

Retirement

CHAPTER 352

MINNESOTA STATE RETIREMENT SYSTEM

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352.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the terms defined in this section, for the purposes of this chapter, have the meanings given them.

Subd. 2. **State employee.** "State employee" means any employee or officer in the classified and unclassified service of the state. The term also includes the special classes of persons listed in subdivision 2a but excludes the special classes of persons listed in subdivision 2b.

Subd. 2a. **Included employees.** "State employee" includes:

- (1) employees of the Minnesota historical society;
- (2) employees of the state horticultural society;
- (3) employees of the Disabled American Veterans, Department of Minnesota, Veterans of Foreign Wars, Department of Minnesota, if employed before July 1, 1963;
- (4) employees of the Minnesota crop improvement association;
- (5) employees of the adjutant general who are paid from federal funds and who are not covered by any federal civilian employees retirement system;
- (6) employees of the state universities employed under the university activities program;
- (7) currently contributing employees covered by the system who are temporarily employed by the legislature during a legislative session or any currently contributing employee employed for any special service as defined in clause (8) of subdivision 2b;
- (8) employees of the armory building commission;
- (9) permanent employees of the legislature and persons employed or designated by the legislature or by a legislative committee or commission or other competent authority to conduct a special inquiry, investigation, examination, or installation;

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(10) trainees who are employed on a full-time established training program performing the duties of the classified position for which they will be eligible to receive immediate appointment at the completion of the training period;

(11) employees of the Minnesota safety council;

(12) employees of the transit operating division of the metropolitan transit commission and any employees on authorized leave of absence from the transit operating division who are employed by the labor organization which is the exclusive bargaining agent representing employees of the transit operating division;

(13) employees of the metropolitan council, metropolitan parks and open space commission, regional transit board, metropolitan transit commission, metropolitan waste control commission, metropolitan sports facilities commission or the metropolitan mosquito control commission unless excluded or covered by another public pension fund or plan under section 473.141, subdivision 12, or 473.415, subdivision 3; and

(14) judges of the tax court.

Subd. 2b. Excluded employees. "State employee" does not include:

(1) elective state officers;

(2) students employed by the University of Minnesota, the state universities, and community colleges unless approved for coverage by the board of regents, the state university board, or the state board for community colleges, as the case may be;

(3) employees who are eligible for membership in the state teachers retirement association except employees of the department of education who have chosen or may choose to be covered by the Minnesota state retirement system instead of the teachers retirement association;

(4) employees of the University of Minnesota who are excluded from coverage by action of the board of regents;

(5) officers and enlisted personnel in the national guard and the naval militia who are assigned to permanent peacetime duty and who under federal law are or are required to be members of a federal retirement system;

(6) election officers;

(7) persons engaged in public work for the state but employed by contractors when the performance of the contract is authorized by the legislature or other competent authority;

(8) officers and employees of the senate and house of representatives or a legislative committee or commission who are temporarily employed;

(9) receivers, jurors, notaries public, and court employees who are not in the judicial branch as defined in section 43A.02, subdivision 25, except referees and adjusters employed by the department of labor and industry;

(10) patient and inmate help in state charitable, penal, and correctional institutions including the Minnesota veterans home;

(11) persons employed for professional services where the service is incidental to regular professional duties and whose compensation is paid on a per diem basis;

(12) employees of the Sibley House Association;

(13) employees of the ladies of the Grand Army of the Republic;

(14) the members of any state board or commission who serve the state intermittently and are paid on a per diem basis; the secretary, secretary-treasurer, and treasurer of those boards if their compensation is \$500 or less per year, or, if they are legally prohibited from serving more than two consecutive terms and their total service is required by law to be less than ten years; and the board of managers of the state agricultural society and its treasurer unless the treasurer is also its full-time secretary;

(15) state troopers;

(16) temporary employees of the Minnesota state fair employed on or after July 1 for a period not to extend beyond October 15 of that year; and persons employed at any time by the state fair administration for special events held on the fairgrounds;

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(17) emergency employees in the classified service; except that if an emergency employee, within the same pay period, becomes a provisional or probationary employee on other than a temporary basis, the employee shall be considered a "state employee" retroactively to the beginning of the pay period;

(18) persons described in section 352B.01, subdivision 2, clauses (2) to (5);

(19) temporary employees in the classified service, temporary employees in the unclassified service appointed for a definite period of not more than six months and employed less than six months in any one-year period and seasonal help in the classified service employed by the department of revenue;

(20) trainees paid under budget classification number 41, and other trainee employees, except those listed in subdivision 2a, clause (10);

(21) persons whose compensation is paid on a fee basis;

(22) state employees who in any year have credit for 12 months service as teachers in the public schools of the state and as teachers are members of the teachers retirement association or a retirement system in St. Paul, Minneapolis, or Duluth;

(23) employees of the adjutant general employed on an unlimited intermittent or temporary basis in the classified and unclassified service for the support of army and air national guard training facilities;

(24) chaplains and nuns who have taken a vow of poverty as members of a religious order;

(25) labor service employees employed as a laborer 1 on an hourly basis;

(26) examination monitors employed by departments, agencies, commissions, and boards to conduct examinations required by law;

(27) members of appeal tribunals, exclusive of the chair, to which reference is made in section 268.10, subdivision 4;

(28) persons appointed to serve as members of fact-finding commissions or adjustment panels, arbitrators, or labor referees under chapter 179;

(29) temporary employees employed for limited periods under any state or federal program for training or rehabilitation including persons employed for limited periods from areas of economic distress except skilled and supervisory personnel and persons having civil service status covered by the system;

(30) full-time students employed by the Minnesota historical society intermittently during part of the year and full-time during the summer months;

(31) temporary employees, appointed for not more than six months, of the metropolitan council and of any of its statutory boards, if the board members are appointed by the metropolitan council;

(32) persons employed in positions designated by the department of employee relations as student workers;

(33) any person who is 65 years of age or older when appointed and who does not have allowable service credit for previous employment, unless the employee gives notice to the director within 60 days after appointment that coverage is desired;

(34) members of trades employed by the metropolitan waste control commission with trade union pension plan coverage under a collective bargaining agreement first employed after June 1, 1977;

(35) persons employed in subsidized on-the-job training, work experience, or public service employment as enrollees under the federal Comprehensive Employment and Training Act after March 30, 1978, unless the person has as of the later of March 30, 1978, or the date of employment sufficient service credit in the retirement system to meet the minimum vesting requirements for a deferred annuity, or the employer agrees in writing on forms prescribed by the director to make the required employer contributions, including any employer additional contributions, on account of that person from revenue sources other than funds provided under the federal Comprehensive Employment and Training Act, or the person agrees in writing on forms prescribed by the director to make the required employer contribution in addition to the required employee contribution;

(36) off-duty peace officers while employed by the metropolitan transit commission under section 629.40, subdivision 5; and

(37) persons who are employed as full-time firefighters by the department of military affairs and as firefighters are members of the public employees police and fire fund.

Subd. 3. Head of department. "Head of department" means the head of any department, institution, or branch of the state service that directly pays salaries out of its income or that prepares, approves, and submits salary abstracts of its employees to the commissioner of finance and state treasurer.

Subd. 4. Accumulated contributions. "Accumulated contributions" means the total, exclusive of interest, of (1) the sums deducted from the salary of an employee, (2) the amount of payments, including assessments, paid by the employee in lieu of salary deductions and all other payments made under Laws 1929, chapter 191, as amended, and credited to the employee's individual account in the retirement fund.

Subd. 5. Retirement fund. "The retirement fund" includes the aggregate of accumulated contributions of employees, and all other funds paid into the state treasury or received by the director under Laws 1929, chapter 191, as amended, together with all income and profits from the money and interest on it, including contributions on the part of the federal government, the state, and state departments.

Subd. 6. [Repealed, Ex1967 c 57 s 29]

Subd. 7. Prior service. "Prior service" means the allowable service rendered before July 1, 1929. It includes the service during the first world war of officers, soldiers, sailors, marines, and army nurses who were state employees at the time of enlisting or being drafted into the military service of the United States, and who returned directly to state service on returning from the first world war. It also includes any temporary service or service of less than six months rendered before July 1, 1929, upon payment for service credit as provided in the law in effect at the time of payment or authorized agreement for payment.

Subd. 8. [Repealed, 1957 c 928 s 33]

Subd. 9. [Repealed, 1957 c 928 s 33]

Subd. 10. [Repealed, 1963 c 383 s 59]

Subd. 11. Allowable service. "Allowable service" means:

(1) Service by an employee for which on or before July 1, 1957, the employee was entitled to allowable service credit on the records of the system by reason of employee contributions in the form of salary deductions, payments in lieu of salary deductions, or in any other manner authorized by Minnesota Statutes 1953, chapter 352, as amended by Laws 1955, chapter 239.

(2) Service by an employee for which on or before July 1, 1961, the employee chose to obtain credit for service by making payments to the fund under Minnesota Statutes 1961, section 352.24.

(3) Except as provided in clauses (9) and (10), service by an employee after July 1, 1957, for any calendar month in which the employee is paid salary from which deductions are made, deposited, and credited in the fund, including deductions made, deposited, and credited as provided in section 352.041.

(4) Except as provided in clauses (9) and (10), service by an employee after July 1, 1957, for any calendar month for which payments in lieu of salary deductions are made, deposited, and credited in the fund, as provided in section 352.27 and Minnesota Statutes 1957, section 352.021, subdivision 4.

For purposes of clauses (3) and (4), except as provided in clauses (9) and (10), any salary paid for a fractional part of any calendar month is deemed the compensation for the entire calendar month.

(5) The period of absence from their duties by employees who are temporarily disabled because of injuries incurred in the performance of duties and for which disability the state is liable under the workers' compensation law until the date authorized by the director for the commencement of payments of a total and permanent disability benefit from the retirement fund.

(6) The unused part of an employee's annual leave allowance for which the employee is paid salary.

(7) Any service covered by a refund repaid as provided in section 352.23 or 352D.05, subdivision 4, except service rendered as an employee of the adjutant general for which the person has credit with the federal civil service retirement system.

(8) Any service before July 1, 1978, by an employee of the transit operating division of the metropolitan transit commission or by an employee on an authorized leave of absence from the transit operating division of the metropolitan transit commission who is employed by the labor organization which is the exclusive bargaining agent representing employees of the transit operating division, which was credited by the metropolitan transit commission-transit operating division employees retirement fund or any of its predecessor plans or funds as past, intermediate, future, continuous, or allowable service as defined in the metropolitan transit commission-transit operating division employees retirement fund plan document in effect on December 31, 1977.

(9) Service after July 1, 1983, by an employee who is employed on a part-time basis for less than 50 percent of full time, for which the employee is paid salary from which deductions are made, deposited, and credited in the fund, including deductions made, deposited, and credited as provided in section 352.041 or for which payments in lieu of salary deductions are made, deposited, and credited in the fund as provided in section 352.27 shall be credited on a fractional basis either by pay period, monthly, or annually based on the relationship that the percentage of salary earned bears to a full-time salary, with any salary paid for the fractional service credited on the basis of the rate of salary applicable for a full-time pay period, month, or a full-time year. For periods of part-time service that is duplicated service credit, section 356.30, subdivision 1, clauses (i) and (j), govern.

The allowable service determined and credited on a fractional basis shall be used in calculating the amount of benefits payable, but service as determined on a fractional basis must not be used in determining the length of service required for eligibility for benefits.

(10) Any period of authorized leave of absence without pay that does not exceed one year and for which the employee obtained credit by payment to the fund in lieu of salary deductions. To obtain credit, the employee shall pay an amount equal to the employee and employer contribution rate in section 352.04, subdivisions 2 and 3, multiplied by the employee's hourly rate of salary on the date of return from leave of absence and by the days and months of the leave of absence without pay for which the employee wants allowable service credit. The employing department, at its option, may pay the employer amount on behalf of its employees. Payments made under this clause shall include interest at the rate of six percent per year from the date of termination of the leave of absence to the date payment is made unless payment is completed within one year of the return from leave of absence.

Subd. 12. Actuarial equivalent. "Actuarial equivalent" means the condition of one annuity or benefit having an equal actuarial present value as another annuity or benefit, determined as of a given date at a specified age with each actuarial present value based on the appropriate mortality table adopted by the board of directors based on the experience of the fund as recommended by the actuary retained by the legislative commission on pensions and retirement and using the applicable preretirement or postretirement interest rate assumption specified in section 356.215, subdivision 4d.

Subd. 13. Salary. "Salary" means the periodical compensation paid to any employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs. It also means wages and includes net income from fees. Lump sum sick leave payments, severance payments, and all payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to an employee with single coverage, are not deemed to be salary. Workers' compensation payments are not considered salary.

Subd. 14. [Repealed, 1963 c 383 s 59]

Subd. 15. Approved actuary. "Approved actuary" means any actuary who is either a fellow of the society of actuaries or who has at least 15 years of service to major public employee funds, or any firm retaining an approved actuary on its staff.

Subd. 16. Year of allowable service. "Year of allowable service" means any 12 calendar months not necessarily consecutive in which an employee is entitled to allowable service credit. It also means 12 months credit each calendar year for teachers in the state universities and state institutions who may or may not receive compensation in every month in the calendar year.

Subd. 17. Total and permanent disability. "Total and permanent disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that has existed or is expected to continue for a period of at least one year.

Subd. 18. "Annuity" and "benefit" synonymous. The words "annuity" and "benefit," wherever they appear in this chapter, are synonymous.

Subd. 19. Retirement. "Retirement" means the time after a state employee is entitled to an accrued annuity, as defined in subdivision 21, payable under an application for annuity filed in the office of the system as provided in section 352.115, subdivision 8 or, in the case of an employee who has received a disability benefit, when that employee reaches normal retirement age.

Subd. 20. Retired employee. "Retired employee" means an employee who has retirement status as defined in subdivision 19.

Subd. 21. Accrued annuities. In this chapter and chapters 3A, 352B, 352C, and 490, "accrued annuity" means an annuity that had become payable to a retired employee in the lifetime of the employee. An annuity or benefit authorized as provided in this chapter and chapters 3A, 352B, 352C, and 490 becomes payable on the first day of each calendar month for that calendar month and is to be paid on the first day of each calendar month beginning with benefits payable on and after December 1, 1977.

Notwithstanding any provision to the contrary in this chapter and chapters 3A, 352B, 352C, and 490, benefit payment authorized as "payable for life" is payable for the entire month in which death occurs, and the benefit payment for the month of death is payable to the surviving spouse or other beneficiary only if the annuitant dies before negotiating the check.

Subd. 22. Disabled employee. "Disabled employee" means an employee who is totally and permanently disabled as defined in subdivision 17, and who as a result of the disability is entitled to receive a disability benefit as provided in section 352.113.

Subd. 23. Coverage or covered by the system. "Coverage" or "covered by the system" means that state employees who serve the state of Minnesota and make the required employee contributions to the retirement fund will by reason of these contributions become entitled to either (1) a retirement annuity, or (2) a disability benefit, or (3) a refund of accumulated contributions, as provided in this chapter.

Subd. 24. System. "System" means the Minnesota state retirement system.

Subd. 25. Normal retirement age. "Normal retirement age" means age 65 for a person who first became a covered employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989. For a person who first becomes a covered employee after June 30, 1989, normal retirement age means the higher of age 65 or "retirement age," as defined in United States Code, title 42, section 416(l), as amended.

