

## CHAPTER 353A

## LOCAL RELIEF ASSOCIATION CONSOLIDATION

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**353A.01 LEGISLATIVE INTENT AND POLICY.**

Subdivision 1. **Voluntary consolidation authorized.** It is the intent and policy of the legislature in sections 353A.01 to 353A.10 to authorize, on a voluntary elective basis, any local police or salaried firefighters relief association and the respective municipality to effect the consolidation of the local relief association with the public employees retirement association established by chapter 353.

Subd. 2. **Savings clause.** A consolidation under Laws 1987, chapter 296, does not impair or diminish benefits for an active, deferred, or retired member or a survivor of an active, deferred, or retired member who elects to retain benefits under the relief association plan in existence at the time of a consolidation.

**History:** 1987 c 296 s 8; 1991 c 341 s 25

**353A.02 DEFINITIONS.**

Subdivision 1. **Generally.** When used in sections 353A.01 to 353A.10, each of the following words and phrases shall have the meaning ascribed to it in this section unless the context clearly indicates otherwise.

Subd. 2. **Actions preliminary.** "Actions preliminary to consolidation finalization" means those actions undertaken by the commission, the state board, the public employee retirement association, the local police or firefighters relief association, and the municipality following initiation of the consolidation procedure as provided in section 353A.04.

Subd. 3. **Assets.** "Assets" means the investment securities and other items of value held by the special fund of the relief association.

Subd. 4. **Beneficiary.** "Beneficiary" means the natural person designated by any active, deferred, or retired member of the fund or of the local relief association consolidation account of the fund, whichever applies, as the recipient of any remainder interest to the credit of the designating person under law upon the death of the designating person, including the natural person receiving or entitled to receive the remainder portion of any elected optional retirement annuity form or automatic survivor benefit portion of a service pension or disability benefit.

Subd. 5. **Benefit plan.** "Benefit plan" means that portion of a pension plan which deals specifically with the service pension or retirement annuity and retirement benefit coverage provided by the relief association or the fund, whichever applies, including, but not limited to, the types of coverage, the initial and continuing eligibility for and entitlement to service pensions or retirement annuities and retirement benefits, the amount of service pensions or retirement annuities and retirement benefits and the adjustment of service pensions or retirement annuities and retirement benefits.

Subd. 6. **Board of trustees.** "Board of trustees" means the managing board of the local police or firefighters relief association.

Subd. 7. **Chief administrative officer.** "Chief administrative officer" means the person who has primary responsibility for the execution of the administrative affairs of the municipality, in the case of a municipality, or of the relief association in the case of a local police or firefighters relief association, or the designee of that person.

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Subd. 8. **Commission.** "Commission" means the legislative commission on pensions and retirement established by section 3.85.

Subd. 9. **Deferred member.** "Deferred member" means a person who has credit for sufficient service in the relief association to gain entitlement to an eventual service pension but who has not yet applied for or started receipt of that service pension.

Subd. 10. **Effective date of the consolidation.** "Effective date of the consolidation" means the date on which the consolidation shall occur as determined under section 353A.06.

Subd. 11. **Existing relief association benefit plan.** "Existing relief association benefit plan" means the benefit plan of the relief association in effect on the day before the initiation of the consolidation procedure as provided in section 353A.04.

Subd. 12. **Fund.** "Fund" means the public employees police and fire consolidation fund established by sections 353A.01 to 353A.10.

Subd. 13. **Inappropriate investments.** "Inappropriate investments" means any investment security or other asset held by the relief association at or after the initiation of the consolidation procedure which does not comply with any applicable investment guidelines or objectives which are established and published by the state board.

Subd. 14. **Ineligible investments.** "Ineligible investments" means any investment security or other asset held by the relief association at or after the initiation of the consolidation procedure which does not comply with the applicable requirements or limitations of sections 11A.09, 11A.18, 11A.23, and 11A.24.

Subd. 15. **Local police or firefighters relief association.** "Local police or firefighters relief association" means a relief association governed by section 69.77, including the Duluth firefighters relief association, the Duluth police pension association, the St. Paul fire department relief association, and the St. Paul police relief association, but does not mean the Bloomington fire department relief association or a relief association that is a member of the Minnesota police pension council or the Minnesota professional firefighters pension council.

Subd. 16. **Local relief association consolidation accounts.** "Local relief association consolidation accounts" means the special accounts consolidated with the public employees retirement association under sections 353.65, subdivision 1, and 353A.09, subdivision 1.

Subd. 17. **Majority vote.** "Majority vote" means:

(1) for a local police or firefighters relief association, a number of votes of the membership of the relief association that equals or exceeds 50 percent of the number of members voting; or

(2) for a relief association that would not have met the definition of a local police or firefighters relief association under subdivision 15, on January 1, 1987, a number of votes that equals or exceeds 50 percent of the membership of the relief association.

Subd. 18. **Membership of the relief association.** "Membership of the relief association" means the active, deferred, disabled, and retired members and the survivors of active, deferred, disabled, and retired members of a relief association. Volunteer firefighters or their survivors may not be included in determining the membership of a relief association.

Subd. 19. **Minimum required proportion of relief association membership.** "Minimum required proportion of relief association membership" means ten percent of the membership of a local police or firefighters relief association or 30 percent of the membership of a relief association that would not have met the definition of a local police or firefighters relief association under subdivision 15, on January 1, 1987.

Subd. 20. **Minnesota postretirement investment fund.** "Minnesota postretirement investment fund" means the postretirement adjustment mechanism and investment fund established by section 11A.18.

Subd. 21. **Other items of value.** "Other items of value" means any real property, personal property, or interest in real or personal property not evidenced by or appropri-

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ately characterized as a security as that term is defined by section 524.1-201, clause (32).

**Subd. 22. Pension plan.** "Pension plan" means the various aspects of the relationship between a municipality and its police officers or salaried firefighters, whichever applies, who are members of the local police or firefighters relief association regarding the retirement benefit coverage provided by the relief association.

