

CHAPTER 7905
MINNESOTA STATE RETIREMENT SYSTEM
DEFERRED COMPENSATION PLAN

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DEFINITIONS AND PLAN

7905.0100 DEFINITIONS.

Subpart 1. **Scope.** When used in the plan, the following terms have the meanings given unless otherwise provided.

Subp. 2. **Accounting date.** "Accounting date" means the date on which an investment fund is valued and earnings or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and if practical more frequent accounting dates to reflect as closely as possible the earnings or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

Subp. 2a. **Alternate payee.** "Alternate payee" means a former spouse designated by a qualified domestic relations order or similar legal document to be entitled to all or part of a participant's deferred compensation account.

Subp. 3. **Beneficiary.** "Beneficiary" means the person or legal entity provided for by the plan or designated by the participant to receive any undistributed deferred compensation that becomes payable in the event of the participant's death.

Subp. 4. **Board.** "Board" means the Minnesota State Board of Investment.

Subp. 4a. **Board of directors.** "Board of directors" means the Minnesota State Retirement System Board of Directors.

Subp. 5. **Compensation.** "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as federal gross income.

Subp. 6. **Deferred compensation.** "Deferred compensation" means the part of the participant's compensation that the participant and employer mutually agree to defer under the plan.

Subp. 7. **Deferred compensation account.** "Deferred compensation account" means the account established for the investment of deferred compensation. It includes any approved investment, as provided by Minnesota Statutes, section 352.96, subdivision 2.

Subp. 8. **Director.** "Director" means the executive director of the Minnesota State Retirement System.

Subp. 9. **Employee.** "Employee" means:

A. an individual receiving compensation for services from the state of Minnesota including any elected official, appointed official, or employee of the state of Minnesota, in-

cluding employees of departments, agencies, and instrumentalities, wherein the state legislature has specifically held the employees to be "state employees" for any one or more specific purposes such as, but not limited to, membership in the Minnesota State Retirement System, employee group insurance program, or unemployment compensation plan for state employees; or

B. an individual receiving compensation for services performed for a political subdivision of the state including any elected official, appointed official, or employee of a political subdivision of the state, including any employee of the political subdivision or other employing unit entitled to membership in a public retirement plan listed in Minnesota Statutes, section 356.20, subdivision 2.

Subp. 10. **Employer.** "Employer" means the state of Minnesota, or a political subdivision of the state of Minnesota, or an agency or instrumentality of the state of Minnesota or its political subdivisions.

Subp. 11. [Repealed, 24 SR 79]

Subp. 12. [Repealed, 26 SR 629]

Subp. 13. **Normal retirement age.** "Normal retirement age" means:

A. an age not earlier than that for attainment of eligibility by the participant to begin receiving normal, or unreduced, retirement benefits from one of the retirement systems listed in Minnesota Statutes, section 356.20, subdivision 2, or other Minnesota public employee pension plan of which the participant is a member, nor later than age 70-1/2; or

B. if the participant is not a member of one of the retirement systems, not later than age 70-1/2.

Subp. 14. **Participant.** "Participant" means an individual who has enrolled in the plan as provided in parts 7905.0900 to 7905.1600 and has not had a complete distribution of the deferred compensation account.

Subp. 15. **Pay period.** "Pay period" means a regular accounting period established by the employer for measuring and paying compensation earned by employees.

Subp. 16. **Pay date.** "Pay date" means the date the participant receives payment of compensation.

Subp. 17. **Plan.** "Plan" means the Minnesota state deferred compensation plan as set forth in this chapter and as it may be amended from time to time.

Subp. 18. [Repealed, 24 SR 79]

Subp. 18a. [Repealed, 26 SR 629]

Subp. 19. **Supplemental investment account.** "Supplemental investment account" means the Minnesota supplemental investment fund as established by Minnesota Statutes, section 11A.17, and managed by the board.

Subp. 20. **Severance from employment.** "Severance from employment" means the severance of the participant's employment relationship with the employer by means of: retirement; discharge, provided all appellate processes have been exhausted; resignation, provided seniority or continuous service is interrupted; permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; death; or other form of severance as may be provided by appropriate law, contract, or rules.

Subp. 21. **Taxable year.** "Taxable year" means the calendar year beginning January 1 and ending December 31.

