normal retirement age. If an optional annuity is elected, the election is effective on the date on which the person attains normal retirement age and the optional annuity begins to accrue on the first day of the month next following the month in which the person attains that age.

Subd. 12. Basic disability survivor benefits. If a basic member who is receiving a disability benefit under subdivision 3:

(a) dies before attaining age 65 or within five years of the effective date of the disability, whichever is later, the surviving spouse shall receive a survivor benefit under section 353.31, unless the surviving spouse elected to receive a refund under section 353.32, subdivision 1.

(b) is living at age 65 or five years after the effective date of the disability, whichever is later, the basic member may continue to receive a normal disability benefit, or elect a joint and survivor optional annuity under section 353.31, subdivision 1b. The election of the joint and survivor optional annuity must occur within 90 days of age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later. The optional annuity takes effect on the first of the month following the month in which the person attains age 65 or reaches the five-year anniversary of the effective date of the disability benefit, whichever is later.

(c) if there is a dependent child or children under paragraph (a) or (b), the association shall grant a dependent child benefit under section 353.31, subdivision 1b, paragraph (b).

History: 1957 c 935 s 13; 1959 c 650 s 21,41; 1961 c 595 s 2; 1963 c 641 s 25; 1965 c 880 s 6; 1967 c 711 s 1; Ex1967 c 37 s 2,3; 1969 c 940 s 10; 1971 c 106 s 29,30; 1973 c 753 s 53-56; 1975 c 102 s 15-17; 1975 c 359 s 23; 1976 c 329 s 23-25; 1977 c 305 s 45; 1977 c 429 s 29,30; 1978 c 471 s 6; 1978 c 796 s 35; 1979 c 216 s 14; 1981 c 68 s 21,22; 1981 c 180 s 11-13; 1981 c 224 s 88; 1983 c 73 s 7; 1983 c 85 s 1; 1984 c 564 s 26; 1986 c 444; 1987 c 284 art 5 s 9; 1987 c 372 art 9 s 14-16; 1988 c 709 art 5 s 19; 1989 c 319 art 3 s 12-16; art 13 s 37-39; 1991 c 341 s 19; 1992 c 432 art 2 s 12-15; 1993 c 307 art 4 s 19-26

353.34 RIGHTS UPON TERMINATION OF MEMBERSHIP.

Subdivision 1. Refund or deferred annuity. A former member is entitled to a refund of accumulated employee deductions under subdivision 2, or to a deferred annuity under subdivision 3. An active member of a fund enumerated in section 356.30, subdivision 3, clause (7), (8), or (14), who terminates public service in any of those funds and becomes a member of another fund enumerated in those clauses may receive a refund of employee contributions plus six percent interest compounded annually from the fund in which the member terminated service. Application for a refund may not be made prior to the date of termination of public service or the termination of membership, whichever is sooner. A refund must be paid within 120 days following receipt of the application unless the applicant has again become a public employee required to be covered by the association.

Subd. 2. Refund with interest. Except as provided in subdivision 1, any person who ceases to be a public employee shall receive a refund in an amount equal to accumulated deductions with interest to the first day of the month in which the refund is processed at the rate of six percent compounded annually based on fiscal year balances. If a person repays a refund and subsequently applies for another refund, the repayment amount, including interest, is added to the fiscal year balance in which the repayment was made.

Subd. 3. Deferred annuity; eligibility; computation. A member with at least three years of allowable service when termination of public service or termination of membership occurs has the option of leaving the accumulated deductions in the fund and being entitled to a deferred retirement annuity commencing at normal retirement age or to a deferred early retirement annuity under section 353.30, subdivision 1, 1a, 1b, 1c, or 5. The deferred annuity must be computed under section 353.29, subdivisions 2 and 3, on the basis of the law in effect on the date of termination of public service or termination of membership and must be augmented as provided in section 353.71, subdivision 2. A former member qualified to apply for a deferred retirement annuity may revoke this option at any time before the commencement of deferred annuity payments by making application for a refund. The person is entitled to a refund of accumulated member contributions within 30 days following date of receipt of the application by the executive director.

Subd. 3a. Deferred annuity; certain hospital employees. Any member employed by a public hospital, as defined in section 355.71, subdivision 3, who has at least three years of allowable service credit on the date the public hospital is taken over by a private corporation or organization, may elect to receive a deferred annuity pursuant to subdivision 3 notwithstanding the length of service requirement contained therein.

Subd. 3b. **Deferred annuity; certain former municipal court judges.** Any person who qualified for membership in the association solely because of service as a municipal court judge, whose service as a municipal court judge was terminated by Laws 1971, chapter 951, section 9, and who elected to leave accumulated deductions in the fund to qualify for a deferred annuity, may receive a deferred early retirement annuity under section 353.30, subdivision 1, 1a, 1b, or 1c, notwithstanding the law in effect on the date of termination of public service.

Subd. 4. [Repealed, 1971 c 106 s 40]

Subd. 5. **Refundment generally unlimited.** The right of refundment provided in this chapter, and laws amendatory thereof, is not restricted as to time unless specifically provided and the statute of limitation does not apply thereto.

Subd. 6. **Additions to fund.** The board of trustees may credit to the fund any monies received in the form of contributions, donations, gifts, appropriations, bequests, or otherwise.

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: 1957 c 935 s 14; 1959 c 650 s 22-24,49; 1963 c 641 s 26-29; 1969 c 940 s 11; 1971 c 106 s 31; 1971 c 412 s 1; 1973 c 753 s 57-59; 1975 c 102 s 6; 1976 c 329 s 26; 1978 c 796 s 36; 1979 c 216 s 15; 1981 c 224 s 89; 1983 c 58 s 1; 1983 c 73 s 8; 1984 c 564 s 27; 1984 c 574 s 10; 1985 c 261 s 4; 1986 c 444; 1987 c 284 art 5 s 10; 1987 c 372 art 9 s 17; 1988 c 709 art 5 s 20; 1989 c 319 art 3 s 17; art 13 s 40-42; 1991 c 341 s 20; 1992 c 432 art 2 s 16; 1993 c 307 art 4 s 27,28

353.35 CONSEQUENCES OF REFUND; REPAYMENT, RIGHTS RESTORED.

Subdivision 1. **Refund rights.** When any former member accepts a refund, all existing service credits and all rights and benefits to which the person was entitled prior to the acceptance of the refund must terminate. The rights and benefits of a former member must not be restored until the person returns to active service and acquires at least six months of allowable service credit after taking the last refund and repays the refund or refunds taken and interest received under section 353.34, subdivisions 1 and 2, plus interest at an annual rate of 8.5 percent compounded annually. If the person elects to restore service credit in a particular fund from which the person has taken more than one refund, the person must repay all refunds to that fund. All refunds must be repaid within six months of the last date of termination of public service.

