

CHAPTER 356

RETIREMENT SYSTEMS, GENERALLY

356.195	SERVICE CREDIT PURCHASE PROCEDURES FOR STRIKE PERIODS.	356.87	HEALTH INSURANCE WITHHOLDING.
356.351	RETIREMENT INCENTIVE.	356.95	PURCHASE OF PRIOR COMPREHENSIVE EMPLOYMENT TRAINING ACT SERVICE.
356.405	COMBINED PAYMENT OF RETIREMENT ANNUITIES.	356.96	PENSION PLAN APPEAL PROCEDURES.
356.46	APPLICATION FOR RETIREMENT ANNUITY; PROCEDURE FOR ELECTING ANNUITY FORM.	356.98	ALLOCATION OF RECEIVABLES.

356.195 SERVICE CREDIT PURCHASE PROCEDURES FOR STRIKE PERIODS.

Subdivision 1. **Covered plans.** This section applies to all defined benefit plans specified in section 356.30, subdivision 3, except clause (10).

[For text of subd 2, see M.S.2006]

History: 2007 c 134 art 2 s 42

356.351 RETIREMENT INCENTIVE.

Subdivision 1. **Eligibility.** (a) An eligible appointing authority may offer the early retirement incentive in this section to an employee who:

(1) has at least 15 years of allowable service in one or more of the funds listed in section 356.30, subdivision 3, or has at least 15 years of coverage by the individual retirement account plan governed by chapter 354B and upon retirement is immediately eligible for a retirement annuity or benefit from one or more of these funds;

(2) terminates service after the effective date of this section, and before July 15, 2009; and

(3) is not in receipt of a public retirement plan retirement annuity, retirement allowance, or service pension during the month preceding the termination of qualified employment.

(b) An eligible appointing authority is any Minnesota governmental employing unit which employs one or more employees with retirement coverage by a retirement plan listed in section 356.30 by virtue of that employment.

(c) An elected official is not eligible to receive an incentive under this section.

Subd. 2. **Incentive.** (a) For an employee eligible under subdivision 1, if approved under paragraph (b), the employer may provide an amount up to \$17,000, to an employee who terminates service, to be used:

(1) unless the appointing authority has designated the use under clause (2) or the use under clause (3) for the initial retirement incentive applicable to that employing entity under Laws 2007, chapter 134, after May 26, 2007, for deposit in the employee's account in the health care savings plan established by section 352.98;

(2) notwithstanding section 352.01, subdivision 11, or 354.05, subdivision 13, whichever applies, if the appointing authority has designated the use under this clause for the initial retirement incentive applicable to that employing entity under Laws 2007, chapter 134, after May 26, 2007, for purchase of service credit for unperformed service sufficient to enable the employee to retire under section 352.116, subdivision 1, paragraph (b); 353.30; 354.44, subdivision 6, paragraph (b), or 354A.31, subdivision 6, paragraph (b), whichever applies; or

(3) if the appointing authority has designated the use under this clause for the initial retirement incentive applicable to the employing entity under Laws 2007, chapter 134, after May 26, 2007, for purchase of a lifetime annuity or an annuity for a specific number of years from the applicable retirement plan to provide additional benefits, as provided in paragraph (d).

(b) Approval to provide the incentive must be obtained from the commissioner of finance if the eligible employee is a state employee and must be obtained from the applicable

governing board with respect to any other employing entity. An employee is eligible for the payment under paragraph (a), clause (2), if the employee uses money from a deferred compensation account that, combined with the payment under paragraph (a), clause (2), would be sufficient to purchase enough service credit to qualify for retirement under section 352.116, subdivision 1, paragraph (b); 353.30, subdivision 1a; 354.44, subdivision 6, paragraph (b), or 354A.31, subdivision 6, paragraph (b), whichever applies.

(c) The cost to purchase service credit under paragraph (a), clause (2), must be made in accordance with section 356.551.

(d) The annuity purchase under paragraph (a), clause (3), must be made using annuity factors derived from the applicable factors used by the applicable retirement plan to transfer amounts to the Minnesota postretirement investment fund and to calculate optional annuity forms. The purchased annuity must be the actuarial equivalent of the incentive amount.

Subd. 3. Designation of positions; employer discretion. (a) Before offering an incentive under this section, an appointing authority must be experiencing employee layoffs due to budget shortfalls or a reorganization that would be offset by offering the incentive. The appointing authority must document that the incentive payment is equal to or less than the cost of the employee layoff. The appointing authority must designate the job classifications or positions within the job classifications that qualify for the incentive. The appointing authority may modify this designation at any time. Designation of positions eligible for the incentive under this section, participation of individual employees, and the amount of the payment under this section are at the sole discretion of the appointing authority. Unilateral implementation of this section by the employer is not an unfair labor practice under chapter 179A.

