

CHAPTER 356A

PUBLIC PENSION FIDUCIARY RESPONSIBILITY

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356A.01 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of this chapter, the following terms have the meanings given them in this section.

Subd. 2. **Benefit.** "Benefit" means an amount, other than an administrative expense, paid or payable from a pension plan, including a retirement annuity, service pension, disability benefit, survivor benefit, death benefit, funeral benefit, or refund.

Subd. 3. **Benefit provisions.** "Benefit provisions" means the portion of a pension plan that deals specifically with the benefit coverage provided by the plan, including the kinds of coverage, the eligibility for and entitlement to benefits, and the amount of benefits.

Subd. 4. **Benefit recipient.** "Benefit recipient" means a person who has received a benefit from a pension plan or to whom a benefit is payable under the terms of the plan document of the pension plan.

Subd. 5. **Chief administrative officer.** "Chief administrative officer" means the person who has primary responsibility for the execution of the administrative or management affairs of a pension plan.

Subd. 6. **Cofiduciary.** "Cofiduciary" means a fiduciary of a pension plan, other than a fiduciary directly undertaking a fiduciary activity or directly and primarily responsible for a fiduciary activity.

Subd. 7. **Covered governmental entity.** "Covered governmental entity" means a governmental subdivision or other governmental entity that employs persons who are plan participants in a covered pension plan and who are eligible for that participation because of their employment.

Subd. 8. **Covered pension plan.** "Covered pension plan" means a pension plan or fund listed in section 356.20, subdivision 2, or section 356.30, subdivision 3, or a plan established under chapter 353D, 354B, 354C, or 354D.

Subd. 9. **Covered pension plan other than a statewide plan.** "Covered pension plan other than a statewide plan" means a pension plan not included in the definition of a statewide plan in subdivision 24.

Subd. 10. **Direct or indirect profit.** "Direct or indirect profit" means a payment of money, the provision of a service or an item of other than nominal value, an extension of credit, a loan, or any other special consideration to a fiduciary or a direct relative of a fiduciary on behalf of the fiduciary in consideration for the performance of a fiduciary activity or a failure to perform a fiduciary activity.

Subd. 11. **Direct relative.** "Direct relative" means any of the persons or spouses of persons related to one another within the third degree of kindred under civil law.

Subd. 12. **Fiduciary.** "Fiduciary" means a person identified in section 356A.02.

Subd. 13. **Fiduciary activity.** "Fiduciary activity" means an activity described in section 356A.02, subdivision 2.

Subd. 14. **Financial institution.** "Financial institution" means a bank, savings institution, or credit union organized under federal or state law.

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Subd. 15. **Governing board of a pension plan.** “Governing board of a pension plan” means the body of a pension plan that is assigned or that undertakes the chief policy-making powers and management duties of the plan.

Subd. 16. **Investment Advisory Council.** “Investment Advisory Council” means the Investment Advisory Council established by section 11A.08.

Subd. 17. **Liability.** “Liability” means a secured or unsecured debt or an obligation for a future payment of money, including an actuarial accrued liability or an unfunded actuarial accrued liability, except where the context clearly indicates another meaning.

Subd. 18. **Office of the pension plan.** “Office of the pension plan” means an administrative facility or portion of a facility where the primary business or administrative affairs of a pension plan are conducted and the primary and permanent records and files of the plan are retained.

Subd. 19. **Pension fund.** “Pension fund” means the assets amassed and held in a pension plan, other than the general fund, as reserves for present and future payment of benefits and administrative expenses.

Subd. 20. **Pension plan.** “Pension plan” means all aspects of an arrangement between a public employer and its employees concerning the pension benefit coverage provided to the employees.

Subd. 21. **Plan document.** “Plan document” means a written document or series of documents containing the eligibility requirements and entitlement provisions constituting the benefit coverage of a pension plan, including any articles of incorporation, bylaws, governing body rules and policies, municipal charter provisions, municipal ordinance provisions, or general or special state law.

Subd. 22. **Plan participant.** “Plan participant” means a person who is an active member of a pension plan by virtue of the person’s employment or who is making a pension plan member contribution.