History: (254-1) 1929 c 191 s 1; 1931 c 351 s 1; 1933 c 326 s 1; 1935 c 238 s 1; 1939 c 432 s 1; 1941 c 391 s 1; 1943 c 622 s 1; 1945 c 38 s 1; 1945 c 284 s 1,2; 1947 c 631 s 2-6; 1949 c 644 s 2,3; 1951 c 441 s 2-8; 1953 c 320 s 1; 1955 c 239 s 1-3; 1957 c 576 s 1,2; 1957 c 928 s 1-6,34; Ex1959 c 6 s 1-3; 1961 c 560 s 31; Ex1961 c 67 s 1,2; 1963 c 383 s 1-8; 1965 c 230 s 1,2; 1965 c 590 s 1; 1965 c 698 s 3; 1967 c 148 s 2; Ex1967 c 1 s 6; Ex1967 c 57 s 1-7; 1969 c 6 s 45; 1971 c 12 s 1,2; 1973 c 178 s 20; 1973 c 221 s 1,2; 1973 c 349 s 2; 1973 c 492 s 14; 1973 c 507 s 45; 1973 c 582 s 3; 1975 c 271 s 6; 1975 c 321 s 2; 1975 c 359 s 23; 1975 c 368 s 13; 1976 c 134 s 78; 1976 c 329 s 2; 1977 c 98

s 1; 1977 c 388 s 1; 1978 c 538 s 1,2; 1978 c 672 s 11,12; 1978 c 720 s 3; 1980 c 342 s 1,2; 1980 c 614 s 135; 1980 c 617 s 47; 1981 c 37 s 2; 1981 c 224 s 41-44; 1983 c 128 s 1-3; 1983 c 247 s 137; 1983 c 286 s 3; 1984 c 654 art 3 s 100; 1985 c 248 s 54; 1Sp1985 c 7 s 4; 1Sp1985 c 13 s 317; 1986 c 444; 1987 c 83 s 1; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 259 s 12; 1987 c 372 art 1 s 2; 1987 c 384 art 2 s 1; 1989 c 209 art 2 s 35; 1989 c 319 art 1 s 2; art 13 s 1,2; 1989 c 335 art 3 s 4; 1990 c 426 art 1 s 41; 1990 c 570 art 1 s 2; art 10 s 1; art 12 s 2

NOTE: Please see text and note to section 480.181.

352.015 [Repealed, 1951 c 441 s 1; 1957 c 928 s 33]

352.02 [Repealed, 1957 c 928 s 33]

352.021 MINNESOTA STATE RETIREMENT SYSTEM.

Subdivision 1. Establishment. There is established the Minnesota state retirement system for state employees. The system is a continuation of the state employees retirement association. Any person who was a member of the state employees retirement association on June 30, 1967, is covered by the system and is entitled to all benefits provided by the system upon fulfilling the age, service, contribution, and other requirements of this chapter.

Subd. 2. State employees covered. Every person who is a state employee, as defined in section 352.01, on July 1, 1967, or becomes a state employee after that date is covered by the system. Acceptance of state employment or continuance in state service is deemed consent to have deductions made from salary for deposit to the credit of the account of the state employee in the retirement fund.

Subd. 3. Optional exemptions. Any person who is appointed by the governor or lieutenant governor may request exemption from coverage under this chapter if the appointee is not so covered at the date of appointment. To qualify for this exemption request must be made within 90 days from the date of entering upon the duties of the position to which appointed. After the request, a person requesting exemption is not entitled to coverage while employed in the position that entitled that person to exemption from coverage.

Subd. 4. MS 1957 [Repealed, Ex1959 c 6 s 34]

Subd. 4. Reentering service after refund. When a former employee who has withdrawn accumulated contributions reenters employment in a position entitled to coverage under the system, the employee shall be covered by the system on the same basis as a new employee and is not entitled to credit for any former service. The annuity rights forfeited when taking a refund can only be restored as provided in this chapter.

Subd. 5. Continuing coverage. Any state employee who has made contributions to the retirement fund for a period of one year and who, continuing in state service after that year, becomes eligible for membership in the state teachers retirement association as a full-time teacher, as defined in section 354.05, subdivision 2, or is covered by section 354.05, subdivision 2a, may continue coverage under the system by filing in its office written notice of election to continue. The election to be covered by the system under this subdivision or section 352.01, subdivision 2b, clause (3), must be made on a form approved by the director within 90 days after appointment to the position. If the option is exercised, the employee is not thereafter entitled to membership in the teachers retirement association or in the individual retirement account plan for community college and state university faculty while employed by the state in a position that entitled the employee to make this election.

History: 1957 c 928 s 7; Ex1959 c 6 s 5,6; 1963 c 383 s 9; Ex1967 c 57 s 8; 1973 c 221 s 3; 1983 c 128 s 4; 1986 c 444; 1987 c 229 art 6 s 1; 1989 c 319 art 1 s 3; 1990 c 570 art 10 s 2

352.022 [Repealed, 1984 c 564 s 51]

352.028 COVERAGE TERMINATION.

Coverage of any person under the system ends when the person ceases to be a state employee.

History: 1963 c 383 s 10; Ex1967 c 57 s 9; 1986 c 444; 1987 c 229 art 6 s 1

352.029 COVERAGE FOR EMPLOYEES OF LABOR ORGANIZATIONS.

Subdivision 1. Qualifications. A former state employee who is an employee of a labor organization that is an exclusive bargaining agent representing state employees or a state employee on leave of absence without pay to provide service as an employee or officer of a labor organization that is an exclusive bargaining agent representing state employees, may choose under subdivision 2 to be covered by the system for service with the labor organization unless specifically excluded under section 352.01, subdivision 2b.

Subd. 2. Election. A person described in subdivision 1 shall be covered by the system if written election to be covered is delivered to the executive director before December 31, 1985, within 90 days of being employed by the labor organization, or within 90 days of starting the first leave of absence with an exclusive bargaining agent, whichever is later.

Subd. 3. Contributions. The employee and employer contributions required by section 352.04, or by section 352.92 for employees covered by section 352.91, are the obligation of the employee who chooses coverage under this section. However, the employing labor organization may pay the employer contributions. Contributions made by the employee must be made by salary deduction. The employing labor organization shall pay all contributions to the system as required by section 352.04, or by section 352.92 for employees covered by section 352.91.

Subd. 4. Purchase of prior service credit. Any person who elects membership under this section may make payment for service rendered before December 31, 1985, in a labor organization designated in subdivision 1 if the labor organization satisfactorily certifies the prior service of the former state employee. Payment shall include all employee, employer, and additional employer contributions at the rates in effect when the service was rendered plus interest at the rate of six percent per year from the year of purchase to the date payment is made. The employing labor organization may pay the employer and employer additional contributions plus interest at the specified rate. Payment must be made in one lump sum before December 31, 1985, or before retirement, whichever is earlier. No allowable service with respect to this payment shall be credited to the employee's account until payment is received by the executive director.

Subd. 5. Board membership excluded. Employees of a labor organization who become members of the system under this section are not eligible for election to the board of directors.

History: 1977 c 429 s 13; 1981 c 224 s 45; 1Sp1985 c 7 s 5; 1987 c 229 art 6 s 1; 1990 c 570 art 10 s 3

352.03 BOARD OF DIRECTORS; EXECUTIVE DIRECTOR.

Subdivision 1. Membership of board; election; term. The policy-making function of the system is vested in a board of 11 members, who must be known as the board of directors. This board shall consist of three members appointed by the governor, one of whom must be a constitutional officer or appointed state official and two of whom must be public members knowledgeable in pension matters, four state employees elected by state employees covered by the system excluding employees in categories specifically authorized to designate or elect a member by this subdivision, one employee of the transit operating division of the metropolitan transit commission designated by the executive committee of the labor organization that is the exclusive bargaining agent representing employees of the transit division, one member of the state patrol retirement fund elected by members of that fund at a time and in a manner fixed by the board, one employee covered by the correctional employees plan elected by

employees covered by that plan, and one retired employee elected by disabled and retired employees of all plans administered by the system at a time and in a manner to be fixed by the board. Two state employee members, whose terms of office begin on the first Monday in May after their election, must be elected biennially. Elected members and the appointed transit operating division member hold office for a term of four years, except the retired member whose term is two years, and until their successors are elected or appointed, and have qualified. An employee of the system is not eligible for membership on the board of directors. A state employee on leave of absence is not eligible for election or reelection to membership on the board of directors. The term of any board member who is on leave for more than six months automatically ends on expiration of this period.

Subd. 1a. Terms; compensation; removal; vacancies; public members. The membership terms, compensation, removal of members, and filling of vacancies for the public members on the board are as provided in section 15.0575.

Subd. 2. Vacancy. Any vacancy of a state employee or retired employee in the board caused by death, resignation, or removal of any member so elected must be filled by the board for the unexpired portion of the term in which the vacancy occurs. Any vacancy of the employee of the transit operating division member of the board caused by death, resignation, or removal must be filled by the governing board of the labor organization that is the exclusive bargaining agent representing employees of the transit operating division.

Subd. 3. [Repealed, 1976 c 134 s 79]

Subd. 4. Duties and powers of board of directors. The board shall:

- (1) elect a chair;
- (2) appoint an executive director;
- (3) establish rules to administer this chapter and chapters 3A, 352B, 352C, 352D, and 490 and transact the business of the system, subject to the limitations of law;
- (4) consider and dispose of, or take any other action the board of directors deems appropriate concerning denials of applications for annuities or disability benefits under this chapter, and complaints of employees and others pertaining to the retirement of employees and the operation of the system; and
- (5) advise the director on any matters relating to the system and carrying out functions and purposes of this chapter. The board's advice shall control.

The director and assistant director must be in the unclassified service but appointees may be selected from civil service lists if desired. The salary of the executive director must be as provided by section 15A.081, subdivision 1. The salary of the assistant director must be set in accordance with section 43A.18, subdivision 3.

Subd. 4a. Additional duties of the board. The board may consider, review, and make recommendations regarding the financial and other needs of retired employees and may disseminate appropriate retirement information to the retired employee.

Subd. 5. Executive director. The executive director, in this chapter called the director, of the system must be appointed by the board on the basis of fitness, experience in the retirement field, and leadership ability. The director must have had at least five years' experience on the administrative staff of a major retirement system.

Subd. 6. Duties and powers of executive director. The management of the system is vested in the director, who is the executive and administrative head of the system. The director shall be advisor to the board on matters pertaining to the system and shall also act as the secretary of the board. The director shall:

- (1) attend meetings of the board;
- (2) prepare and recommend to the board appropriate rules to carry out this chapter;
- (3) establish and maintain an adequate system of records and accounts following recognized accounting principles and controls;
- (4) designate an assistant director with the approval of the board;

(5) appoint any employees, both permanent and temporary, that are necessary to carry out the provisions of this chapter;

(6) organize the work of the system as the director deems necessary to fulfill the functions of the system, and define the duties of its employees and delegate to them any powers or duties, subject to the control of the director and under conditions the director may prescribe. Appointments to exercise delegated power must be by written order and shall be filed with the secretary of state;

(7) with the advice and consent of the board, contract for the services of an approved actuary, professional management services, and any other consulting services as necessary and fix the compensation for those services. The contracts are not subject to competitive bidding under chapter 16B. 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. Professional management services may not be contracted for more often than once in six years. Copies of professional management survey reports must 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, to the executive director of the commission and to the legislative auditor at the time as reports are furnished to the board. Only management firms experienced in conducting management surveys of federal, state, or local public retirement systems are qualified to contract with the director;

(8) with the advice and consent of the board provide in-service training for the employees of the system;

(9) make refunds of accumulated contributions to former state employees and to the designated beneficiary, surviving spouse, legal representative, or next of kin of deceased state employees or deceased former state employees, as provided in this chapter;

(10) determine the amount of the annuities and disability benefits of employees covered by the system 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;

(11) pay annuities, refunds, survivor benefits, salaries, and necessary operating expenses of the system;

(12) certify funds available for investment to the state board of investment;

(13) with the advice and approval of the board request the state board of investment to sell securities when the director determines that funds are needed for the system;

(14) prepare and submit to the board and the legislature an annual financial report covering the operation of the system, as required by section 356.20;

(15) prepare and submit biennial and quarterly budgets to the board and with the approval of the board submit the budgets to the department of finance; and

(16) with the approval of the board, perform other duties required to administer the retirement and other provisions of this chapter and to do its business.

Subd. 7. Directors' fiduciary obligation. The board and the director shall undertake their activities consistent with chapter 356A.

Subd. 8. Medical advisor. The state commissioner of health or other licensed physician on the staff of the commissioner as the commissioner may designate shall be the medical advisor of the director.

Subd. 9. Duties of the medical advisor. The medical advisor shall designate licensed physicians to examine applicants for disability benefits. The medical advisor shall pass upon medical reports based upon examinations required to determine whether a state employee is totally and permanently disabled as defined in section

352.01, subdivision 17, shall investigate health and medical statements and certificates by or on behalf of a state employee in connection with a disability benefit, and shall report in writing to the director conclusions and recommendations on matters referred for advice.

Subd. 10. **Power to determine employee's status.** Except as otherwise specifically provided in this chapter, the final power to determine the status of any individual in the employ of the state for the purposes of this chapter is vested in the board and its decision is final.

Subd. 11. **Legal adviser, attorney general.** The attorney general shall be the legal adviser of the board and of the director. The board may sue or be sued or petitioned under this section in the name of the board of directors of the system. In actions brought by it or against it, the board shall be represented by the attorney general and, except as provided in section 352.031, subdivision 9, venue of actions shall be in the Ramsey county district court.

Subd. 12. **Department of employee relations, duties.** Upon request of the director, the department of employee relations shall furnish information about the status of state employees as required by the director or the board in the performance of their duties.

Subd. 13. [Repealed, 1989 c 319 art 1 s 17]

Subd. 14. **Departmental information.** Under the direction of the director the head of each department shall give information and keep records the director or the board needs for their duties.

Subd. 15. **Calendar year basis optional.** For all purposes except quarterly and biennial budgets the system may operate on a calendar rather than a fiscal year basis.

Subd. 16. **Data processing services.** Notwithstanding chapter 16, or any law to the contrary, the executive director of the system may use the services of the department of administration, information services division, for electronic data processing and related services or may contract for all or a part of the services.

History: (254-3) 1929 c 191 s 3; 1931 c 351 s 3; 1935 c 238 s 3; 1941 c 391 s 3; 1947 c 631 s 9; 1949 c 644 s 8; Ex1959 c 6 s 4; 1963 c 383 s 11; 1965 c 691 s 1; Ex1967 c 1 s 6; Ex1967 c 57 s 10; 1973 c 35 s 52; 1973 c 492 s 14; 1973 c 507 s 45; 1973 c 653 s 24,25; 1975 c 368 s 15-17; 1976 c 134 s 66,67; 1977 c 305 s 45; 1977 c 429 s 10-12; 1978 c 538 s 3,4; 1980 c 617 s 47; 1981 c 224 s 46; 1983 c 63 s 1; 1983 c 299 s 28; 1985 c 248 s 70; 1986 c 444; 1987 c 229 art 6 s 1; art 1 s 1; 1987 c 259 s 13; 1989 c 319 art 1 s 4; art 8 s 10; 1990 c 570 art 10 s 4

352.031 APPEALS PROCEDURE.

Subdivision 1. **Definitions.** Unless the language or context clearly indicates that a different meaning is intended, for the purpose of this section, the following terms have the meanings given them.

(a) "Board" means the board of directors of the Minnesota state retirement system.

(b) "Documentation" includes, but is not limited to:

- (1) sworn and notarized affidavits made on the personal knowledge of any person;
- (2) official letters or documents;
- (3) documents from the file of the petitioner; and
- (4) other relevant documents that are admissible as evidence in a court of law.

(c) "Executive director" means the executive director of the Minnesota state retirement system.

(d) "Person" includes any state agency or other governmental unit that employs persons covered under statutes listed in subdivision 2.

(e) "Record" means the petition and the documentation that the petitioners submit with the petition; the executive director's answer to the petition and documentation submitted with it; and any documentation the board allows to be submitted at or after the meeting at which the petition is considered.

Subd. 2. Notice of termination or denial. If the executive director terminates a benefit or denies an application or a written request of any person claiming a right under chapter 352, other than sections 352.96 and 352.97; chapters 3A, 352B, 352C, and 352D; sections 490.121 to 490.133; or the applicable sections of chapters 355 and 356, the executive director shall serve upon that person written notice containing:

(1) the reasons for the termination or denial;

(2) notice that the person may petition the board for a review of the termination or denial and that the petition for review must be filed within 60 days of the receipt of the written notice;

(3) a statement that relevant documentation submitted by the petitioner to the executive director must be received in the office of the Minnesota state retirement system at least 30 days before the meeting prescribed in subdivision 4;

(4) a statement that failure to petition the board within 60 days will preclude the person from contesting in any other court procedure or administrative hearing, the issues determined by the executive director; and

(5) a copy of this section.