**Subd. 23. Postretirement adjustment.** "Postretirement adjustment" means any periodic or regular procedure for modifying the amount of a retirement annuity, service pension, disability benefit, or survivor benefit after the start of that annuity, pension, or benefit, including but not limited to modifications of amounts from the Minnesota postretirement investment fund under section 11A.18, subdivision 9, or any benefit escalation or benefit amount modification based on changes in the salaries payable to active police officers or salaried firefighters or changes in a cost-of-living index as provided for in the existing relief association benefit plan.

**Subd. 24. Public employees police and fire fund benefit plan.** "Public employees police and fire fund benefit plan" means the provisions of sections 353.63 to 353.68, any general provisions of chapter 353 which may be applicable, any applicable provisions of chapter 11A or 356, any applicable provisions of any rules issued by the board of the public employees retirement association, and any applicable amendments in those statutes or rules.

**Subd. 24a. Public employees retirement association.** "Public employees retirement association" means the retirement system that administers the public employees police and fire fund and the local relief association consolidated accounts.

**Subd. 25. Public hearing.** "Public hearing" means a meeting held by the board of trustees of the relief association or the governing body of the municipality in which the relief association is located, whichever applies, in a place and at a time accessible to members of the general public, which is reasonably calculated to allow for participation by all affected interests, for which proper notice has been given and at which the views of the general public may be heard.

**Subd. 26. Referendum.** "Referendum" means a vote of the total membership of a relief association on the question of the consolidation of the relief association with the fund as provided in section 353A.04 which shall occur upon the initiation of the consolidation and shall be conducted through the use of a mailed secret, written ballot and in accordance with procedures established by the board of trustees of the relief association for the issuance and collection of ballots.

**Subd. 27. Relief association.** "Relief association" means the police or firefighters relief association for which consolidation procedures have been initiated.

**Subd. 28. Special benefit coverage.** "Special benefit coverage" means any benefit provided for in the articles of incorporation or bylaws of the local relief association which, in the judgment of the executive director of the public employees retirement association, is not of the type regularly provided by the public employees police and fire fund because it involves one or a combination of the following factors:

- (a) the benefit is other than a service pension, a disability or superannuation benefit, or a survivor benefit;
- (b) the payment of the benefit does not occur monthly and does not continue beyond one or a small number of payments; or
- (c) the payment of amounts from the pension fund is not made to individual benefit recipients or former members.

**Subd. 29. State board.** "State board" means the state board of investment operating under chapter 11A.

**Subd. 30. Survivor.** "Survivor" means the person who has or the persons who have, as of the death of the active, deferred, or retired member of the relief association, the relationship to the member of the legally married spouse or the dependent minor child as defined or specified by the benefit plan of the relief association.

**History:** 1987 c 296 s 9; 1990 c 426 art 1 s 4; 1991 c 341 s 26,27; 1992 c 423 s 1; 1992 c 432 art 2 s 25

**353A.03 VOLUNTARY CONSOLIDATION OPTION.**

Notwithstanding any provision of law to the contrary, a local police or firefighters relief association, as defined in section 353A.02, subdivision 15, may consolidate with the public employees retirement association under sections 353A.01 to 353A.10.

*History:* 1987 c 296 s 10; 1991 c 341 s 28; 1992 c 432 art 2 s 26

**353A.04 CONSOLIDATION PROCEDURE.**

**Subdivision 1. Source of consolidation initiation.** The consolidation of a relief association may be initiated by the minimum required proportion of the relief association membership.

**Subd. 2. Initiation procedure.** To initiate the consolidation procedure, the minimum required proportion of the relief association membership shall submit a signed petition to the board of trustees recommending to the board, the balance of the membership of the relief association and to the municipality that the relief association be consolidated with the public employees retirement association. Upon receipt of the petition and authentication of the signatures contained in it, the board of trustees shall hold a public hearing on the issue and shall adopt a resolution setting forth its recommendation to the membership and to the municipality on the issue and setting forth the procedure for a membership referendum under subdivision 4.

**Subd. 3. Board of trustees response.** In responding to a petition of the minimum required proportion of the relief association membership, the board of trustees shall hold a special meeting within one month of the receipt and authentication of the petition at which the public hearing shall be conducted. The resolution of the board of trustees setting forth its recommendation and the membership referendum procedure shall be adopted either at that special meeting or at the regular scheduled meeting of the board of trustees next following the special meeting.

**Subd. 4. Membership referendum procedure.** The resolution of the board of trustees setting forth the membership referendum procedure shall provide for a referendum by the membership of the relief association. The referendum must be conducted by a secret ballot in a manner agreeable to the chief administrative officer of the relief association and the representative of the municipality on the relief association board who is most senior in rank. The resolution must specify the language of the referendum question, the time and place for the referendum, the procedure for referendum balloting as provided in section 353A.02, subdivision 26, and the form and content of any informational or explanatory materials that may be distributed with the referendum ballot. Approval or disapproval of consolidation shall be determined by majority vote. A ballot must be provided to each active, deferred, or retired member and to the survivors of active, deferred, or retired members. A relief association shall distribute ballots by mail to the last known addresses of members or survivors at least 30 days before the deadline for their return to the association. An active, deferred, disabled, or retired member is entitled to one vote. The survivor or survivors of an active, deferred, disabled, or retired member is entitled to one vote. If there is more than one survivor, the vote must be cast by the eldest survivor if that person is of the age of majority or, if not, by the guardian of the eldest survivor.

**Subd. 5. Approval time limits.** When the consolidation process is approved by the relief association membership, the governing body of the municipality shall approve or disapprove the consolidation action by a resolution of the governing body of the municipality within two months.

**Subd. 6. Impact of disapproval.** If a consolidation action is disapproved by action of the governing body of the municipality or by majority referendum vote of the membership of the relief association, no consolidation action may be initiated until after January 1 of the year next following the date of disapproval.

