

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 5073

(SENATE AUTHORS: WESTLIN)

DATE	D-PG	OFFICIAL STATUS
03/18/2024	12415	Introduction and first reading Referred to State and Local Government and Veterans See HF5040

1.1 A bill for an act

1.2 relating to retirement; Public Employees Retirement Association; public employees

1.3 defined contribution plan; modifying requirements for electing to participate in

1.4 the plan; amending Minnesota Statutes 2022, sections 353.028, subdivisions 1, 2,

1.5 3; 353D.02, as amended; Minnesota Statutes 2023 Supplement, section 353D.01,

1.6 subdivision 2; repealing Minnesota Statutes 2022, sections 353.028, subdivisions

1.7 4, 5; 353D.071.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2022, section 353.028, subdivision 1, is amended to read:

1.10 Subdivision 1. **Definitions.** (a) For purposes of this section, each of the terms in this

1.11 subdivision has the meaning indicated.

1.12 (b) "City manager" means:

1.13 (1) a person who is duly appointed to and is holding the position of city manager in a

1.14 Plan B statutory city or in a home rule city operating under the "council-manager" form of

1.15 government; or

1.16 (2) a person who is appointed to and is holding the position of chief administrative officer

1.17 of a home rule charter city or a statutory city under a charter provision, ordinance, or

1.18 resolution establishing such a position and prescribing its duties and responsibilities.

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

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

1.21 (e) "First employed" means a city manager employed by a city who, prior to employment

1.22 as a city manager, has not been an employee in any position covered by any retirement plan

2.1 administered by the association or by any supplemental pension or deferred compensation
 2.2 plan under section 356.24 sponsored by the city.

2.3 Sec. 2. Minnesota Statutes 2022, section 353.028, subdivision 2, is amended to read:

2.4 Subd. 2. **Election.** (a) A city manager first employed by a city may ~~elect~~ make a onetime,
 2.5 irrevocable election to be excluded from membership in the general employees retirement
 2.6 plan of the ~~Public Employees Retirement~~ association. The election of exclusion must be
 2.7 made within ~~six months~~ 30 days following the commencement of employment, must be
 2.8 made in writing on a form prescribed by the executive director, and must be approved by
 2.9 a resolution adopted by the governing body of the city. The election of exclusion is not
 2.10 effective until it is filed with the executive director. Membership of a city manager in the
 2.11 general employees retirement plan ceases on the date the written election is received by the
 2.12 executive director ~~or upon a later date specified~~. Employee and employer contributions
 2.13 made during the first 30 days of employment on behalf of a person exercising the option to
 2.14 be excluded from membership under this ~~section~~ paragraph must be refunded or credited
 2.15 in accordance with section 353.27, subdivision 7.

2.16 (b) A city manager who has ~~elected exclusion under this subdivision~~ may ~~elect to revoke~~
 2.17 ~~that action by filing a written notice with the executive director. The notice must be on a~~
 2.18 ~~form prescribed by the executive director and must be approved by a resolution of the~~
 2.19 ~~governing body of the city. Membership of the city manager in the association resumes~~
 2.20 ~~prospectively from the date of the first day of the pay period for which contributions were~~
 2.21 ~~deducted or, if pay period coverage dates are not provided, the date on which the notice of~~
 2.22 ~~revocation or contributions are received in the office of the association, provided that the~~
 2.23 ~~notice of revocation is received by the association within 60 days of the receipt of~~
 2.24 ~~contributions~~ previously been an employee in any position covered by any retirement plan
 2.25 administered by the association or by any supplemental pension or deferred compensation
 2.26 plan under section 356.24 sponsored by the city is not eligible to make the election under
 2.27 paragraph (a).

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

2.31 Sec. 3. Minnesota Statutes 2022, section 353.028, subdivision 3, is amended to read:

2.32 Subd. 3. **Deferred compensation; city contribution.** (a) If an election of exclusion
 2.33 under subdivision 2 is made, and if the city manager and the governing body of the city

3.1 additionally agree in writing that the additional compensation is to be deferred and is to be
3.2 contributed on behalf of the city manager to a deferred compensation program ~~which~~ that
3.3 meets the requirements of section 457 of the Internal Revenue Code of 1986, as amended,
3.4 and section 356.24, the governing body may compensate the city manager, in addition to
3.5 the salary allowed under any limitation imposed on salaries by law or charter, in an amount
3.6 equal to the employer contribution ~~which~~ that would be required by section 353.27,
3.7 subdivision 3, if the city manager were a member of the general employees retirement plan.