Subd. 3. Petition for review. A person who claims a right under subdivision 2 and whose benefit has been terminated or whose application or written request has been denied may petition for a review of that decision by the board. A petition under this section must be served upon the executive director personally, or by mail postmarked no later than 60 days after the petitioner received the notice required by subdivision 2. The petition must include the sworn, notarized statement of the reasons the petitioner believes the decision of the executive director should be reversed or modified and may include relevant documentation. Relevant documentation submitted by the petitioner to the executive director must be received in the office of the Minnesota state retirement system at least 30 days before the meeting prescribed in subdivision 4.

Subd. 4. Answer; record for hearing. Within a reasonable time after receiving a petition, the executive director must serve the petitioner with an answer to the petition with all relevant documentation and with notice of the time and place of the regular or special board meeting at which the board will consider the petition. The documentation need not duplicate the documentation submitted by the petitioner. Not later than ten days before the board meeting at which the petition will be heard, the executive director must, personally or by mail, deliver a copy of the relevant documentation to each board member. Each board member who participates in the decision on the petition must be familiar with all relevant documentation.

Subd. 5. Hearing. The board shall hold a timely hearing on a petition for review. The board shall make its decision on a petition solely on the relevant documentation as submitted and the proceedings of the hearing. At the hearing, the petitioner, the petitioner's attorney, and the executive director may state and discuss with the board their positions with respect to the petition. The board may allow further documentation to be placed in the record at or subsequent to the board meeting at which the petition is considered. If the board allows additional documentation into the record at or subsequent to the board meeting, it may make a final determination on the petition at that board meeting only upon the agreement of both the petitioner and the executive director.

Subd. 5a. Executive director's order. Notwithstanding subdivisions 4 and 5, if the executive director determines with respect to a petition that no relevant facts are in dispute, the executive director shall inform the board of that determination, and the board may issue findings of fact, a decision, reasons for the decision, and a final order and serve it upon the petitioner as provided in subdivision 8. If a petitioner receives an adverse decision, the petitioner may appeal the board's final order under subdivision 9.

Subd. 6. Termination of benefits. If the executive director proposes to terminate a benefit that is being paid to any person, before terminating the benefit, the executive director must, in addition to the other procedures prescribed herein, give the person

written or oral notice of the proposed termination. The notice must explain the reason for the proposed termination. The person must be given an opportunity, verbally or in writing, to explain why the benefit should not be terminated: if the executive director is unable to contact the person and the executive director determines that a failure to terminate the benefit might result in unauthorized payment by the association, the executive director may terminate the benefit with only a written notice containing the information required by subdivision 2, mailed to the address to which the benefit was last sent and, if that address is a financial institution, to the last known address of the person.

Subd. 7. Medical advisor action. If a person petitions the board to reverse or modify a determination by the executive director finding that the petitioner, for medical reasons, does not or has ceased to qualify for a disability benefit, the board may resubmit the matter to the medical advisor for reconsideration, with or without instructions to obtain further medical examinations. The 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 opinion contrary to the opinion of the medical advisor in the record and the medical advisor asserts that the decision was made in accordance with the disability standard in section 352.01, subdivision 17; 352B.10; or 490.121, subdivision 13, the board must follow the determination of the medical advisor. The board may make a determination different from the recommendation of the medical advisor on issues that do not involve a medical opinion.

Subd. 8. Board findings. After the board has made a decision on a petition, the executive director must prepare findings of fact, the board's reasons for its conclusions, and the board's final order for the signature of the chair or other board member as the board, by resolution, may designate. The executive director shall serve the findings, conclusions, and order on the petitioner by certified mail.

Subd. 9. Appeals. Within 30 days of receipt of the findings, conclusions, and final order, the petitioner may appeal the board's decision by writ of certiorari to the court of appeals. Failure to appeal to that court within the 30 days precludes the petitioner from later raising, in any court procedure or administrative hearing, those substantive and procedural issues that reasonably should have been raised upon appeal.

Subd. 10. Referral for administrative hearing. Notwithstanding sections 14.03; 14.06; and 14.57 to 14.69, a challenge to a determination of the executive director must be conducted exclusively under the procedures in this section. The 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. 11. Petitions without notice. A person who is not entitled to a review under this section may nevertheless receive review of the decision of the executive director which affects the person's rights by petitioning the board under this section within 60 days of the time the person knew or should have known of the disputed decision.

History: 1989 c 319 art 1 s 5; 1990 c 570 art 12 s 3-5

352.04 STATE EMPLOYEES RETIREMENT FUND, CONTRIBUTIONS BY EMPLOYEE AND EMPLOYER.

Subdivision 1. Fund created. (a) There is created a special fund to be known as the state employees retirement fund. In that fund there shall be deposited employees contributions, employers contributions, and other amounts authorized by law.

(b) Effective July 1, 1969, the Minnesota state retirement system shall participate in the Minnesota postretirement investment fund. In that fund there shall be deposited the amounts provided in section 352.119.

Subd. 2. Employee contributions. The employee contribution to the fund must be equal to 4.15 percent of salary. These contributions must be made by deduction from salary as provided in subdivision 4.

Subd. 3. Employer contributions. (a) The employer contribution to the fund must be equal to 4.29 percent of salary.

(b) By January 1 of each year, the board of directors shall report to the legislative commission on pensions and retirement, the chair of the committee on appropriations of the house of representatives, and the chair of the committee on finance of the senate on the amount raised by the employer and employee contribution rates in effect and whether the total amount is less than, the same as, or more than the actuarial requirement determined under section 356.215.

Subd. 4. Payroll deductions. The head of each department shall have employee contributions deducted from the salary of each employee covered by the system on every payroll abstract and shall approve one voucher payable to the state treasurer for the aggregate amount deducted on the payroll abstract. Deductions from salaries of employees paid direct by any department, institution, or agency of the state must be made by the officer or employee authorized by law to pay the salaries. The head of any department or agency having authority to appoint any employee who receives fees as compensation or who receives compensation on federal payrolls shall collect as the required employee contribution the applicable amounts required in subdivision 2. Deductions from salary and amounts collected must be remitted to the director with a statement showing the amount of earnings or fees, and in the case of fees, the number of transactions, and the amount of each of the deductions and collections and the names of the employees on whose account they have been made.

Subd. 5. Payment of employer contributions. The head of each department or agency shall have employer contributions made to the fund on a payroll abstract at the time an employee is paid salary in the amounts required by subdivision 3. These contributions must be charged as administrative costs. Each department shall pay these amounts from accounts and funds from which the department or agency receives its revenue, including appropriations from the general fund and from any other fund for the payment of salaries and in the same proportion as it pays the amounts of salaries.

Subd. 6. Quasi-state agencies; employer contributions. For those of their employees who are covered by the system, the state horticultural society, the Disabled American Veterans, Department of Minnesota, Veterans of Foreign Wars, Department of Minnesota, the Minnesota crop improvement association, the Minnesota historical society, the armory building commission, the Minnesota safety council, the Metropolitan council and any of its statutory boards, and any other agency employing employees covered by this system, respectively, shall also pay into the retirement fund the amount required by subdivision 3.

Subd. 7. [Repealed, 1973 c 221 s 11]

Subd. 8. Department required to pay omitted salary deductions. (a) If a department fails to take deductions past due for a period of 60 days or less from an employee's salary as provided in this section, those deductions must be taken on later payroll abstracts.

(b) If a department fails to take deductions past due for a period in excess of 60 days from an employee's salary as provided in this section, the department, and not the employee, shall pay the employee and employer contributions and an amount equivalent to six percent of the total amount due in lieu of interest.

(c) If a department fails to take deductions past due for a period of 60 days or less and the employee is no longer in state service so that the required deductions cannot be taken from the salary of the employee, the department shall nevertheless pay the required employer contributions. If any department fails to take deductions past due for a period in excess of 60 days and the employee is no longer in state service, the omitted contributions shall be recovered under paragraph (b).

(d) If an employee from whose salary required deductions were past due for a period of 60 days or less leaves state service before the payment of the omitted deductions and subsequently returns to state service, the unpaid amount is considered the equivalent of a refund. The employee accrues no right by reason of the unpaid amount, except that the employee may pay the amount of omitted deductions as provided in section 352.23.

Subd. 9. **Erroneous deductions, canceled warrants.** (a) Deductions taken from the salary of an employee for the retirement fund in error must, upon discovery and verification by the department making the deduction, be refunded to the employee.

(b) If a deduction for the retirement fund is taken from a salary warrant or check, and the check is canceled or the amount of the warrant or check returned to the funds of the department making the payment, the sum deducted, or the part of it required to adjust the deductions, must be refunded to the department or institution if the department applies for the refund on a form furnished by the director. The department's payments must likewise be refunded to the department.

Subd. 10. [Repealed, 2Sp1981 c 1 s 8]

Subd. 11. **Gifts and bequests.** The director may credit to the retirement fund any money received in the form of donations, gifts, appropriations, bequests, or otherwise, or derived from it.

Subd. 12. **Fund disbursement restricted.** The state employees retirement fund and the participation in the Minnesota postretirement investment fund must be disbursed only for the purposes provided by law. The expenses of the system and any benefits provided by law, other than benefits payable from the Minnesota postretirement investment fund, must be paid from the state employees retirement fund. The retirement allowances, retirement annuities, and disability benefits, as well as refunds of any sum remaining to the credit of a deceased retired employee or a disabled employee must be paid only from the state employees retirement fund after the needs have been certified and the amounts withdrawn from the participation in the Minnesota postretirement investment fund under section 11A.18. The amounts necessary to make the payments from the state employees retirement fund and the participation in the Minnesota postretirement investment fund are annually appropriated from these funds for those purposes.

History: (254-4) 1929 c 191 s 4; 1931 c 351 s 4; 1933 c 326 s 4; 1935 c 238 s 4; 1939 c 432 s 2; 1941 c 391 s 4; 1943 c 622 s 3; 1945 c 284 s 5-7; 1945 c 603 s 1; 1947 c 631 s 10,11; 1949 c 644 s 9,10; 1951 c 441 s 13,14; 1955 c 239 s 7,8; 1957 c 928 s 8,33; 1961 c 633 s 1; Ex1961 c 67 s 3-6; 1963 c 383 s 12-19; 1965 c 861 s 1; 1967 c 571 s 1; Ex1967 c 57 s 11; 1969 c 399 s 1; 1969 c 893 s 3-5; 1971 c 194 s 1; 1973 c 492 s 14; 1973 c 653 s 26,27; 1980 c 607 art 14 s 45 subd 2; s 46; 1980 c 614 s 136; 3Sp1981 c 2 art 1 s 64,65; 1982 c 578 art 1 s 2; 1982 c 641 art 1 s 9,10; 1984 c 564 s 4,5; 1986 c 444; 1987 c 229 art 6 s 1; 1989 c 319 art 13 s 3,4; 1990 c 591 art 2 s 1,2

352.041 LEAVE OF ABSENCE FOR EMPLOYMENT BY POLITICAL SUBDIVISION.

Subdivision 1. **Allowable service credit.** Any employee covered by the system who is given a leave of absence for employment by a political subdivision of the state shall continue to pay into the state employees retirement fund for the period of leave. Upon payment the employee must be given allowable service credit as a state employee on the records of the system as though the employee had received salary from the state during the leave. Payments into the retirement fund shall be at the rate required in section 352.04, subdivision 2, and must be based upon the salary received from the political subdivision subject to the maximum amount, if any.

Subd. 2. **Employee contributions, procedure.** The officer or employee authorized by law to pay salaries to employees of the political subdivision employing a state employee shall have employee contributions deducted from the salary of each employee who is on leave of absence from state service on each payroll abstract and shall pay the sum to the director each pay period.

Subd. 3. **Employer contributions, procedure.** The officer or employee authorized by law to pay salaries to employees of the political subdivision employing a state employee covered by the system shall also have employer contributions made to the state employees retirement fund on each payroll abstract in the amount required by section 352.04, subdivision 3. These contributions are to be charged as an administrative cost.

Subd. 4. [Repealed, 1963 c 383 s 59]

Subd. 5. **Employer contributions, leaves of absence; tax levies.** Every political subdivision employing a state employee covered by the system on leave of absence from state service for employment by a political subdivision of the state shall pay into the state employees retirement fund the amount of the employer contribution required by law for state employees covered by the system. Employing political subdivisions, except school districts, may levy taxes necessary for the payment of employer contributions without limitation as to rate or amount. The levy of the taxes does not reduce the amount of other taxes to be levied by political subdivisions, except school districts, which are subject to any limitation.

Subd. 6. [Repealed, 1983 c 128 s 36]

Subd. 7. [Repealed, 1963 c 383 s 59]

History: 1959 c 647 s 1; 1963 c 383 s 20,21; Ex1967 c 57 s 12; Ex1971 c 31 art 20 s 10; 1986 c 444; 1987 c 229 art 6 s 1

352.05 STATE TREASURER TO BE TREASURER OF SYSTEM.

The state treasurer is ex officio treasurer of the retirement funds of the system. The general bond to the state shall cover all liability for actions as treasurer of these funds. Funds of the system received by the treasurer must be set aside in the state treasury to the credit of the proper fund. The treasurer shall deliver to the director copies of all payroll abstracts of the state together with the commissioner of finance's warrants covering the deductions made on these payroll abstracts for the retirement fund. The director shall have a list made of the commissioner of finance's warrants. These warrants must then be deposited with the state treasurer to be credited to the retirement fund. The treasurer shall pay out of this fund only on warrants issued by the commissioner of finance, upon abstracts signed by the director, or by the finance officer designated by the director during the disability or the absence of the director from the city of St. Paul, Minnesota. Abstracts for investments may be signed by the executive director of the state board of investment.

History: (254-5) 1929 c 191 s 5; 1931 c 351 s 5; 1935 c 238 s 5; 1941 c 391 s 5; 1945 c 284 s 8; 1957 c 928 s 28; Ex1961 c 67 s 7; Ex1967 c 57 c 13; 1973 c 492 s 14; 1986 c 444; 1987 c 229 art 6 s 1

352.06 [Repealed, 1967 c 404 s 8]

352.061 INVESTMENT BOARD TO INVEST FUNDS.

The director shall, from time to time, certify to the state board of investment any portions of the state employees retirement fund that in the judgment of the director are not required for immediate use. Assets from the state employees retirement fund must be transferred to the Minnesota postretirement investment fund as provided in section 11A.18. The state board of investment shall invest and reinvest sums so transferred, or certified, in securities that are duly authorized legal investments under section 11A.24.

History: 1967 c 404 s 7; Ex1967 c 57 s 14; 1969 c 893 s 6; 1980 c 607 art 14 s 45 subd 2; s 46; 1986 c 444; 1987 c 229 art 6 s 1

352.07 [Repealed, 1963 c 383 s 59]

352.08 [Repealed, 1963 c 383 s 59]

352.09 [Repealed, 1957 c 928 s 33]

352.10 [Repealed, 1945 c 284 s 1]

352.103 Subdivision 1. [Repealed, 1963 c 383 s 59]

Subd. 2. [Repealed, 1963 c 383 s 59; 1965 c 230 s 18]

352.11 [Repealed, 1957 c 928 s 33]

352.113 PERMANENT DISABILITY BENEFITS.

Subdivision 1. Age and service requirements. Any employee covered by the system who is less than normal retirement age who becomes totally and permanently disabled after three or more years of allowable service is entitled to a disability benefit in an amount provided in subdivision 3. If the disabled employee's state service has terminated at any time, the employee must have at least two years of allowable service after last becoming a state employee covered by the system.

Subd. 2. Application; accrual of benefits. An employee making claim for a total and permanent disability benefit shall file a written application for benefits in the office of the system. The application must be in a form and manner prescribed by the executive director. The benefit shall begin to accrue the day following the start of disability or the day following the last day paid, whichever is later, but not earlier than 60 days before the date the application is filed with the director.

Subd. 3. Computation of benefits. The total and permanent disability benefit must be computed in the manner provided in section 352.115. The disability benefit shall be the normal annuity without reduction for each month the employee is under age 65 at the time of becoming disabled. A disabled employee may choose to receive the normal disability benefit or an optional annuity as provided in section 352.116, subdivision 3. This choice must be made before the start of payment of the disability benefit and is effective the date on which the disability begins to accrue as provided in subdivision 2.