Subd. 23. **State Board of Investment.** “State Board of Investment” means the Minnesota State Board of Investment created by the Minnesota Constitution, article XI, section 8.

Subd. 24. **Statewide plan.** “Statewide plan” means any of the following pension plans: (1) the Minnesota State Retirement System or a pension plan administered by it; (2) the Public Employees Retirement Association or a pension plan administered by it; and

(3) the Teachers Retirement Association or a pension plan administered by it.

History: 1989 c 319 art 7 s 1; 2000 c 461 art 12 s 16

356A.02 FIDUCIARY STATUS AND ACTIVITIES.

Subdivision 1. **Fiduciary status.** For purposes of this chapter, the following persons are fiduciaries:

- (1) any member of the governing board of a covered pension plan;
- (2) the chief administrative officer of a covered pension plan or of the State Board of Investment;
- (3) any member of the State Board of Investment;
- (4) any member of the Investment Advisory Council; and
- (5) any member of the advisory committee established under section 354B.25.

Subd. 2. **Fiduciary activity.** The activities of a fiduciary identified in subdivision 1 that must be carried out in accordance with the requirements of section 356A.04 include, but are not limited to:

- (1) the investment and reinvestment of plan assets;
- (2) the determination of benefits;
- (3) the determination of eligibility for membership or benefits;
- (4) the determination of the amount or duration of benefits;

- (5) the determination of funding requirements or the amounts of contributions;
- (6) the maintenance of membership or financial records;
- (7) the expenditure of plan assets; and
- (8) the selection of financial institutions and investment products.

History: 1989 c 319 art 7 s 2; 2000 c 461 art 12 s 17

356A.03 PROHIBITION OF CERTAIN PERSONS FROM FIDUCIARY STATUS.

Subdivision 1. **Individual prohibition.** For the prohibition period established by subdivision 2, a person, other than a constitutional officer of the state, who has been convicted of a violation listed in subdivision 3, may not serve in a fiduciary capacity identified in section 356A.02.

Subd. 2. **Prohibition period.** A prohibition under subdivision 1 is for a period of five years, beginning on the day following conviction for a violation listed in subdivision 3 or, if the person convicted is incarcerated, the day following unconditional release from incarceration.

Subd. 3. **Applicable violations.** A prohibition under subdivision 1 is imposed as a result of any of the following violations of law:

- (1) a violation of federal law specified in United States Code, title 29, section 1111, as amended;
- (2) a violation of Minnesota law that is a felony under Minnesota law; or
- (3) a violation of the law of another state, United States territory or possession, or federally recognized Indian tribal government, or of the Uniform Code of Military Justice, that would be a felony under the offense definitions and sentences in Minnesota law.

Subd. 4. **Documentation.** In determining the applicability of this section, the appropriate appointing authority, the State Board of Investment, or the covered pension plan, as the case may be, may rely on a disclosure form meeting the requirements of the federal Investment Advisers Act of 1940, as amended through June 2, 1989, and filed with the State Board of Investment or the pension plan.

History: 1989 c 319 art 7 s 3

356A.04 GENERAL STANDARD OF FIDUCIARY CONDUCT.

Subdivision 1. **Duty.** A fiduciary of a covered pension plan owes a fiduciary duty to:

- (1) the active, deferred, and retired members of the plan, who are its beneficiaries;
- (2) the taxpayers of the state or political subdivision, who help to finance the plan; and
- (3) the state of Minnesota, which established the plan.

Subd. 2. **Prudent person standard.** A fiduciary identified in section 356A.02 shall act in good faith and shall exercise that degree of judgment and care, under the circumstances then prevailing, that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation, considering the probable safety of the plan capital as well as the probable investment return to be derived from the assets.

History: 1989 c 319 art 7 s 4

356A.05 DUTIES APPLICABLE TO ALL ACTIVITIES.

(a) The activities of a fiduciary of a covered pension plan must be carried out solely for the following purposes:

- (1) to provide authorized benefits to plan participants and beneficiaries;
- (2) to incur and pay reasonable and necessary administrative expenses; or
- (3) to manage a covered pension plan in accordance with the purposes and intent of the plan document.