Subd. 2. **Refund repayment.** A person who receives a refund of accumulated employee deductions, plus interest, may repay the total amount of the refund including the interest, within 30 days of the date the refund was issued, to retain allowable service.

History: 1957 c 935 s 15; 1959 c 650 s 38; 1963 c 641 s 30; 1971 c 106 s 32; 1973 c 753 s 60; 1976 c 329 s 27; 1979 c 216 s 16; 1982 c 404 s 6; 1986 c 444; 1989 c 319 art 3 s 18; 1990 c 570 art 11 s 7; 1992 c 598 art 2 s 6; 1993 c 307 art 4 s 29

353.36 PURCHASES OF PRIOR SERVICE CREDIT.

Subdivision 1. [Repealed, 1971 c 106 s 40]

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 is 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 percentages for a basic member and a coordinated member are the current contribution percentages under section 353.27, subdivision 2. 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 an annual rate of 8.5 percent compounded annually from the date first payable to the date payment is made, must also be paid. The employer, at its sole discretion, may agree to pay the amount representing the employer and employer additional contributions under subdivision 2a. An annuity accrues under section 353.29, subdivision 7, but is not 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 is void.

Subd. 2a. Matching payment; employer may assume. Any employer may certify to the association that it assumes the matching payment under subdivision 2 with respect to all persons who exercise the option provided in subdivision 2 and pay such amount pursuant to section 353.28.

Subd. 2b. Purchases of prior service credit; limited. After June 30, 1973, no person shall be allowed to purchase prior public service credit, except as provided in subdivision 2.

Subd. 2c. Refund of additional payments made on total salary. Any member who elected to pay additional contributions and interest based on total salary received in excess of prior salary limitations may make application to the board of trustees for return of the total amount so paid, but not less than the total amount of such contributions and interest; provided, however, said amount shall be so returned without interest thereon. Any member who accepts a refund hereunder shall thereby relinquish all contributory credit with respect to payments which were made on total salary. No matching amount paid by the employer, or assumed by the employer pursuant to certification, shall be repaid.

Subd. 2d. [Repealed, 1977 c 429 s 65]

Subd. 3. [Repealed, 1971 c 106 s 40]

Subd. 4. [Repealed, 1965 c 715 s 4]

Subd. 5. [Repealed, 1973 c 753 s 85]

Subd. 6. [Repealed, 1973 c 753 s 85]

Subd. 7. [Repealed, 1973 c 753 s 85]

Subd. 8. [Repealed, 1973 c 753 s 85]

Subd. 9. [Repealed, 1973 c 753 s 85]

Subd. 10. [Repealed, 1973 c 753 s 85]

History: 1957 c 935 s 16; 1959 c 650 s 25,58; 1965 c 715 s 1-3; 1967 c 687 s 1; 1969 c 999 s 3; 1971 c 106 s 33; 1973 c 753 s 61,62; 1974 c 229 s 18; 1977 c 429 s 31; 1978 c 796 s 37; 1981 c 224 s 90; 1982 c 404 s 7; 1987 c 284 art 5 s 11; 1992 c 598 art 2 s 7

353.37 PUBLIC REEMPLOYMENT OF ANNUITANT.

Subdivision 1. Salary maximums. The annuity of a person otherwise eligible for an annuity under this chapter must be suspended under subdivision 2 or reduced under subdivision 3, whichever results in the higher annual annuity amount, if the person reenters public service as a nonelective employee of a governmental subdivision in a position covered by this chapter or returns to work as an employee of a labor organization that represents public employees who are association members under this chapter and salary for the reemployment service exceeds the annual maximum earnings allowable for that age for the continued receipt of full benefit amounts monthly under the

federal Old Age, Survivors and Disability Insurance Program as set by the secretary of health and human services under United States Code, title 42, section 403, in any calendar year. If the person has not yet reached the minimum age for the receipt of social security benefits, the maximum salary for the person is equal to the annual maximum earnings allowable for the minimum age for the receipt of social security benefits.

Subd. 1a. [Repealed, 1981 c 180 s 18]

Subd. 2. [Repealed, 1973 c 753 s 85]

Subd. 2. **Suspension of annuity.** The association shall suspend the annuity on the first of the month after the month in which the salary of the reemployed annuitant exceeds the maximums set in subdivision 1, based only on those months in which the annuitant is actually employed in nonelective public service in a position covered under this chapter or employment with a labor organization that represents public employees who are association members under this chapter. An annuitant who is elected to public office after retirement may hold office and receive an annuity otherwise payable from the association.

Subd. 3. [Repealed, 1973 c 753 s 85]

Subd. 3. **Reduction of annuity.** The association shall reduce the amount of the annuity as follows:

(a) for a person who has not reached normal retirement age, one-half of the amount in excess of the applicable reemployment income maximum under subdivision 1;

(b) for a person who has reached normal retirement age, but has not reached age 70, one-third of the amount in excess of the applicable reemployment income maximum under subdivision 1;

(c) for a person who has reached age 70, or for salary earned through service in an elected office, there is no reduction upon reemployment, regardless of income.

Subd. 4. **Resumption of annuity.** The association shall resume paying a full annuity to the reemployed annuitant at the start of each calendar year until the salary exceeds the maximums under subdivision 1, or on the first of the month following termination of employment which resulted in the suspension of the annuity. The executive director may adopt policies regarding the suspension and reduction of annuities under this section.

Subd. 5. **Effect on annuity.** Except as provided under this section, public service performed by an annuitant subsequent to retirement under this chapter does not increase or decrease the amount of an annuity. The annuitant shall not make any further contributions to the association's defined benefit plan by reason of this subsequent public service.

History: 1957 c 935 s 17; 1959 c 650 s 26,58; Ex1961 c 87 s 1; 1963 c 641 s 31; 1963 c 853 s 1,2; 1967 c 711 s 2; 1971 c 412 s 2; 1973 c 753 s 63; 1975 c 102 s 18; 1977 c 429 s 32; 1980 c 342 s 7; 1981 c 224 s 91; 1988 c 709 art 5 s 21; 1992 c 440 s 1; 1993 c 307 art 4 s 30; 1994 c 528 art 2 s 9-11

353.38 [Repealed, 1984 c 564 s 51]

353.39 [Repealed, 1973 c 753 s 85]

353.40 [Repealed, 1974 c 229 s 25]

353.41 [Repealed, 1959 c 650 s 57]

353.42 [Repealed, 1963 c 641 s 38]

353.43 [Repealed, 1959 c 650 s 57]

353.44 Subdivision 1. [Repealed, 1973 c 753 s 85]

Subd. 2. [Repealed, 1963 c 641 s 38]

353.45 [Repealed, 1973 c 753 s 85]

353.46 SAVINGS CLAUSES.

Subdivision 1. [Repealed, 1981 c 180 s 18]

Subd. 1a. **Purchase of allowable service; annuity.** A person who purchased allowable service in the public employees retirement association for a period of time including June 30, 1957, but was not in fact a member of the association on June 30, 1957, shall not be entitled to receive retirement annuity computed under Minnesota Statutes 1971, section 353.46, subdivision 1. This section shall have retroactive application to any such person receiving or found eligible by the district court to receive benefits calculated under Minnesota Statutes 1971, section 353.46, subdivision 1.