Subd. 4. Medical examinations; authorization for payment of benefit. An applicant shall provide medical evidence to support an application for total and permanent disability. The director shall have the employee examined by at least one additional licensed physician designated by the medical advisor. The physicians shall make written reports to the director concerning the employee's disability including medical opinions as to whether the employee is permanently and totally disabled within the meaning of section 352.01, subdivision 17. The director shall also obtain written certification from the employer stating whether the employee is on sick leave of absence because of a disability that will prevent further service to the employer and as a consequence the employee is not entitled to compensation from the employer. The medical advisor shall consider the reports of the physicians and any other evidence supplied by the employee or other interested parties. If the medical advisor finds the employee totally and permanently disabled, the advisor shall make appropriate recommendation to the director in writing together with the date from which the employee has been totally disabled. The director shall then determine the propriety of authorizing payment of a disability benefit as provided in this section. The employee must be on approved leave of absence from the employer to be eligible to apply for a total and permanent disability benefit, but the fact that an employee is placed on leave of absence without compensation because of disability does not bar that employee from receiving a disability benefit. Unless payment of a disability benefit has terminated because the employee is no longer totally disabled, or because the employee has reached age 65 as provided in this section, the disability benefit shall cease with the last payment received by the disabled employee or which had accrued during the lifetime of the employee unless there is a spouse surviving; in that event the surviving spouse is entitled to the disability benefit for the calendar month in which the disabled employee died.

Subd. 5. [Repealed, 1Sp1985 c 7 s 36]

Subd. 6. Regular medical examinations. At least once each year during the first five years following the allowance of a disability benefit to any employee, and at least once in every three-year period thereafter, the director may require any disabled employee to undergo a medical examination. The examination must be made at the place of residence of the employee, or at any place mutually agreed upon, by a physician or physicians designated by the medical advisor and engaged by the director. If any examination indicates to the medical advisor that the employee is no longer permanently and totally disabled, or is engaged in or can engage in a gainful occupation, payments of the disability benefit by the fund must be discontinued. The payments shall

discontinue as soon as the employee is reinstated to the payroll following sick leave, but in no case shall payment be made for more than 60 days after the medical advisor finds that the employee is no longer permanently and totally disabled.

Subd. 7. Partial reemployment. If the disabled employee resumes a gainful occupation from which earnings are less than the employee's salary at the date of disability or the salary currently paid for similar positions, the director shall continue the disability benefit in an amount which when added to earnings does not exceed the salary at the date of disability or the salary currently paid for similar positions, whichever is lower, provided the disability benefit in this case does not exceed the disability benefit originally allowed. Deductions for the retirement fund must not be taken from the salary of a disabled employee who is receiving a disability benefit as provided in this subdivision.

Subd. 8. Refusal of examination. If a disabled employee refuses to submit to a medical examination as required, payments by the fund must be discontinued and the director shall revoke all rights of the employee in any disability benefit.

Subd. 9. Return to state service. Any employee receiving a disability benefit who is restored to active state service except employees receiving benefits as provided in subdivision 7, shall have deductions taken for the retirement fund and upon retirement have the payable retirement annuity based upon all allowable service including that upon which the disability benefits were based. No employee is entitled to receive disability benefits and a retirement annuity at the same time.

Subd. 10. Employee again disabled after resuming employment. If a disabled employee resumes gainful employment with the state and is not entitled to continued payment of a disability benefit as provided in subdivision 7, the right to a disability benefit ends when the employee has been employed for one year thereafter. If the employee again becomes totally and permanently disabled before reaching age 65, application for a disability benefit may again be made. If the employee is entitled to a disability benefit it must be computed as provided in subdivision 9.

Subd. 11. Recomputation of benefit. If an employee who has resumed employment as provided in subdivision 10 is reemployed for more than three months, but cannot continue for one year, the disability benefit must be recomputed allowing additional service credit for the period of reemployment. If the period of reemployment does not exceed three months, the deductions taken from salary after resuming employment must be returned to the employee. The employee is not entitled to service credit for the period covered by the returned deductions.

Subd. 12. Retirement status at normal retirement age. The disability benefit paid to a disabled employee under this section ends when the employee reaches normal retirement age. If the disabled employee is still totally and permanently disabled when the employee reaches normal retirement age, the employee shall be considered to be a retired employee. If the employee had chosen an optional annuity under subdivision 3, the employee shall receive an annuity in accordance with the terms of the optional annuity previously chosen. If the employee had not chosen an optional annuity pursuant to subdivision 3, the employee may then choose to receive either a normal retirement annuity equal in amount to the disability benefit paid before the employee reached normal retirement age or an optional annuity as provided in section 352.116, subdivision 3. The choice of an optional annuity must be made before reaching normal retirement age. If an optional annuity is chosen, the choice is effective on the date the employee attains normal retirement age and the optional annuity shall begin to accrue the first of the month following the month in which the employee attains this age.

History: 1951 c 441 s 21; 1955 c 239 s 13; 1957 c 928 s 13; Ex1959 c 6 s 13; Ex1961 c 67 s 9; 1963 c 383 s 22-25; Ex1967 c 57 s 15; 1971 c 12 s 3; 1971 c 194 s 2; 1975 c 359 s 23; 1975 c 368 s 18-20; 1981 c 68 s 10,11; 1981 c 224 s 47; 1983 c 128 s 5-7; 1984 c 564 s 6,7; 1984 c 574 s 5,6; 1986 c 444; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 372 art 9 s 1; 1989 c 319 art 13 s 5,6

352.115 RETIREMENT ANNUITY.

Subdivision 1. **Age and service requirements.** After separation from state service, any employee (1) who has attained the age of at least 55 years and who is entitled to credit for at least three years allowable service, or (2) who has received credit for at least 30 years allowable service regardless of age, is entitled upon application to a retirement annuity.

Subd. 2. **Average salary.** The retirement annuity hereunder payable at normal retirement age or thereafter must be computed in accordance with the applicable provisions of the formula stated in subdivision 3, on the basis of the employee's average salary for the period of allowable service. This retirement annuity is known as the "normal" retirement annuity.

For each year of allowable service, "average salary" of an employee in determining a retirement annuity means the average of the highest five successive years of salary upon which the employee has made contributions to the retirement fund by payroll deductions. Average salary must be based upon all allowable service if this service is less than five years.

"Average salary" does not include the payment of accrued unused annual leave or overtime paid at time of final separation from state service if paid in a lump sum nor does it include the reduced salary, if any, paid during the period the employee is entitled to workers' compensation benefit payments for temporary disability.

Subd. 3. **Retirement annuity formula.** (a) This paragraph, in conjunction with section 352.116, subdivision 1, applies to a person who became a covered employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989, unless paragraph (b), in conjunction with section 352.116, subdivision 1a, produces a higher annuity amount, in which case paragraph (b) will apply. The employee's average salary, as defined in subdivision 2, multiplied by one percent per year of allowable service for the first ten years and 1.5 percent for each later year of allowable service and pro rata for completed months less than a full year shall determine the amount of the retirement annuity to which the employee is entitled.

(b) This paragraph applies to a person who has become at least 55 years old and first became a covered employee after June 30, 1989, and to any other covered employee who has become at least 55 years old and whose annuity amount, when calculated under this paragraph and in conjunction with section 352.116, subdivision 1a, is higher than it is when calculated under paragraph (a), in conjunction with section 352.116, subdivision 1. The employee's average salary, as defined in subdivision 2, multiplied by 1.5 percent for each year of allowable service and pro rata for months less than a full year shall determine the amount of the retirement annuity to which the employee is entitled.

Subd. 4. [Repealed, 1983 c 128 s 36]

Subd. 5. [Repealed, 1983 c 128 s 36]

Subd. 6. [Repealed, 1965 c 230 s 18]

Subd. 7. **Application for annuity.** Application for annuity or optional annuity payment may be made by the employee at time of retirement, or by someone acting in behalf of the employee, upon proof of authority satisfactory to the director.

Subd. 8. **Accrual of annuity.** State employees shall apply for an annuity. The application must not be made more than 60 days before the time the employee is eligible to retire by reason of both age and service requirements. If the director determines an applicant for annuity has fulfilled the legal requirements for an annuity, the director shall authorize the annuity payment in accordance with this chapter and payment must be made as authorized. An annuity shall begin to accrue no earlier than 60 days before the date the application is filed with the director, but not before the day following the termination of state service or before the day the employee is eligible to retire by reason of both age and service requirements. The retirement annuity shall cease with the last payment which had accrued during the lifetime of the retired employee unless an optional annuity provided in section 352.116, subdivision 3, had been selected and had

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become payable. The joint and last survivor annuity shall cease with the last payment received by the survivor during the lifetime of the survivor. If a retired employee had not selected an optional annuity, or a survivor annuity is not payable under the option, and a spouse survives, the spouse is entitled only to the annuity for the calendar month in which the retired employee died. If an optional annuity is payable after the death of the retired employee, the survivor is entitled to the annuity for the calendar month in which the retired employee died.

Subd. 9. Annuities payable monthly. All annuities, and disability benefits authorized by this chapter, must be paid in equal monthly installments and must not be increased, decreased, or revoked except as provided in this chapter.

Subd. 10. Reemployment of annuitant. If any retired employee again becomes entitled to receive salary or wages from the state, or any employer who employs state employees as that term is defined in section 352.01, subdivision 2, other than salary or wages received as a temporary employee of the legislature during a legislative session, the annuity or retirement allowance shall cease when the retired employee has earned an amount equal to the annual maximum earnings allowable for that age for the continued receipt of full benefit amounts monthly under the federal old age, survivors, and disability insurance program as set by the secretary of health and human services under United States Code, title 42, section 403, in any calendar year. If the retired employee has not yet reached the minimum age for the receipt of social security benefits, the maximum earnings for the retired employee shall be equal to the annual maximum earnings allowable for the minimum age for the receipt of social security benefits. The annuity must be resumed when state service ends, or, if the retired employee is still employed at the beginning of the next calendar year, at the beginning of that calendar year, and payment must again end when the retired employee has earned the applicable reemployment earnings maximum specified in this subdivision. No payroll deductions for the retirement fund shall be made from the earnings of a reemployed retired employee. If the retired employee is granted a sick leave without pay, but not otherwise, the annuity or retirement allowance must be resumed during the period of sick leave. No change shall be made in the monthly amount of an annuity or retirement allowance because of the reemployment of an annuitant.

Subd. 11. Accrued annuity at death. Any annuity accrued before the death of a retired employee, and any disability benefit accrued before the death of a disabled employee shall be paid to the beneficiary whom the retired employee or the disabled employee had last designated. If (1) no beneficiary has been so designated, or (2) the designated beneficiary dies before making claim for payment of an annuity or benefit, payment must be made to the surviving spouse, or, if none, to the employee's surviving children in equal shares or, if none, to the employee's surviving parents in equal shares or, if none, to the legal representative of the retired employee or disabled employee. If the designated beneficiary, surviving spouse, or legal representative entitled to the annuity does not apply for payment within five years from the date of death of the retired employee or disabled employee, the annuity or disability benefit which had accrued at the time of death must be credited to and become a part of the retirement fund.

Subd. 12. Death, return of warrants. If at the time of death a retired employee, a disabled employee, or a survivor has in possession commissioner of finance's warrants covering a retirement annuity, disability benefit or survivor benefit from the retirement fund, in the absence of probate proceedings, and upon the return of the warrants for cancellation, payment of the accrued annuity or benefit, shall be made as provided in subdivision 11, or 352.12, subdivision 4. Payments made under this subdivision shall be a bar to recovery by any other person or persons.

Subd. 13. [Repealed, 1981 c 224 s 276]

History: 1957 c 928 s 9; Ex1959 c 6 s 7,9,20; Ex1961 c 67 s 10; 1963 c 383 s 26-32; 1963 c 814 s 1; 1965 c 230 s 3-6; Ex1967 c 57 s 16; 1969 c 893 s 7; 1971 c 12 s 4; 1973 c 35 s 53; 1973 c 221 s 4; 1973 c 492 s 14; 1973 c 653 s 28-30; 1975 c 271 s 6; 1975 c 359 s 23; 1975 c 368 s 21-23; 1976 c 134 s 78; 1980 c 342 s 3; 1980 c 607 art 14 s 33; 1981

c 224 s 48; 1983 c 128 s 8; 1984 c 564 s 8,9; 1984 c 574 s 7; 1986 c 444; 1987 c 229 art 6 s 1; 1987 c 372 art 9 s 2; 1989 c 319 art 13 s 7-9; 1990 c 570 art 10 s 5; art 12 s 6

352.116 ANNUITIES UPON RETIREMENT.

Subdivision 1. Reduced annuity before normal retirement age. This subdivision applies only to a person who first became a covered employee or a member of a pension fund listed in section 356.30, subdivision 3, before July 1, 1989, and whose annuity is higher when calculated under section 352.115, subdivision 3, paragraph (a), in conjunction with this subdivision than when calculated under section 352.115, subdivision 3, paragraph (b), in conjunction with subdivision 1a.

(a) Any employee who is eligible for a retirement annuity under section 352.115, subdivision 1, and who retires before normal retirement age with credit for at least three but less than 30 years of allowable service shall be paid the normal retirement annuity provided in section 352.115, subdivisions 2 and 3, paragraph (a), reduced by one-quarter of one percent for each month that the employee is under normal retirement age at the time of retirement. An employee who is eligible for a retirement annuity under section 352.115, subdivision 1, and who retires prior to age 62 with credit for at least 30 years of allowable service shall be paid the normal retirement annuity provided in section 352.115, subdivisions 2 and 3, paragraph (a), reduced by one-quarter of one percent for each month that the employee is under age 62 at the time of retirement.

(b) Any person whose attained age plus credited allowable service totals 90 years is entitled, upon application, to a retirement annuity in an amount equal to the normal annuity provided in section 352.115, subdivisions 2 and 3, paragraph (a), without any reduction by reason of early retirement.

Subd. 1a. Actuarial reduction for early retirement. This subdivision applies to a person who has become at least 55 years old and first became a covered employee after June 30, 1989, and to any other covered employee who has become at least 55 years old and whose annuity is higher when calculated under section 352.115, subdivision 3, paragraph (b), in conjunction with this subdivision than when calculated under section 352.115, subdivision 3, paragraph (a), in conjunction with subdivision 1. A covered employee who retires before the normal retirement age shall be paid the normal retirement annuity provided in section 352.115, subdivisions 2 and 3, paragraph (b), reduced so that the reduced annuity is the actuarial equivalent of the annuity that would be payable to the employee if the employee deferred receipt of the annuity and the annuity amount were augmented at an annual rate of three percent compounded annually from the day the annuity begins to accrue until the normal retirement age.

Subd. 2. Normal annuity at normal retirement age. Any employee who retires after reaching normal retirement age shall be paid the annuity provided in section 352.115.

Subd. 3. Optional annuities. The board shall establish an optional retirement annuity in the form of a joint and survivor annuity. The board may also establish an optional annuity in the form of an annuity payable for a period certain and for life thereafter. In addition, the board may also establish an optional annuity that takes the form of an annuity calculated on the basis of the age of the retired employee at retirement and payable for the period before the retired employee becomes eligible for social security old age retirement benefits in a greater amount than the amount of the annuity calculated under subdivision 2 on the basis of the age of the retired employee at retirement. For each year that the retiring employee is under age 62, up to five percent of the total single life annuity required reserves may be used to accelerate the optional retirement annuity. This greater amount shall be paid until the end of the month in which the retired employee reaches age 62, at which time the annuity shall be reduced. Except as provided in subdivision 3a, the optional forms must be actuarially equivalent to the normal single life annuity forms provided in sections 352.115 and 352.116, whichever applies.

Subd. 3a. Bounce-back annuity. (a) If a retired employee or disabilitant selects a joint and survivor annuity option under subdivision 3, the retired employee or disabili-

tant must receive a normal single-life annuity if the designated optional annuity beneficiary dies before the retired employee or disabilitant. Under this option, no reduction may be made in the annuity to provide for restoration of the normal single-life annuity in the event of the death of the designated optional annuity beneficiary.

(b) A retired employee or disabilitant who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single-life annuity is payable to the retired employee or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single-life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A retired employee or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single-life annuity after that date, but shall not receive retroactive payments for periods before that date.

(c) A retired employee or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the retired employee or disabilitant if the designated optional beneficiary died before July 1, 1989, shall have the annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.