(b) The activities of fiduciaries identified in section 356A.02 must be carried out faithfully, without prejudice, and in a manner consistent with law and the plan document.

History: 1989 c 319 art 7 s 5

356A.06 INVESTMENTS; ADDITIONAL DUTIES.

Subdivision 1. **Title to assets.** Assets of a covered pension plan may be held only by the plan treasurer, the State Board of Investment, the depository agent of the plan, or of the State Board of Investment. Legal title to plan assets must be vested in the plan, the State Board of Investment, the governmental entity that sponsors the plan, the nominee of the plan, or the depository agent. The holder of legal title shall function as a trustee for a person or entity with a beneficial interest in the assets of the plan.

Subd. 2. **Diversification.** The investment of plan assets must be diversified to minimize the risk of substantial investment losses unless the circumstances at the time an investment is made clearly indicate that diversification would not be prudent.

Subd. 3. **Absence of personal profit.** No fiduciary may personally profit, directly or indirectly, as a result of the investment or management of plan assets. This subdivision, however, does not preclude the receipt by a fiduciary of reasonable compensation, including membership in or the receipt of benefits from a pension plan, for the fiduciary's position with respect to the plan.

Subd. 4. **Economic interest statement.** (a) Each member of the governing board of a covered pension plan and the chief administrative officer of the plan shall file with the plan a statement of economic interest.

(b) For a covered pension plan other than a plan specified in paragraph (c), the statement must contain the information required by section 10A.09, subdivision 5, and any other information that the fiduciary or the governing board of the plan determines is necessary to disclose a reasonably foreseeable potential or actual conflict of interest.

(c) For a covered pension plan governed by sections 69.771 to 69.776 or a covered pension plan governed by section 69.77 with assets under \$8,000,000, the statement must contain the following:

- (1) the person's principal occupation and principal place of business;
- (2) whether or not the person has an ownership of or interest of ten percent or greater in an investment security brokerage business, a real estate sales business, an insurance agency, a bank, a savings and loan, or another financial institution; and
- (3) any relationship or financial arrangement that can reasonably be expected to give rise to a conflict of interest.

(d) The statement must be filed annually with the chief administrative officer of the plan and be available for public inspection during regular office hours at the office of the pension plan.

(e) A disclosure form meeting the requirements of the federal Investment Advisers Act of 1940, United States Code, title 15, sections 80b-1 to 80b-21 as amended, and filed with the State Board of Investment or the pension plan meets the requirements of this subdivision.

(f) The chief administrative officer of each covered pension plan, by January 15, annually, shall transmit a certified listing of all individuals who have filed statements of economic interest with the plan under this subdivision during the preceding 12 months and the address of the office referenced in paragraph (d) to the Campaign Finance and Public Disclosure Board.

Subd. 5. **Investment business recipient disclosure.** The chief administrative officer of a covered pension plan, with respect to investments made by the plan, and the executive director of the State Board of Investment, with respect to investments of plan assets made by the board, shall annually disclose in writing the recipients of investment business placed with or investment commissions allocated among commercial banks, investment bankers, brokerage organizations, or other investment managers. The disclosure document must be prepared within 60 days after the close of the fiscal year of the plan and must be available for public inspection during regular office hours at the office of the plan. The disclosure document must also be filed with the executive director of the Legislative Commission on Pensions and Retirement within 90 days after the close of the fiscal year of the plan. For the State Board of Investment and a first class city teacher retirement fund association, a disclosure

document included as part of a regular annual report of the board or of the first class city teacher retirement fund association when filed with the executive director of the Legislative Commission on Pensions and Retirement is considered to have been filed on a timely basis.

Subd. 6. Limited list of authorized investment securities. (a) Except to the extent otherwise authorized by law, a covered pension plan may invest its assets only in investment securities authorized by this subdivision if the plan does not:

(1) have assets with a book value in excess of \$1,000,000;

(2) use the services of an investment advisor registered with the Securities and Exchange Commission in accordance with the Investment Advisers Act of 1940, or registered as an investment advisor in accordance with sections 80A.58, and 80A.59, for the investment of at least 60 percent of its assets, calculated on book value;

(3) use the services of the State Board of Investment for the investment of at least 60 percent of its assets, calculated on book value; or

(4) use a combination of the services of an investment advisor meeting the requirements of clause (2) and the services of the State Board of Investment for the investment of at least 75 percent of its assets, calculated on book value.