Subd. 2. The right of a deferred annuitant or other former member to receive an annuity under the law in effect at the time such person terminated public service is herein preserved; provided, however, the provisions of section 353.71, subdivision 2, as amended by Laws 1973, chapter 753 shall apply to a deferred annuitant or other former member who first begins receiving an annuity after July 1, 1973.

Subd. 3. [Repealed, 1977 c 429 s 65]

Subd. 4. Except as provided in section 353.84, the rights of a survivor of a former member, where such former member died prior to June 30, 1973, must be determined by the law in effect when such former member died even though a benefit is not payable until after June 30, 1973. If the survivor is also eligible to receive a retirement annuity from the association, the survivor is eligible to receive both benefits even upon remarriage.

Subd. 5. [Repealed, 1973 c 753 s 85]

Subd. 6. **Computation of benefits for certain coordinated members.** Any coordinated member who prior to July 1, 1979 was a member of the coordinated program of the Minneapolis municipal employees retirement fund and who prior to July 1, 1978 was a member of the basic program of the Minneapolis municipal employees retirement fund shall:

(1) be entitled to receive a retirement annuity when otherwise qualified, the calculation of which shall utilize the formula accrual rates specified in section 422A.15, subdivision 1, for that portion of credited service which was rendered prior to July 1, 1978, and the formula accrual rates specified in section 353.29, subdivision 3, for the remainder of credited service, both applied to the average salary as specified in section 353.29, subdivision 2. The formula accrual rates to be used in calculating the retirement annuity shall recognize the service after July 1, 1978 as a member of the coordinated program of the Minneapolis municipal employees retirement fund and after July 1, 1979 as a member of the public employees retirement association as a continuation of service rendered prior to July 1, 1978. The annuity amount attributable to service as a member of the basic program of the Minneapolis municipal employees retirement fund shall be payable by the Minneapolis employees retirement fund and the annuity amount attributable to all other service shall be payable by the public employees retirement association;

(2) retain eligibility when otherwise qualified for a disability benefit from the Minneapolis employees retirement fund until July 1, 1982, notwithstanding coverage by the public employees retirement association, if the member has or would, without the transfer of retirement coverage from the basic program of the Minneapolis municipal employees retirement fund to the coordinated program of the Minneapolis municipal employees retirement fund or from the coordinated program of the Minneapolis municipal employees retirement fund to the public employees retirement fund, have sufficient credited service prior to January 1, 1983, to meet the minimum service requirements for a disability benefit pursuant to section 422A.18. The disability benefit amount attributable to service as a member of the basic program of the Minneapolis municipal employees retirement fund shall be payable by the Minneapolis employees retirement fund and the disability benefit amount attributable to all other service shall be payable by the public employees retirement association.

History: 1957 c 935 s 26; 1959 c 650 s 27; Ex1961 c 87 s 2; 1965 c 814 s 1,3; 1971

c 106 s 36; 1973 c 753 s 65-68; 1975 c 102 s 19; 1977 c 4 29 s 33; 1981 c 224 s 93,94; 1981 c 298 s 11; 1990 c 570 art 11 s 8; 1991 c 341 s 21

- 353.51** [Repealed, 1973 c 753 s 85]
- 353.52** [Repealed, 1973 c 753 s 85]
- 353.53** [Repealed, 1973 c 753 s 85]
- 353.54** [Repealed, 1973 c 753 s 85]
- 353.55** [Repealed, 1973 c 753 s 85]
- 353.56** [Repealed, 1973 c 753 s 85]
- 353.57** [Repealed, 1973 c 753 s 85]
- 353.58** [Repealed, 1973 c 753 s 85]
- 353.59** [Repealed, 1973 c 753 s 85]
- 353.591** [Repealed, 1973 c 753 s 85]
- 353.60** [Repealed, 1973 c 753 s 85]
- 353.61** [Repealed, 1973 c 753 s 85]
- 353.62** [Repealed, 1971 c 106 s 40]

353.63 POLICY.

It is the recognized policy of the state that special consideration should be given to employees of governmental subdivisions who devote their time and skills to protecting the property and personal safety of others. Since this work is hazardous, special provisions are hereby made for retirement pensions, disability benefits and survivors benefits based on the particular dangers inherent in these occupations. The benefits provided in sections 353.63 to 353.68 are more costly than similar benefits for other public employees since they are computed on the basis of a shorter working lifetime taking into account experience which has been universally recognized. This extra cost should be borne by the employee and employer alike at the ratio of 40 percent employee contributions and 60 percent employer contributions.

History: 1959 c 650 s 31

353.64 MEMBERSHIP; QUALIFICATIONS; POLICE OFFICER, FIRE-FIGHTER.

Subdivision 1. **Police and fire fund membership.** (a) A 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, continue membership in the fund.

(b) A 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, and if employed by the same governmental subdivision in a position in the same department in which the person was employed on that date, shall continue membership in the fund whether or not that person has the power of arrest by warrant after that date.

(c) A 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 become 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.

(d) 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.

(e) An 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.

(f) An employee serving on less than a full-time basis as a 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.

(g) A police officer or 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 any police officer or firefighter of a relief association that has consolidated with the association 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 shall not become a member of the public employees police and fire 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 must, as a minimum, include employment 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. A police officer who is periodically assigned to employment duties not within the scope of this subdivision may contribute to the public employees police and fire fund for all service, if a resolution declaring that the primary position held by the person is that of a police officer, is adopted by the governing body of the department, and is promptly submitted to the executive director.

Subd. 3. Before a governing body may declare a position to be that of a firefighter, the duties of the person so employed must, as a minimum, include services as an employee of a designated fire company or person in charge of a designated fire company or companies who is engaged in the hazards of fire fighting. A firefighter who is periodically assigned to employment duties outside the scope of firefighting may contribute to the public employees police and fire fund for all service, if a resolution declaring that the primary position held by the person is that of a firefighter, is adopted by the governing body of the company or companies, and is promptly submitted to the executive director.