Subd. 3b. Bounce-back annuity. (a) The board of trustees must provide a joint and survivor annuity option to members of the correctional employees and state patrol retirement funds. Under this option, a former member or disabilitant must receive a normal single life annuity if the designated optional annuity beneficiary dies before the former member or disabilitant. Under this option, no reduction may be made in the person's annuity to provide for restoration of the normal single life annuity in the event of the death of the designated optional annuity beneficiary.

(b) A former member or disabilitant of the correctional or state patrol fund who selected an optional joint and survivor annuity before July 1, 1989, but did not choose an option that provides that the normal single life annuity is payable to the former member or the disabilitant if the designated optional annuity beneficiary dies first, is eligible for restoration of the normal single life annuity if the designated optional annuity beneficiary dies first, without further actuarial reduction of the person's annuity. A former member or disabilitant who selected an optional joint and survivor annuity, but whose designated optional annuity beneficiary died before July 1, 1989, shall receive a normal single life annuity after that date, but shall not receive retroactive payments for periods before that date.

(c) A former member or disabilitant who took a further actuarial reduction to elect an optional joint and survivor annuity that provides that the normal annuity is payable to the former member or disabilitant if the designated optional beneficiary died before July 1, 1989, shall have their annuity increased as of July 1, 1989, to the amount the person would have received if, at the time of retirement or disability, the person had selected only optional survivor coverage that would not have provided for restoration of the normal annuity upon the death of the designated optional annuity beneficiary. Any annuity or benefit increase under this paragraph is effective only for payments made after June 30, 1989, and is not retroactive for payments made before July 1, 1989.

Subd. 3c. Effective date of bounce-back annuity. In the event of the death of the designated optional annuity beneficiary before the retired employee or disabilitant, the restoration of the normal single life annuity under subdivision 3a or 3b will take effect as of the first of the month following the date of death of the designated optional annuity beneficiary or on the first of the month following one year before the date on which a certified copy of the death certificate of the designated optional annuity beneficiary is received in the office of the Minnesota state retirement system, whichever date is later.

Subd. 4. Determining actuarial equivalency. In establishing the procedure for determining the actuarial equivalency of early retirement annuities as required under subdivision 1a or in establishing actuarial equivalent optional retirement annuity forms as required under subdivision 3, the board shall obtain the written recommendation of the commission-retained actuary. The recommendations shall be a part of the permanent records of the board.

History: 1957 c 928 s 10; Ex1959 c 6 s 11; Ex1961 c 67 s 11; 1963 c 383 s 33-35; Ex1967 c 57 s 17; 1969 c 37 s 1; 1971 c 274 s 1; 1973 c 653 s 31; 1978 c 781 s 1; 1980 c 509 s 130; 1981 c 224 s 49; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 259 s 14-16; 1989 c 319 art 1 s 6; art 13 s 10; art 17 s 1; 1990 c 570 art 12 s 7-9

352.117 Subdivision 1. [Repealed, 1963 c 383 s 59]

Subd. 2. [Repealed, 1963 c 383 s 59]

Subd. 3. [Repealed, 1959 c 162 s 3]

352.118 [Repealed, 1983 c 128 s 36]

352.1181 [Repealed, 1981 c 224 s 276]

352.119 PARTICIPATION IN POSTRETIREMENT INVESTMENT FUND.

Subdivision 1. Adjustable fixed benefit annuity. Adjustable fixed benefit annuity means the payments made from the participation in the fund to an annuitant after retirement in accordance with this section. It also means that the payments made to the persons receiving benefits must never be less than the amount originally determined on the date of retirement or on July 1, 1969, whichever is later, but not including the supplemental benefit provided for in section 352.73.

Subd. 2. Valuation of assets; adjustment of benefits. (a) The required reserves for retirement annuities or disability benefits under this chapter as determined in accordance with the appropriate mortality table adopted by the board of directors based on experience of the fund as recommended by the commission-retained actuary and using the interest assumption specified in section 356.215, subdivision 4d must be transferred to the Minnesota postretirement investment fund as of the last business day of the month in which the retirement annuity or disability benefit begins.

(b) Annuity and benefit payments must be adjusted in accordance with section 11A.18.

Subd. 3. Increases made automatically. Notwithstanding section 356.18, increases in benefit payments under this section will be made automatically unless the intended recipient files written notice with the system requesting that the increase not be made.

History: 1969 c 893 s 9; 1971 c 12 s 5; 1971 c 414 s 7; 1973 c 653 s 33; 1980 c 607 art 14 s 45 subd 2; s 46; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 259 s 17

352.1191 [Repealed, 1983 c 128 s 36]

352.12 REFUND AFTER DEATH.

Subdivision 1. Death before termination of service. If an employee dies before state service has terminated and neither a survivor annuity nor a reversionary annuity is payable, or if a former employee who has sufficient service credit to be entitled to an annuity dies before the benefit has become payable, the director shall make a refund to the last designated beneficiary or, if there is none, to the surviving spouse or, if none, to the employee's surviving children in equal shares or, if none, to the employee's surviving parents in equal shares or, if none, to the representative of the estate in an amount equal to the accumulated employee contributions plus interest thereon to the date of death at the rate of six percent per annum compounded annually. Upon the death of an employee who has received a refund that was later repaid in full, interest must be paid on the repaid refund only from the date of repayment. If the repayment was made in installments, interest must be paid only from the date installment payments began. The designated beneficiary, surviving spouse, or representative of the estate of an

employee who had received a disability benefit is not entitled to interest upon any balance remaining to the decedent's credit in the fund at the time of death.

Subd. 2. Surviving spouse benefit. If an employee or former employee is at least 50 years old and has credit for at least three years allowable service or who has credit for at least 30 years of allowable service, regardless of age, dies before an annuity or disability benefit has become payable, notwithstanding any designation of beneficiary to the contrary, the surviving spouse of the employee may elect to receive, in lieu of the refund with interest provided in subdivision 1, an annuity equal to the joint and 100 percent survivor annuity which the employee could have qualified for had the employee terminated service on the date of death. The surviving spouse may apply for the annuity at any time after the date on which the deceased employee would have attained the required age for retirement based on the employee's allowable service. The annuity must be computed as provided in sections 352.115, subdivisions 1, 2, and 3, and 352.116, subdivisions 1, 1a, and 3. Sections 352.22, subdivision 3, and 352.72, subdivision 2, apply to a deferred annuity payable under this subdivision. The annuity must cease with the last payment received by the surviving spouse in the lifetime of the surviving spouse. An amount equal to the excess, if any, of the accumulated contributions credited to the account of the deceased employee in excess of the total of the benefits paid and payable to the surviving spouse must be paid to the deceased employee's last designated beneficiary or, if none, to the surviving children of the deceased spouse in equal shares or, if none, to the surviving parents of the deceased spouse or, if none, to the representative of the estate of the deceased spouse. Any employee may request in writing that this subdivision not apply and that payment be made only to a designated beneficiary as otherwise provided by this chapter.

Subd. 3. Refund of \$1,500 or less. If a state employee or former state employee dies without having designated a beneficiary, or if the beneficiary should die before applying for refund of the sum to the credit of the deceased employee or former employee, and there is no surviving spouse, and the amount of the refund does not exceed \$1,500 exclusive of interest, the director may refund the amount to the deceased or former employee's next of kin. The amount may be refunded 90 days after the date of death of the employee or former employee in the absence of probate proceedings, and upon proper application. The next of kin must be determined by the director with the concurrence of the board, to be entitled to the refund consistent with the laws of descent. A determination and payment without notice are conclusive and final and are a bar against claims of all other persons.

Subd. 4. Refund to minor beneficiary. If an employee or former employee dies having named as a beneficiary a person who is a minor at the time of the application for refund, and the amount of the refund does not exceed \$1,500, exclusive of interest, the director in the absence of guardianship or probate proceedings may make payment to the natural guardian having custody of the minor beneficiary, for the benefit of the child. Any annuity, retirement allowance, or disability benefit accrued at the time of death of a disabled or retired employee, payable to a minor beneficiary, may similarly be paid. Payment is a bar to recovery by any other person or persons.

Subd. 5. Monthly installments. The beneficiary or surviving spouse of any deceased employee or former employee entitled to receive a refund has the option of having the amount due paid in monthly installments in amounts agreed upon with the director.

Subd. 6. Death after service termination. Except as provided in subdivision 1, if a former employee covered by the system dies and has not received an annuity, a retirement allowance, or a disability benefit, a refund must be made to the last designated beneficiary or, if there is none, to the surviving spouse or, if none, to the employee's surviving children in equal shares or, if none, to the employee's surviving parents in equal shares or, if none, to the representative of the estate in an amount equal to accumulated employee contributions. The refund must include interest at the rate of six percent per year compounded annually. The interest must be computed to the first day of the month in which the refund is processed and be based on fiscal year balances.

Subd. 7. **Absence of optional or reversionary annuity.** Upon the death of a retired employee who selected neither an optional annuity or a reversionary annuity, a refund must be paid in an amount equal to the excess, if any, of the accumulated contributions to the credit of the retired employee immediately before retirement in excess of the sum of (1) all annuities, retirement allowances, and disability benefits that had been received and had accrued in the lifetime of the decedent, and (2) the annuity, retirement allowance, or disability benefit if applicable, payable to the surviving spouse under section 352.115, subdivision 8, or 352.113, subdivision 4, for the calendar month in which the retired employee died. The refund must be paid to the named beneficiary or, if there be none, to the surviving spouse or, if none, to the employee's surviving children in equal shares or, if none, to the employee's surviving parents in equal shares or, if none, to the representative of the estate.

Subd. 8. MS 1961 [Repealed, 1963 c 383 s 59]

Subd. 8. **Optional or reversionary annuity.** If the last eligible recipient of an optional annuity dies and the total amounts paid under it are less than the accumulated contributions to the credit of the retired employee immediately before retirement, the balance of accumulated contributions must be paid to the person designated by the retired employee in writing to receive payment. If no designation has been made by the retired employee, the remaining balance of accumulated contributions must be paid to the surviving children of the deceased recipient of the optional annuity in equal shares. If there are no surviving children, payment must be made to the deceased recipient's parents or, if none, to the representative of the deceased recipient's estate.

Subd. 9. **Beneficiary designation.** The designation of a beneficiary or person to receive any accumulated contributions remaining to the credit of an employee, a former employee, or a retired employee, at the time of death, as provided in this section, must be in writing and must be filed with the director before the death of the employee, former employee, or retired employee.

Subd. 10. **Death of beneficiary before refund.** If the last designated beneficiary or beneficiaries and the surviving spouse of a (1) deceased employee, (2) former employee, or (3) retired employee, dies before receiving a refund of the sum to the credit of the deceased employee, former employee, or retired employee at the time of death, the refund must be made to the estate of the deceased employee or as provided in subdivision 3 if the amount of the refund does not exceed \$1,500 exclusive of interest.

Subd. 11. **Death of disability annuitant.** If an employee who has received a disability benefit dies, a payment must be made of an amount equal to the excess, if any, of the accumulated contributions to the credit of the employee at the time the disability benefit began to accrue over and above the aggregate of (1) all disability benefits received and which had accrued during life, and (2) the benefit for the month in which the disabled employee died, payable, if applicable, to the surviving spouse under section 352.113, subdivision 4. The payment must be paid to the last designated beneficiary or, if there be none, to the surviving spouse, or if none, to the employee's surviving children in equal shares or, if none, to the employee's surviving parents in equal shares or, if none, to the representative of the estate.

Subd. 12. **Refund, failure to request.** If the last designated beneficiary, surviving spouse, legal representative, or next of kin, as determined by the director with the concurrence of the board, fails to claim the refund as provided in this section (1) within five years from the date of death of a retired employee or disabled employee, or (2) within five years after the last deduction was taken from the salary of a deceased employee or deceased former employee, the accumulated contributions of the deceased employee, former employee, retired employee, or disabled employee must be credited to the retirement fund. However, if claim to refund is made within ten years after the transfer of accumulated contributions to the fund or within ten years after the date of death, whichever is later, and the amount transferred to the fund is over \$25, the sum must be restored to the account of the deceased employee, former employee, retired employee, or disabled employee. The refund must then be made to the surviving spouse or, if none, to the legal representative of the estate irrespective of any designation of

beneficiary made by the deceased employee, former employee, retired employee, or disabled employee.

Subd. 13. **Refund, beneficiary.** If upon death a former employee has in possession a commissioner of finance's warrant which does not exceed \$500 covering a refund of accumulated contributions in the retirement fund, in the absence of probate proceedings the commissioner of finance's warrant may be returned for cancellation, and then upon application made by the last designated beneficiary of the deceased former employee, refund of the accumulated contributions must be paid to the last designated beneficiary. Payments made under this subdivision are a bar to recovery by any other person or persons.

History: (254-11) 1929 c 191 s 14; 1933 c 326 s 1; 1935 c 238 s 12; 1941 c 391 s 11; 1947 c 631 s 15; 1949 c 644 s 15; 1951 c 441 s 22-24; 1957 c 928 s 12; 1959 c 162 s 1,2; 1963 c 383 s 36-45; 1965 c 230 s 7-9; Ex1967 c 57 s 18; 1969 c 188 s 1; 1969 c 893 s 10; 1971 c 12 s 6; 1971 c 194 s 3,4; 1973 c 221 s 5-7; 1973 c 492 s 14; 1975 c 368 s 24-29; 1981 c 224 s 50; 1983 c 128 s 9-11; 1984 c 564 s 10,11; 1986 c 444; 1986 c 458 s 4; 1987 c 229 art 6 s 1; 1987 c 284 art 4 s 1; 1987 c 372 art 9 s 3; 1989 c 319 art 13 s 11-13

352.13 [Repealed, 1963 c 383 s 59]

352.14 [Repealed, 1963 c 383 s 59]

352.15 EXEMPTION FROM PROCESS AND TAXATION.

Subdivision 1. **Exemption; exceptions.** None of the money, annuities, or other benefits mentioned in this chapter is assignable either in law or in equity or subject to state estate tax, or to execution, levy, attachment, garnishment, or other legal process, except as provided in subdivision 1a or section 518.58, 518.581, or 518.611.

Subd. 1a. **Automatic deposits.** The executive director may pay an annuity, benefit, or refund to a banking institution, qualified under chapter 48, that is trustee for a person eligible to receive the annuity, benefit, or refund. Upon the request of a retired, disabled, or former employee, the executive director may mail the annuity, benefit, or refund check to a banking institution, savings association, or credit union for deposit to the employee's account or joint account with a spouse. The board of directors may prescribe the conditions under which payments will be made.

Subd. 2. **Correcting overpayments.** Upon certification to the director by the commissioner of finance or the regents of the University of Minnesota or the head of any other department or agency responsible for the processing of its payrolls, the director shall release part or all of any money held for an employee in a retirement fund to correct a salary overpayment to an employee who has been erroneously paid. The director shall not release the money until the former employee or person otherwise entitled to it would be eligible to apply for a refund and has been given proper notice. Amounts paid under this subdivision shall be the equivalent of a refund. If an employee or survivor is entitled to an immediate or deferred annuity or survivor benefit, no funds shall be paid from a retirement account under this provision. The director shall prescribe the form and manner of certification.

History: (254-17) 1929 c 191 s 17; 1931 c 351; 1933 c 326; 1935 c 238 s 15; 1941 c 391 s 14; Ex1959 c 6 s 21; 1971 c 789 s 4; 1975 c 368 s 30; 1979 c 303 art 3 s 28; 1983 c 128 s 12; 1984 c 547 s 4; 1986 c 444; 1987 c 157 s 2; 1987 c 229 art 6 s 1

352.16 INSURANCE LAWS NOT TO APPLY.

None of the laws of this state regulating insurance or insurance companies apply to the Minnesota state retirement system or any of its funds.

History: (254-18) 1929 c 191 s 18; 1933 c 326; 1935 c 238 s 16; 1941 c 391 s 15; Ex1967 c 57 s 19; 1987 c 229 art 6 s 1

352.17 [Repealed, 1963 c 383 s 59]

352.18 [Repealed, 1963 c 383 s 59]

352.22 REFUND OR DEFERRED ANNUITIES.

Subdivision 1. **Service termination.** Any employee who ceases to be a state employee by reason of termination of state service or layoff is entitled to a refund provided in subdivision 2 or a deferred retirement annuity as provided in subdivision 3. Application for a refund may be made 30 or more days after the termination of state service or layoff if the applicant has not again become a state employee required to be covered by the system.