(b) Investment securities authorized for a pension plan covered by this subdivision are:

(1) certificates of deposit issued, to the extent of available insurance or collateralization, by a financial institution that is a member of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, is insured by the National Credit Union Administration, or is authorized to do business in this state and has deposited with the chief administrative officer of the plan a sufficient amount of marketable securities as collateral in accordance with section 118A.03;

(2) savings accounts, to the extent of available insurance, with a financial institution that is a member of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(3) governmental obligations, including bonds, notes, bills, or other fixed obligations, issued by the United States, an agency or instrumentality of the United States, an organization established and regulated by an act of Congress or by a state, state agency or instrumentality, municipality, or other governmental or political subdivision that:

(i) for the obligation in question, issues an obligation that equals or exceeds the stated investment yield of debt securities not exempt from federal income taxation and of comparable quality;

(ii) for an obligation that is a revenue bond, has been completely self-supporting for the last five years; and

(iii) for an obligation other than a revenue bond, has issued an obligation backed by the full faith and credit of the applicable taxing jurisdiction and has not been in default on the payment of principal or interest on the obligation in question or any other nonrevenue bond obligation during the preceding ten years;

(4) corporate obligations, including bonds, notes, debentures, or other regularly issued and readily marketable evidences of indebtedness issued by a corporation organized under the laws of any state that during the preceding five years has had on average annual net pretax earnings at least 50 percent greater than the annual interest charges and principal payments on the total issued debt of the corporation during that period and that, for the obligation in question, has issued an obligation rated in one of the top three quality categories by Moody's Investors Service, Incorporated, or Standard and Poor's Corporation; and

(5) shares in an open-end investment company registered under the federal Investment Company Act of 1940, if the portfolio investments of the company are limited to investments that meet the requirements of clauses (1) to (4).

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Subd. 7. **Expanded list of authorized investment securities.** (a) **Authority.** Except to the extent otherwise authorized by law, a covered pension plan not described by subdivision 6, paragraph (a), shall invest its assets only in accordance with this subdivision.

(b) **Securities generally.** The covered pension plan has the authority to purchase, sell, lend, or exchange the securities specified in paragraphs (c) to (i), including puts and call options and future contracts traded on a contract market regulated by a governmental agency or by a financial institution regulated by a governmental agency. These securities may be owned as units in commingled trusts that own the securities described in paragraphs (c) to (i), including real estate investment trusts and insurance company commingled accounts, including separate accounts.

(c) **Government obligations.** The covered pension plan may invest funds in governmental bonds, notes, bills, mortgages, and other evidences of indebtedness if the issue is backed by the full faith and credit of the issuer or the issue is rated among the top four quality rating categories by a nationally recognized rating agency. The obligations in which funds may be invested under this paragraph include guaranteed or insured issues of (1) the United States, its agencies, its instrumentalities, or organizations created and regulated by an act of Congress; (2) Canada and its provinces, provided the principal and interest is payable in United States dollars; (3) the states and their municipalities, political subdivisions, agencies, or instrumentalities; (4) the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, or any other United States government sponsored organization of which the United States is a member, provided the principal and interest is payable in United States dollars.

(d) **Corporate obligations.** The covered pension plan may invest funds in bonds, notes, debentures, transportation equipment obligations, or any other longer term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof if they conform to the following provisions:

(1) the principal and interest of obligations of corporations incorporated or organized under the laws of the Dominion of Canada or any province thereof must be payable in United States dollars; and

(2) obligations must be rated among the top four quality categories by a nationally recognized rating agency.

