

CHAPTER 353

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

353.01	Definitions.	353.652	Social security benefit offset in certain instances.
353.03	Board of trustees.	353.665	Merger of certain consolidation accounts into PERA-P&F.
353.27	Public employees retirement fund.	353.88	Penalty for membership miscertifications and certification failures.
353.33	Total and permanent disability benefits.		
353.64	Membership; qualifications; police officer, firefighter.		
353.65	Contributions.		
353.651	Retirement annuity upon separation from public service.		

353.01 DEFINITIONS.

[For text of subsds 1 to 2a, see M.S.1998]

Subd. 2b. **Excluded employees.** The following public employees shall not participate as members of the association with retirement coverage by the public employees retirement plan or the public employees police and fire retirement plan:

(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 local police or firefighters consolidation account but who have not elected the type of benefit coverage provided by the public employees police and fire fund under sections 353A.01 to 353A.10, or any persons covered by section 353.665, subdivision 4, 5, or 6, who have not elected public employees

police and fire plan benefit coverage. 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;

(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; and

(17) pipefitters and associated trades personnel employed by independent school district No. 625, St. Paul, with coverage by the pipefitters local 455 pension plan under a collective bargaining agreement who were either first employed after May 1, 1997, or, if first employed before May 2, 1997, elected to be excluded under Laws 1997, chapter 241, article 2, section 12.

[For text of subds 3 to 8, see M.S.1998]

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 firefighters' relief association that has consolidated with the public employees retirement association or

to which section 353.665 applies and who has elected coverage either under the public employees police and fire fund benefit plan under section 353A.08 following the consolidation or under section 353.665, subdivision 4, "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.

[For text of subds 11 to 15a, see M.S.1998]

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 11a. 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 commit-

ment 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 or to which section 353.665 applies, and who has elected the type of benefit coverage provided by the public employees police and fire fund either under section 353A.08 following the consolidation or under section 353.665, subdivision 4, "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.

[For text of subds 17 to 37, see M.S.1998]

History: 1999 c 222 art 4 s 4-6

353.03 BOARD OF TRUSTEES.

[For text of subds 1 to 3, see M.S.1998]

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.0815.

(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 16C. 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, and to the executive director of the commission 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 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.

[For text of subd 5, see M.S.1998]

History: 1999 c 99 s 16; 1999 c 222 art 22 s 2

353.27 PUBLIC EMPLOYEES RETIREMENT FUND.

[For text of subd 1, see M.S.1998]

Subd. 2. Employee contribution. (a) The employee contribution is an amount (1) for a "basic member" equal to 8.75 percent of total salary; and (2) for a "coordinated member" equal to 4.75 percent of total salary.

(b) These contributions 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, such member's employee contribution must be based on the total salary received from all sources.

Subd. 3. Employer contribution. (a) The employer contribution is an amount equal to the employee contribution under subdivision 2.

(b) This contribution must be made from funds available to the employing subdivision by the means and in the manner provided in section 353.28.

[For text of subds 3a to 13, see M.S.1998]

History: 1999 c 222 art 2 s 5,6

353.33 TOTAL AND PERMANENT DISABILITY BENEFITS.

[For text of subds 1 to 3, see M.S.1998]

Subd. 3a. [Repealed, 1999 c 222 art 2 s 20]

[For text of subds 3b to 12, see M.S.1998]

353.64 MEMBERSHIP; QUALIFICATIONS; POLICE OFFICER, FIREFIGHTER.

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, continues to be a member of the fund, whether or not that person has the power of arrest by warrant and is licensed by the peace officers standards and training board after that date. A person who was employed as a correctional officer by Rice county before July 1, 1998, for the duration of employment in the correctional position held on July 1, 1998, continues to be a member of the public employees police and fire plan, whether or not the person has the power of arrest by warrant and is licensed by the peace officers standards and training board 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 as defined in subdivision 2 or as a firefighter as defined in subdivision 3 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, 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, or any police officer or firefighter to whom section 353.665 applies who has not elected coverage by the public employees police and fire fund benefit plan as provided in section 353.665, subdivision 4, shall not become a member of the public employees police and fire fund.

[For text of subds 2 to 9, see M.S.1998]

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 144E.28, subdivision 4;

(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: 1999 c 222 art 4 s 7; art 14 s 2; 1999 c 245 art 9 s 65

353.65 CONTRIBUTIONS.

[For text of subd. 1, see M.S.1998]

Subd. 2. Employee contribution rate. The employee contribution is an amount equal to 6.2 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. Employer contribution rate. The employer contribution shall be an amount equal to 9.3 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. [Repealed, 1999 c 222 art 4 s 20]

[For text of subds 4 and 6, see M.S.1998]

History: 1999 c 222 art 4 s 8,9

353.651 RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC SERVICE.

[For text of subds 1 to 3, see M.S.1998]

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 by one-tenth of one percent for each month that the member is under age 55 at the time of retirement.

