

**CHAPTER 353D**  
**PUBLIC EMPLOYEES DEFINED CONTRIBUTION PLAN**

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**353D.01 PUBLIC EMPLOYEES DEFINED CONTRIBUTION PLAN.**

Subdivision 1. **Establishment.** The public employees defined contribution plan is administered by the Public Employees Retirement Association under supervision of the association board of trustees.

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

(1) elected local government officials of a governmental subdivision who elect to participate in the plan under section 353D.02, subdivision 1, and who, for the elected service rendered to a governmental subdivision, are not members of the Public Employees Retirement Association within the meaning of section 353.01, subdivision 7;

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

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

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

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

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

(7) volunteer or emergency on-call firefighters serving in a municipal fire department or an independent nonprofit firefighting corporation who are not covered by the public employees police

and fire retirement plan and who are not covered by a volunteer firefighters relief association and who elect to participate in the public employees defined contribution plan;

(8) elected county sheriffs who are former members of the police and fire plan and who are receiving a retirement annuity as provided under section 353.651; and

(9) persons who are excluded from membership under section 353.01, subdivision 2b, paragraph (a), clause (25).

(b) For purposes of this chapter, an elected local government official includes a person appointed to fill a vacancy in an elective office. Service as an elected local government official only includes service for the governmental subdivision for which the official was elected by the public at large. Service as an elected local government official ceases and eligibility to participate terminates when the person ceases to be an elected official. An elected local government official does not include an elected county sheriff who must be a member of the police and fire plan as provided under chapter 353.

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

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

**History:** 1987 c 372 art 5 s 1; 1990 c 570 art 8 s 2; 1991 c 291 art 19 s 2,11; 1991 c 341 s 35; 1992 c 432 art 2 s 36; 1996 c 438 art 6 s 1; 1999 c 222 art 21 s 1; 1Sp2003 c 12 art 4 s 4; 2006 c 271 art 3 s 30; 2007 c 133 art 2 s 12; 2010 c 359 art 5 s 13

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

Subdivision 1. **Elected local government officials.** Eligible elected local government officials may elect to participate in the defined contribution plan after being elected or appointed to elective public office by filing a membership application on a form prescribed by the executive director of the association authorizing contributions to be deducted from the elected official's salary. Participation begins on the first day of the pay period for which the contributions were deducted or, if pay period coverage dates are not provided, the date on which the membership application or contributions are received in the office of the association, whichever is received first, provided further that the membership application is received by the association within 60 days of the receipt of the contributions. An election to participate in the plan is revocable during incumbency.

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

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

An election by a service or an individual is revocable.

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

Subd. 5. **St. Paul Port Authority personnel.** Employees of the Port Authority of the city of St. Paul who do not elect to participate in the general employees retirement plan may elect to participate in the plan by filing a membership application on a form prescribed by the executive director of the association authorizing contributions to be deducted from the employee's salary. Participation begins on the first day of the pay period for which the contributions were deducted or, if pay period coverage dates are not provided, the date on which the membership application or the contributions are received in the office of the association, whichever is received first, if the membership application is received by the association within 60 days of the receipt of the contributions. An election to participate in the plan is irrevocable.

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

Subd. 7. **Certain volunteer firefighters.** Volunteer or emergency on-call firefighters who are serving as members of a municipal fire department or an independent nonprofit firefighting corporation and who are not covered for that firefighting service by the public employees police and fire retirement plan under sections 353.63 to 353.68 or by the applicable volunteer firefighters relief association under chapter 424A may elect to participate in the plan. An eligible firefighter's election is irrevocable. No employer contribution is payable by the fire department or the firefighting corporation unless the municipal governing body or the firefighting corporation governing body, whichever applies, ratifies the election.