(b) An employee who is eligible for an incentive under this section, who is offered an incentive by the appointing authority, and who accepts the incentive offer must do so in writing. A copy of the acceptance document must be provided by the appointing authority to the applicable retirement plan within 15 days of its execution.

Subd. 4. Reemployment prohibition. No appointing authority referenced in subdivision 1 is permitted to employ or retain as a consultant an individual who received an early retirement incentive under this section for a period of three years after the receipt of the incentive. This provision does not prohibit a school district from employing as a substitute teacher an individual who received an early retirement incentive under this section.

Subd. 5. Utilization report. On August 1, 2008, and annually thereafter, the commissioner of employee relations, with respect to the executive branch of state government, the commissioner of education, with respect to school districts, and the chancellor of the Minnesota State Colleges and Universities System, with respect to the system, shall report to the chair of the house of representatives Finance Committee, the chair of the house of representatives Governmental Operations, Reform, Technology and Elections Committee, the chair of the senate Finance Committee, the chair of the senate State and Local Government Operations and Oversight Committee, and the executive director of the Legislative Commission on Pensions and Retirement on the utilization of the early retirement incentive. The report must include the total number of employees who utilized the incentive, the age of each retiring employee, the length of service of each retiring employee, the incentive amount paid to each retiring employee, the amount of salary savings through the previous June 30 obtained for each retiring employee, and the amount of any other financial or budgetary impact related to each retiring employee.

History: 2006 c 271 art 3 s 43; 2007 c 134 art 11 s 11

NOTE: This section as added by Laws 2006, chapter 271, article 3, section 43, as amended by Laws 2007, chapter 134, article 11, section 11, expires July 15, 2009. Laws 2006, chapter 271, article 3, section 43, as amended by Laws 2007, chapter 134, article 11, section 11, the effective date.

356.405 COMBINED PAYMENT OF RETIREMENT ANNUITIES.

(a) The Public Employees Retirement Association and the Minnesota State Retirement System are permitted to combine payments to retirees if one of the payments is less than \$250

per month and if the individual elects the same joint and survivor annuity form from both systems, or if the individual elects straight life annuities from both systems. The total payment must be equal to the amount that is payable if payments were kept separate.

(b) Each plan must calculate the benefit amounts under the laws governing the plan and the required reserves must be paid to the plan making the combined payment from the plan where the service was earned.

(c) The plan making the payment would be responsible for issuing one payment and making address changes, tax withholding changes, and other administrative functions needed to process the payment.

History: 2007 c 134 art 2 s 43

356.46 APPLICATION FOR RETIREMENT ANNUITY; PROCEDURE FOR ELECTING ANNUITY FORM.

[For text of subs 1 and 2, see M.S.2006]

Subd. 3. Requirement of notice to member's spouse. (a) Except as specified in paragraph (c), if a public pension plan provides optional retirement annuity forms which include a joint and survivor optional retirement annuity form potentially applicable to the surviving spouse of a member, the executive director of the public pension plan shall send a copy of the written statement required by subdivision 2 to the spouse of the member before the member's election of a retirement annuity.

(b) Following the election of a retirement annuity by the member, a copy of the completed retirement annuity application and retirement annuity beneficiary form, if applicable, must be sent by the executive director of the public pension plan to the spouse of the retiring member. A signed acknowledgment must be required from the spouse confirming receipt of a copy of the completed retirement annuity application and retirement annuity beneficiary form, unless the spouse's signature confirming the receipt is on the annuity application form. If the required signed acknowledgment is not received from the spouse within 30 days, the executive director of the public pension plan must send another copy of the completed retirement annuity application and retirement annuity beneficiary form, if applicable, to the spouse by certified mail with restricted delivery.

(c) For the Teachers Retirement Association, the statement to the spouse that is required under paragraph (a) must be sent before or upon the member's election of an annuity.

History: 2007 c 134 art 2 s 44

356.87 HEALTH INSURANCE WITHHOLDING.

Subdivision 1. Public employees insurance program withholding. (a) Upon authorization of a person entitled to receive a retirement annuity, disability benefit or survivor benefit, the executive director of a public pension fund enumerated in section 356.20, subdivision 2, shall withhold health insurance premium amounts from the retirement annuity, disability benefit or survivor benefit, and shall pay the premium amounts to the public employees insurance program.

(b) The public employees insurance program shall reimburse a public pension fund for the administrative expense of withholding the premium amounts and shall assume liability for the failure of a public pension fund to properly withhold the premium amounts.