**Subd. 7. Certification of approval.** If a consolidation action is approved, the chief administrative officer of the municipality shall notify the executive director of the public employees retirement association, the executive director of the state board, the exec-

utive director of the commission, the commissioner of finance, the secretary of state, and the state auditor of the approval. The notification to the state auditor shall also contain a certification by the chief administrative officer of the municipality and by the secretary of the relief association that there was compliance with the procedures set forth in this section in approving that consolidation action and shall include a copy of any relevant documentation.

**Subd. 8. Final municipal approval.** If a consolidation action is approved, the remaining actions preliminary to the finalization of the consolidation provided for in section 353A.05 shall take place and consolidation shall occur pending final approval of the consolidation by the governing body of the municipality. Final action on the question of the approval of the consolidation by the governing body of the municipality shall occur at a public hearing held for that purpose and shall occur within one month of the conclusion of the remaining actions preliminary to the finalization of the consolidation. If the governing body of the municipality upon its final action on the consolidation disapproves the consolidation, or the deadline for the municipality to take final action upon the question of consolidation expires, the approvals by the relief association and the municipality to initiate the consolidation shall no longer be effective.

**Subd. 9. Division of salaried and volunteer firefighter relief association.** If the relief association includes in its membership both volunteer firefighters and salaried firefighters, the board of trustees of the relief association shall, before the effective date of the consolidation, undertake the necessary steps to separate the volunteer firefighters portion of the relief association from the salaried firefighters portion of the relief association and to establish the volunteer firefighters portion of the relief association as a distinct relief association governed by chapter 424A. Any special fund assets of the original relief association shall be valued at their fair market value and divided between the new volunteer firefighters relief association and the existing relief association on the basis of their relative actuarial accrued liabilities as determined by an approved actuary as provided in section 356.215. The municipality shall adopt a resolution specifying how any fire state aid received by the municipality under sections 69.011 to 69.051 shall be allocated between the newly established volunteer firefighters relief association and the existing relief association or the fund, whichever applies, as of the date of allocation.

*History: 1987 c 296 s 11; 1992 c 432 art 2 s 27*

### **353A.05 ACTIONS PRELIMINARY TO CONSOLIDATION FINALIZATION.**

**Subdivision 1. Commission actions.** Upon initiation of consolidation as provided in section 353A.04, the executive director of the commission shall direct the actuary retained by the commission to undertake the preparation of the actuarial calculations necessary to complete the consolidation.

These actuarial calculations shall include for each active member, each deferred former member, each retired member, and each current beneficiary the computation of the present value of future benefits, the future normal costs, if any, and the actuarial accrued liability on the basis of the existing relief association benefit plan and on the basis of the public employees police and fire fund benefit plan. These actuarial calculations shall also include for the total active, deferred, retired, and benefit recipient membership the sum of the present value of future benefits, the future normal costs, if any, and the actuarial accrued liability on the basis of the existing relief association benefit plan, on the basis of the public employees police and fire fund benefit plan, and on the basis of the benefit plan which produced the largest present value of future benefits for each person. The actuarial calculations shall be prepared using the entry age actuarial cost method for all components of the benefit plan and using the actuarial assumptions applicable to the fund for the most recent actuarial valuation prepared under section 356.215, except that the actuarial calculations on the basis of the existing relief association benefit plan shall be prepared using an interest rate actuarial assumption during the postretirement period which is in the same amount as the interest rate actuarial assumption applicable to the preretirement period. The actuarial calculations shall include the computation of the present value of the initial postretirement adjustment

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anticipated by the executive director of the state board as payable after the effective date of the consolidation from the Minnesota postretirement investment fund under section 11A.18.

The chief administrative officer of the relief association shall, upon request, provide in a timely manner to the executive director of the commission and to the actuary retained by the commission the most current available information or documents, whichever applies, regarding the demographics of the active, deferred, retired, and benefit recipient membership of the relief association, the financial condition of the relief association, and the existing benefit plan of the relief association.

Upon completion of the actuarial calculations required by this subdivision, the actuary retained by the commission shall issue a report in the form of an appropriate summary of the actuarial calculations and shall provide a copy of that report to the executive director of the commission, the executive director of the public employees retirement association, the chief administrative officer of the relief association, the chief administrative officer of the municipality in which the relief association is located, the state auditor, and the legislative auditor.

**Subd. 2. State board actions.** Upon approval of consolidation by the membership as provided in section 353A.04, the executive director of the state board shall review the existing investment portfolio of the relief association for compliance with the requirements and limitations set forth in sections 11A.09, 11A.14, 11A.18, 11A.23, and 11A.24 and for appropriateness for retention in the light of the established investment objectives of the state board. The executive director of the state board, using any reporting service retained by the state board, shall determine the approximate market value of the existing assets of the relief association upon the effective date of consolidation and the transfer of assets from the relief association to the individual relief association consolidation accounts at market value.

The state board may require that the relief association liquidate any investment security or other item of value which is determined to be ineligible or inappropriate for retention by the state board. The liquidation shall occur before the effective date of consolidation and transfer of assets.

If requested to do so by the chief administrative officer of the relief association or of the municipality, the state board shall provide advice on the means and procedures available to liquidate investment securities and other assets determined to be ineligible or inappropriate.

**Subd. 3. Association actions.** Upon receipt of the report of actuarial calculations under subdivision 1 and notice from the state board of the completion of the preliminary actions under subdivision 2, the association shall notify the chief administrative officer of the municipality and the chief administrative officer of the relief association of the completion of the preliminary actions.

**History:** 1987 c 296 s 12; 1992 c 432 art 2 s 28

## **353A.06 FINALIZATION OF CONSOLIDATION.**

**Subdivision 1. Notice of final approval.** Upon final approval by the governing body of the municipality, the chief administrative officer of the municipality shall provide notice of the local action to the chief administrative officer of the relief association, the executive director of the state board, the executive director of the commission, the executive director of the public employees retirement association, the commissioner of finance, the secretary of state, and the state auditor. The board of trustees of the public employees retirement association, at its next regularly scheduled meeting, shall set the effective date for the consolidation and notify the persons under this subdivision who are to receive notice from the municipality.