**History:** 1987 c 372 art 5 s 2; 1990 c 570 art 8 s 3; 1991 c 291 art 19 s 3,11; 1991 c 341 s 36; 1992 c 432 art 2 s 37; 1993 c 307 art 4 s 47; 1996 c 438 art 6 s 2; 1999 c 222 art 21 s 2; 1Sp2003 c 12 art 4 s 5; 2006 c 271 art 3 s 31-33

**353D.021** [Never effective]

### **353D.03 FUNDING OF PLAN.**

Subdivision 1. **Contributions for eligible participants.** (a) The following classes of eligible participants who elect to participate in the public employees defined contribution plan under section 353D.02 shall contribute an amount equal to five percent of salary as defined in section 353.01, subdivision 10:

- (1) elected local government officials;
- (2) physicians; and
- (3) persons who are excluded from membership under section 353.01, subdivision 2b, clause (25).

(b) A participant's governmental subdivision shall contribute a matching amount.

Subd. 2. [Repealed, 2010 c 359 art 5 s 28]

Subd. 3. **Ambulance service, rescue squad personnel contribution.** A public ambulance service or privately operated ambulance service that receives an operating subsidy from a governmental entity that elects to participate in the plan shall fund benefits for its qualified personnel who individually elect to participate. Personnel who are paid for their services may elect to make member contributions in an amount not to exceed the service's contribution on their behalf. Ambulance service contributions on behalf of salaried employees must be a fixed percentage of salary. An ambulance service making contributions for volunteer or largely uncompensated personnel, or a municipality or county making contributions on behalf of rescue squad members who are volunteers or largely uncompensated personnel, may assign a unit value for each call or each period of alert duty for the purpose of calculating ambulance service or rescue squad service contributions, as applicable.

Subd. 4. **Payments by former eligible elected officials.** Former eligible elected local government officials in the defined contribution plan under this chapter shall not contribute to the plan except under section 353D.12.

Subd. 5. **City managers.** A city manager who elects to participate in the plan shall contribute an amount equal to the contribution under section 353.27, subdivision 2. The applicable city shall make a contribution equal to the contribution required under section 353.27, subdivision 3.

Subd. 6. **Volunteer firefighters.** (a) Unless paragraph (b) applies, a volunteer or emergency on-call firefighter who elects to participate in the plan shall contribute at least 7.5 percent of any compensation received for firefighting services.

(b) If the municipality or the independent nonprofit firefighting corporation ratified the election of plan coverage under section 353D.02, subdivision 6, the volunteer firefighter and the employing unit shall contribute in total an amount equal at least to 7.5 percent of any compensation received for firefighting services.

**History:** 1987 c 372 art 5 s 3; 1990 c 570 art 8 s 4; 1991 c 291 art 19 s 5,11; 1992 c 432 art 2 s 38; 1996 c 438 art 6 s 3; 1999 c 222 art 21 s 3; 2006 c 271 art 3 s 34,35; 2010 c 359 art 5 s 14

**353D.031** [Never effective]

#### **353D.04 CONTRIBUTIONS AND DEDUCTIONS IN ERROR.**

Subdivision 1. **Crediting of contributions to participant accounts.** (a) Contributions made by or on behalf of a participant under section 353D.03, subdivisions 1, 5, and 6, paragraph (a), must be remitted to the Public Employees Retirement Association and credited to the individual account established for the participant.

(b) Contributions as provided under section 353D.03, subdivisions 3 and 6, paragraph (b), must be remitted on a regular basis to the association together with any member contributions

paid or withheld. Those contributions must be credited to the individual account of each participating member.

Subd. 2. **Authority to adopt policies correcting erroneous contributions.** The executive director may adopt policies and procedures regarding deductions taken totally or partially in error by the employer from the salary of an elected official.

**History:** 1987 c 372 art 5 s 4; 1990 c 570 art 8 s 5; 1991 c 341 s 37; 1992 c 432 art 2 s 39; 1993 c 307 art 4 s 48; 1996 c 438 art 6 s 4; 2010 c 359 art 5 s 15,16

### 353D.05 INVESTMENT OF FUNDS.

Subdivision 1. **Investment.** Employing unit contributions, after the deduction of an amount for administrative expenses, and individual participant contributions must be remitted to the State Board of Investment for investment in the Minnesota supplemental investment fund established by section 11A.17.