Subp. 22. **Unforeseeable emergency.** "Unforeseeable emergency" means a severe financial hardship to the participant as defined in section 457 of the Internal Revenue Code. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but in any case payment will not be made to the extent that the hardship is, or may be relieved, through reimbursement or compensation by insurance or otherwise by

liquidation of the participant's assets to the extent the liquidation of the assets would not itself cause severe financial hardship or by cessation of deferrals under the plan.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; L 1985 1Sp14 art 21 s 49; L 1986 1Sp1 art 1 s 9; L 1987 c 268 art 1 s 126; L 1988 c 719 art 3 s 12; 16 SR 202; 19 SR 1158; 22 SR 713; 24 SR 79; 26 SR 629*

7905.0200 ESTABLISHMENT OF PLAN.

The plan shall be known as the "Minnesota state deferred compensation plan" ("plan") and is created according to Minnesota Statutes, section 352.96 and section 457 of the Internal Revenue Code.

Statutory Authority: *MS s 352.96*

History: *16 SR 202; 19 SR 1158; 24 SR 79*

7905.0300 PURPOSE OF PLAN.

The purpose of the plan is to allow employees to designate a portion of their compensation to be withheld each pay period by the employer and invested at the discretion of the employee until severance from employment, financial hardship, or death of the employee. Any compensation deferred by employees may be invested by the board of directors. Participation in the plan shall not be construed to establish or create an employment contract between the employee and the employer.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 19 SR 1158; 22 SR 713; 26 SR 629*

7905.0400 APPLICABLE LAW.

The plan shall be construed, administered, and governed in all respects under and by the laws of the state of Minnesota, Minnesota Statutes, section 352.96 and section 457 of the Internal Revenue Code.

Statutory Authority: *MS s 352.96*

History: *19 SR 1158*

7905.0500 TERMS: GENDER AND NUMBER.

Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and neuter and vice versa, and the definition of any terms in part 7905.0400 in the singular may also include the plural.

Statutory Authority: *MS s 352.96 subd 4*

RESPONSIBILITIES OF DIRECTOR

7905.0600 ADMINISTRATION OF PLAN.

The board of directors has the full power and authority to administer the plan and promulgate, adopt, amend, or revoke internal management procedures which are consistent with, and necessary, to implement and maintain the plan.

Statutory Authority: *MS s 352.96*

History: *16 SR 202; 19 SR 1158; 22 SR 713*

7905.0700 WRITTEN AGREEMENT.

The employer or the director on behalf of the board of directors and the employer shall enter into a written agreement with each participant. The written agreement and other application forms shall be in a form and manner as prescribed by the director and shall set forth the obligations contained in the plan, the amounts of compensation to be deferred, and other information the director considers necessary to administer the plan.

Statutory Authority: *MS s 352.96*

History: *16 SR 202; 19 SR 1158*

7905.0800 COPIES OF PLAN, PAMPHLETS, AND ACCOUNT STATEMENTS.

Pamphlets describing the plan and outlining the options and opportunities available shall be prepared under the direction of the director and made available to eligible employees. Copies of the plan documents will be made available upon request. Individual account statements shall be made available to each participant at least quarterly.

Statutory Authority: *MS s 352.96*

History: *16 SR 202; 19 SR 1158; 24 SR 79; 26 SR 629*

PARTICIPATION IN PLAN**7905.0900 ELIGIBILITY.**

All employees who are receiving compensation who have not received a distribution based on an unforeseeable emergency as provided in part 7905.2300 within the last six months shall be eligible to become participants in accordance with part 7905.1000.

Statutory Authority: *MS s 352.96*

History: *16 SR 202; 17 SR 8; 24 SR 79; 26 SR 629*

7905.1000 ENROLLMENT.

Any employee eligible to participate according to part 7905.0900 may become a participant by agreeing with the employer in writing, on a form approved by the director, to a deferment of the participant's compensation according to parts 7905.1100 and 7905.1200. The deferment shall be made in compliance with section 457 of the Internal Revenue Code. The application shall also specify an investment preference for the deferred compensation.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 19 SR 1158*

7905.1100 MINIMUM DEFERRAL.

The minimum amount which may be deferred is \$10 per pay period. The amounts to be deferred must be stated in whole dollars. If the application indicates an amount including cents, the cents will be disregarded.