3.8 (b) Alternatively, if an election of exclusion under subdivision 2 is made, the city manager
3.9 and the governing body of the city may agree in writing that the equivalent employer
3.10 contribution to the contribution under section 353.27, subdivision 3, be contributed by the
3.11 city to the defined contribution plan of the Public Employees Retirement Association under
3.12 chapter 353D. Any agreement under this paragraph must be entered into within 30 days
3.13 following the commencement of employment.

3.14 Sec. 4. Minnesota Statutes 2023 Supplement, section 353D.01, subdivision 2, is amended
3.15 to read:

3.16 Subd. 2. **Eligibility.** (a) Eligibility to participate in the plan is available to:

3.17 (1) any elected or appointed local government official of a governmental subdivision
3.18 who elects to participate in the plan under section 353D.02, subdivision 1, and who, for the
3.19 service rendered to a governmental subdivision, is not a member of the association within
3.20 the meaning of section 353.01, subdivision 7;

3.21 (2) physicians who, if they did not elect to participate in the plan under section 353D.02,
3.22 subdivision 2, would meet the definition of member under section 353.01, subdivision 7;

3.23 (3) basic and advanced life-support emergency medical service personnel who are
3.24 employed by any public ambulance service that elects to participate under section 353D.02,
3.25 subdivision 3;

3.26 (4) members of a municipal rescue squad associated with the city of Litchfield in Meeker
3.27 County, or of a county rescue squad associated with Kandiyohi County, if an independent
3.28 nonprofit rescue squad corporation, incorporated under chapter 317A, performing emergency
3.29 management services, and if not affiliated with a fire department or ambulance service and
3.30 if its members are not eligible for membership in that fire department's or ambulance service's
3.31 relief association or comparable pension plan;

4.1 (5) employees of the Port Authority of the city of St. Paul who elect to participate in the
 4.2 plan under section 353D.02, subdivision 5, and who are not members of the association
 4.3 under section 353.01, subdivision 7;

4.4 (6) city managers who elected to be excluded from the general employees retirement
 4.5 plan of the association under section 353.028 and who elected to participate in the public
 4.6 employees defined contribution plan under section 353.028, subdivision 3, paragraph (b);

4.7 (7) volunteer or emergency on-call firefighters serving in a municipal fire department
 4.8 or an independent nonprofit firefighting corporation who are not covered by the police and
 4.9 fire retirement plan and who are not covered by a volunteer firefighters relief association
 4.10 and who elect to participate in the public employees defined contribution plan;

4.11 (8) any elected county sheriffs sheriff who are is a former members member of the police
 4.12 and fire plan ~~and who are,~~ is receiving a retirement annuity as provided under section
 4.13 353.651, who does not have previous employment with the county, and is for the first time
 4.14 eligible to participate in any retirement plan administered by the association or in any
 4.15 supplemental pension or deferred compensation plan under section 356.24 sponsored by
 4.16 the county; and

4.17 (9) persons appointed to serve on a board or commission of a governmental subdivision
 4.18 or an instrumentality thereof.

4.19 (b) Individuals otherwise eligible to participate in the plan under this subdivision who
 4.20 are currently covered by a public or private pension plan because of their employment or
 4.21 provision of services are not eligible to participate in the public employees defined
 4.22 contribution plan.

4.23 (c) A former participant is a person who has terminated eligible employment or service
 4.24 and has not withdrawn the value of the person's individual account.

4.25 Sec. 5. Minnesota Statutes 2022, section 353D.02, as amended by Laws 2023, chapter 47,
 4.26 article 3, section 3, is amended to read:

4.27 **353D.02 ELECTION OF COVERAGE.**

4.28 Subdivision 1. **Local government officials.** Eligible elected or appointed local
 4.29 government officials may elect to participate in the defined contribution plan ~~after~~ within
 4.30 the first 30 days of being elected or appointed to public office by filing a membership
 4.31 application on a form prescribed by the executive director of the association authorizing
 4.32 contributions to be deducted from the official's salary. Participation begins on the first day
 4.33 of the pay period for which the contributions were deducted or, if pay period coverage dates

5.1 are not provided, the date on which the membership application or contributions are received
5.2 in the office of the association, whichever is received first, provided further that the
5.3 membership application is received by the association within 60 days of the receipt of the
5.4 contributions. An election to participate in the plan is ~~revocable during incumbency~~
5.5 irrevocable.