History: 1999 c 222 art 14 s 3

353.652 SOCIAL SECURITY BENEFIT OFFSET IN CERTAIN INSTANCES.

(a) If a public employee continues in retirement plan coverage by the public employees police and fire retirement plan by virtue of this article and subsequently is covered by the federal old age, survivors, and disability insurance program for service as a Rice county correctional officer, the retirement annuity of the person under section 353.651 or the disability benefit of the person under section 353.656 must be reduced dollar for dollar for the social security benefit that the person is entitled to receive by virtue of Rice county correctional service rendered after the effective date of section 1.

(b) To be effective, the retirement annuity or disability benefit application form for a Rice county correctional employee must include signed written permission by the person for

the public employees retirement association to obtain the necessary information from the federal old age, survivors, and disability insurance program to implement the offset provision in paragraph (a).

History: 1999 c 222 art 14 s 4

353.665 MERGER OF CERTAIN CONSOLIDATION ACCOUNTS INTO PERA-P&F.

Subdivision 1. **Merger authorized.** (a) Notwithstanding any provision of law to the contrary, unless the applicable municipality elects otherwise under paragraph (b), every local police and fire consolidation account under chapter 353A in existence on March 1, 1999, becomes a part of the public employees police and fire plan and fund governed by sections 353.63 to 353.659 on July 1, 1999.

(b) If a municipality desires to retain its consolidation account or consolidation accounts, whichever applies, the governing body of the municipality must adopt a resolution to that effect and must file a copy of the resolution with the secretary of state, the state auditor, the legislative auditor, the finance commissioner, the revenue commissioner, the executive director of the public employees retirement association, and the executive director of the legislative commission on pensions and retirement. The retention election must apply to both consolidation accounts if the municipality is associated with more than one consolidation account. The retention resolution must be adopted and filed with all recipients before June 15, 1999.

Subd. 2. **Transfer of liabilities.** Unless the municipality has elected to retain the consolidation account under subdivision 1, paragraph (b), all current and future liabilities of a former local police or fire consolidation account are the liabilities of the public employees police and fire fund as of July 1, 1999, and the accrued benefits of the members are the obligation of the public employees police and fire fund.

Subd. 3. **Transfer of assets.** Unless the municipality has elected to retain the consolidation account under subdivision 1, paragraph (b), the assets of the former local police or fire consolidation account must be transferred and upon transfer, the actuarial value of the assets of a former local police or fire consolidation account less an amount equal to the residual assets as determined under subdivision 7, paragraph (f), are the assets of the public employees police and fire fund as of July 1, 1999. The participation of a consolidation account in the Minnesota postretirement investment fund becomes part of the participation of the public employees police and fire fund in the Minnesota postretirement investment fund. The remaining assets, excluding the amounts for distribution under subdivision 7, paragraph (f), become an asset of the public employees police and fire fund. The public employees police and fire fund also must be credited as an asset with the amount of receivable assets under subdivision 7, paragraph (e).

Subd. 4. **Benefit coverage for active members.** (a) A person who is a police officer or a firefighter who, as such, is an active member of a merging local police or fire consolidation account on June 30, 1999, and who has not previously elected benefit coverage under the relevant provisions of the public employees police and fire fund benefit plan under section 353A.08, subdivision 3, may elect benefit coverage under the relevant provisions of the public employees police and fire fund benefit plan. This election must be made in writing on a form prescribed by the executive director before September 1, 1999, and is irrevocable.

(b) If an eligible person makes no affirmative election of benefit coverage before September 1, 1999, the person retains the benefit coverage provided by the relief association benefit plan as reflected in the applicable provisions of chapter 353B and may elect benefit coverage under the relevant provisions of the public employees police and fire fund benefit plan when the person terminates active employment for purposes of receiving a service pension, disability benefit, or within 90 days of the date the member terminates active employment and defers receipt of a service pension, whichever applies.

(c) Notwithstanding any provision of section 353A.083 and any municipal action under authority of that statute to the contrary, the provisions of the public employees police and fire fund benefit plan applicable to active members of the merging local police or fire consolidation accounts who elect the public employees police and fire fund benefit plan under section

353A.08, subdivision 3, or paragraph (a), are the applicable provisions of sections 353.63 to 353.659.