Subd. 4. A copy of the resolution of the governing body declaring a position to be that of police officer or firefighter shall be filed with the board of trustees and shall be irrevocable.

Subd. 5. [Repealed, 1977 c 429 s 65]

Subd. 5a. A member of the police and fire fund continues to be a member of that fund if transferred to a different position with associated police or fire department functions in the same department or a related department in the same governmental subdivision provided the governing body sends a copy of a resolution to that effect to the association. A police and fire fund member who is elected or assumes an appointive position, including but not limited to, the positions of city council member, city manager, and finance director is not eligible to retain membership in the public employees police and fire fund.

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

Subd. 7. **Pension coverage for certain public safety employees of the metropolitan airports commission.** Any person first employed as either a full-time firefighter or a full-time police officer by the metropolitan airports commission after June 30, 1978, 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 municipal employees because that position is excluded from application pursuant to Title 42, United States Code, Sections 418 (d) (5) (A) and 418 (d) (8) (D) and section 355.07, shall not be a member of the Minneapolis employees retirement fund but shall be a member of the public employees police and fire fund and shall be deemed to be a firefighter or a police officer within the meaning of this section. The metropolitan airports commission shall make the employer contribution required pursuant to section 353.65, subdivision 3, with respect to each of its firefighters or police officers covered by the public employees police and fire fund and shall meet the employers recording and reporting requirements set forth in section 353.65, subdivision 4.

Subd. 7a. Pension coverage for certain metropolitan transit police officers. A person who is employed as a full-time police officer on or after the first day of the first payroll period after July 1, 1993, by the metropolitan council and who is not eligible for coverage under the agreement with the Secretary of the federal Department of Health and Human Services making the provisions of the federal Old Age, Survivors, and Disability Insurance Act because the person's position is excluded from application under United States Code, sections 418(d)(5)(A) and 418(d)(8)(D), and under section 355.07, is a member of the public employees police and fire fund and is considered to be a police officer within the meaning of this section. The metropolitan council shall deduct the employee contribution from the salary of each full-time police officer as required by section 353.65, subdivision 2, shall make the employer contribution for each full-time police officer as required by section 353.65, subdivision 3, and shall meet the employer recording and reporting requirements in section 353.65, subdivision 4.

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.

Subd. 9. Pension coverage for certain sheriffs' association employees. A former member of the association who is an employee of the Minnesota sheriffs' association may elect to be a police and fire fund member with respect to service with the sheriffs' association, if written election to be covered is delivered to the board within 60 days after July 1, 1989, or within 60 days after commencement of employment, whichever is later.

Employee and employer contributions for past service are the obligation of the employee, except that the Minnesota sheriffs' association may pay the employer contributions. The employer shall, in any event, deduct necessary future contributions from the employee's salary and remit all contributions to the association as required by this chapter.

Persons who become association members under this section shall not be eligible for election to the board of trustees.

Subd. 10. Pension coverage for Hennepin county paramedics and emergency medical technicians. An employee of Hennepin county who is:

(1) certified as a paramedic or emergency medical technician by the state under section 144.804, subdivision 3;

(2) employed full time as a paramedic or emergency medical technician by Hennepin county on or after the effective date specified in Laws 1994, chapter 499, section 2; and

(3) not eligible after the effective date under Laws 1994, chapter 499, section 2, 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 paramedics and emergency medical technicians because the person's position is excluded after that date 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 under sections 353.63 to 353.68.

Hennepin county shall deduct the employee contribution from the salary of each full-time Hennepin county paramedic and emergency medical technician as required by section 353.65, subdivision 2, shall make the employer contribution for each full-time Hennepin county paramedic and emergency medical technician as required by section 353.65, subdivision 3, and shall meet the employer recording and reporting requirements in section 353.65, subdivision 4.

History: 1959 c 650 s 32; 1961 c 743 s 1; 1963 c 641 s 34; 1978 c 720 s 7; 1979 c 216 s 17; 1979 c 262 s 2; 1981 c 180 s 14,15; 1981 c 224 s 95; 1981 c 298 s 11; 1982 c 404 s 8; 1987 c 284 art 5 s 12,13; 1987 c 296 s 5; 1987 c 372 art 1 s 6; 1989 c 319 art 3 s 19-21; art 11 s 1; 1991 c 341 s 22; 1992 c 432 art 2 s 17; 1993 c 307 art 4 s 31-33; 1994 c 499 s 1; 1994 c 628 art 3 s 31

NOTE: Subdivision 10, as added by Laws 1994, chapter 499, section 1, is effective on the first of the month next following:

(1) receipt of an affirmative written determination from the Secretary of the federal Department of Health and Human Services of ineligibility for coverage under the federal Old Age, Survivors, and Disability Insurance Act; and

(2) approval by the Hennepin county board and compliance with Minnesota Statutes, section 645.021. See Laws 1994, chapter 499, section 2.

353.65 CONTRIBUTIONS.

Subdivision 1. The public employees police and fire fund is established for police officers and firefighters who meet the eligibility criteria under section 353.64. Employee contributions, employer contributions, other than the excess contribution established by section 69.031, subdivision 5, paragraphs (2), clauses (b) and (c), and (3), and other amounts authorized by law, including all employee and employer contributions of members transferred must be deposited in the public employees police and fire fund.

Subd. 2. The employee contribution is an amount equal to 7.6 percent of the total salary of the member. This contribution must be made by deduction from salary in the manner provided in subdivision 4. Where any portion of a member's salary is paid from other than public funds, the member's employee contribution is based on the total salary received from all sources.

Subd. 3. The employer contribution shall be an amount equal to 11.4 percent of the total salary of every member. This contribution shall be made from funds available to the employing subdivision by the means and in the manner provided in section 353.28.

Subd. 3a. **Change in employee and employer contributions in certain instances.** (a) If, after four consecutive fiscal years beginning July 1, 1994, the regular actuarial valuation of the public employees police and fire fund under section 356.215 indicates that the fund has no unfunded actuarial accrued liability and that there is a sufficiency in excess of 0.5 percent of covered payroll when the total actuarial funding requirements of the fund are compared to the total support, the employee and employer contribution rates must be decreased as determined under paragraph (c) to a level such that the sufficiency equals 0.5 percent of covered payroll based on the most recent actuarial valuation.

(b) If, after four consecutive fiscal years beginning July 1, 1994, the regular actuar-

ial valuation of the public employees police and fire fund under section 356.215 indicates that the fund has an unfunded actuarial accrued liability and that there is a deficiency in excess of 0.5 percent of covered payroll when the total actuarial funding requirements of the fund are compared to the total support, the employee and employer contribution rates must be increased as determined under paragraph (c) so that no deficiency exists based on the most recent actuarial valuation.