5.6 Subd. 2. **Eligible physician.** Eligible physicians may elect to participate in the defined
5.7 contribution plan within ~~90~~ the first 30 days of commencing employment with a government
5.8 subdivision under section 353.01, subdivision 6, by filing a membership application on a
5.9 form prescribed by the executive director of the association authorizing contributions to be
5.10 deducted from the physician's salary. Participation begins on the first day of the pay period
5.11 for which the contributions were deducted. An election to participate in the defined
5.12 contribution plan is irrevocable.

5.13 Subd. 3. **Eligible ambulance service personnel.** Each public ambulance service with
5.14 eligible personnel may elect to participate in the plan. If a service elects to participate, its
5.15 eligible personnel may elect to participate or ~~to~~ decline to participate. An individual's election
5.16 must be made within 30 days of the service's election to participate or within 30 days of the
5.17 date on which the individual ~~was employed by~~ began employment with the service or began
5.18 to provide service for it, whichever date is later. An election by a service or an individual
5.19 is ~~revocable~~ irrevocable.

5.20 Subd. 4. **Eligible rescue squad personnel.** The municipality or county, as applicable,
5.21 associated with a rescue squad under section 353D.01, subdivision 2, paragraph (a), clause
5.22 (4), may elect to participate in the plan. If the municipality or county, as applicable, elects
5.23 to participate, the eligible personnel may elect to participate or decline to participate. An
5.24 eligible individual's election must be made within 30 days of the service's election to
5.25 participate or within 30 days of the date on which the individual ~~begins to provide service~~
5.26 ~~to~~ first began employment with the rescue squad, whichever is later. Elections under this
5.27 subdivision by a government unit or individual are irrevocable. The municipality or county,
5.28 as applicable, must specify by resolution eligibility requirements for rescue squad personnel
5.29 which must be satisfied if the individual is to be authorized to make the election under this
5.30 subdivision.

5.31 Subd. 5. **St. Paul Port Authority personnel.** Employees of the Port Authority of the
5.32 city of St. Paul who do not elect to participate in the general employees retirement plan may
5.33 elect within the first 30 days of commencing employment to participate in the plan by filing
5.34 a membership application on a form prescribed by the executive director of the association
5.35 authorizing contributions to be deducted from the employee's salary. Participation begins

6.1 on the first day of the pay period for which the contributions were deducted or, if pay period
 6.2 coverage dates are not provided, the date on which the membership application or the
 6.3 contributions are received in the office of the association, whichever is received first, if the
 6.4 membership application is received by the association within 60 days of the receipt of the
 6.5 contributions. An election to participate in the plan is irrevocable.

6.6 Subd. 6. **City managers.** City managers who elected to be excluded from the general
 6.7 employees retirement plan of the Public Employees Retirement Association under section
 6.8 353.028, and who elected to participate in the plan under section 353.028, subdivision 3,
 6.9 paragraph (b), ~~shall~~ must file that election with the executive director within the first 30
 6.10 days of commencing employment. Participation begins on the first day of the pay period
 6.11 next following the date of the coverage election. An election to participate by a city manager
 6.12 is ~~revocable~~ irrevocable.

6.13 Subd. 7. **Certain volunteer firefighters.** Volunteer or ~~emergency~~ on-call firefighters
 6.14 who are serving as members of a municipal fire department or an independent nonprofit
 6.15 firefighting corporation and who are not covered for that firefighting service by the public
 6.16 employees police and fire retirement plan under sections 353.63 to 353.68 ~~or~~, by ~~the~~
 6.17 ~~applicable~~ a volunteer firefighters relief association under chapter 424A, or by the statewide
 6.18 volunteer firefighter retirement plan under chapter 353G may elect to participate in the plan
 6.19 within the first 30 days of commencing service. An eligible firefighter's election is
 6.20 irrevocable. No employer contribution is payable by the fire department or the firefighting
 6.21 corporation unless the municipal governing body or the firefighting corporation governing
 6.22 body, whichever applies, ratifies the election.

6.23 Subd. 8. **Election available only upon first hire and no prior retirement plan**
 6.24 **eligibility.** Notwithstanding any other provisions under this section, an election under this
 6.25 section is available to eligible participants only within the first 30 days of commencing
 6.26 employment or service with the governmental subdivision. If the eligible participant has
 6.27 previously been or is currently in a position covered by any retirement plan administered
 6.28 by the association or by any supplemental pension or deferred compensation plan under
 6.29 section 356.24 sponsored by the governmental subdivision, then the eligible participant
 6.30 must not receive an election.