(e) **Other obligations.** (1) The covered pension plan may invest funds in bankers acceptances, certificates of deposit, deposit notes, commercial paper, mortgage participation certificates and pools, asset backed securities, repurchase agreements and reverse repurchase agreements, guaranteed investment contracts, savings accounts, and guaranty fund certificates, surplus notes, or debentures of domestic mutual insurance companies if they conform to the following provisions:

(i) bankers acceptances and deposit notes of United States banks are limited to those issued by banks rated in the highest four quality categories by a nationally recognized rating agency;

(ii) certificates of deposit are limited to those issued by (A) United States banks and savings institutions that are rated in the highest four quality categories by a nationally recognized rating agency or whose certificates of deposit are fully insured by federal agencies; or (B) credit unions in amounts up to the limit of insurance coverage provided by the National Credit Union Administration;

(iii) commercial paper is limited to those issued by United States corporations or their Canadian subsidiaries and rated in the highest two quality categories by a nationally recognized rating agency;

(iv) mortgage participation or pass through certificates evidencing interests in pools of first mortgages or trust deeds on improved real estate located in the United States where the loan to value ratio for each loan as calculated in accordance with section 61A.28, subdivision

3, does not exceed 80 percent for fully amortizable residential properties and in all other respects meets the requirements of section 61A.28, subdivision 3;

(v) collateral for repurchase agreements and reverse repurchase agreements is limited to letters of credit and securities authorized in this section;

(vi) guaranteed investment contracts are limited to those issued by insurance companies or banks rated in the top four quality categories by a nationally recognized rating agency or to alternative guaranteed investment contracts where the underlying assets comply with the requirements of this subdivision;

(vii) savings accounts are limited to those fully insured by federal agencies; and

(viii) asset backed securities must be rated in the top four quality categories by a nationally recognized rating agency.

(2) Sections 16A.58, 16C.03, subdivision 4, and 16C.05 do not apply to certificates of deposit and collateralization agreements executed by the covered pension plan under clause (1), item (ii).

(3) In addition to investments authorized by clause (1), item (iv), the covered pension plan may purchase from the Minnesota Housing Finance Agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The covered pension plan may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The covered pension plan may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the covered pension plan comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The covered pension plan may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.

(f) **Corporate stocks.** The covered pension plan may invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or the states thereof, any corporation organized under the laws of the Dominion of Canada or its provinces, or any corporation listed on an exchange regulated by an agency of the United States or of the Canadian national government, if they conform to the following provisions:

(1) the aggregate value of investments under this paragraph, plus paragraphs (g) and (k), plus equity investments under paragraphs (h), (i), and (j), as adjusted for realized gains and losses, must not exceed 85 percent of the market or book value, whichever is less, of a fund; and

(2) investments must not exceed five percent of the total outstanding shares of any one corporation.

(g) **Developed market foreign stocks investments.** In addition to investments authorized under paragraph (f), the covered pension fund may invest in foreign stock sold on an exchange in any developed market country that is included in the Europe, Australia, and Far East Index.

(h) **Commingled or mutual investments.** The covered pension plan may invest in index funds or mutual funds, including index mutual funds, through bank-sponsored collective funds and shares of open-end investment companies registered under the Federal Investment Company Act of 1940, if the investments of the index or of the mutual fund comply with paragraphs (c) to (j).

(i) **Real estate investment trust; related investments.** The covered pension plan may invest in real estate investment trusts secured by mortgages or deeds of trust and sold on an exchange, and insurance company commingled accounts, including separate accounts, of a debt or equity nature.

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(j) **Exchange traded funds.** The covered pension plan may invest funds in exchange traded funds, subject to the maximums, the requirements, and the limitations set forth in paragraphs (c) to (i), as applicable.

(k) **Other investments.** (1) In addition to the investments authorized in paragraphs (b) to (j), and subject to the provisions in clause (2), the covered pension plan may invest funds in:

(i) venture capital investment businesses through participation in limited partnerships and corporations;

(ii) real estate ownership interests or loans secured by mortgages or deeds of trust through investment in limited partnerships or bank sponsored collective funds;

(iii) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940 which do not qualify under paragraph (h);

(iv) resource investments through limited partnerships, private placements, and corporations; and

(v) international debt securities and emerging market equity securities.