Subd. 5. Benefit coverage for retirees and benefit recipients. (a) A person who received a service pension, a disability pension or benefit, or a survivor benefit from a merging local police or fire consolidation account for the month of June 1999, and who has not previously elected participation in the Minnesota postretirement investment fund for any future postretirement adjustments rather than the postretirement adjustment mechanism or mechanisms of the relief association benefit plan under section 353A.08, subdivision 1, may elect participation in the Minnesota postretirement investment fund for any future postretirement adjustments or retention of the postretirement adjustment mechanism or mechanisms of the relief association benefit plan as reflected in the applicable provisions of chapter 353B. This election must be in writing on a form prescribed by the executive director and must be made before September 1, 1999.

(b) If an eligible person is a minor, the election must be made by the person's parent or legal guardian. If the eligible person makes no affirmative election under this subdivision, the person retains the postretirement adjustment mechanism or mechanisms of the relief association benefit plan as reflected in the applicable provisions of chapter 353B.

(c) The survivor benefit payable on behalf of any service pension or disability benefit recipient who elects participation in the Minnesota postretirement investment fund must be calculated under the relief association benefit plan in effect on the effective date of consolidation under chapter 353A as reflected in the applicable provisions of chapter 353B.

Subd. 6. Benefit coverage for deferred members. A person who terminated before July 1, 1999, active employment as a police officer or a firefighter that gave rise to membership in a local relief association that has consolidated with the public employees police and fire plan under chapter 353A and is merging under this section and who had sufficient service credit to entitle the person to an eventual service pension retains the benefit plan as reflected in the applicable provisions of chapter 353B, except that the deferred member may elect before September 1, 1999, to participate, upon retirement, in the Minnesota postretirement investment fund. Any election to participate in the Minnesota postretirement investment fund is applicable to any survivor benefit attributable to a deferred member covered by this subdivision.

Subd. 7. Calculation of final funded status. (a) As of June 30, 1999, the actuary retained by the legislative commission on pensions and retirement shall determine the final funded status of local police and fire consolidation accounts under chapter 353A that the applicable municipality has not elected to retain under subdivision 1, paragraph (b), as provided in this subdivision.

(b) The final funded status calculation must be made using the benefit plan provisions applicable to the consolidation account and the actuarial assumptions used for the June 30, 1998, actuarial valuation of the account.

(c) The actuary must calculate the total actuarial accrued liability of the consolidation account, which is the sum of the actuarial accrued liability for all consolidation account members who are not included in the participation of the account in the Minnesota postretirement investment fund calculated using the entry age normal actuarial cost method. If local legislation enacted during the 1999 regular session or any special session occurring before October 1, 1999, provides a benefit increase for one consolidation account member or more, whether the applicable municipality has given final approval to the local legislation yet or not, the total actuarial accrued liability calculation must include that benefit increase. The actuary also must calculate any account unfunded accrued liability or any account funding surplus. An account unfunded accrued liability is the actuarial accrued liability reduced by the amount of the current value of assets, if the resulting number is positive. An account funding surplus is the actuarial accrued liability reduced by the amount of the current value of assets, if the resulting number is negative. If a municipality is associated with two consolidation accounts and one has an account funding surplus and one has an account unfunded accrued liability in the preliminary calculation under this paragraph, the actuary must make a second calculation for the account with a preliminary account unfunded accrued liability, after crediting to that account an amount up to 75 percent of the one-half of the market value of

the assets of the account with an account funding surplus that are in excess of 100 percent of the account actuarial accrued liability and that are less than that percentage of the total actuarial accrued liability that equals the public employees police and fire fund funded ratio as of June 30, 1999, but not to exceed the account's unfunded actuarial accrued liability.

(d) The actuary also must calculate the amortizable base for every consolidation account. The amortizable base is the present value of future benefits for all account members who are not included in the participation of the account in the Minnesota postretirement investment fund reduced by the present value of 19 percent of future covered salary and further reduced by the current value of account assets other than its participation in the Minnesota postretirement investment fund, after adjustment for fiscal year 1999 net mortality gains and losses and for the net actuarial affect of the election of postretirement adjustment coverage under subdivision 5.

(e) If the amortizable base under paragraph (d) is a positive number, the receivable assets are an amount equal to the amortizable base number.