Subd. 2. Public safety retiree insurance withholding. (a) For purposes of this subdivision, "governing board" means the governing board or body that has been assigned the chief policy-making powers and management duties of the applicable pension plan.

(b) For a pension plan covered under section 356.20, subdivision 2, that provides monthly annuity payments, the governing board may direct the plan's chief administrative officer to withhold health, accident, and long-term care insurance premiums from the retirement annuity or disability benefit and to transmit the amount to an approved insurance provider specified by the eligible person. A governing board which agrees to participate may

revise or revoke that decision at a later date if the board provides reasonable notice to the applicable parties.

(c) An eligible person is a person who:

- (1) is a retiree or disabilitant from a participating plan;
- (2) was a public safety officer as defined in United States Code, title 42, section 3796b;
- (3) terminated service as a public safety officer due to disability or attainment of normal retirement age and commences receipt of an annuity without any period of deferral; and
- (4) satisfies any other requirements to have all or a portion of the health, accident, or long-term care insurance premiums excluded from income for taxation purposes, as specified in section 845 of Public Law 109-28, the Pension Protection Act of 2006.

(d) An approved insurance provider is:

- (1) any regulated, licensed insurance company;
- (2) a fraternal or any other organization sponsoring a regulated, licensed insurance program; or
- (3) an employer-sponsored insurance program, whether directly through the employer or a third-party administrator.

(e) An eligible person may elect to have the applicable plan administrator withhold and transmit the insurance amounts described in paragraph (b). The eligible person must make this election on a form prescribed by the chief administrative officer of the applicable plan.

(f) A pension fund and the plan fiduciaries which authorize or administer withholding of insurance premiums under this subdivision is not liable for failure to properly withhold or transmit the premium amounts.

History: 2007 c 134 art 11 s 8

356.90 [Repealed, 2007 c 134 art 2 s 50]

356.95 PURCHASE OF PRIOR COMPREHENSIVE EMPLOYMENT TRAINING ACT SERVICE.

Subdivision 1. **Eligibility.** An eligible person is a person who:

- (1) is currently an active plan member in a plan included under section 356.30, subdivision 3, other than clause (3);
- (2) was excluded from pension coverage under the provisions of Laws 1978, chapter 720; and
- (3) subsequently became employed in unsubsidized public employment covered by a pension plan included under section 356.30, subdivision 3, other than clause (3), with the same public employer which provided the subsidized employment or other public employer.

Subd. 2. **Authorization.** An eligible person under subdivision 1 is authorized to purchase service credit for that period of uncovered prior subsidized public employment, other than a period of prior subsidized public employment for which a repayment of a refund was made, with a public pension plan specified in subdivision 1, clause (3), which, except for the exclusion provided by Laws 1978, chapter 720, would have provided pension coverage for the subsidized employment.

Subd. 3. **Procedures.** Section 356.551 applies to purchases under this section, except that payment must be made before the expiration date of this section or termination from eligible employment covered by a pension plan under subdivision 1, clause (1), whichever is earlier.

Subd. 4. **Restriction.** (a) Pre-July 1, 1989, service credit purchased under this section does not extend eligibility to plan benefits applicable to individuals who became members prior to July 1, 1989, of a plan listed in section 356.30, subdivision 3.

(b) Service credit may not be purchased for any period for which the individual has service credit in a covered pension plan, as defined in section 356A.01, subdivision 8, other than a volunteer firefighter plan.

Subd. 5. **Expiration.** This section expires on June 30, 2009.

History: 2007 c 134 art 2 s 45

356.96 PENSION PLAN APPEAL PROCEDURES.

Subdivision 1. **Definitions.** (a) Unless the language or context clearly indicates that a different meaning is intended, for the purpose of this section, the terms in paragraphs (b) to (e) have the meanings given them.

(b) "Chief administrative officer" means the executive director of a covered pension plan or the executive director's designee or representative.

(c) "Covered pension plan" means a plan enumerated in section 356.20, subdivision 2, clauses (1) to (4), (10), and (12) to (14), but does not mean the deferred compensation plan administered under sections 352.96 and 352.97 or to the postretirement health care savings plan administered under section 352.98.

(d) "Governing board" means the Board of Trustees of the Public Employees Retirement Association, the Board of Trustees of the Teachers Retirement Association, or the Board of Directors of the Minnesota State Retirement System.

(e) "Person" includes an active, retired, deferred, or nonvested inactive participant in a covered pension plan or a beneficiary of a participant, or an individual who has applied to be a participant or who is or may be a survivor of a participant, or a state agency or other governmental unit that employs active participants in a covered pension plan.