(c) The increase or decrease in employee and employer contribution rates required under paragraphs (a) and (b) must maintain the current ratio in employer and employee contribution rates of 40 percent employee contribution and 60 percent employer contribution.

(d) The contribution rate increase or decrease must be determined by the executive director of the public employees retirement association.

(e) The contribution rate increase or decrease is effective on the first full payroll period beginning after June 30 following receipt by the association of the fourth consecutive annual actuarial valuation disclosing the deficiency or sufficiency specified in paragraph (a) or (b).

(f) A contribution rate increase or decrease under paragraph (a) or (b) must not occur prior to receipt by the association of the 1997 regular actuarial valuation of the police and fire fund under section 356.215. A contribution rate increase or decrease under paragraph (a) or (b) must not occur within four years of a prior increase or decrease under paragraph (a) or (b).

Subd. 4. The head of each department of the various governmental subdivisions is hereby directed to cause employee contributions to be deducted in the manner and subject to the terms provided in section 353.27, subdivision 4.

Subd. 5. [Repealed, 1973 c 753 s 85]

Subd. 6. All contributions other than the excess contribution established by section 69.031, subdivision 5, paragraphs (2), clauses (b) and (c), and (3) shall be credited to the fund and all interest and other income of the fund shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said fund and the annuities herein provided upon retirement shall be paid from said fund.

Subd. 7. **Excess contributions holding account.** (a) The excess contributions holding account is established in the public employees retirement association. Excess contributions established by section 69.031, subdivision 5, paragraphs (2), clauses (b) and (c), and (3) must be deposited in the account. These contributions and all investment earnings associated with them must be regularly transferred as provided in paragraph (b).

(b) From the amount of the excess contributions and associated investment earnings:

(1) \$1,000,000 must be transferred annually to the ambulance service personnel longevity award and incentive suspense account established by section 144C.03, subdivision 2; and

(2) any remaining balance must be transferred to the general fund.

(c) If a law is enacted creating a police officer stress reduction program, and money is appropriated for the program, an amount equal to the appropriation must be transferred from the excess contributions holding account to the stress reduction program before money is transferred to the general fund under paragraph (b), clause (2).

History: 1959 c 650 s 33; 1965 c 714 s 6-8; Ex1967 c 53 s 6-8; 1971 c 297 s 5; 1973 c 753 s 69,70; 1979 c 216 s 18; 1987 c 296 s 6; 1988 c 709 art 5 s 22; 1989 c 319 art 6 s 3-5; 1992 c 432 art 2 s 18; 1993 c 352 s 1-3; 1994 c 528 art 2 s 12; 1994 c 632 art 3 s 56

353.651 RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC SERVICE.

Subdivision 1. **Age and allowable service requirements.** Upon separation from pub-

lic 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 three 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. Average salary must be based upon all allowable service if this service is less than five years.

The 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.

Subd. 3. Retirement annuity formula. The average salary as defined in subdivision 2, multiplied by 2.65 percent per year of allowable service determines the amount of the normal retirement annuity. If the member has earned allowable service for performing services other than those of a police officer or firefighter, the annuity representing such service is computed under sections 353.29 and 353.30.

Subd. 4. Early retirement. Any police officer or firefighter member who has become at least 50 years old and who has at least three years of allowable service is entitled upon application to a retirement annuity equal to the normal annuity calculated under subdivision 3, reduced so that the reduced annuity is the actuarial equivalent of the annuity that would be payable to the member if the member deferred receipt of the annuity from the day the annuity begins to accrue until the member attains age 55.

History: 1973 c 753 s 71; 1974 c 229 s 19; 1977 c 429 s 34; 1984 c 564 s 28; 1987 c 372 art 9 s 18,19; 1989 c 319 art 13 s 43,44; art 17 s 12,13; 1990 c 570 art 12 s 22; 1993 c 352 s 4

353.654 [Repealed, 1973 c 753 s 85]

353.655 [Repealed, 1973 c 753 s 85]

353.656 DISABILITY BENEFITS.

Subdivision 1. In line of duty; computation of benefits. A member of the police and fire fund who becomes disabled and physically unfit to perform duties as a police officer or firefighter subsequent to June 30, 1973, as a direct result of an injury, sickness, or other disability incurred in or arising out of any act of duty, which has or is expected to render the member physically or mentally unable to perform duties as a police officer or firefighter for a period of at least one year, shall receive disability benefits during the period of such disability. The benefits must be in an amount equal to 53 percent of the "average salary" under subdivision 3, plus an additional 2.65 percent of said average salary for each year of service in excess of 20 years. Should disability under this subdivision occur before the member has at least five years of allowable service credit in the police and fire fund, the disability benefit must be computed on the "average salary" from which deductions were made for contribution to the police and fire fund.

Subd. 1a. Optional annuity election. A disabled member of the police and fire fund may elect to receive the normal disability benefit or an optional annuity as provided in section 353.30, subdivision 3. The election of an optional annuity may be made prior to commencement of payment of the disability benefit or as specified under subdivision 6a. The optional annuity shall begin to accrue on the same date as provided for the disability benefit.

(1) If the person who is not the spouse of the member is named as beneficiary of the joint and survivor optional annuity, the person is eligible to receive the annuity only if the spouse, on the disability application form prescribed by the executive director, permanently waives the surviving spouse benefits under section 353.657, subdivisions 2 and 2a. If the spouse of the member refuses to permanently waive the surviving spouse coverage, the selection of a person other than the spouse of the member as a joint annuitant is invalid.

(2) If the spouse of the member permanently waives survivor coverage, the dependent child or children, if any, continue to be eligible for survivor benefits, including the minimum benefit under section 353.657, subdivision 3. The designated optional annuity beneficiary may draw the monthly benefit; however, the amount payable to the dependent child or children and joint annuitant must not exceed the 70 percent maximum family benefit under section 353.657, subdivision 3. If the maximum is exceeded, the benefit of the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount.

(3) If the spouse is named as the beneficiary of the joint and survivor optional annuity, the spouse may draw the monthly benefit; however, the amount payable to the dependent child or children and the joint annuitant must not exceed the 70 percent maximum family benefit under section 353.657, subdivision 3. If the maximum is exceeded, each dependent child will receive ten percent of the member's specified average monthly salary, and the benefit to the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount. The joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

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 one year of allowable service 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 has been or is expected to be unable to perform duties as a police officer or firefighter for a period of at least one year, is entitled to receive a disability benefit. The benefit must be paid in the same manner as if the benefit were paid under section 353.651. If a disability under this subdivision occurs after one but in less than 15 years of allowable service, the disability benefit must be the same as though the member had at least 15 years service. 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. 4. Limitation on disability benefit payments. (a) No member is entitled to receive a disability benefit payment when there remains to the member's credit unused annual leave or sick leave or under any other circumstances when, during the period of disability, there has been no impairment of the person's salary as a police officer or a firefighter, whichever applies.