Subd. 2. **Amount of refund.** Except as provided in subdivision 3, any person who ceased to be a state employee after June 30, 1973, by reason of termination of state service shall receive a refund in an amount equal to employee accumulated contributions plus interest at the rate of six percent per year compounded annually. Interest must be computed to the first day of the month in which the refund is processed and must be based on fiscal year balances.

Subd. 2a. **Certain refund repayments prohibited.** No refunds of contributions made to the metropolitan transit commission-transit operating division employees retirement fund received before July 1, 1978, or for service rendered before July 1, 1978, may be repaid.

Subd. 3. **Deferred annuity.** (a) Any employee with at least three years of allowable service when termination occurs may elect to leave the accumulated contributions in the fund and thereby be entitled to a deferred retirement annuity. This annuity must be computed as provided by the law in effect when state service terminated, on the basis of allowable service before termination of service.

(b) An employee on layoff or on leave of absence without pay, except a leave of absence for health reasons, who does not return to state service shall have any annuity, deferred annuity, or other benefit to which the employee may become entitled computed under the law in effect on the last working day.

(c) No application for a deferred annuity shall be made more than 60 days before the time the former employee reaches the required age for entitlement to the payment of the annuity. The deferred annuity shall begin to accrue no earlier than 60 days before the date the application is filed in the office of the system, but not (1) before the date the employee reaches the required age for entitlement to the annuity nor (2) before the day following the termination of state service in a position not covered by the retirement system nor (3) before the day following the termination of employment in a position that requires the employee to be a member of either the public employees retirement association or the teachers retirement association.

(d) Application for the accumulated contributions left on deposit with the fund may be made at any time after 30 days following the date of termination of service.

Subd. 4. [Repealed, 1983 c 128 s 36]

Subd. 5. **Refund generally unlimited.** The right of refund provided in this section is not restricted as to time unless specifically provided and the statute of limitation does not apply to it.

Subd. 6. [Repealed, 1965 c 230 s 18]

Subd. 7. [Repealed, Ex1967 c 57 so 20]

Subd. 8. **Refund specifically limited.** If a former employee covered by the system does not apply for refund within five years after the last deduction was taken from salary for the retirement fund, and does not have enough service to qualify for a deferred annuity, accumulated contributions must be credited to and become a part of the retirement fund. If the former employee returns to state service and becomes a state employee covered by the system, the amount credited to the retirement fund, if more than \$2, shall be restored to the individual account. If the amount credited to the fund is over \$2 and the former employee applies for refund or an annuity under section 352.72, the amount must be restored to the former employee's individual account and refund made or annuity paid whichever applies.

Subd. 9. **Refund for persons committed to state hospitals.** While a former employee is under commitment as an inmate of a state hospital under the jurisdiction of the com-

missioner of human services, or of a similar public authority if the former employee is an inmate of a state hospital of another state, and if the inmate is entitled to a refund of accumulated employee contributions in the retirement fund in an amount not to exceed \$300, refund of accumulated contributions may be made, upon appropriate application to the superintendent of the state hospital of this state, or similar public authority of another state if authorized to do so by the laws of that state. The refund is a bar to recovery by any other person or persons.

Subd. 10. Other refunds. Former employees covered by the system are entitled to apply for refunds if they are or become members of the state patrol retirement fund, the state teacher's retirement association, or employees of the University of Minnesota excluded from coverage under the system by action of the board of regents; or labor service employees, excluded from coverage under section 352.01, subdivision 2b, clause (26); or employees of the adjutant general who under federal law effectually elect membership in a federal retirement system; or officers or employees of the senate or house of representatives, excluded from coverage under section 352.01, subdivision 2b, clause (8). The refunds must include accumulated contributions plus interest as provided in subdivision 2. These employees may apply 30 days or more after their coverage ceases, even if they continue in state service but in positions not covered by this chapter.

Subd. 11. [Repealed, 1980 c 342 s 21]

History: 1957 c 928 s 14; Ex1959 c 6 s 14,15; Ex1961 c 67 s 13,14; 1963 c 383 s 46-52; 1965 c 230 s 10-13; Ex1967 c 57 s 20; 1969 c 31 s 1; 1969 c 188 s 2; 1969 c 893 s 11; 1971 c 12 s 7,8; 1971 c 194 s 5; 1973 c 221 s 8; 1973 c 653 s 35,36; 1975 c 368 s 31,32; 1978 c 538 s 5; 1980 c 342 s 4,5; 1981 c 37 s 2; 1981 c 224 s 51-53; 1Sp1981 c 4 art 1 s 163; 1983 c 128 s 13; 1984 c 564 s 12; 1984 c 654 art 5 s 58; 1Sp1985 c 7 s 6; 1986 c 444; 1987 c 229 art 6 s 1; 1987 c 372 art 9 s 4; 1989 c 319 art 1 s 7,8; art 13 s 14,15

352.23 TERMINATION OF RIGHTS.

When any employee accepts a refund as provided in section 352.22, all existing service credits and all rights and benefits to which the employee was entitled before accepting the refund terminate. They must not again be restored until the former employee acquires at least one year's allowable service credit after taking the last refund. In that event, the employee may repay all refunds previously taken from the retirement fund. Repayment of refunds entitles the employee only to credit for service covered by (1) salary deductions, (2) payments made in lieu of salary deductions, and (3) payments made to obtain credit for service as permitted by laws in effect when payment was made. If an employee before taking one or more refunds had credit for prior service or for military service without payment in either case, the employee may obtain credit for any forfeited service before July 1, 1929, and for any forfeited military service by making payments at a contribution rate of three percent of the average salary upon which deductions for the retirement fund were based, for the three-year period immediately preceding repayment of refund for service credit before July 1, 1929, and on the salary received at the time of entering military service to restore military service credit. Payments and repayment of refunds are to be paid with interest at six percent per year compounded annually. They may be paid in a lump sum or by payroll deduction in the manner provided in section 352.04.

History: 1957 c 928 s 15; Ex1959 c 6 s 22; 1965 c 230 s 14; Ex1967 c 57 s 21; 1969 c 1083 s 1; 1973 c 653 s 37; 1980 c 607 art 14 s 34; 1986 c 444; 1987 c 229 art 6 s 1

352.24 [Repealed, 1963 c 383 s 59]

352.241 [Repealed, 1963 c 383 s 59]

352.25 [Repealed, 1963 c 383 s 59]

352.26 [Repealed, 1963 c 383 s 59]

352.27 CREDIT FOR MILITARY SERVICE.

Any employee given a leave of absence to enter military service who returns to state service upon discharge from military service as provided in section 192.262, may obtain credit for the period of military service. The employee is not entitled to credit for any voluntary extension of military service at the instance of the employee beyond the initial period of enlistment, induction, or call to active duty, nor to credit for any period of service following a voluntary return to military service. An employee may obtain credit by paying into the fund an employee contribution based upon the salary received at the date of return from military service. The amount of this contribution must be the applicable amounts required in section 352.04, subdivision 2, plus interest at six percent per year compounded annually. The matching employer contribution and additional contribution provided in section 352.04 must be paid by the department employing the employee upon return to state service from funds available to the department at the time and in the manner provided in section 352.04.

History: 1957 c 928 s 20; Ex1959 c 6 s 25; 1963 c 383 s 53; 1965 c 230 s 15; Ex1967 c 57 s 22; 1969 c 188 s 3; 1973 c 653 s 38; 1986 c 444; 1987 c 229 art 6 s 1

352.271 METROPOLITAN TRANSIT COMMISSION-TRANSIT OPERATING DIVISION EMPLOYEES; CREDIT FOR MILITARY SERVICE.

Any employee of the metropolitan transit commission operating division who was on a leave of absence to enter military service on July 1, 1978, who has not taken a refund of employee contributions as authorized by article 12 of the metropolitan transit commission-transit operating division employees retirement fund document or section 352.22, subdivision 2a, and who returns to service as an employee of the metropolitan transit commission-transit operating division upon discharge from military service as provided in section 192.262 is entitled to allowable service credit for the period of military service. If an employee has taken a refund of employee contributions, and would otherwise be entitled to allowable service credit under this section, the employee is entitled to allowable service credit for the period of military service upon repayment to the executive director of the system of the amount refunded plus interest at the rate of six percent per year compounded annually from the date on which the refund was taken to the date of repayment. No employee is entitled to allowable service credit for any voluntary extensions of military service at the instance of the employee beyond any initial period of enlistment, induction, or call to active duty.

History: 1980 c 342 s 19; 1987 c 229 art 6 s 1

352.28 Subdivision 1. [Repealed, 1975 c 368 s 51]

Subd. 2. [Repealed, 1975 c 368 s 51]

Subd. 3. [Repealed, Ex1967 c 57 s 29]

Subd. 4. [Repealed, 1975 c 368 s 51]

Subd. 5. [Repealed, 1963 c 383 s 59]

Subd. 6. [Repealed, 1963 c 383 s 59]

Subd. 7. [Repealed, 1975 c 368 s 51]

Subd. 8. [Repealed, 1975 c 368 s 51]

352.29 [Repealed, 1963 c 383 s 59]

352.30 [Repealed, Ex1959 c 6 s 34]

352.31 [Repealed, 1963 c 383 s 59]

352.32 [Repealed, 1975 c 368 s 51]

352.33 [Repealed, 1963 c 383 s 59]

352.34 [Repealed, 1963 c 383 s 59]

352.35 [Repealed, 1963 c 383 s 59]

352.36 [Repealed, 1963 c 383 s 59]

352.37 [Repealed, 1963 c 383 s 59]

352.38 Subdivision 1. [Repealed, 1975 c 368 s 51]

Subd. 2. [Repealed, 1963 c 383 s 59]

Subd. 3. [Repealed, 1975 c 368 s 51]

352.61 [Repealed, 1963 c 383 s 59]

352.62 Subdivision 1. [Repealed, 1963 c 383 s 59]

Subd. 2. [Repealed, 1963 c 383 s 59]

Subd. 3. [Repealed, Ex1961 c 67 s 23]

352.63 [Repealed, 1963 c 383 s 59]

352.64 [Repealed, 1963 c 383 s 59]

352.65 [Repealed, 1963 c 383 s 59]

352.651 [Repealed, 1963 c 383 s 59]

352.66 Subdivision 1. [Repealed, 1959 c 162 s 3]

Subd. 2. [Repealed, 1959 c 162 s 3]

Subd. 3. [Repealed, 1963 c 383 s 59]

352.67 [Repealed, 1963 c 383 s 59]

352.68 [Repealed, 1963 c 383 s 59]

352.69 [Repealed, 1963 c 383 s 59]

352.71 [Repealed, 1983 c 128 s 36]

352.715 [Repealed, 1975 c 368 s 51]

352.72 COVERAGE BY MORE THAN ONE RETIREMENT SYSTEM.

Subdivision 1. **Entitlement to annuity.** (a) Any person who has been an employee covered by a retirement system listed in paragraph (b) is entitled when qualified to an annuity from each fund if total allowable service in all funds or in any two of these funds totals three or more years.

(b) This section applies to the Minnesota state retirement system, the public employees retirement association including the public employees retirement association police and fire fund, the teachers retirement association, the state patrol retirement association, or any other public employee retirement system in the state with a similar provision, except as noted in paragraph (c).

(c) This section does not apply to other funds providing benefits for police officers or firefighters.

(d) No portion of the allowable service upon which the retirement annuity from one fund is based shall be again used in the computation for benefits from another fund. No refund may have been taken from any one of these funds since service entitling the employee to coverage under the system or the employee's membership in any of the associations last terminated. The annuity from each fund must be determined by the appropriate provisions of the law except that the requirement that a person must have at least three years allowable service in the respective system or association does not apply for the purposes of this section if the combined service in two or more of these funds equals three or more years.

Subd. 2. **Computation of deferred annuity.** The deferred annuity, if any, accruing under subdivision 1, or section 352.22, subdivision 3, must be computed as provided in section 352.22, subdivision 3, on the basis of allowable service before termination of state service and augmented as provided herein. The required reserves applicable to a deferred annuity or to an annuity for which a former employee was eligible but had not applied or to any deferred segment of an annuity must be determined as of the date the benefit begins to accrue and augmented by interest compounded annually from the first day of the month following the month in which the employee ceased to be a state employee, or July 1, 1971, whichever is later, to the first day of the month in which the annuity begins to accrue. The rates of interest used for this purpose must be five percent compounded annually until January 1, 1981, and three percent compounded annually thereafter until January 1 of the year following the year in which the former employee

attains age 55. From that date to the effective date of retirement, the rate is five percent compounded annually. If a person has more than one period of uninterrupted service, the required reserves related to each period must be augmented by interest under this subdivision. The sum of the augmented required reserves so determined is the present value of the annuity. "Uninterrupted service" for the purpose of this subdivision means periods of covered employment during which the employee has not been separated from state service for more than two years. If a person repays a refund, the service restored by the repayment must be considered continuous with the next period of service for which the employee has credit with this system. The formula percentages used for each period of uninterrupted service must be those applicable to a new employee. The mortality table and interest assumption used to compute the annuity must be those in effect when the employee files application for annuity. This section shall not reduce the annuity otherwise payable under this chapter.

Subd. 3. [Repealed, 1971 c 274 s 4]

Subd. 4. **Refund repayment.** Any person who has received a refund from the state employees retirement fund, and who is a member of a public retirement system included in subdivision 1, may repay the refund with interest to the state employees retirement fund. If a refund is repaid to the fund and more than one refund has been received from the fund, all refunds must be repaid. Repayment must be made as provided in section 352.23, and under terms and conditions consistent with that section as agreed upon with the director.

Subd. 5. **Early retirement.** The requirements and provisions for retirement before normal retirement age in sections 352.115, subdivision 1, and 352.116 also apply to an employee fulfilling the requirements with a combination of service as provided in subdivision 1.

History: *Ex1961 c 67 s 22; 1963 c 383 s 57; 1965 c 230 s 17; Ex1967 c 57 s 28; 1969 c 188 s 4; 1971 c 274 s 2,3; 1973 c 221 s 9,10; 1975 c 368 s 33,34; 1977 c 429 s 63; 1978 c 796 s 10; 1981 c 37 s 2; 1981 c 224 s 54,55; 1986 c 444; 1987 c 229 art 6 s 1; 1987 c 372 art 9 s 5; 1989 c 319 art 13 s 16-18; 1990 c 426 art 1 s 42*

NOTE: See also sections 353.71 and 354.60.

352.73 SUPPLEMENTAL BENEFIT FOR FORMER STATE EMPLOYEES.

Subdivision 1. **Eligibility; amount.** Any person who on June 30, 1963, was receiving from the state employees retirement fund an annuity or retirement allowance based upon at least 20 years allowable service, who is receiving the annuity or retirement allowance on June 30, 1967, and

(1) who did not have social security coverage as a state employee shall receive on and after July 1, 1967, the following supplemental benefit: \$18 a month, or

(2) who had social security coverage as a state employee and who was eligible to receive either an immediate social security benefit or who would become eligible to receive a social security benefit based in whole or in part upon social security coverage as a state employee shall receive on and after July 1, 1967, a supplemental benefit of \$10 a month.

Subd. 1a. **Payment added.** The supplemental benefit payable under subdivision 1 is to be added to and considered a portion of the annuity otherwise payable to the recipient.

Subd. 2. **Purpose; administration.** The supplemental benefit payable under subdivision 1 must not be paid to any person receiving, or who may become eligible to receive, a survivor benefit pursuant to the employee's election of an optional annuity or a reversionary annuity. A supplemental benefit must not be paid to any person receiving a survivor benefit under Minnesota Statutes 1957, section 352.117, subdivisions 1 and 2, as amended, or to any employee receiving a disability benefit. A supplemental payment must be paid to a surviving spouse receiving payment as provided in section 352.115, subdivision 8.