(2) The investments authorized in clause (1) must conform to the following provisions:

(i) the aggregate value of all investments made according to clause (1) may not exceed 20 percent of the market value of the fund for which the covered pension plan is investing;

(ii) there must be at least four unrelated owners of the investment other than the covered pension plan for investments made under clause (1), item (i), (ii), (iii), or (iv);

(iii) covered pension plan participation in an investment vehicle is limited to 20 percent thereof for investments made under clause (1), item (i), (ii), (iii), or (iv); and

(iv) covered pension plan participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The covered pension plan may not engage in any activity as a limited partner which creates general liability.

Subd. 7a. Restrictions. Any agreement to lend securities must be concurrently collateralized with cash or securities with a market value of not less than 100 percent of the market value of the loaned securities at the time of the agreement. For a covered pension authorized to purchase put and call options and futures contracts under subdivision 7, any agreement for put and call options and futures contracts may only be entered into with a fully offsetting amount of cash or securities. Only securities authorized by this section, excluding those under subdivision 7, paragraph (g), clause (1), items (i) to (iv), may be accepted as collateral or offsetting securities.

Subd. 8. Minimum liquidity requirements. A covered pension plan described by subdivision 6, paragraph (a), in order to pay benefits as they come due, shall invest a portion of its assets in authorized short-term debt obligations that can be immediately liquidated without accrual of a substantial determinable penalty or loss and that have an average maturity of no more than 90 days. The chief administrative officer of the plan shall determine the minimum liquidity requirement of the plan and shall retain appropriate documentation of that determination for three years from the date of determination.

Subd. 8a. Collateralization requirement. (a) The governing board of a covered pension plan shall designate a national bank, an insured state bank, an insured credit union, or an insured thrift institution as the depository for the pension plan for assets not held by the pension plan's custodian bank.

(b) Unless collateralized as provided under paragraph (c), a covered pension plan may not deposit in a designated depository an amount in excess of the insurance held by the depository in the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, whichever applies.

(c) For an amount greater than the insurance under paragraph (b), the depository must provide collateral in compliance with section 118A.03 or with any comparable successor enactment relating to the collateralization of municipal deposits.

Subd. 8b. **Disclosure of investment authority; receipt of statement.** (a) For this subdivision, the term "broker" means a broker, broker-dealer, investment advisor, investment manager, or third party agent who transfers, purchases, sells, or obtains investment securities for, or on behalf of, a covered pension plan.

(b) Before a covered pension plan may complete an investment transaction with or in accord with the advice of a broker, the covered pension plan shall provide annually to the broker a written statement of investment restrictions applicable under state law to the covered pension plan or applicable under the pension plan governing board investment policy.

(c) A broker must acknowledge in writing annually the receipt of the statement of investment restrictions and must agree to handle the covered pension plan's investments and assets in accord with the provided investment restrictions. A covered pension plan may not enter into or continue a business arrangement with a broker until the broker has provided this written acknowledgment to the chief administrative officer of the covered pension plan.

Subd. 9. **Prohibited transactions.** (a) No fiduciary of a covered pension plan may engage in a prohibited transaction or allow the plan to engage in a transaction that the fiduciary knows or should know is a prohibited transaction.

(b) A prohibited transaction is any of the following transactions, whether direct or indirect:

(1) the sale, exchange, or lease of real estate between the pension plan and a fiduciary of the plan;

(2) the lending of money or other extension of credit between the plan and a fiduciary of the plan;

(3) the furnishing to a plan by a fiduciary for compensation or remuneration, of goods, services other than those performed in the capacity of fiduciary, or facilities;

(4) the furnishing to a fiduciary by a plan of goods, services, or facilities other than office and related space, equipment and office supplies, and administrative services appropriate to the recipient's fiduciary position;

(5) the transfer of plan assets to a plan fiduciary for use by or for the benefit of the fiduciary, other than the payment of retirement plan benefits to which a fiduciary is entitled or the payment to a fiduciary of a reasonable salary and of necessary and reasonable expenses incurred by the fiduciary in the performance of the fiduciary's duties; and

(6) the sale, exchange, loan, or lease of any item of value between a plan and a fiduciary of the plan other than for a fair market value and as a result of an arm's-length transaction.