Statutory Authority: *MS s 352.96*

History: *16 SR 202; 19 SR 1158; 24 SR 79*

7905.1200 MAXIMUM DEFERRAL.

The total amount of deferred compensation during any taxable year shall not exceed the applicable limits established under sections 457 and 414(v), as applicable, of the Internal Revenue Code.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 19 SR 1158; 22 SR 713; 26 SR 629*

7905.1300 MODIFICATIONS TO AMOUNT DEFERRED.

The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's application. That amount, subject to the limits of part 7905.1200, may be increased or decreased only by proper application to the employer or to the director acting for the employer.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 19 SR 1158*

7905.1400 REVOCATION OF DEFERRAL.

A participant may revoke an election to have compensation deferred by notifying the employer or the director acting for the employer on a form prescribed by the director.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 17 SR 8; 19 SR 1158*

7905.1500 DURATION OF ELECTION TO DEFER COMPENSATION.

Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's severance from employment, unless the participant modifies the amount according to part 7905.1300, or revokes the deferred compensation according to part 7905.1400 or receives a distribution under part 7905.2300.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 26 SR 629*

7905.1600 DEFERRAL ADJUSTMENTS.

Subpart 1. **Deduction exceeds pay period salary.** If for any reason the deferred compensation deduction for any pay period exceeds the amount remaining after provision is made for retirement deductions, social security tax contributions, state and federal income taxes, and any other deductions required by law, then no deduction for the plan will be made for the participant for that pay period.

Subp. 2. **Missed deductions; overdeductions.** If a deferred compensation deduction is missed for any reason, no adjustment shall be made on any future pay period for the missed deduction. However, if for any reason an amount is deducted from a pay period greater than that indicated by the participant on the application, the amount overdeducted will be refunded or future contributions will be adjusted to correct the amount that was overdeducted.

Subp. 3. **Change in pay period length.** In the employee's application for participation in the plan, the employee must state the amount the employee wishes withheld each pay period. If for any reason the length of the period for which the employee is paid is changed from that in effect as of the date of the application, the employer or the director acting for the employer shall compute and have withheld from the employee's salary and equivalent whole dollar amount to be withheld corresponding to the new pay period length that will result in approximately the same annual amount being withheld.

Subp. 4. **Maximum deduction.** The employer shall attempt to ensure compliance with the maximum deferral in part 7905.1200. If the amount deducted exceeds the maximum deferral in part 7905.1200, the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferral allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded to the employer or participant according to section 457 of the Internal Revenue Code. A participant is responsible for any tax consequences to the participant that may arise as a result of the participant's deferrals under the plan that exceed the maximum amounts allowable.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 22 SR 713; 26 SR 629*

PARTICIPANTS' ACCOUNTS, INVESTMENTS, AND DISTRIBUTIONS**7905.1700 DEFERRED COMPENSATION ACCOUNTS AND VALUATION.**

Subpart 1. **Participants' accounts.** An investment account shall be established for each participant which shall be the basis for any distributions payable to the participants under parts 7905.2000 to 7905.2400. Each participant's account shall be credited with the amount of any compensation deferred and received, and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments under part 7905.1900, and credited or debited with any investment expenses. All amounts in a participant's account are held in trust for the exclusive benefit of the participant.

Subp. 2. **Financial responsibility of employer.** The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minnesota Statutes, section 352.96, subdivision 2, until distributed according to parts 7905.2000 to 7905.2400.

The employer, board, or board of directors shall not be responsible for any loss due to the investment or failure of investment of funds and assets in the deferred compensation account, nor shall the employer, board, or board of directors be required to replace any loss which may result from the investments.

Subp. 3. **Account and fund valuation.** The supplemental investment account is to be valued by the board as of each accounting date according to Minnesota Statutes, section 11A.17. Any withdrawals or distributions shall be based upon the account's value as of the accounting date, except if withdrawn under part 7905.2300, subpart 3.

The approved investments provided by Minnesota Statutes, section 352.96, subdivision 2, are to be valued at current market value as of each accounting date on a reasonable and consistent basis and according to the terms of the contract as approved by the board under Minnesota Statutes, section 352.96.

Subp. 4. **Administrative expense.** The administrative expenses of the plan shall be established by the board under Minnesota Statutes, section 352.96.