**Subd. 2. Information required.** Upon final approval of consolidation by the municipality under section 353A.04, the executive director of the public employees retirement association shall request from the relief association and the municipality the information necessary to allow the association to complete the consolidation. The

information, at a minimum, must include all data required to be provided by the executive director of the commission and the actuary retained by the commission under section 353A.05, subdivision 1. The chief administrative officer of the relief association and the chief administrative officer of the municipality shall provide the requested information in a timely manner. The data must be reported on forms or in a manner prescribed by the executive director of the association. The data must be current as of the effective date of the consolidation with the association. The chief administrative officer of the municipality and the chief administrative officer of the relief association shall certify the accuracy of the data reported to the association. The executive director may rely on that data without undertaking any affirmative duty to verify the data.

**History:** 1987 c 296 s 13; 1991 c 341 s 29; 1992 c 432 art 2 s 29

### **353A.07 EFFECT ON ADMINISTRATION.**

**Subdivision 1. Transfer of administration.** On the effective date of consolidation, the administration of the special fund and the benefit plan of the relief association is transferred to the executive director and the board of trustees of the public employees retirement association.

**Subd. 2. Transfer of records.** On the effective date of consolidation, the chief administrative officer of the relief association shall transfer all records and documents relating to the special fund of the relief association to the fund. To the extent possible, original copies of all records and documents shall be transferred. For any records and documents which apply to both the general fund and the special fund of the relief association, the chief administrative officer may transfer a photostatic copy of the applicable original record or document if the copy is accompanied by a certification by the chief administrative officer that the copy is a true and exact copy of the original. Any photostatic copy of any document so certified may be treated by the fund for all purposes as an original copy.

**Subd. 3. Transfer of assets.** On the effective date of consolidation, the chief administrative officer of the relief association shall transfer the entire assets of the special fund of the relief association to the public employees retirement association. The transfer must include any investment securities of the consolidation account which are not determined to be ineligible or inappropriate by the executive director of the state board under section 353A.05, subdivision 2, at the market value of the investment security as of the effective date of the consolidation. The transfer must include any accounts receivable determined by the executive director of the state board as capable of being collected. The transfer must also include an amount, in cash, representing any remaining investment security or other asset of the consolidation account which was liquidated, after defraying any accounts payable.

As of the effective date of consolidation, subject to the authority of the state board, the board of trustees of the public employee retirement association has legal title to and management responsibility for any transferred assets as trustees for any person having a beneficial interest arising out of benefit coverage provided by the relief association. The public employees retirement association is the successor in interest for all claims for and against the consolidation account or the municipality with respect to the consolidation account of the relief association, except a claim against the relief association or the municipality or any person connected with the relief association or the municipality in a fiduciary capacity, based on any act or acts by that person which were not done in good faith and which constituted a breach of the obligation of the person as a fiduciary. As a successor in interest, the public employees retirement association may assert any applicable defense in any judicial proceeding which the board of the relief association or the municipality would have otherwise been entitled to assert.

**Subd. 4. Termination of special fund.** As of the effective date of consolidation and the transfer of administration, records, assets, and liabilities from the relief association to the separate consolidation fund, the special fund of the relief association shall cease to exist as a legal entity. If the relief association has a general fund as of the effective date of consolidation, the general fund may continue to exist as a legal entity at the dis-

cretion of the board of the relief association. If the relief association does not have a general fund as of the effective date of consolidation, the board of the relief association may establish a general fund, which may conduct business on behalf of the relief association as the board of the relief association may direct. Following consolidation, the general fund may retain the name of the relief association, shall be the only fund of the relief association, and shall continue to be governed by any applicable general or special law provision other than any provisions governing the benefits previously payable from the special fund of the relief association. Any relief association continuing in the form of the general fund shall function as a fraternal organization.

The municipality shall maintain the service previously provided to assist the relief association through making the appropriate payroll deduction of relief association membership dues from relief association members.

**Subd. 5. Costs of consolidation.** The reasonable and necessary costs arising from the actions of the commission, the state board, and the fund preliminary to consolidation as provided in section 353A.05 shall be paid by the relief association from the special fund as those costs are incurred before the effective date of the consolidation and shall be considered to be authorized administrative expenses of the relief association for section 69.80.

**Subd. 6. Postconsolidation bylaw amendments.** Following the effective date of consolidation, if the relief association continues in the form of the general fund, the board of the relief association shall adopt the appropriate amendments to its bylaws and articles of incorporation to reflect its change in status and operation. The amendments shall be effective upon filing the applicable amendments with the executive director of the commission and with the state auditor and shall not require municipal ratification as provided in section 69.77, subdivision 2a.

*History: 1987 c 296 s 14; 1992 c 432 art 2 s 30; 1992 c 598 art 7 s 1*

### **353A.08 EFFECT ON BENEFIT COVERAGE.**

**Subdivision 1. Election of coverage by current retirees.** A person who is receiving a service pension, disability benefit, or survivorship benefit is eligible to elect benefit coverage provided under the relevant provisions of the public employees police and fire fund benefit plan or to retain benefit coverage provided under the relief association benefit plan in effect on the effective date of the consolidation. The relevant provisions of the public employees police and fire fund benefit plan for the person electing that benefit coverage shall be limited to participation in the Minnesota postretirement investment fund for any future postretirement adjustments in the amount of the benefit or pension payable as of the effective date of the consolidation, the date as of which pension or benefit payments are to be paid and the termination of a survivor or disability benefit or suspension of a retirement annuity before the death of the person. The survivorship benefit payable on behalf of any service pension or disability benefit recipient who elects benefit coverage provided under the relevant provisions of the public employees police and fire fund benefit plan must be calculated under the relief association benefit plan in effect on the effective date of the consolidation and is subject to participation in the Minnesota postretirement investment fund for any future postretirement adjustments in the amount of the survivorship benefit payable.