(b) If a disabled member resumes a gainful occupation with earnings less than the disabilitant reemployment earnings limit, the amount of the disability benefit must be reduced as provided in this paragraph. The disabilitant reemployment earnings limit is the greater of:

- (1) the salary earned at the date of disability; or
- (2) 125 percent of the salary currently paid by the employing governmental subdivision for similar positions.

The disability benefit must be reduced by one dollar for each three dollars by which the total amount of the current disability benefit, any workers' compensation benefits, and actual earnings exceed the greater disabilitant reemployment earnings limit. In no event may the disability benefit as adjusted under this subdivision exceed the disability benefit originally allowed.

Subd. 5. Proof of disability. A disability benefit payment must not be made except upon adequate proof furnished to the association of the existence of such disability, and during the time when disability benefits are being paid, the association has the right, at reasonable times, to require the disabled member to submit proof of the continuance of the disability claimed. A person applying for or receiving a disability benefit shall provide or authorize release of medical evidence, including all medical records and information from any source, relating to an application for disability benefits.

Subd. 5a. Cessation of disability benefit. The association shall cease the payment of an in-line-of-duty or nonduty disability benefit the first of the month following the reinstatement of a member to full time or less than full-time service in a position covered by the police and fire fund.

Subd. 6. [Repealed, 1993 c 307 art 4 s 54]

Subd. 6a. Disability survivor benefits. If a member who is receiving a disability benefit under subdivision 1 or 3:

(a) dies before attaining age 65 or within five years of the effective date of the disability, whichever is later, the surviving spouse shall receive a survivor benefit under section 353.657, subdivision 2 or 2a, unless the surviving spouse elected to receive a refund under section 353.32, subdivision 1. The joint and survivor optional annuity under subdivision 2a is based on the minimum disability benefit under subdivision 1 or 3, or the deceased member's allowable service, whichever is greater.

(b) is living at age 65 or five years after the effective date of the disability, whichever is later, the member may continue to receive a normal disability benefit, or the member may elect a joint and survivor optional annuity under section 353.30. The optional annuity is based on the minimum disability benefit under subdivision 1 or 3, or the member's allowable service, whichever is greater. The election of this joint and survivor annuity must occur within 90 days of age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later. The optional annuity takes effect the first of the month following the month in which the person attains age 65 or reaches the five-year anniversary of the effective date of the disability benefit, whichever is later.

(c) if there is a dependent child or children under paragraph (a) or (b), the association shall grant a dependent child benefit under section 353.657, subdivision 3.

Subd. 7. [Repealed, 1992 c 432 art 2 s 51]

History: 1971 c 297 s 3; 1973 c 753 s 72-74; 1975 c 102 s 20,21; 1975 c 359 s 23; 1976

c 329 s 28; 1977 c 429 s 63; 1978 c 796 s 38; 1979 c 216 s 19; 1981 c 68 s 23,24; 1981 c 180 s 16; 1981 c 224 s 96; 1983 c 85 s 2; 1Sp1985 c 7 s 15; 1986 c 444; 1987 c 284 art 5 s 14,15; 1987 c 372 art 1 s 7; art 9 s 20,21; 1989 c 319 art 3 s 22; art 17 s 14,15; 1990 c 570 art 11 s 9,10; 1991 c 341 s 23; 1992 c 432 art 2 s 19; 1993 c 307 art 4 s 34-39; 1993 c 352 s 5; 1994 c 463 s 1

353.657 SURVIVOR BENEFITS.

Subdivision 1. In the event a member of the police and fire fund dies from any cause before retirement or after becoming disabled and receiving disability benefits, the association shall grant survivor benefits to a surviving spouse, as defined in section 353.01, subdivision 20, 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. The association shall also grant survivor benefits to a dependent child or children, as defined in section 353.01, subdivision 15.

Notwithstanding the definition of surviving spouse, a former spouse of the member, if any, is entitled to a portion of the monthly surviving spouse benefit if stipulated under the terms of a marriage dissolution decree filed with the association. If there is no surviving spouse or child or children, a former spouse may be entitled to a lump-sum refund payment under section 353.32, subdivision 1, if provided for in a marriage dissolution decree but not a monthly surviving spouse benefit despite the terms of a marriage dissolution decree filed with the association.

The spouse and child or children are entitled to monthly benefits as provided in the following subdivisions.

Subd. 2. The spouse, for life, shall receive a monthly benefit equal to 50 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. If the member was a part-time police officer or firefighter, the monthly survivor benefit is based on the salary rate in effect for that member's part-time service during the last six months of allowable service. If the member's status changed from full time to part time for health reasons during the last year of employment, the monthly survivor benefit is based on the full-time salary rate of a police officer or firefighter in effect over the last six months of allowable service preceding the month in which the 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 three years allowable service or who has credit for at least 30 years of allowable service, regardless of age attained, dies before the annuity or disability benefit becomes payable, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive a death while eligible survivor benefit.

Notwithstanding the definition of surviving spouse in section 353.01, subdivision 20, a former spouse of the member, if any, is entitled to a portion of the death while eligible survivor benefit if stipulated under the terms of a marriage dissolution decree filed with the association. If there is no surviving spouse or child or children, a former spouse may be entitled to a lump-sum refund payment under section 353.32, subdivision 1, if provided for in a marriage dissolution decree but not a death while eligible survivor benefit despite the terms of a marriage dissolution decree filed with the association.

The benefit may be elected instead of a refund with interest under section 353.32, subdivision 1, or surviving spouse benefits otherwise payable under 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. If there is a dependent child or children, and the 100 percent joint and survivor optional annuity for the surviving spouse, when added to the benefit of the dependent child or children under subdivision 3, exceeds an amount equal to 70 percent of the member's specified average monthly salary, the 100 percent joint and survivor annuity must be reduced by the

amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount under subdivision 3. The 100 percent joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement fund adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15. 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 must 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. A dependent child, as defined in section 353.01, subdivision 15, 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 a dependent child must be made to the surviving parent, or 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 advises 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 one family must not exceed an amount equal to 70 percent of the member's specified average monthly salary, and the minimum benefit per family, including the joint and survivor optional annuity under subdivision 2a, and section 353.656, subdivision 1a, must not be less than 50 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: 1971 c 297 s 4; 1973 c 753 s 75-77; 1974 c 229 s 20; 1975 c 102 s 22; 1975 c 359 s 23; 1978 c 471 s 7; 1978 c 796 s 39; 1980 c 607 art 15 s 3; 1981 c 180 s 17; 1982 c 404 s 9; 1Sp1985 c 7 s 16; 1986 c 444; 1986 c 458 s 13; 1987 c 284 art 5 s 16; 1987 c 372 art 1 s 8; art 9 s 22; 1989 c 319 art 13 s 45; art 17 s 16,17; 1990 c 570 art 11 s 11; 1991 c 269 art 2 s 7; 1991 c 341 s 24; 1992 c 432 art 2 s 20-22

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 employees retirement association and who has elected the type of benefit coverage provided by the public employees police and fire fund benefit plan under section 353A.08 following the consolidation, any retirement benefits payable are 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 retirement association and who has not elected the type of benefit coverage provided by the public employees police and fire fund benefit plan under section 353A.08 following the consolidation, any retirement benefits payable are governed by the provisions of sections 353B.01 to 353B.13 which apply to the relief association.