(f) If the amortizable base under paragraph (d) is a negative number, the actuary must calculate the residual asset amount. The residual asset amount is:

(1) one-half of the amount by which the current assets of the account exceed 100 percent of the total actuarial accrued liability up to that percentage of the total actuarial accrued liability that equals the public employees police and fire fund funded ratio on June 30, 1999; and

(2) the amount by which the current assets of the account exceed that percentage of the total actuarial accrued liability that equals the public employees police and fire fund funded ratio on June 30, 1999. Following the calculation of the residual asset amount for each applicable municipality and the verification of the amount by the legislative auditor, the executive director of the public employees retirement association shall pay the applicable residual asset amount with interest equal to the average yield on the invested treasurer's cash fund from July 1, 1999, to the first of the month in which the payment is issued to each qualifying municipality. The residual asset amount must be used by the municipality to defray fire department expenditure items if the residual asset amount was derived from a fire consolidation account or to defray police department expenditure items if the residual asset amount was derived from a police consolidation account. Before the residual asset amount payment is made by the public employees retirement association, the governing body of the applicable municipality, following a public hearing on the issue, must formulate and adopt a plan for the expenditure of the residual amount and must file that plan in the form of a municipal resolution with the state auditor. The residual asset amount must be deposited in a special fund or account in the municipal treasury established for that purpose. The special fund or account must be invested and any investment return attributable to the residual asset amount must be credited to that special fund or account and its disbursement similarly restricted. The special fund or account must be audited periodically by the state auditor.

Subd. 8. Member and employer contributions. (a) Effective on the first day of the first full pay period following June 30, 1999, the employee contribution rate for merging former consolidation account active members is the rate specified in section 353.65, subdivision 2, and the regular municipal contribution rate on behalf of former consolidation account active members is the rate specified in section 353.65, subdivision 3.

(b) The municipality associated with a merging former local consolidation account that had a positive value amortizable base calculation under subdivision 7, paragraph (d), after the preliminary calculation or the second calculation, whichever applies, must make an additional municipal contribution to the public employees police and fire plan for the period from January 1, 2000, to December 31, 2009. The amount of the additional municipal contribution is the amount calculated by the actuary retained by the legislative commission on pensions and retirement and certified by the executive director of the public employees retirement association by which the amortizable base amount would be amortized on a level dollar annual end-of-the-year contribution basis, using an 8.5 percent interest rate assumption. The additional municipal contribution is payable during the month of January, is without any interest, or if made after January 31, but before the next following December 31, is payable with interest for the period since January 1 at a rate which is equal to the preretirement inter-

est rate assumption specified in section 356.215, subdivision 4d, applicable to the public employees police and fire fund expressed as a monthly rate and compounded on a monthly basis or if made after December 31 of the year in which the additional municipal contribution is due is payable with interest at a rate which is four percent greater than the highest interest rate assumption specified in section 356.215, subdivision 4d, expressed as a monthly rate and compounded monthly from January 1 of the year in which the additional municipal contribution is due until the date on which payment is made.

Subd. 9. Benefit plan coverage. Unless modified by an election authorized under subdivision 4, 5, or 6, the benefit plan election by any person or on behalf of any person under section 353A.08 remains binding. Merging former consolidation account members who elected the entirety of the public employees police and fire benefit plan are entitled to an applicable annuity or benefit under the provisions of sections 353.63 to 353.68 in effect on the day that the merging former consolidation account member terminated active service as a police officer or firefighter, whichever applies.

Subd. 10. Consolidation account termination. Unless the municipality has elected to retain the consolidation account under subdivision 1, paragraph (b), upon the payment of all residual asset amounts under subdivision 7 and the transfer of all liabilities and remaining assets under subdivisions 2 and 3, the local consolidation accounts under chapter 353A in existence on March 1, 1999, are terminated, and all benefits accrued up to the date of termination are the obligation of the public employees police and fire fund.

History: 1999 c 222 art 4 s 10

353.88 PENALTY FOR MEMBERSHIP MISCERTIFICATIONS AND CERTIFICATION FAILURES.

(a) If the board of trustees of the public employees retirement association, upon the recommendation of the executive director, determines that a governmental subdivision has certified a public employee for membership in the public employees police and fire retirement plan when the public employee was not eligible for that retirement plan coverage, the public employee must be covered by the correct retirement plan for subsequent service, the public employee retains the coverage for the period of the misclassification, and the governmental subdivision shall pay in a lump sum the difference in the actuarial present value of the retirement annuities to which the public employee would have been entitled if the public employee was properly classified. The governmental subdivision payment is payable within 30 days of the board's determination. If unpaid, it must be collected under section 353.28. The lump sum payment must be deposited in the public employees retirement fund.

(b) If the executive director of the public employees retirement association determines that a governmental subdivision has failed to certify a person for retirement plan membership and coverage under this chapter, in addition to the procedures under section 353.27, subdivision 4, 9, 10, 11, 12, 12a, or 12b, the director shall charge a fine of \$25 for each membership certification failure.

History: 1999 c 222 art 14 s 5