By electing the public employees police and fire fund benefit plan, a current service pension or disability benefit recipient who, as of the first January 1 occurring after the effective date of consolidation, has been receiving the pension or benefit for at least seven months, or any survivor benefit recipient who, as of the first January 1 occurring after the effective date of consolidation, has been receiving the benefit on the person's own behalf or in combination with a prior applicable service pension or disability benefit for at least seven months is eligible to receive a partial adjustment payable from the Minnesota postretirement investment fund under section 11A.18, subdivision 9.

The election by any pension or benefit recipient must be made on or before the deadline established by the board of the public employees retirement association in a manner that recognizes the number of persons eligible to make the election and the anticipated time required to conduct any required benefit counseling.



**Subd. 2. Election of coverage by current deferred retirees.** Any person who has terminated active employment as a police officer or firefighter, whichever applies, with the municipality, has sufficient credit for service to entitle the person to an eventual service pension and has not taken a refund of accumulated member contributions, if applicable, shall have the option to elect to have benefit coverage provided under the relevant provisions of the public employees police and fire fund benefit plan or to retain benefit coverage provided by the relief association benefit plan in effect on the effective date of consolidation. The relevant provisions of the public employees police and fire fund benefit plan for the person electing that benefit coverage shall be the provisions specified in subdivision 1.

The election shall be made when the person files an application for receipt of the deferred service pension and shall accompany that application.

**Subd. 3. Election of coverage by active members.** Any person who is employed as a police officer or as a firefighter other than a volunteer firefighter, whichever applies, by the municipality and is an active member of the relief association shall have the option to elect to have benefit coverage provided under the relevant provisions of the public employees police and fire fund benefit plan or to retain benefit coverage provided by the relief association benefit plan in effect on the effective date of consolidation. The relevant provisions of the public employee police and fire fund benefit plan for the person electing that benefit coverage shall be the relevant provisions of the public employee police and fire fund benefit plan applicable to retirement annuities, disability benefits, and survivor benefits, including participation in the Minnesota postretirement investment fund, but excluding any provisions governing the purchase of credit for prior service or making payments in lieu of member contribution deductions applicable to any period which occurred before the effective date of consolidation.

An active member shall be eligible to make an election at one of the following times:

(a) on or before the date occurring 180 days after the effective date of consolidation;

(b) after the date on which the active member attains the age of 49 years and six months and before the date on which the active member attains the age of 50 years; or

(c) on the date on which the active member terminates active employment as a police officer or firefighter, whichever applies, with the municipality in which the local relief association subject to consolidation was located.

**Subd. 4. Irrevocable election.** Any election made under this section shall be irrevocable once it has been filed. Each election shall be made on a form prescribed by the executive director of the public employees retirement association and shall be filed with the executive director. If the current retiree, current benefit recipient, current deferred retiree, or current active member has, as of the effective date of consolidation or the election of benefit coverage, whichever applies, a spouse or other person who has reached the age of majority who under the benefit plan of the relief association would be entitled to receive a survivor benefit upon the death of the person making the election, the election made as provided in this section shall not be considered valid without a statement signed by the potential survivor and accompanying the election form which indicates that the potential survivor has been informed of the election and understands the consequences of the election.

The election form, if validly executed and accompanied by any required statement or statements, shall be effective on the first day of the month next following its filing with the executive director of the public employees retirement association or the date of retirement, whichever is earlier. If the person making the election becomes disabled or dies before the effective date of the election, any disability or survivor benefits which are payable shall be governed by the existing benefit plan of the relief association.

If the person entitled to make the election elects to retain coverage by the benefit plan of the relief association or fails to make the election in a timely fashion, the person

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shall have future pension or benefit payments governed by the provisions of the existing benefit plan of the relief association in effect on the effective date of consolidation.

**Subd. 5. Returning disabilitants; reemployed annuitants.** Any person who is receiving a disability benefit from a consolidating local relief association as of the effective date of the consolidation and who recovers sufficiently from that disability following the effective date of the consolidation to allow for a return to active employment as a police officer or firefighter, whichever applies, with the municipality in which the consolidating relief association was located shall retain eligibility to the local relief association benefit plan only and shall not be entitled to elect the public employees police and fire fund benefit plan as an active member, even if the public employees police and fire fund benefit plan was elected as a benefit recipient.

Any person who becomes disabled following the effective date of the consolidation shall be entitled to make a benefit plan coverage election as an active member upon the termination of active employment and commencement of the disability benefit and, upon any return to active service, shall retain benefit plan coverage by the previously selected benefit plan coverage election.

Any person who retired from a consolidating local relief association before the effective date of the consolidation or retires after the effective date of the consolidation, who has elected coverage by the public employees police and fire fund benefit plan and who returns to active employment with an employing unit covered by the public employees retirement association following the effective date of consolidation shall be subject to the provisions of section 353.37, subdivision 1.

**Subd. 6. Special benefit coverage.** A person who would have otherwise been entitled to special benefit coverage under section 353A.02, subdivision 28, retains entitlement upon consolidation to that special benefit coverage notwithstanding the election which the person makes regarding other aspects of the benefit coverage under subdivision 1, 2, or 3. The special benefit coverage continues to be provided by the municipality and, if not provided through a contract with an insurance carrier authorized to do business in this state, must be funded on an actuarial basis using the relevant provisions of section 69.77, with the establishment by the municipality of a special account within the general fund of the municipality for this special benefit coverage. The chief administrative officer of the municipality shall manage the special benefit coverage. Disbursements must be limited to payments of the special benefit or benefits based on the relevant portion of the benefit plan of the relief association that existed as of the date on which consolidation is initiated.

A special account in the general fund of a municipality established to provide special preexisting benefit plan coverage under this subdivision is not a supplemental pension plan under section 356.24 or a local governmental pension plan or fund under section 356.25.