History: 1987 c 296 s 7; 1992 c 432 art 2 s 23

353.66 [Repealed, 1973 c 753 s 85]

353.661 [Repealed, 1989 c 319 art 3 s 26]

353.662 [Repealed, 1989 c 319 art 3 s 26]

353.663 GENERAL ADMINISTRATION.

The provisions of this chapter shall govern in all instances where not inconsistent with the provisions of Laws 1978, chapter 774.

History: 1978 c 774 s 4

353.67 APPLICATION FOR ANNUITY.

Application for retirement annuity may be made by a member or by someone authorized to act in behalf of the member.

History: 1959 c 650 s 35; 1965 c 880 s 9; 1986 c 444

353.68 SCOPE AND APPLICATION.

Subdivision 1. The general provisions of this chapter apply to all police officers and firefighters who are members of the police and fire fund and also to all governmental subdivisions employing such members except where otherwise specifically provided in sections 353.63 to 353.68.

Subd. 2. [Repealed, 1973 c 753 s 85]

Subd. 3. [Repealed, 1973 c 753 s 85]

Subd. 4. The deferred annuity of section 353.34, subdivision 3, as it applies to members of the police and fire fund, begins and is computed in the manner provided in section 353.651 on the basis of the law in effect on the date of termination of public service. The deferred annuity is augmented under section 353.71, subdivision 2.

Subd. 5. [Repealed, 1973 c 753 s 85]

Subd. 6. [Repealed, 1973 c 753 s 85]

Subd. 7. [Repealed, 1973 c 753 s 85]

Subd. 8. [Repealed, 1973 c 753 s 85]

Subd. 9. [Repealed, 1973 c 753 s 85]

History: 1959 c 650 s 36; 1961 c 743 s 3; 1963 c 639 s 2; 1963 c 641 s 35-37; 1963 c 659 s 1; 1965 c 814 s 2; Ex1967 c 37 s 4; 1969 c 940 s 15; 1971 c 412 s 3; 1973 c 753 s 78; 1992 c 432 art 2 s 24

353.69 OFFICERS OR EMPLOYEES OF NONCOVERED MUNICIPALITIES; OPTIONAL MEMBERSHIP.

Any former member who is an elected official or an employee of a municipality not covered by the public employees retirement association, has the option to continue membership in the association for any period of service with the municipality. Except for the repayment of refunds pursuant to section 353.35, this option applies to future service only. Any person desiring to exercise this option shall file application with the association. No such person shall be entitled to allowable service credit under this chapter, if for the same period of service that person receives credit with any other public retirement or pension plan maintained by the municipality.

History: 1959 c 650 s 56; 1965 c 714 s 10; Ex1967 c 53 s 10; 1971 c 106 s 39; 1973 c 753 s 79; 1986 c 444

353.70 [Repealed, 1963 c 641 s 38]

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 three 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 three 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 three or more years.

Subd. 2. Deferred annuity computation; augmentation. The deferred annuity, if any, accruing under subdivision 1, or sections 353.34, subdivision 3, and 353.68, subdivision 4, shall be computed in the manner provided in said sections, on the basis of allowable service prior to termination of public service and augmented as provided herein. The required reserves applicable to a deferred annuity, or to an annuity for which a former member was eligible but had not applied, or to any deferred segment of an annuity shall be determined as of the date the annuity begins to accrue and shall be augmented from the first day of the month following the month in which the former member ceased to be a public employee, or July 1, 1971, whichever is later, to the first day of the month in which the annuity begins to accrue, at the rate of five percent per annum compounded annually until January 1, 1981, and at the rate of three percent thereafter until January 1 of the year following the year in which the former member attains age 55. From that date to the effective date of retirement, the rate is five percent per annum compounded annually. If a person has more than one period of uninterrupted service, the required reserves related to each period shall be augmented by interest pursuant to this subdivision. The sum of the augmented required reserves so determined shall be the present value of the annuity. Uninterrupted service for the purpose of this subdivision shall mean periods of covered employment during which the employee has not been separated from public service for more than two years. If a person repays a refund, the service restored thereby shall be considered as continuous with the next period of service for which the employee has credit with this association. The formula percentages used for each period of uninterrupted service shall be those as would be applicable to a new employee. This section shall not reduce the annuity otherwise payable under this chapter. This subdivision shall apply to deferred annuitants of record on July 1, 1971, and to employees who thereafter become deferred annuitants; it shall also apply from July 1, 1971, to former members who make application for an annuity after July 1, 1973.

Subd. 3. [Repealed, 1992 c 432 art 2 s 51]

Subd. 4. Repayment of refund. Any person who has received a refund from the public employees retirement fund and who is a member of any public retirement system referred to in subdivision 1, may repay such refund to the public employees retirement fund as provided in section 353.35.

Subd. 5. Early retirement. The requirements and provisions for retirement prior to normal retirement age contained in section 353.30, shall also apply to a person fulfilling such requirements with a combination of service as provided in subdivision 1.

History: 1963 c 641 s 2; 1969 c 940 s 16-18; 1971 c 412 s 4-7; 1973 c 35 s 58; 1973 c 753 s 80,82,83; 1974 c 229 s 21; 1975 c 102 s 23; 1977 c 429 s 63; 1978 c 796 s 40; 1979 c 216 s 20; 1981 c 224 s 97; 1Sp1981 c 4 art 1 s 165; 1987 c 372 art 9 s 23; 1989 c 319 art 13 s 46-48

NOTE: See also sections 352.72 and 354.60.

353.74 CERTAIN SURVIVOR BENEFITS.

The surviving spouse of a former member of the public employees retirement asso-

ciation for not less than 18 years who was separated from the association by becoming a member of the judicial branch of the state government shall receive the same benefits as if the former member was a member of the public employees retirement association on the date of death. This section shall only apply when neither the former member nor a survivor have received any refundment of the accumulated salary deduction of the former member.