Subd. 2. **Right to review.** A determination made by the administration of a covered pension plan regarding a person's eligibility, benefits, or other rights under the plan with which the person does not agree is subject to review under this section.

Subd. 3. **Notice of determination.** If the applicable chief administrative officer denies an application or a written request, modifies a benefit, or terminates a benefit of a person claiming a right or potential rights under a covered pension plan, the chief administrative officer shall notify that person through a written notice containing:

(1) a statement of the reasons for the determination;

(2) a notice that the person may petition the governing board of the covered pension plan for a review of the determination and that a person's petition for review must be filed in the administrative office of the covered pension plan within 60 days of the receipt of the written notice of the determination;

(3) a statement indicating that a failure to petition for review within 60 days precludes the person from contesting in any other administrative review or court procedure the issues determined by the chief administrative officer;

(4) a statement indicating that all relevant materials, documents, affidavits, and other records that the person wishes to be reviewed in support of the petition must be filed with and received in the administrative office of the covered pension plan at least 30 days before the date of the hearing under subdivision 10; and

(5) a copy of this section.

Subd. 4. **Termination of benefits.** (a) If a covered pension plan decides to terminate a benefit that is being paid to a person, before terminating the benefit, the chief administrative officer must, in addition to the other procedures prescribed in this section, provide the individual with written notice of the pending benefit termination by certified mail. The notice must explain the reason for the pending benefit termination. The person must be given an opportunity to explain, in writing, in person, by telephone, or by e-mail, the reasons that the benefit should not be terminated.

(b) If the chief administrative officer is unable to contact the person and determines that a failure to terminate the benefit will result in unauthorized payment by a covered pension plan, the chief administrative officer may terminate the benefit immediately upon mailing a written notice containing the information required by subdivision 3 to the address to which the most recent benefit payment was sent and, if that address is that of a financial institution, to the last known address of the person.

Subd. 5. Petition for review. (a) A person who claims a right under subdivision 2 may petition for a review of that decision by the governing board of the covered pension plan.

(b) A petition under this section must be sent to the chief administrative officer by mail and must be postmarked no later than 60 days after the person received the notice required by subdivision 3. The petition must include the person's statement of the reason or reasons that the person believes the decision of the chief administrative officer should be reversed or modified. The petition may include all documentation and written materials that the petitioner deems to be relevant.

Subd. 6. Failure to petition. If a timely petition for review under subdivision 5 is not filed with the chief administrative officer, the covered pension plan's determination is final and is not subject to further administrative or judicial review.

Subd. 7. Notice of hearing. (a) After receiving a petition, and not less than 30 calendar days from the date of the next regular board meeting, the chief administrative officer must schedule a timely review of the petition before the governing board of the covered pension plan. The review must be scheduled to take into consideration any necessary accommodations to allow the petitioner to participate in the governing board's review.

(b) Not less than 15 calendar days before the scheduled hearing date, the chief administrative officer must provide by mail to the petitioner an acknowledgment of the receipt of the person's petition and a follow-up notice of the time and place of the meeting at which the governing board is scheduled to consider the petition and must provide a copy of all relevant documents, evidence, summaries, and recommendations assembled by or on behalf of the plan administration to be considered by the governing board.

(c) Except as provided in subdivision 8, paragraph (c), all documents and materials that the petitioner wishes to be part of the record for review must be filed with the chief administrative officer and must be received in the offices of the covered pension plan at least 30 days before the date of the meeting at which the petition is scheduled to be heard.

(d) A petitioner, within ten calendar days of the scheduled date of the applicable board meeting, may request a continuance on a scheduled petition. The chief administrative officer must reschedule the review within 60 days of the date of the continuance request. Only one continuance may be granted to any petitioner.

Subd. 8. Record for review. (a) All evidence, including all records, documents, and affidavits in the possession of the covered pension plan of which the covered pension plan desires to avail itself and be considered by the governing board, and all evidence which the petitioner wishes to present to the governing board, including any evidence which would otherwise be classified by law as "private," must be made part of the hearing record.

(b) Not later than seven days before the scheduled hearing date, the chief administrative officer must provide a copy of the record to each member of the governing board.

(c) At least five days before the hearing, the petitioner may submit to the chief administrative officer, for submission to the governing board, any additional document, affidavit, or other relevant information that was not initially submitted with the petition.

Subd. 9. Amended determination. At any time before the hearing before the governing board, for good cause shown and made part of the records of the plan, the chief administrative officer may reverse, alter, amend, or modify the prior decision which is subject to review under this section by issuing an amended decision. Upon doing so, the chief administrative officer may cancel the governing board's scheduled review of the person's petition and shall so notify the petitioner.