**Subd. 6a. Military service contribution and refund.** A person who was an active member of a local police or firefighters relief association upon its consolidation with the public employees retirement association, and who was otherwise eligible for automatic service credit for military service under sections 423.57 and 424.23, and who has not elected the type of benefit coverage provided by the public employees police and fire fund at the time of consolidation, must make employee contributions under section 353.01, subdivision 16, paragraph (h), to receive allowable service credit from the association for a military service leave after the effective date of the consolidation. A person who later elects, under subdivision 3, to retain benefit coverage under the bylaws of the local relief association is eligible for a refund from the association at the time of retirement. The association shall refund the employee contributions plus interest at the rate of six percent, compounded quarterly, from the date on which contributions were made until the first day of the month in which the refund is paid. The employer shall receive a refund of the employer contributions. The association shall not pay a refund to a person who later elects, under subdivision 3, the type of benefit coverage provided by the public employees police and fire fund or to the person's employer.

**Subd. 7. Effect of coverage by local plan.** A person who, under this section, elects

benefit coverage under the relief association benefit plan, or who fails to make a timely election of coverage under the public employees retirement association police and fire fund benefit plan, is a member of the relief association as administered by the public employees retirement association and has a right to benefits under the relief association benefit plan in effect on the effective date of the consolidation.

**Subd. 8. Counseling.** The executive director of the public employees retirement association shall undertake all reasonable efforts to provide any necessary benefit counseling to persons who are entitled to make or who are affected by an election, if benefit counseling is requested by the person.

**History:** 1987 c 296 s 15; 1991 c 341 s 30; 1992 c 432 art 2 s 31,32

### **353A.081 PUBLIC EMPLOYEES RETIREMENT ASSOCIATION POLICE AND FIRE CONSOLIDATION ACCOUNT COVERAGE ELECTION AUTHORITY.**

**Subdivision 1. Entitlement.** In addition to coverage selection periods in section 353A.08, subdivisions 3 and 4, the surviving spouse of a member of a public employee retirement association consolidation account who is killed in the line of duty is eligible to make an election of coverage indicated in subdivision 2. If there is no surviving spouse, the legal guardian of the oldest dependent child under the age of 18 is eligible to make an election of coverage under subdivision 2. If there are no surviving dependent children under age 18, then the oldest dependent child who is age 18 to 23 and who is enrolled full time in an accredited post-secondary educational institution is eligible to make the election. A refund may be paid to a designated beneficiary only if:

- (1) there are no survivors entitled to benefits under this subdivision; or
- (2) the surviving spouse and dependent children, who are between age 18 to 23, permanently waive their rights to benefits in writing and the benefits of dependent children under 18 are waived under a district court order.

**Subd. 2. Election of coverage.** Individuals eligible under subdivision 1 may elect, on a form prescribed by the executive director of the public employees retirement association, to have survivor benefits calculated under the relevant provisions of the public employees police and fire fund benefit plan or to have survivor benefits calculated under the relief association benefit plan. The relevant provisions of the public employee police and fire fund benefit plan for the person electing that benefit coverage are the relevant provisions of the public employee police and fire fund benefit plan applicable to survivor benefits, including participation in the Minnesota postretirement investment fund.

If the election results in an increased benefit amount to the surviving spouse eligible under subdivision 1, or to eligible children if there is no surviving spouse, the increased benefit accrues as of the date on which the survivor benefits payable to the survivors from the consolidation account were first paid. The back payment of any increase in prior benefit amounts, plus any postretirement adjustments payable under section 356.41, or any increase payable under the local relief association bylaws is payable as soon as practicable after the effective date of the election.

**History:** 1991 c 172 s 1

### **353A.09 EFFECT ON CONTRIBUTIONS AND FUNDING.**

**Subdivision 1. Establishment of consolidation accounts.** The board of trustees of the public employees retirement association shall establish a separate consolidation account for each local relief association of a municipality that consolidates with the public employees retirement association. The association shall credit to the consolidation account the assets of the individual consolidating local relief association upon transfer, member contributions received after consolidation under subdivision 4, municipal contributions received after consolidation under subdivision 5, and a proportionate share of any investment income earned after consolidation. From the consolidation account, the association shall pay for the transfer of any required reserves to the Minnesota postretirement investment fund on account of persons electing the

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type of benefit coverage provided by the public employees police and fire fund under subdivisions 2 and 3 and section 353.271, subdivision 2, the pension and benefit amounts on account of persons electing coverage by the relief association benefit plan under section 353A.08, the benefit amounts not payable from the Minnesota postretirement investment fund on account of persons electing the type of benefit coverage provided by the public employees police and fire fund under section 353A.08, and any direct administrative expenses related to the consolidation account, and the proportional share of the general administrative expenses of the association.

Except as otherwise provided for in this section, the liabilities and the assets of a consolidation account must be considered for all purposes to be separate from the balance of the public employees police and fire fund. The consolidation account must be subject to separate accounting, a separate actuarial valuation, and must be reported as a separate exhibit in any annual financial report or actuarial valuation report of the public employees police and fire consolidation fund, whichever applies. The executive director of the public employees retirement association shall maintain separate accounting records and balances for each consolidation account.

**Subd. 2. Initial allocation of assets upon consolidation.** As soon as is practicable following the effective date of consolidation, the executive director of the public employees retirement association shall transfer from the individual local relief association consolidation accounts to the Minnesota postretirement investment fund assets of that account equal to the required reserves for service pensions payable to persons electing coverage by the public employees police and fire fund benefit plan under section 353A.08 and any potential survivor benefit payable on account of those persons as determined in accordance with the appropriate mortality table adopted by the board of the public employees retirement association based on the experience of the consolidating relief association or consolidating relief associations as recommended by the actuary retained by the legislative commission on pensions and retirement and using the applicable interest assumption specified in section 356.215, subdivision 4d. A transfer may be made only from the individual account for an electing person's municipality. The executive director may not transfer assets between individual local consolidation accounts, nor may the executive director transfer assets from the public employees retirement association to the Minnesota postretirement fund or to a local consolidation account to cover liabilities of an individual local consolidation account. If there are insufficient assets in a local consolidation account to provide for the transfer of assets to the Minnesota postretirement investment fund or to provide for benefit payments, the municipality shall immediately provide the local consolidation account with the assets necessary to make the transfer or benefit payments.