History: 1963 c 520 s 1; 1986 c 444

353.75 CERTAIN RETIREMENT ANNUITY BENEFITS.

Any public employee who retired on or after December 31, 1964, and who (1) has attained the age of 65 years, and who (2) had more than 22 years of continuous service in that employee's first public employment, (3) had more than five years of subsequent continuous service in public employment before retirement, (4) and has made contributions to the public employees retirement fund during all public employment, and who (5) has not withdrawn any contributions to the public employees retirement fund, is entitled to receive a retirement annuity from May 14, 1965, based upon the sum total of such periods of public employment in like manner as if the public employment had been continuous.

History: 1965 c 432 s 1; 1986 c 444

353.76 MS 1969 [Special]

353.77 MS 1969 [Special]

353.78 MS 1969 [Special]

353.79 MS 1969 [Special]

353.80 MS 1969 [Special]

353.81 MS 1969 [Special]

353.82 MS 1969 [Special]

353.83 ADDITIONAL PAYMENTS TO CERTAIN ANNUITANTS.

Payments of retirement annuities pursuant to this chapter, to annuitants who (a) retired prior to July 1, 1962, (b) had at least 20 years of allowable service credit in the public employees retirement association upon their termination of public employment, and (c) receive annuities of less than \$200 per month must, retroactive to July 1, 1967, be supplemented by additional payments of \$15 per month from the public employees retirement association, if the annuitants have not previously qualified for the additional payments under this section, and the annuities plus the additional payments do not exceed \$200 per month. These additional payments must be made in the same manner and at the same time retirement annuities are paid and must be included in the warrants on which the annuities are so paid. The additional payments are to be added to and considered a portion of the annuity otherwise payable to the recipient and must be included in the computation of any monthly survivor benefit or optional annuity which may become due and payable to any person following the death of an annuitant who, during life, received a benefit under this section. If an annuitant entitled to receive additional payment under this section dies before retroactive payment is received, payment must be made upon demand to the designated beneficiary in an amount equal to the accumulated benefit from July 1, 1967, to the date of death, without interest.

History: 1967 c 688 s 1; 1969 c 399 s 1; 1969 c 998 s 1; 1980 c 614 s 141; 1986 c 444; 1990 c 570 art 11 s 12

353.84 INCREASE IN BENEFITS.

All survivors and disabilitants who were receiving benefits on June 30, 1973, shall receive from the appropriate special fund, a 25 percent increase in such benefits accruing from January 1, 1974; provided, that survivors of members who died prior to July 1, 1973 and will not become eligible to receive benefits until after June 30, 1973, shall

receive the 25 percent increase in such benefits when the benefits begin to accrue. Such increases shall not be affected by any maximum limitations otherwise provided in this chapter.

Notwithstanding section 356.18, increases in payments pursuant to this section will be made automatically unless the intended recipient files written notice with the public employees retirement association requesting that the increase shall not be made.

History: 1973 c 753 s 84

353.85 OPTIONAL BENEFITS TO SURVIVORS OF MEMBERS WHO DIED AFTER JUNE 15, 1973.

A qualified survivor of a "basic" member or a member of the police and fire fund where such member died after June 15, 1973 and was entitled to salary or vacation pay after June 30, 1973 shall in lieu of all other association survivor benefits be entitled to the survivor benefits payable under the law in effect on July 1, 1973.

History: 1974 c 229 s 22

353.86 VOLUNTEER AMBULANCE SERVICE PERSONNEL; PARTICIPATION; ELECTION; LIMITATION; AND COMPENSATION.

Subdivision 1. Participation. Volunteer ambulance service personnel, as defined in section 353.01, subdivision 35, who are or become members of and participants in the public employees retirement fund or the public employees police and fire fund and make contributions to either of those funds based on compensation for service other than volunteer ambulance service may elect to participate in that same fund with respect to compensation received for volunteer ambulance service, provided that the volunteer ambulance service is not credited to another public or private pension plan including the public employees retirement plan established by chapter 353D and provided further that the volunteer ambulance service is rendered for the same governmental unit for which the nonvolunteer ambulance service is rendered.

Subd. 2. Election. Volunteer ambulance service personnel to whom subdivision 1 applies may exercise the election authorized under subdivision 1 within the earlier of the one-year period beginning on July 1, 1989, and extending through June 30, 1990, or the one-year period commencing on the first day of the first month following the start of employment in a position covered by the public employees retirement fund or the public employees police and fire fund. The election must be exercised by filing a written notice on a form prescribed by the executive director of the association.

Subd. 3. Limitation. Volunteer ambulance service personnel to whom subdivision 1 applies who exercise their option in accordance with subdivision 2 and their governmental employers are not required to pay omitted deductions and contributions under section 353.27, subdivision 12, for volunteer ambulance service rendered before July 1, 1989.

Subd. 4. Compensation. Notwithstanding section 353.01, subdivision 10, compensation received for service rendered by volunteer ambulance service personnel to whom subdivision 1 applies who exercise their option in accordance with subdivision 2 shall be considered salary.

History: 1989 c 319 art 3 s 23

353.87 VOLUNTEER FIREFIGHTERS; PARTICIPATION; LIMITATION; AND REFUND.

Subdivision 1. Participation. Except as provided in subdivision 2, a volunteer firefighter, as defined in section 353.01, subdivision 36, who, on June 30, 1989, was a member of, and a participant in, the public employees retirement fund or the public employees police and fire fund and was making contributions to either of those funds based, at least in part, on compensation for services performed as a volunteer firefighter shall continue as a member of, and a participant in, the public employees retirement fund or the public employees police and fire fund and compensation for services performed as a volunteer firefighter shall be considered salary.

Subd. 2. **Option.** A volunteer firefighter to whom subdivision 1 applies has the option to terminate membership and future participation in the public employees retirement fund or the public employees police and fire fund upon filing of a written notice of intention to terminate participation. Notice must be given on a form prescribed by the executive director of the association and must be filed in the offices of the association not later than June 30, 1990.

Subd. 3. **Limitation.** No volunteer firefighter to whom subdivision 1 applies or the governmental employer of the volunteer firefighter is required to make back contributions to the public employees retirement association for volunteer firefighter services rendered before July 1, 1989, notwithstanding the provisions of section 353.27, subdivision 12.

Subd. 4. **Refund.** Upon timely filing of a valid notice of termination of participation in accordance with subdivision 2, a volunteer firefighter to whom subdivision 1 applies must be given a refund of all past employee contributions made on account of volunteer firefighter service with five percent interest compounded annually.

Subd. 5. [Repealed, 1990 c 570 art 11 s 13]

History: 1989 c 319 art 3 s 24