Subd. 3. [Repealed, 1989 c 319 art 1 s 17]

Subd. 4. [Repealed, 1980 c 614 s 191]

History: 1967 c 714 s 1,2; 1969 c 293 s 1; 1980 c 614 s 137; 1986 c 444; 1987 c 229 art 6 s 1; 1990 c 570 art 12 s 10

352.75 TRANSFER OF PENSION COVERAGE SAVINGS CLAUSE; INCREASE IN EXISTING ANNUITIES AND BENEFITS.

Subdivision 1. Existing employees. Notwithstanding any law to the contrary, as of July 1, 1978, all active employees of the transit operating division of the metropolitan transit commission and all employees on authorized leaves of absence from the transit operating division who are employed on July 1, 1978, by a labor organization which is the exclusive bargaining agent representing employees of the transit operating division shall cease to be members of the metropolitan transit commission-transit operating employees retirement fund and shall cease to have any accrual of service credit, rights, or benefits under that retirement fund. After July 1, 1978, those employees become members of the Minnesota state retirement system, are considered state employees for purposes of this chapter, unless specifically excluded by section 352.01, subdivision 2b, and shall have past service with the transit operating division of the metropolitan transit commission credited by the Minnesota state retirement system in accordance with section 352.01, subdivision 11, clause (10). Any employees on authorized leaves of absence from the transit operating division of the metropolitan transit commission who become employed by the labor organization which is the exclusive bargaining agent representing employees of the transit operating division after July 1, 1978, shall be entitled to be members of the Minnesota state retirement system under section 352.029.

Subd. 2. New employees. All persons first employed by the metropolitan transit commission as employees of the transit operating division on or after July 1, 1978, are members of the Minnesota state retirement system and are considered state employees for purposes of this chapter unless specifically excluded under section 352.01, subdivision 2b.

Subd. 3. Existing retired members and benefit recipients. As of July 1, 1978, the liability for all retirement annuities, disability benefits, survivorship annuities, and survivor of deceased active employee benefits paid or payable by the metropolitan transit commission-transit operating division employees retirement fund is transferred to the Minnesota state retirement system, and is no longer the liability of the metropolitan transit commission-transit operating division employees retirement fund. The required reserves for retirement annuities, disability benefits, and optional joint and survivor annuities in effect on June 30, 1978, and the required reserves for the increase in annuities and benefits provided under subdivision 6 must be determined using a five percent interest assumption and the applicable Minnesota state retirement system mortality table and shall be transferred by the Minnesota state retirement system to the Minnesota postretirement investment fund on July 1, 1978, but shall be considered transferred as of June 30, 1978. The annuity or benefit amount in effect on July 1, 1978, including the increase granted under subdivision 6, must be used for adjustments made under section 11A.18. For persons receiving benefits as survivors of deceased former retirement annuitants, the benefits must be considered as having commenced on the date on which the retirement annuitant began receiving the retirement annuity.

Subd. 4. Existing deferred retirees. Any former member of the metropolitan transit commission-transit operating division employees retirement fund is entitled to a retirement annuity from the Minnesota state retirement system if the employee:

(1) is not an active employee of the transit operating division of the metropolitan transit commission on July 1, 1978; (2) has at least ten years of active continuous service with the transit operating division of the metropolitan transit commission as defined by the metropolitan transit commission-transit operating division employees retirement plan document in effect on December 31, 1977; (3) has not received a refund of contributions; (4) has not retired or begun receiving an annuity or benefit from the metropolitan transit commission-transit operating division employees retirement fund;

(5) is at least 55 years old; and (6) submits a valid application for a retirement annuity to the executive director of the Minnesota state retirement system.

The person is entitled to a retirement annuity in an amount equal to the normal old age retirement allowance calculated under the metropolitan transit commission-transit operating division employees retirement fund plan document in effect on December 31, 1977, subject to an early retirement reduction or adjustment in amount on account of retirement before the normal retirement age specified in that metropolitan transit commission-transit operating division employees retirement fund plan document.

The deferred retirement annuity of any person to whom this subdivision applies must be augmented. The required reserves applicable to the deferred retirement annuity, determined as of the date the allowance begins to accrue using an appropriate mortality table and an interest assumption of five percent, must be augmented by interest at the rate of five percent per year compounded annually from January 1, 1978, to January 1, 1981, and three percent per year compounded annually from January 1, 1981, to the first day of the month in which the annuity begins to accrue. Upon the commencement of the retirement annuity, the required reserves for the annuity must be transferred to the Minnesota postretirement investment fund in accordance with subdivision 2 and section 352.119. On applying for a retirement annuity under this subdivision, the person is entitled to elect a joint and survivor optional annuity under section 352.116, subdivision 3.

Subd. 5. Savings clause for certain existing employees. Any person who is a member of the metropolitan transit commission-transit operating division employees retirement fund on July 1, 1978, is entitled to retain past and prospective rights under the retirement benefit formula, normal retirement age, and early reduced retirement age provisions of the metropolitan transit commission-transit operating division employees retirement fund plan document in effect on July 1, 1978, in lieu of the provisions in sections 352.115; 352.116; 352.22, subdivisions 3 to 11; and 356.30.

Subd. 6. Increase in existing annuities and benefits. All persons receiving retirement allowances or annuities, disability benefits, survivorship annuities and survivor of deceased active employee benefits from the metropolitan transit commission-transit operating division employees retirement fund on December 31, 1977, and on July 1, 1978, are entitled to have the allowances, annuities, or benefits increased by an amount equal to \$20 per month. Notwithstanding section 356.18, increases in payments under this subdivision must be made automatically unless the intended recipient files written notice with the executive director of the Minnesota state retirement system requesting that the increase not be made. If any actuarial reduction or adjustment was applied to the retirement allowance or annuity, disability benefit, survivorship annuity, or survivor of deceased active employee benefit, the increase specified in this subdivision must be similarly reduced or adjusted. Upon the death of any person receiving an annuity or benefit if the person elected a joint and survivor optional annuity the survivor is entitled to the continued receipt of the increase provided for under this subdivision, but the increase must be reduced or adjusted in accordance with the optional annuity election.

History: 1978 c 538 s 8-10; 1980 c 607 art 14 s 35,45 subd 2; 1981 c 224 s 56; 1987 c 229 art 6 s 1

352.76 GENERAL ADMINISTRATION.

This chapter governs where not inconsistent with Laws 1978, chapter 538.

History: 1978 c 538 s 17; 1987 c 229 art 6 s 1

SPECIAL COVERAGE

352.85 MILITARY AFFAIRS PERSONNEL.

Subdivision 1. Eligibility; retirement annuity. Any person who is employed by the

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department of military affairs other than as a full-time firefighter, who is covered by the general employee retirement plan of the system as provided in section 352.01, subdivision 23, who is ordered to active duty under section 190.08, subdivision 3, who elects this special retirement coverage under subdivision 4, who is required to retire from federal military status at an age earlier than normal retirement age by applicable federal laws or regulations, and who terminates employment as a state employee upon attaining that mandatory retirement age is entitled, upon application, to a retirement annuity computed in accordance with section 352.115, subdivisions 2 and 3, without any reduction for early retirement under section 352.116, subdivision 1 or la.

Subd. 2. Disability benefit. An employee described in subdivision 1, who is less than the applicable federal military status mandatory retirement age and who becomes disabled and physically or mentally unfit to perform occupational duties due to injury, sickness, or other disability, and who is found disqualified for retention on active duty as a result of a physical examination required by applicable federal laws or regulations, is entitled upon application to disability benefits computed in the manner specified in section 352.113. Disability benefits are otherwise governed by section 352.113, except that the age for the termination of the disability benefit is the applicable federal military status mandatory retirement age.

Subd. 3. Additional contributions. The special retirement annuities and disability benefits authorized by this section shall be financed by an employee contribution from the covered department of military affairs employee of 1.6 percent and an employer contribution from the department of military affairs of 1.6 percent. These contributions are in addition to the contributions required by section 352.04, subdivisions 2 and 3. They must be made as provided in section 352.04, subdivisions 4, 5, and 6.

Subd. 4. Election of coverage. To be covered by Laws 1980, chapter 607, any employee of the department of military affairs, described in subdivision 1, who is employed on July 1, 1980, or is first employed after July 1, 1980, must file a notice with the executive director of the system on a form prescribed by the executive director stating whether or not the employee elects to be covered. Notice must be filed by August 1, 1980, or within 30 days of employment, whichever is later. Elections are irrevocable during any period of covered employment.

Subd. 5. Restriction on coverage. Nothing in this section applies to the adjutant general.

Subd. 6. Actuarial valuation exhibit. Each valuation of the system prepared by the commission-retained actuary under section 356.215 shall include an exhibit pertaining to this special retirement program which shall set forth the normal cost of the special program.

History: 1980 c 607 art 15 s 22; 1981 c 224 s 57; 1982 c 575 s 1,2; 1Sp1985 c 7 s 35; 1986 c 444; 1987 c 229 art 6 s 1; 1987 c 259 s 18; 1987 c 372 art 1 s 3; 1988 c 709 art 9 s 1,2; 1989 c 319 art 13 s 19

352.86 TRANSPORTATION DEPARTMENT PILOTS.

Subdivision 1. Eligibility; retirement annuity. A person who is employed by the department of transportation in the civil service employment classification of aircraft pilot or chief pilot who is covered by the general employee retirement plan of the system under section 352.01, subdivision 23, who elects this special retirement coverage under subdivision 3, who is prohibited from performing the duties of aircraft pilot or chief pilot after reaching age 62 by a rule adopted by the commissioner of transportation and who terminates employment as a state employee on reaching that age is entitled, upon application, to a retirement annuity computed in accordance with section 352.115, subdivisions 2 and 3, without any reduction for early retirement under section 352.116, subdivision 1.

Subd. 1a. Disability benefits. An employee described in subdivision 1, who is less than 62 years of age and who becomes disabled and physically or mentally unfit to perform occupational duties due to injury, sickness, or other disability, and who is found

disqualified for retention as chief pilot or pilot as a result of a physical examination required by applicable federal laws or regulations, is entitled upon application to disability benefits for a maximum of five years in the amount of 75 percent of current monthly salary, to be paid by the appointing authority from the state airports fund. Disability benefits must not continue after the employee reaches age 62. These benefits are in lieu of all other state benefits for the disability, including, but not limited to, workers' compensation benefits.

Subd. 2. Additional contributions. The special retirement annuity authorized by subdivision 1 shall be financed by an employee contribution from the covered aircraft pilot or chief pilot of 1.6 percent and an employer contribution from the department of transportation of 1.6 percent. These contributions are in addition to the contributions required by section 352.04, subdivisions 2 and 3. They must be made in the manner provided for in section 352.04, subdivisions 4, 5, and 6.

Subd. 3. Election of coverage. To be covered by this section, an employee of the department of transportation described in subdivision 1 who is employed in the described position on July 1, 1982, or after must file a notice with the executive director of the Minnesota state retirement system on a form prescribed by the executive director stating whether or not the employee elects to be covered by this special plan. Notice must be filed by August 1, 1982, or within 90 days of employment, whichever is later. Elections are irrevocable during any period of covered employment.

Subd. 4. Actuarial valuation exhibit. Each valuation of the system prepared by the commission-retained actuary under section 356.215 shall include an exhibit pertaining to this special retirement program which shall set forth the normal cost of the special program.

History: 1982 c 575 s 3; 1983 c 293 s 98,99; 1985 c 248 s 70; 1Sp1985 c 7 s 35; 1986 c 444; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 259 s 19

CORRECTIONAL EMPLOYEES

352.90 POLICY.

It is the policy of the legislature to provide special retirement benefits and contributions for certain correctional employees who may be required to retire at an early age because they lose the mental or physical capacity required to maintain the safety, security, discipline, and custody of inmates at state adult correctional facilities.

History: 1973 c 653 s 39; 1980 c 600 s 2; 1981 c 224 s 58; 1987 c 229 art 6 s 1

352.91 COVERED CORRECTIONAL SERVICE.

Subdivision 1. Qualifying jobs. "Covered correctional service" means: (1) services performed on, before, or after July 1, 1973, by a state employee, as defined in section 352.01, as an attendant guard, attendant guard supervisor, correctional captain, correctional counselor I, correctional counselor II, correctional counselor III, correctional counselor IV, correctional lieutenant, correctional officer, correctional sergeant, director of attendant guards, and guard farmer garden, provided the employee was employed in the position on July 1, 1973, or after; (2) services performed before July 1, 1973, by an employee covered under clause (1) in a position classified as a houseparent, special schools counselor, shop instructor, or guard instructor; and (3) services performed before July 1, 1973, in a position listed in clause (1) and positions classified as houseparent, guard instructor, and guard farmer dairy, by a person employed on July 1, 1973, in a position classified as a license plant manager, prison industry lead supervisor (general, metal fabricating and foundry), prison industry supervisor, food service manager, prison farmer supervisor, prison farmer assistant supervisor, or rehabilitation therapist employed at the Minnesota security hospital. However, an employee is not covered under sections 352.91 to 352.951 if first employed after July 1, 1973, and because of age could not acquire sufficient service to qualify for an annuity as a correctional employee.

Subd. 2. **Teaching, maintenance, and trades.** "Covered correctional service" also means service rendered at any time by state employees as special teachers, maintenance personnel, and members of trades certified by the commissioner of employee relations as being regularly engaged in rehabilitation, treatment, custody, or supervision of inmates employed at the Minnesota correctional facility-St. Cloud, the Minnesota correctional facility-Stillwater and the Minnesota correctional facility-Shakopee on or after July 1, 1974, other than any employees who are age 62 or older as of July 1, 1974. Effective the first payroll period after June 1, 1980, or the date of initial employment in covered correctional service, whichever is later, "covered correctional service" also includes those employees of the Minnesota correctional facility-Lino Lakes and the employees of any other adult state correctional facility which may be established, who perform covered correctional service after June 1, 1980. "Special teacher" also includes the classifications of facility educational administrator and supervisor.

Subd. 3. "Covered correctional service" includes service rendered before July 1, 1973, in a classification of farmer or farm manager by an employee employed in a covered correctional position on July 1, 1973. Services performed before July 1, 1974, in a classification defined in subdivisions 1, clauses (1) and (2), and 2 by an employee in a covered correctional position on or after July 1, 1974, are covered correctional service and apply to employees retiring after July 1, 1974. The portion of the retirement benefit payable to any special teacher who was covered by the correctional plan under subdivision 2 and who retires after July 1, 1974, which is based on service rendered before July 1, 1974, if that service was covered by the state teachers retirement basic formula, must be at least the benefit determined using the basic formula and must never be less than the benefit that would have been payable on the service under the basic formula adjusted for the number of months the employee is under age 65 at date of retirement.

Subd. 3a. **Security guards.** "Covered correctional service" also means service rendered before January 1, 1981, in the classification of security guard by any employee employed in a covered correctional position on January 1, 1981.

Subd. 3b. **Older employees formerly excluded.** "Covered correctional service" also means service performed by certain state employees in positions usually covered by this section who: (1) were excluded by law from coverage between July 1973 and July 1980; (2) were age 45 or over when hired; (3) are state employees on March 26, 1986; and (4) elect coverage. Eligible employees who elect coverage must file written notice of their election with the director before July 1, 1986.

Subd. 4. Upon the recommendation of the commissioner of corrections or the commissioner of human services, whichever is the appropriate employing authority, with the approval of the legislative advisory committee and with notification to and receipt of comments from the legislative commission on pensions and retirement, the commissioner of employee relations may certify additional civil service classifications at state correctional or security hospital facilities to the executive director of the Minnesota state retirement system as positions rendering covered correctional service. The commissioner of corrections and the commissioner of human services must establish, in writing, a set of criteria upon which to base a recommendation for certifying additional civil service classifications as rendering covered correctional service.

History: 1973 c 653 s 40; 1974 c 520 s 1; 1975 c 368 s 35; 1978 c 781 s 2; 1980 c 600 s 3-5; 1980 c 617 s 47; 1981 c 224 s 59; 1981 c 297 s 3; 1984 c 654 art 5 s 58; 1986 c 444; 1986 c 458 s 31; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 372 art 1 s 4

352.911 CORRECTIONAL EMPLOYEES RETIREMENT FUND.

Subdivision 1. **Fund created.** There is created a special fund to be known as the correctional employees retirement fund.

Subd. 2. **Revenue sources.** Employee contributions under section 352.92, subdivision 1, and employer contributions under section 352.92, subdivision 2, and other amounts, including any investment income on invested fund assets as authorized by law, shall be deposited in the fund.

Subd. 3. Investment. The correctional employees retirement fund shall participate in the Minnesota postretirement investment fund and in that fund there shall be deposited the amounts provided in section 352.119. The balance of any assets of the fund shall be deposited in the Minnesota combined investment funds as provided in section 11A.14, if applicable, or otherwise under section 11A.23.