**Subd. 3. Subsequent postretirement fund transfers.** Upon the retirement of any person who was entitled to a deferred service pension as of the effective date of consolidation or who was a current active member of the relief association as of the effective date of consolidation and who elects coverage by the public employees police and fire fund benefit plan under section 353A.08, the executive director of the public employees retirement association shall transfer from that local relief association consolidation account to the Minnesota postretirement investment fund assets equal to the required reserves for that retirement annuity and any potential survivor benefit payable under section 353.271. The transfer for any person who was a current active member of the relief association as of the effective date of consolidation and elected coverage by the public employees police and fire fund benefit plan and who also has service credit as an employee of another governmental subdivision in the public employees police and fire fund shall be that amount of the total required reserves which bears the same relationship that the service as an active member of the consolidating relief association bears to the total public employees police and fire fund membership. A transfer may be made only from the individual account for an electing person's municipality. The executive director may not transfer assets between individual municipal accounts, nor may the executive director transfer assets from the public employees retirement association to the Minnesota postretirement fund or to a local consolidation account to cover liabilities of an individual local consolidation account. If there are insufficient assets

in a local consolidation account to provide for the transfer of assets to the Minnesota postretirement investment fund or to provide for benefit payments, the municipality shall immediately provide the local consolidation account with the assets necessary to make the transfer or benefit payments.

**Subd. 4. Member contributions.** Following the effective date of consolidation, the applicable member contribution rate and applicable salary rate to which the member contribution rate applies for persons who were formerly members of the relief association shall be determined as follows:

(1) if the person has elected coverage by the public employees police and fire fund benefit plan under section 353A.08, the applicable member contribution rate shall be that rate specified in section 353.65, subdivision 2, and the applicable salary rate to which the member contribution rate applies shall be the actual salary of the person, as defined in section 353.01, subdivision 10; and

(2) if the person has not elected coverage by the public employees police and fire fund benefit plan under section 353A.08, the applicable member contribution rate shall be the rate specified in section 69.77, subdivision 2a, or the rate specified in the applicable general law, special law, or bylaw provision governing the relief association as of the date of the initiation of consolidation, whichever is greater, and the applicable salary rate to which the member contribution rate applies shall be the salary rate specified in the applicable general law, special law, or bylaw provision governing the relief association as of the date of the initiation of consolidation or the actual salary of the person, including overtime pay and any regularly occurring special payments but excluding lump sum annual leave payments, worker's compensation payments, and severance payments, whichever salary rate is greater.

The member contribution rate and applicable salary rate to which the member contribution rate applies shall be effective as of the first day of the first pay period occurring after the effective date of consolidation.

The chief administrative officer of the municipal police department or municipal fire department, whichever applies, shall cause the member contributions required under this subdivision to be deducted in the manner and subject to the terms provided in section 353.27, subdivision 4.

**Subd. 5. Regular and additional municipal contributions.** (a) Following the effective date of consolidation, the applicable regular municipal contribution rate and applicable salary rate to which the regular municipal contribution rate applies on behalf of persons who were formerly members of the relief association shall be as follows:

(1) on behalf of persons who have elected coverage by the public employees police and fire fund benefit plan under section 353A.08, the applicable regular municipal contribution rate shall be that specified in section 353.65, subdivision 3, and the applicable salary rate to which the regular municipal contribution rate applies shall be that specified in subdivision 4, clause (1); and

(2) on behalf of persons who have not elected coverage by the public employees police and fire fund benefit plan under section 353A.08, the applicable regular municipal contribution rate shall be 12 percent and the applicable salary rate to which the regular municipal contribution rate applies shall be that specified in subdivision 4, clause (2).

(b) Following the effective date of consolidation, the applicable additional municipal contribution amount shall be the sum of the following:

(1) the annual level dollar contribution as calculated by the actuary retained by the commission as of the effective date of consolidation which is required to amortize by December 31, 2010, that portion of the present value of future benefits computed on the basis of the benefit plan producing the largest present value of future benefits for each individual which remains after subtracting the present value of future member contributions as provided in subdivision 4, the present value of future regular municipal contributions as provided in clause (a), and the market value of the assets of the relief association transferred to the fund; and

(2) the amount of the annual contribution as calculated by the actuary retained by the commission as of the most recent actuarial valuation date which is required to amortize on a level annual dollar basis the amount of any net actuarial experience loss incurred during the year which ended as of the day immediately before the most recent actuarial valuation date by December 31 of the year occurring 15 years later.

(c) Regular municipal contributions shall be made in the manner provided in section 353.28. Additional municipal contributions shall be paid during the calendar year following the annual certification of the amount of the annual additional municipal contribution by the executive director of the public employees retirement association and, if made during the month of January, shall be payable without any interest, or if made after January 31, but before the next following December 31, shall be payable with interest for the period since January 1 at a rate which is equal to the preretirement interest rate assumption specified in section 356.215, subdivision 4d, applicable to the fund expressed as a monthly rate and compounded on a monthly basis or if made after December 31 of the year in which the additional municipal contribution is due shall be payable with interest at a rate which is four percent greater than the highest interest rate assumption specified in section 356.215, subdivision 4d, expressed as a monthly rate and compounded monthly from January 1 of the year in which the additional municipal contribution is due until the date on which payment is made.

**Subd. 6. Certification of municipal contributions.** The governing body of the municipality shall include the amount of any regular municipal contribution and additional municipal contribution in the budget approved for the municipality and to the extent not paid from other revenue sources of the municipality, in the tax levy certified by the municipality to the county auditor.

**Subd. 7.** [Repealed, 1991 c 269 art 3 s 21]

**History:** 1987 c 296 s 16; 1992 c 432 art 2 s 33

### **353A.10 MISCELLANEOUS PROVISIONS.**

**Subdivision 1. Prohibition on service credit purchases and repayment of refunds.** No member of the public employees retirement association or of the fund who has credit for service rendered before the consolidation as a member of a local police or firefighters relief association which has consolidated with the fund shall be entitled to purchase credit for that prior local relief association service, make payments in lieu of member contribution deductions for that prior local relief association service, or repay any refund of member contributions previously taken.