Statutory Authority: *MS s 352.96*

History: 8 SR 1403; 16 SR 202; 17 SR 8; 19 SR 1158; 22 SR 713; 24 SR 79

7905.1800 PROTECTION OF ASSETS.

All amounts contributed to the plan and all earnings on those amounts will be held for the exclusive benefit of the plan participants and beneficiaries. These amounts are not subject to the claims of the employer's general creditors and are held in trust, in custodial accounts, qualifying annuity contracts, or other investment accounts authorized by federal law.

Statutory Authority: *MS s 352.96*

History: 16 SR 202; 22 SR 713

7905.1900 INVESTMENT OF FUNDS.

Subpart 1. **Investment allowed.** Any compensation deferred by employees may be invested by the director for the participant.

Subp. 2. **Investment options.** The participant may select an investment preference from among the approved investments as provided by Minnesota Statutes, section 352.96, subdivision 2.

The supplemental investment account shall provide the options available under Minnesota Statutes, chapter 11A.

Subp. 3. **Investment preference requests for future compensation.** A participant shall, at the time of enrollment, make an investment preference request on an application provided for that purpose. Once made, an investment request shall continue for any deferrals unless later changed by the participant.

A participant may change an investment preference request for future amounts of deferred compensation.

Subp. 4. **Investment preference requests for past deferred compensation.** A participant may also change an investment preference request with respect to all or part of previously deferred compensation subject to account transfer limitations.

Statutory Authority: *MS s 352.96*

History: 8 SR 1403; 16 SR 202; 17 SR 8; 19 SR 1158; 22 SR 713; 24 SR 79

7905.2000 DISTRIBUTION.

A participant's deferred compensation account may begin to be distributed following the occurrence of one of the following events: severance from employment; death; unforeseeable emergency; or according to part 7905.2200, subpart 7.

Statutory Authority: *MS s 352.96*

History: 8 SR 1403; 16 SR 202; 26 SR 629

7905.2100 METHODS OF DISTRIBUTION.

Subpart 1. **Methods of distribution.** Distribution of a participant's, alternate payee's, or beneficiaries deferred compensation account shall be made as outlined in subpart 2, items A to C, with the distribution start date determined according to part 7905.2200, subpart 5.

Elections by a participant as authorized in this chapter shall be made on forms approved by the director.

Subp. 2. Payout options. Benefits must be made according to section 457 of the Internal Revenue Code. The following options will be provided:

- A. a lump sum or partial lump sum;
- B. a lump sum purchase by the director of an annuity contract with one of the companies approved by the board under Minnesota Statutes, section 352.96, subdivision 2; or
- C. periodic payments over a specified period of time or specific dollar amount specified by the participant, alternate payee, or beneficiary.

The payments shall conform to the minimum distribution requirements as specified in the Internal Revenue Code.

Subp. 3. Default method. If no payout election is made by the participant, alternate payee, or beneficiary, the participant's deferred compensation account will be paid according to section 457 of the Internal Revenue Code.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 19 SR 1158; 22 SR 713; 24 SR 79; 26 SR 629*

7905.2200 DATE OF DISTRIBUTION.

Subpart 1. [Repealed, 26 SR 629]

Subp. 2. [Repealed, 26 SR 629]

Subp. 3. [Repealed, 26 SR 629]

Subp. 4. [Repealed, 26 SR 629]

Subp. 5. When distribution begins. Distribution may not begin before 30 days following severance from employment or death, except for unforeseeable emergency distributions as provided in part 7905.2300 or as listed in subpart 7.

Subp. 6. No distribution date. If the participant, alternate payee, or beneficiary does not apply for payout by the mandatory date in which payments must legally begin, payment shall be made according to section 457 of the Internal Revenue Code.

Subp. 7. Distribution election. If, prior to severance from employment, the value of a participant's benefits under the plan does not exceed \$5,000, the participant may elect at any time to receive the value in a lump sum if:

- A. the participant has not deferred any compensation under the plan during the two-year period ending on the date of distribution; and
- B. the participant has not previously received a distribution under this subpart.

Subp. 8. Irrevocable distribution. Any irrevocable distribution election on file prior to January 1, 2002, is void.

Statutory Authority: *MS s 352.96*

History: *8 SR 1403; 16 SR 202; 19 SR 1158; 22 SR 713; 24 SR 79; 26 SR 629*

7905.2300 UNFORESEEABLE EMERGENCY.

Subpart 1. Conditions permitting distribution. A distribution of all or a part of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has begun, unless the distribution is in the form of an annuity, shall be permitted if the participant is faced with an unforeseeable emergency. Deferrals under the plan shall cease as soon as possible for six months for any participant granted a distribution because of an unforeseeable emergency.