6.31 Sec. 6. **ONETIME IRREVOCABLE ELECTION.**

6.32 Subdivision 1. **City managers.** (a) A city manager hired by a city within six months
 6.33 before the effective date of this act and who is currently participating in the general employee

7.1 retirement plan of the Public Employees Retirement Association may make a onetime
7.2 irrevocable election to be excluded from membership if the election is:

7.3 (1) in writing on a form prescribed by the executive director;

7.4 (2) approved by a resolution adopted by the governing body of the city; and

7.5 (3) received by the executive director between August 1, 2024, and August 31, 2024.

7.6 (b) Membership of a city manager in the general employees retirement plan ceases on
7.7 the date that the written election is received by the executive director. Employee and
7.8 employer contributions made on behalf of a person exercising the option to be excluded
7.9 from membership under this subdivision must be refunded or credited in accordance with
7.10 Minnesota Statutes, section 353.27, subdivision 7.

7.11 Subd. 2. **Local government officials.** A local government official elected or appointed
7.12 to public office in a city within six months before the effective date of this act may make a
7.13 onetime irrevocable election to participate in the public employees defined contribution
7.14 plan if the election is:

7.15 (1) in writing on a form prescribed by the executive director;

7.16 (2) approved by a resolution adopted by the governing body of the city; and

7.17 (3) received by the executive director between August 1, 2024, and August 31, 2024.

7.18 Subd. 3. **Public ambulance service personnel.** Eligible personnel hired by or providing
7.19 service to a participating public ambulance service within six months before the effective
7.20 date of this act may make a onetime irrevocable election to participate in the public
7.21 employees defined contribution plan if the election is:

7.22 (1) in writing on a form prescribed by the executive director; and

7.23 (2) received by the executive director between August 1, 2024, and August 31, 2024.

7.24 **Sec. 7. REPEALER.**

7.25 Minnesota Statutes 2022, sections 353.028, subdivisions 4 and 5; and 353D.071, are
7.26 repealed.

7.27 **Sec. 8. EFFECTIVE DATE.**

7.28 Sections 1 to 7 are effective the day following final enactment.

353.028 CITY MANAGERS; ELECTION; DEFERRED COMPENSATION.

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.

353D.071 FEDERAL COMPLIANCE.

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given them.

(b) "Designated beneficiary" means the person designated as the beneficiary under section 353D.07, subdivision 5, and who is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401 (a)(9)-1, Q&A-4 of the Treasury regulations.

(c) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subdivision 2, paragraph (c). The required minimum distribution for the participant's first distribution calendar year shall be made on or before the participant's required beginning date.

(d) "Participant's account balance" means the account balance as of the last valuation date in the valuation calendar year increased by the amount of any contributions made and allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(e) "Required beginning date" means the date a participant's retirement benefit must begin under section 356.635, subdivision 1, paragraph (a).

(f) "Valuation calendar year" means the calendar year immediately preceding the distribution calendar year.

Subd. 2. **Required minimum distributions.** (a) The provisions of this subdivision apply for purposes of determining required minimum distributions for calendar years and must take precedence over any inconsistent provisions of the plan. All distributions required under this section must be determined and made in accordance with the treasury regulations under section 401(a)(9) of the Internal Revenue Code, including regulations providing special rules for governmental plans, as defined under section 414(d) of the Internal Revenue Code, that comply with a reasonable good faith interpretation of the minimum distribution requirements.

(b) The participant's entire interest must be distributed or begin to be distributed no later than the participant's required beginning date.

(c) If the participant dies before the required minimum distribution is made or begins, the participant's account must be distributed in a lump sum no later than as follows:

(1) if the participant's surviving spouse is the participant's sole designated beneficiary, the distribution must be made by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained the participant's required beginning date, whichever is later;

(2) if the participant's surviving spouse is not the participant's sole beneficiary, or if there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's account must be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death as directed under section 353D.07, subdivision 5; or

(3) if the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant, but before the account balance is distributed to the surviving spouse, paragraph (c), clause (2), must apply as if the surviving spouse were the participant.

APPENDIX
Repealed Minnesota Statutes: 24-07716

(d) For purposes of paragraph (c), unless clause (3) applies, distributions are considered to be made on the participant's required beginning date. If paragraph (c), clause (3), applies, distributions are considered to begin on the date distributions must be made to the surviving spouse under paragraph (c), clause (1).