Subd. 10. **Defined contribution plans; application.** (a) To the extent that a plan governed by chapter 352D, 353D, 354B, 354C, or 354D permits a participant or beneficiary to select among investment products for the person's account and the participant or beneficiary exercises that investment self-direction, no fiduciary is liable for any loss which may result from the participant's or beneficiary's exercise of that investment self-direction.

(b) Subdivisions 1, 2, 6, 8, and 8a do not apply to plans governed by chapter 354B or 354C.

History: 1989 c 319 art 7 s 6; 1990 c 570 art 5 s 1; 1994 c 604 art 2 s 3; 1995 c 122 s 2; 1995 c 262 art 6 s 1,2; 1996 c 399 art 2 s 12; 1996 c 438 art 4 s 7; art 10 s 2; 1997 c 202 art 2 s 63; 1998 c 386 art 2 s 90; 2000 c 461 art 12 s 18; 1Sp2001 c 10 art 3 s 26; 2002 c 363 s 41; 1Sp2005 c 8 art 9 s 9; art 10 s 66; 2006 c 196 art 2 s 12; 2006 c 271 art 8 s 6

NOTE: The amendment to subdivision 6 by Laws 2006, chapter 196, article 2, section 12, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

356A.07 BENEFIT SUMMARY; ANNUAL REPORTS; ADDITIONAL DUTIES.

Subdivision 1. **Benefit provisions summary.** The chief administrative officer of a covered pension plan shall prepare and provide each active plan participant with a summary of the benefit provisions of the plan document. The summary must be provided within 30 days

of the start or resumption of a participant's membership in the plan, or within 30 days of the date on which the start or resumption of membership was reported to a covered pension plan by a covered governmental entity, whichever is later. The summary must contain a notice that it is a summary of the plan document but is not itself the plan document, and that in the event of a discrepancy between the summary and the plan document as amended, the plan document governs. A copy of the plan document as amended must be furnished to a plan participant or benefit recipient upon request. The chief administrative officer may utilize the services of the covered governmental entity in providing the summary. The summary must be in a form reasonably calculated to be understood by an average plan participant.

Subd. 2. Annual financial report. A covered pension plan shall provide each active plan participant and benefit recipient with a copy of the most recent annual financial report required by section 356.20 and a copy of the most recent actuarial evaluation, if any, required by section 69.77, 69.773, 356.215, or 356.216, or a summary of those reports.

Subd. 3. Distribution. A covered pension plan may distribute the summaries required by this section through covered governmental entities so long as the plan has made arrangements with the entities to assure, with reasonable certainty, that the summaries will be distributed, or made easily available, to active plan participants.

Subd. 4. Review procedure. If a review procedure is not specified by law for a covered pension plan, the chief administrative officer of the plan shall propose, and the governing board of the plan shall adopt and implement, a procedure for reviewing a determination of eligibility, benefits, or other rights under the plan that is adverse to a plan participant or benefit recipient. The review procedure must include provisions for timely notice to the plan participant or benefit recipient and reasonable opportunity to be heard in any review proceeding conducted and may, but need not be, a contested case under chapter 14.

History: 1989 c 319 art 7 s 7

356A.08 PLAN ADMINISTRATION; ADDITIONAL DUTIES.

Subdivision 1. Public meetings. A meeting of the governing board of a covered pension plan or of a committee of the governing board of the covered pension plan is governed by chapter 13D.

Subd. 2. Limit on compensation. No fiduciary of a covered pension plan or a direct relative of a fiduciary may receive any direct or indirect compensation, fee, or other item of more than nominal value from a third party in consideration for a pension plan disbursement.

History: 1989 c 319 art 7 s 8; 1Sp2001 c 10 art 4 s 2

356A.09 FIDUCIARY BREACH; REMEDIES.

Subdivision 1. Occurrence of breach. A fiduciary breach occurs if a fiduciary violates the general standard of fiduciary conduct as specified in section 356A.04 in carrying out the activities of a fiduciary. A fiduciary breach also occurs if a fiduciary of a covered pension plan violates the provisions of section 356A.06, subdivision 9.

Subd. 2. Remedies. Remedies available for a fiduciary breach by a fiduciary are those specified by statute or available at common law.

