

**353.028 CITY MANAGERS; ELECTION; DEFERRED COMPENSATION.**

Subdivision 1. **Definitions.** (a) For purposes of this section, each of the terms in this subdivision has the meaning indicated.

(b) "City manager" means (1) a person who is duly appointed to and is 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 who is appointed to and is holding the position of chief administrative officer of a home rule charter city or a statutory city under a charter provision, ordinance, or resolution establishing such a position and prescribing its duties and responsibilities.

(c) "Governing body" means the city council of the city employing the city manager.

(d) "Election" means the election described in subdivision 2.

Subd. 2. **Election.** (a) A city manager may elect to be excluded from membership in the general employees retirement plan of the Public Employees Retirement Association. The election of exclusion must be made within six months following the commencement of employment, must be made in writing on a form prescribed by the executive director, and must be approved by a resolution adopted by 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 general employees retirement plan ceases on the date the written election is received by the executive director or upon a later date specified. 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.

(b) A city manager who has elected exclusion under this subdivision may elect to revoke that action by filing a written notice with the executive director. The notice must be on a form prescribed by the executive director and must be approved by a resolution of the governing body of the city. Membership of the city manager in the association resumes prospectively from the date of the first day of the pay period for which contributions were deducted or, if pay period coverage dates are not provided, the date on which the notice of revocation or contributions are received in the office of the association, provided that the notice of revocation is received by the association within 60 days of the receipt of contributions.

(c) An election under paragraph (b) is irrevocable. Any election under paragraph (a) or (b) must include a statement that the individual will not seek authorization to purchase service credit for any period of excluded service.

Subd. 3. **Deferred compensation; city contribution.** (a) If an election of exclusion under subdivision 2 is made, and if the city manager and the governing body of the city additionally agree in writing that the additional compensation is to be deferred and is to be contributed on behalf of the city manager to a deferred compensation program which meets the requirements of section 457 of the Internal Revenue Code of 1986, as amended, 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 general employees retirement plan.

(b) Alternatively, if an election of exclusion under subdivision 2 is made, the city manager and the governing body of the city may agree in writing that the equivalent employer contribution to the contribution under section 353.27, subdivision 3, be contributed by the city to the defined contribution plan of the Public Employees Retirement Association under chapter 353D.

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 under 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 subsequently accepts employment in another governmental subdivision or subsequently accepts employment other than as a city manager in the same city, the election is rescinded on the effective date of employment.

**History:** 1981 c 254 s 1; 1988 c 709 art 5 s 8; 1Sp2003 c 12 art 4 s 3; 1Sp2005 c 8 art 10 s 43; 2006 c 271 art 3 s 12