Subd. 4. Collection of contributions. The collection of employee and employer contributions shall be governed by the applicable procedures set forth in section 352.04, subdivisions 4, 5, 6, 8, and 9.

Subd. 5. Fund disbursement restricted. The correctional employees retirement fund and its share of participation in the Minnesota postretirement investment fund shall be disbursed only for the purposes provided for in the applicable provisions in this chapter. The proportional share of the expenses of the system and any benefits provided in sections 352.90 to 352.951, other than benefits payable from the Minnesota postretirement investment fund, shall be paid from the correctional employees retirement fund. The retirement allowances, retirement annuities, the disability benefits, the survivorship benefits, and any refunds of accumulated deductions shall be paid only from the correctional employees retirement fund after those needs have been certified by the executive director and the amounts withdrawn from the share of participation in the Minnesota postretirement fund under section 11A.18. The amounts necessary to make the payments from the correctional employees retirement fund and the participation in the Minnesota postretirement investment fund are annually appropriated from those funds for those purposes.

History: 1987 c 259 s 20

352.92 CORRECTIONAL EMPLOYEE CONTRIBUTIONS.

Subdivision 1. Employee contributions. Beginning with the first full pay period after July 1, 1984, in lieu of employee contributions payable under section 352.04, subdivision 2, contributions by covered correctional employees must be in an amount equal to 4.90 percent of salary.

Subd. 2. Employer contributions. (a) In lieu of employer contributions payable under section 352.04, subdivision 3, the employer shall contribute for covered correctional employees an amount equal to 6.27 percent of salary.

(b) By January 1 of each year, the board of directors shall report to the legislative commission on pensions and retirement, the chair of the committee on appropriations of the house of representatives, and the chair of the committee on finance of the senate on the amount raised by the employer and employee contribution rates in effect and whether the total amount is less than, the same as, or more than the actuarial requirement determined under section 356.215.

Subd. 3. Plan administration. The Minnesota state retirement system shall administer the correctional employees retirement plan established by sections 352.90 to 352.951 in accordance with this chapter and chapters 356 and 356A.

History: 1973 c 653 s 41; 3Sp1981 c 2 art 1 s 66,67; 1982 c 641 art 1 s 11,12; 1984 c 564 s 13; 1987 c 229 art 6 s 1; 1989 c 319 art 8 s 11; 1990 c 591 art 2 s 3

352.93 RETIREMENT ANNUITY.

Subdivision 1. Basis of annuity; when to apply. After separation from state service, an employee covered under section 352.91 who has reached age 55 years and has credit for at least three years of covered correctional service and regular Minnesota state retirement system service is entitled upon application to a retirement annuity under this section based only on covered correctional employees' service. Application may be made no earlier than 60 days before the date the employee is eligible to retire by reason of both age and service requirements.

In this section, "average salary" means the average of the monthly salary during the employee's highest five successive years of salary as an employee covered by the Minnesota state retirement system. Average salary must be based upon all allowable service if this service is less than five years.

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Subd. 2. **Calculating monthly annuity.** The monthly annuity under this section must be determined by multiplying the average monthly salary by the number of years, or completed months, of covered correctional service by 2.5 percent. However, the monthly annuity must not exceed 75 percent of the average monthly salary.

Subd. 2a. **Early retirement.** Any covered correctional employee who becomes 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 2, reduced so that the reduced annuity is the actuarial equivalent of the annuity that would be payable if the employee deferred receipt of the annuity from the day the annuity begins to accrue to age 55.

Subd. 3. **Payments; duration and amount.** The annuity under this section shall begin to accrue as provided in section 352.115, subdivision 8, and must be paid for an additional 84 full calendar months or to the first of the month following the month in which the employee attains normal retirement age, whichever occurs first, except that payment must not cease before the first of the month following the month in which the employee becomes 62. It must then be reduced to the amount as calculated at normal retirement age under section 352.115, except that if this amount, when added to that portion of the social security benefit based on state service the employee would be eligible to receive at the time, is less than the benefit payable under subdivision 2, the retired employee shall receive an amount that when added to the social security benefit will equal the amount payable under subdivision 2. If the employee retired prior to age 55, the reduced benefit as calculated under section 352.115 must be actuarially reduced as provided in subdivision 2a.

When an annuity is reduced under this subdivision, the percentage adjustments, if any, that have been applied to the original annuity under section 11A.18, before the reduction, must be compounded and applied to the reduced annuity. A former correctional employee employed by the state in a position covered by the regular plan or the unclassified employees retirement program between the age of 58 and normal retirement age shall receive a partial return of correctional contributions at retirement with six percent interest based on the following formula:

Employee contributions contributed as a correctional employee in excess of the contributions the employee would have contributed as a regular employee	X	Years and complete months of regular service between age 58 and the normal retirement age number of years between age 58 and normal retirement age
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Subd. 4. **Employee with regular and correctional service.** A former employee who has both regular and correctional service shall, if qualified, receive an annuity based on both periods of service under applicable sections of law but no period of service shall be used more than once in calculating the annuity.

Subd. 5. [Repealed, 1983 c 128 s 36]

Subd. 6. [Repealed, 1983 c 128 s 36]

History: 1973 c 653 s 42; 1975 c 368 s 36; 1980 c 607 art 14 s 46; 1983 c 128 s 14; 1984 c 564 s 14,15; 1986 c 444; 1987 c 229 art 6 s 1; 1987 c 372 art 9 s 6; 1989 c 319 art 1 s 9; art 13 s 20,21; art 17 s 2,3; 1990 c 570 art 12 s 11,12

352.94 AUGMENTATION FOR EMPLOYEES WITH REGULAR AND CORRECTIONAL SERVICE.

Subdivision 1. **Change from regular to correctional service.** An employee who becomes a correctional employee after serving as a regular employee is covered under section 352.72, subdivision 2, with respect to the regular service.

Subd. 2. **Change from correctional to regular service.** An employee who becomes a regular employee after serving as a correctional employee is not covered under section 352.72, subdivision 2, with respect to correctional service.

History: 1973 c 653 s 43; 1986 c 444; 1987 c 229 art 6 s 1

352.95 DISABILITY BENEFITS.

Subdivision 1. **Job-related disability.** A covered correctional employee less than 55 years old who becomes disabled and physically unfit to perform the duties of the position as a direct result of an injury, sickness, or other disability incurred in or arising out of any act of duty that makes the employee physically or mentally unable to perform the duties, is entitled to a disability benefit based on covered correctional service only. The benefit amount must equal 50 percent of the average salary defined in section 352.93, plus an additional 2-1/2 percent for each year of covered correctional service in excess of 20 years, prorated for completed months.

Subd. 1a. **Optional annuity election.** A disabled correctional employee may elect the normal disability benefit or an optional annuity as provided in section 352.116, subdivision 3. The election of an optional annuity must be made before commencement of payment of the disability benefit and becomes effective the date on which the disability benefit begins to accrue as provided in subdivision 3. Upon becoming effective, the optional annuity shall begin to accrue on the same date as provided for the disability benefit.

Subd. 2. **Non-job-related disability.** Any covered correctional employee who, after at least one year of covered correctional service, before reaching the age of 55 becomes disabled and physically unfit to perform the duties of the position because of sickness or injury occurring while not engaged in covered employment, is entitled to a disability benefit based on covered correctional service only. The disability benefit must be computed as provided in section 352.93, subdivisions 1 and 2, and computed as though the employee had at least 15 years of covered correctional service.

Subd. 3. **Applying for benefits; accrual.** No application for disability benefits shall be made until after the last day physically on the job. The disability benefit shall begin to accrue the day following the last day for which the employee is paid sick leave or annual leave but not earlier than 60 days before the date the application is filed.

Subd. 4. **Medical evidence.** An applicant shall provide medical evidence to support an application for disability benefits. The director shall have the employee examined by at least one additional licensed physician designated by the medical advisor. The physicians shall make written reports to the director concerning the employee's disability, including medical opinions as to whether the employee is disabled within the meaning of this section. The director shall also obtain written certification from the employer stating whether the employee is on sick leave of absence because of a disability that will prevent further service to the employer, and as a consequence the employee is not entitled to compensation from the employer.

If on considering the physicians' reports and any other evidence supplied by the employee or others, the medical advisor finds the employee disabled within the meaning of this section, the advisor shall make appropriate recommendation to the director in writing, together with the date from which the employee has been disabled. The director shall then determine the propriety of authorizing payment of a disability benefit as provided in this section.

Unless payment of a disability benefit has terminated because the employee is no longer disabled, or because the employee has reached age 62, the disability benefit shall cease with the last payment received by the disabled employee or which had accrued during the employee's lifetime. While disability benefits are paid, the director has the right at reasonable times to require the disabled employee to submit proof of the continuance of the disability claimed. If any examination indicates to the medical advisor that the employee is no longer disabled, the disability payment must be discontinued upon reinstatement to state service or within 60 days of the finding, whichever is sooner.

Subd. 5. Retirement status at normal retirement age. The disability benefit paid to a disabled correctional employee under this section shall terminate at the end of the month in which the employee reaches age 62. If the disabled correctional employee is still disabled when the employee reaches age 62, the employee shall be deemed to be a retired employee. If the employee had elected an optional annuity under subdivision 1a, the employee shall receive an annuity in accordance with the terms of the optional annuity previously elected. If the employee had not elected an optional annuity under subdivision 1a, the employee may then either elect to receive a normal retirement annuity computed in the manner provided in section 352.115 or elect to receive an optional annuity as provided in section 352.116, subdivision 3, based on the same length of service as used in the calculation of the disability benefit. Election of an optional annuity must be made before reaching age 62. The reduction for retirement before normal retirement age as provided in section 352.116, subdivision 1 or 1a, does not apply. The savings clause provision of section 352.93, subdivision 3, applies. If an optional annuity is elected, the optional annuity shall begin to accrue on the first of the month following the month in which the employee reaches age 62.

Subd. 6. If the employee is entitled to receive a disability benefit as provided in subdivision 1 or 2 and has credit for less covered correctional service than the length of service upon which the correctional disability benefit is based, and also has credit for regular plan service, the employee is entitled to a disability benefit or deferred retirement annuity based on the regular plan service only for that service which when combined with the correctional service exceeds number of years on which the correctional disability benefit is based. The disabled employee who also has credit for regular plan service must in all respects qualify under section 352.113 for a disability benefit based on the regular plan service, except that the service may be combined to satisfy length of service requirements. Any deferred annuity to which the employee is entitled based on regular plan service must be augmented as provided in section 352.72 while the employee is receiving a disability benefit under this section.

Subd. 7. Resumption of employment. If the disabled employee resumes a gainful occupation from which earnings are less than the salary received at the date of disability or the salary currently paid for similar positions, or if the employee is entitled to receive workers' compensation benefits, the disability benefit must be continued in an amount which when added to earnings and workers' compensation benefits does not exceed the salary received at the date of disability or the salary currently paid for similar positions, whichever is higher, if the disability benefit in that case does not exceed the disability benefit originally authorized and in effect.

History: 1973 c 653 s 44; 1980 c 342 s 6; 1981 c 68 s 12,13; 1983 c 128 s 15,16; 1984 c 564 s 16; 1984 c 574 s 9; 1Sp1985 c 7 s 7; 1986 c 444; 1987 c 229 art 6 s 1; 1989 c 319 art 13 s 23; art 17 s 4,5

NOTE: Subdivision 2, was also amended by Laws 1989, chapter 319, article 13, section 22, to read as follows:

"Subd. 2. **Non-job-related disability.** Any covered correctional employee who, after at least three years of covered correctional service, before reaching the age of 55 becomes disabled and physically unfit to perform the duties of the position because of sickness or injury occurring while not engaged in covered employment, is entitled to a disability benefit based on covered correctional service only. The disability benefit must be computed as provided in section 352.93, subdivisions 1 and 2, and computed as though the employee had at least ten years of covered correctional service."

352.951 APPLICABILITY OF GENERAL LAW.

Except as otherwise provided, this chapter applies to covered correctional employees.

History: 1981 c 224 s 60; 1987 c 229 art 6 s 1

352.96 DEFERRED COMPENSATION.

Subdivision 1. Entitlement to defer compensation. At the request of an officer or employee of the state, an officer or employee of a political subdivision, or an employee covered by a retirement fund in section 356.20, subdivision 2, the appointing authority shall by payroll deduction defer the payment of part of the compensation of the officer or employee. The amount to be deferred must be as provided in a written agreement

between the officer or employee and the employing unit. The agreement must be in a form specified by the executive director of the Minnesota state retirement system in such a manner as will qualify the deferred amount for benefits under federal and state tax laws, rules, and rulings.

Subd. 1a. Failure to implement plan. Implementation of the deferred compensation plan by the employing unit must be completed within 30 days of the request as provided in subdivision 1. If the employing unit fails to implement the deferred compensation plan, the employing unit may not defer compensation under any existing or new deferred compensation plan from the date of the request until the date on which the deferred compensation plan provided for in this section is implemented. The executive director of the Minnesota state retirement system may order any employing unit that fails to implement the deferred compensation plan provided for in this section upon a valid request to undertake that implementation and may enforce that order in appropriate legal proceedings.

Subd. 2. Purchase of shares. The amount of compensation so deferred may be used to purchase:

- (1) shares in the Minnesota supplemental investment fund established in section 11A.17;
- (2) saving accounts in federally insured financial institutions;
- (3) life insurance contracts, fixed annuity and variable annuity contracts from companies that are subject to regulation by the commissioner of commerce; or
- (4) a combination of (1), (2), or (3), as specified by the participant.

The shares accounts or contracts purchased shall stand in the name of the state or other employing unit, for the officer or employee whose deferred compensation purchased the shares, until distributed to the officer or employee in a manner agreed upon by the employee and the executive director of the Minnesota state retirement system, acting for the employer. This subdivision does not authorize an employer contribution, except as authorized in section 356.24, paragraph (a), clause (4). The state, political subdivision, or other employing unit is not responsible for any loss that may result from investment of the deferred compensation.

Subd. 3. Executive director to administer section. This section must be administered by the executive director of the system under subdivision 4. Fiduciary activities of the deferred compensation plan must be undertaken in a manner consistent with chapter 356A. If the state board of investment so elects, it may solicit bids for options under subdivision 2, clauses (2) and (3). All contracts must be approved before execution by the state board of investment. Contracts must provide that all options in subdivision 2 must: be presented in an unbiased manner and in a manner that conforms to rules adopted by the executive director, be reported on a periodic basis to all employees participating in the deferred compensation program, and not be the subject of unreasonable solicitation of state employees to participate in the program. The contract may not call for any person to jeopardize the tax-deferred status of money invested by state employees under this section. All costs or fees in relation to the options provided under subdivision 2, clause (3), must be paid by the underwriting companies ultimately selected by the state board of investment.

Subd. 4. Executive director to establish rules. The executive director of the system shall establish rules and procedures to carry out this section including allocation of administrative costs against the assets accumulated under this section. Funds to pay these costs are appropriated from the fund or account in which the assets accumulated under this section are placed. The rules established by the executive director must conform to federal and state tax laws, regulations, and rulings, and are not subject to the administrative procedure act. Except for the marketing rules, rules relating to the options provided under subdivision 2, clauses (2) and (3), must be approved by the state board of investment. A state employee must not make payments under a plan until the plan or applicable component of the plan has been approved for tax-deferred status by the Internal Revenue Service.

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Subd. 5. Other laws not applicable. No provision of this chapter or other law specifically referring to this chapter applies to this section unless this section is specifically mentioned.

Subd. 6. Exemption from process. As money to which legal title is vested in the state of Minnesota, no amount of deferred compensation is assignable or subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 518.58, 518.581, or 518.611.

History: 1975 c 273 s 1; 1977 c 300 s 1-3; 1980 c 607 art 14 s 45 subd 1; s 46; 1981 c 208 s 10; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 356 s 8; 1987 c 157 s 3; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 284 art 4 s 2,3; 1988 c 605 s 8; 1989 c 319 art 8 s 12; 1990 c 570 art 10 s 6

352.97 PRIOR DEFERRED COMPENSATION PLANS; CONSTRUCTION.

Sections 352.96 and 352.97 do not preempt, prohibit, ratify, or approve any other deferred compensation plan established before or after June 3, 1975.

History: 1975 c 273 s 2; 1987 c 229 art 6 s 1