History: 1989 c 319 art 7 s 9

356A.10 COFIDUCIARY RESPONSIBILITY AND LIABILITY.

Subdivision 1. Cofiduciary responsibility in general. A cofiduciary has a general responsibility to oversee the fiduciary activities of all other fiduciaries unless the activity has been allocated or delegated in accordance with subdivision 3. A cofiduciary also has a general responsibility to correct or alleviate a fiduciary breach of which the cofiduciary had or ought to have had knowledge.

Subd. 2. Cofiduciary liability. A cofiduciary is liable for a fiduciary breach committed by another fiduciary when the cofiduciary has a responsibility to oversee the fiduciary activities of the other fiduciary or to correct or alleviate a breach by that fiduciary.

Subd. 3. **Limitation on cofiduciary responsibility.** A cofiduciary may limit cofiduciary responsibility and liability through the allocation or delegation of fiduciary activities if the allocation or delegation:

- (1) follows appropriate procedures;
- (2) is made to an appropriate person or persons; and
- (3) is subject to continued monitoring of performance.

Subd. 4. **Bar to liability in certain instances.** A properly made delegation or allocation of a fiduciary activity is a bar to liability on the part of a fiduciary making the delegation or allocation unless the fiduciary has or ought to have knowledge of the breach and takes part in the breach, conceals it, or fails to take reasonable steps to remedy it.

Subd. 5. **Extent of cofiduciary liability.** Unless liability is barred under subdivision 4, cofiduciary liability is joint and several, but a cofiduciary has the right to recover from the responsible fiduciary for any damages paid by the cofiduciary.

History: 1989 c 319 art 7 s 10

356A.11 FIDUCIARY INDEMNIFICATION.

Subdivision 1. **Indemnified fiduciaries.** A fiduciary who is a member of the governing board of a pension plan, the State Board of Investment or the Investment Advisory Council, or who is an employee of a covered pension plan or of the State Board of Investment may be indemnified from liability for fiduciary breach. Indemnification is at the discretion of the governing board of the plan or of the State Board of Investment in the case of members of the state board or of the Investment Advisory Council. A decision to indemnify a fiduciary must apply to all eligible fiduciaries of similar rank.

Subd. 2. **Allowable indemnification.** An indemnified fiduciary must be held harmless from reasonable costs or expenses incurred as a result of any actual or threatened litigation or other proceedings.

History: 1989 c 319 art 7 s 11

356A.12 JURISDICTION; SERVICE OF PROCESS; AND STATUTE OF LIMITATIONS.

Subdivision 1. **Jurisdiction.** The district court has jurisdiction over a challenge of a fiduciary action or inaction.

Subd. 2. **Service of process.** For a fiduciary or cofiduciary alleged in the complaint to be responsible for an alleged breach, personal service of process must be obtained.

Subd. 3. **Limitations on legal actions.** A legal action challenging a fiduciary action or inaction must be timely. Notwithstanding any limitation in chapter 541, an action is timely if it is brought within the earlier of the following periods:

- (1) the period ending three years after the date of the last demonstrable act representing the alleged fiduciary breach or after the final date for performance of the act the failure to perform which constitutes the alleged breach; or
- (2) the period ending one year after the date of the discovery of the alleged fiduciary breach.

History: 1989 c 319 art 7 s 12

356A.13 CONTINUING FIDUCIARY EDUCATION.

Subdivision 1. **Obligation of fiduciaries.** A fiduciary of a covered pension plan shall make reasonable effort to obtain knowledge and skills sufficient to enable the fiduciary to perform fiduciary activities adequately. At a minimum, a fiduciary of a covered pension plan shall comply with the program established in accordance with subdivision 2.

Subd. 2. **Continuing fiduciary education program.** The governing boards of covered pension plans shall each develop and periodically revise a program for the continuing educa-

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tion of any of their board members and any of their chief administrative officers who are not reasonably considered to be experts with respect to their activities as fiduciaries. The program must be designed to provide those persons with knowledge and skills sufficient to enable them to perform their fiduciary activities adequately.

History: *1989 c 319 art 7 s 13*