Subp. 2. Showing of an emergency. Any participant desiring a distribution by reason of an unforeseeable emergency must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency that is likely to cause the participant great financial hardship and qualifies under section 457 of the Internal Revenue Code. The director shall have the authority to require medical or other evidence as may be needed to determine the necessity for the participant's withdrawal request.

Subp. 3. **Amount and method of distribution.** The distribution shall be limited to an amount sufficient only to meet the emergency and shall not exceed the amount of the deferred compensation account.

The allowed distribution shall be payable by a method determined by the director and begin as soon as possible after notice to the participant of approval.

Statutory Authority: *MS s 352.96*

History: 8 SR 1403; 16 SR 202; 17 SR 8; 19 SR 1158; 22 SR 713; 24 SR 79; 26 SR 629

7905.2400 DESIGNATION OF BENEFICIARY.

A participant may designate a beneficiary or beneficiaries to receive payment of the participant's deferred compensation in the event of the participant's death. If the designated beneficiary predeceases the employee and a new beneficiary has not been named or the designated beneficiary dies before receiving payment, a lump sum payment shall be made to the surviving spouse or, if none, to the participant's estate. The beneficiary designation shall be in writing and must be filed before the death of the participant. If no designation of beneficiary is filed, the beneficiary shall be the surviving spouse, or if none, a lump sum payment shall be made to the participant's estate.

Statutory Authority: *MS s 352.96*

History: 8 SR 1403; 16 SR 202; 19 SR 1158; 22 SR 713; 24 SR 79

7905.2450 ALTERNATE PAYEE.

Amounts may be paid to an alternate payee prior to severance from employment if provided by a qualified domestic relations order or other similar document.

Statutory Authority: *MS s 352.96*

History: 26 SR 629

7905.2500 LEAVE OF ABSENCE.

A participant who is granted a leave of absence by the employer may continue to be a participant in the plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a severance from employment under the plan.

Statutory Authority: *MS s 352.96*

History: 8 SR 1403; 16 SR 202; 26 SR 629

7905.2550 [Repealed, 16 SR 202]

7905.2560 PURCHASE OF SERVICE CREDIT.

Subpart 1. **Purchase service credit.** Amounts can be transferred from the deferred compensation plan to purchase service credit in eligible plans according to section 457 of the Internal Revenue Code.

Subp. 2. **Transfers to and from the plan.** The deferred compensation plan will accept rollovers from savings plans as permitted by section 457 of the Internal Revenue Code. The plan will allow transfers upon severance from employment to other savings plans as provided by section 457 of the Internal Revenue Code. The board of directors may establish policies regarding the timing and amount of allowable transfers.

Statutory Authority: *MS s 352.96*

History: 26 SR 629

INTERPRETATION OF PLAN

7905.2600 NONASSIGNABILITY OF CONTRACT.

The contract entered into between the employer and a participant through the plan and the benefits, proceeds, or payments under the plan cannot be sold, assigned, pledged, com-

muted, transferred, or otherwise conveyed by an employee, participant, or beneficiary, except to an alternate payee according to part 7905.2450. An attempt to assign or transfer shall not be recognized and shall impose no liability on the employer.

Except as otherwise required by law, deferred compensation money withheld under the plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant, the employer, or the state.

Statutory Authority: *MS s 352.96*

History: *16 SR 202; 22 SR 713; 26 SR 629*

7905.2700 HEADINGS AND SUBHEADINGS.

The headings and subheadings in the plan are inserted for convenience of reference only and are to be ignored in any construction of the provisions of this chapter.

Statutory Authority: *MS s 352.96*

History: *16 SR 202*

7905.2800 CONFLICTS.

If any form or other document used in administering the plan conflicts with the terms of the plan, the terms of the plan shall prevail.

Statutory Authority: *MS s 352.96*

History: *16 SR 202*

7905.2900 AMENDMENT OF PLAN.

The board of directors shall have the authority to propose amendments to the plan consistent with Minnesota Statutes, section 352.96.

Statutory Authority: *MS s 352.96*

History: *16 SR 202; 19 SR 1158; 22 SR 713*

7905.3000 [Repealed, 24 SR 79]