Subd. 10. Hearing. (a) The governing board shall hold a timely hearing on a petition for review as part of a regularly scheduled board meeting, or as part of a special meeting if so scheduled. All governing board members who participate in the decision-making process must be familiar with the record. The governing board shall make its decision on a petition solely on the record as submitted and on the proceedings of the hearing. At the hearing, the petitioner, the petitioner's attorney, and the chief administrative officer may state and discuss with the governing board their positions with respect to the petition. The governing board

may allow further documentation to be placed in the record at the board meeting only with the agreement of both the chief administrative officer and the petitioner. The chief administrative officer may not otherwise participate in the board's decision-making process.

(b) When a petition presents a contested issue of law, an assistant attorney general may participate and may argue on behalf of the legal position taken by the chief administrative officer if that assistant attorney general does not also serve as the governing board's legal advisor during the board's decision-making process.

(c) A motion by a board member, supported by a summary of the relevant facts, conclusions and reasons, as properly amended and approved by a majority of the governing board, constitutes the board's final decision. A verbatim statement of the board's final decision must be served upon the petitioner. If the decision is contrary to the petitioner's desired outcome, the notice shall inform the petitioner of the appeal rights set forth in subdivision 13.

(d) If a petitioner who received timely notice of a scheduled hearing fails to appear, the governing board may nevertheless hear the petition and issue a decision.

Subd. 11. Disability medical issues. (a) If a person petitions the governing board to reverse or modify a determination which found that there exists no medical data supporting an application for disability benefits, the board may reverse that determination only if there is in fact medical evidence supporting the application. The board has the discretion to resubmit a disability benefit application at any time to a medical advisor for reconsideration, and the resubmission may include an instruction that further medical examinations be obtained.

(b) The governing board may make a determination contrary to the recommendation of the medical advisor only if there is expert medical evidence in the record to support its contrary decision. If there is no medical evidence contrary to the opinion of the medical advisor in the record and the medical advisor attests that the decision was made in accordance with the applicable disability standard, the board must follow the decision of the medical advisor regarding the cause of the disability.

(c) The obligation of the governing board to follow the decision of the medical advisor under paragraph (b) does not apply to instances when the governing board makes a determination different from the recommendation of the medical advisor on issues that do not involve medical issues.

Subd. 12. Referral for administrative hearing. (a) Notwithstanding any provision of sections 14.03, 14.06, and 14.57 to 14.69 to the contrary, a challenge to a determination of the chief administrative officer of a covered pension plan must be conducted exclusively under the procedures set forth in this section and is not a contested case under chapter 14.

(b) Notwithstanding the provisions of paragraph (a), a governing board, in its sole discretion, may refer a petition brought under this section to the Office of Administrative Hearings for a contested case hearing under sections 14.57 to 14.69.

Subd. 13. Appeal of the governing board's decision; judicial review. Within 60 days of the date of the mailing of the notice of the governing board's decision, the petitioner may appeal the decision by filing a writ of certiorari with the Court of Appeals under section 606.01 and Rule 115 of the Minnesota Rules of Civil Appellate Procedure. Failure by a person to appeal to the Court of Appeals within the 60-day period precludes the person from later raising, in any subsequent administrative hearing or court proceeding, those substantive and procedural issues that reasonably should have been raised upon a timely appeal.

Subd. 14. Petitions without notice. Notwithstanding the petition notice and requirements under this section, a person who believes that the person's rights have been affected by a decision made by the administration of a covered pension plan may request a review under this section by the appropriate governing board. The petition under this subdivision must be made within 45 days of the time that the person knew or should have known of the disputed decision.

Subd. 15. Governing board review panel. Any covered pension plan subject to this section, by motion duly made and adopted, may appoint a panel of governing board members to hear and determine any or all petitions brought under this section. The governing board

review panel must contain a minimum number of board members that would otherwise constitute a quorum of board members under the governing body's rules and procedures.

History: 2007 c 134 art 6 s 2

356.98 ALLOCATION OF RECEIVABLES.

If an employing unit is dissolved or closed and amounts are owed to more than one Minnesota public pension plan, any amounts available to cover payments to the plans must be applied first to the employee contributions owed to the applicable plans, and next to the unpaid employer contributions, including any applicable employer additional contributions, and finally to the interest due on the employee and employer amounts. If, at any stage in this allocation process, the available amount is insufficient to fully cover the amount required, the remaining available payment amount must be prorated among the applicable plans based on each plan's share of combined covered payroll.

History: 2007 c 134 art 2 s 46