A person who has credit for service in more than one local police or firefighters relief association which have consolidated with the fund for service before the consolidation shall not be entitled to purchase credit for any of that local relief association service, but shall be entitled to receive allowable service credit for service previously credited by the most recent local relief association under section 353.01, subdivisions 11, 16, and 18, if the person elects coverage by the public employee police and fire fund benefit plan.

No person who was a member of a local police or firefighters relief association which has consolidated with the fund shall be entitled to purchase credit in the fund for any prior service which at the time it was rendered was covered by the public employees retirement association, although a refund under section 353.34 may be repaid in accordance with section 353.35, 353.71, or 356.30.

No person who was a member of a local police or firefighters relief association which has consolidated with the fund shall be entitled to make any payments in lieu of salary deductions, voluntary assessments, or purchases of credit for prior service to the fund in connection with any service for which the person has already received credit by the local relief association or by any other Minnesota public pension plan or for establishing a higher average salary rate than otherwise to the credit of the person.

**Subd. 2. Collection of late contributions.** In the event of a refusal by a municipality in which was located a local police or firefighters relief association which has consoli-

dated with the fund to pay to the fund any amount or amounts due under section 353A.09, subdivisions 2 to 6, the executive director of the public employees retirement association may notify the department of revenue, the department of finance, and the state auditor of the refusal and commence the necessary procedure to collect the amount or amounts due from the amount of any state aid under sections 69.011 to 69.051, amortization state aid under section 423A.02, or supplemental amortization state aid under Laws 1984, chapter 564, section 48, as amended by Laws 1986, chapter 359, section 20, which is payable to the municipality or to certify the amount or amounts due to the county auditor for inclusion in the next tax levy of the municipality or for collection from other revenue available to the municipality, or both.

**Subd. 3. Levy and bonding authority.** A municipality in which was located a local police or firefighters relief association that has consolidated with the fund may issue general obligation bonds of the municipality to defray all or a portion of the principal amounts specified in section 353A.09, subdivisions 2 to 6, or certify to the county auditor a levy in the amount necessary to defray all or a portion of the principal amount specified in section 353A.09, subdivisions 2 to 6, or the annual amount specified in section 353A.09, subdivisions 2 to 6. The municipality may pledge the full faith, credit, and taxing power of the municipality for the payment of the principal of and interest on the general obligation bonds. Any municipal bond may be issued without an election under section 475.58 and may not be included in the net debt of the municipality for purposes of any charter or statutory debt limitation, nor may any tax levy for the payment of bond principal or interest be subject to any limitation concerning rate or amount established by charter or law.

**Subd. 4. Refund of certain member contribution amounts.** (a) The following persons are entitled to receive a refund of certain member contribution amounts under paragraph (b):

(1) A person who was an active member of a local police or firefighters relief association upon its consolidation with the public employees retirement association, who does not elect the type of benefit coverage provided by the public employees police and fire benefit plan and who begins receipt of a service pension or a disability benefit from the consolidation account; or

(2) A person who is the surviving spouse, or if none, the surviving minor child, or if none, the designated beneficiary of a person who was an active member of a local police or firefighters relief association upon its consolidation with the fund, who did not elect the type of benefit coverage provided by the public employees police and fire benefit plan and who dies prior to receiving a service pension or a disability benefit from the consolidation account.

(b) The refund of certain member contribution amounts is the amount by which any member contributions made to the consolidation account under section 353A.09, subdivision 4, exceeds the amount of employee or member contributions which would have been payable to the local relief association as provided in the benefit plan in effect on the effective date of consolidation, plus interest at the rate of six percent, compounded quarterly, from the date on which the contribution was made until the first of the month in which the refund is paid.

(c) A refund of certain contribution amounts must occur as soon as practicable following receipt of a valid application from the appropriate person and the commencement of receipt of the service pension or disability benefit or official notification of death, whichever applies.

**Subd. 5. Savings clause.** Notwithstanding any law to the contrary, any person who has commenced receipt of a service pension, disability benefit, or survivor benefit, or who has become entitled to a deferred service pension from a local police or firefighters relief association before the effective date of consolidation with the fund, and who is or becomes a state employee as defined in section 352.01, subdivisions 2 and 2a, or a public employee as defined in section 353.01, subdivisions 2 and 2a, on or after the effective date of the consolidation shall be entitled to retain any amounts previously received and to receive that pension or benefit provided by the applicable local relief

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association benefit plan as of the effective date of the consolidation despite that status as an active state or public employee.

**Subd. 6. Allocation of state aid.** Any municipality in which was located a local police or firefighters relief association which has consolidated with the fund shall allocate to meet the municipal contribution and additional municipal contribution requirements as provided in section 353A.09, subdivision 6, an appropriate portion of any fire or police state aid under sections 69.011 to 69.051, any fire insurance premium tax surcharge, any amortization state aid under section 423A.02, or any supplemental amortization state aid under Laws 1984, chapter 564, section 48, as amended by Laws 1986, chapter 359, section 20. State aids for pension purposes referred to in this subdivision that were exclusively for payment to pension funds must continue to be dedicated to that purpose.

**Subd. 6a. Dissolution of consolidation account.** If a consolidation account no longer has current or potential future liabilities for the payment of annuities, benefits, refunds, or administrative expenses, the association shall transfer the remaining net assets, if any, for police and fire purposes only, to the municipality that made contributions to the account.

**Subd. 7. Applicability of chapter 353.** The provisions of chapter 353 shall govern in all instances where not inconsistent with the provisions of sections 353A.01 to 353A.10 for the administration of each local relief association consolidation account.

**History:** 1987 c 296 s 17; 1988 c 709 art 5 s 23; 1Sp1989 c 1 art 5 s 25; 1992 c 432 art 2 s 34,35

**NOTE:** Subdivision 3, as amended by Laws 1989, First Special Session chapter 1, article 5, section 25, is effective for taxes levied in 1992, payable in 1993 and thereafter. See Laws 1989, First Special Session chapter 1, article 5, section 52, as amended by Laws 1990, chapter 604, article 3, section 47.