Subd. 2. **Investment options.** (a) A participant may elect to purchase shares in the income share account, the growth share account, the international share account, the money market account, the bond market account, the fixed interest account, or the common stock index account established by section 11A.17, or a combination of those accounts. The participant may elect to purchase shares in a combination of those accounts by specifying the percentage of the total contributions to be used to purchase shares in each of the accounts.

(b) A participant or a former participant may indicate in writing a choice of options for subsequent purchases of shares. After a choice is made, until the participant or former participant makes a different written indication, the executive director of the association shall purchase shares in the supplemental investment account or accounts specified by the participant. If no initial option is indicated by a participant or the specifications made by the participant exceeds 100 percent to be invested in more than one account, the executive director shall invest all contributions made by or on behalf of a participant in the income share account. If the specifications are less than 100 percent, the executive director shall invest the remaining percentage in the income share account.

(c) Shares in the fixed interest account attributable to any guaranteed investment contract as of July 1, 1994, may not be withdrawn from the fund or transferred to another account until the guaranteed investment contract has expired, unless the participant qualifies for a benefit payment under section 353D.07.

(d) A participant or former participant may also change the investment options selected for all or a portion of the individual's previously purchased shares in accounts, subject to the provisions of paragraph (c) concerning the fixed interest account.

(e) The change or selection of an investment option or the transfer of all or a portion of the deceased or former participant's shares in the income share, growth share, common stock index, bond market, international share, money market, or fixed interest accounts must not be made following death of the participant or former participant.

Subd. 3. **Administrative expenses.** The executive director of the association with the advice and consent of the board shall annually set an amount to recover the costs of the association in administering the public employees defined contribution plan.

**History:** 1987 c 372 art 5 s 5; 1988 c 453 s 11; 1988 c 709 art 5 s 34; 1990 c 570 art 8 s 6,7; 1991 c 291 art 19 s 7,11; 1991 c 341 s 38; 1992 c 432 art 2 s 40,41; 1992 c 539 s 13,14;

*1993 c 307 art 4 s 49; 1994 c 465 art 3 s 57; 1994 c 604 art 1 s 14; 1998 c 390 art 2 s 8; 2008 c 349 art 5 s 24*

**353D.051** [Never effective]

### **353D.06 REPORTING.**

The executive director of the public employees retirement association shall prescribe the reporting forms required from employing units and the election forms required from participants. Reporting forms must contain names, identification numbers, amount of contribution by and on behalf of each participant, and such other data as is required to keep an accurate record of the account value of each participant.

**History:** *1987 c 372 art 5 s 6; 1990 c 570 art 8 s 8; 1991 c 291 art 19 s 9,11*

### **353D.07 BENEFITS.**

Subdivision 1. **Type of plan; uniformity.** (a) The plan is a defined contribution plan the benefits from which are payable upon termination of service, retirement, disability, or death. The amount of benefits is determined by the value of accumulated contributions plus a proportionate share of investment income of the fund credited to each individual account.

(b) In the case of ambulance service personnel, eligibility standards must be uniform among all ambulance service personnel of an ambulance service electing to participate.

Subd. 2. **Payment of benefits.** Withdrawal of a benefit based on individual participant contributions and employer contributions plus accrued investment income is payable upon the death or termination of a participant but not at the time an individual revokes membership in the defined contribution plan under section 353D.02. An application by or on behalf of the participant must be filed before any payment of benefits may be made.

Subd. 3. **Form of benefit.** A retirement benefit is payable in a lump sum equal to the value of a participant's account at the date of withdrawal. As an alternative to a lump-sum distribution, the participant may choose to have the association transfer the total account value for the purchase of an annuity payable at a designated age to an insurance company of the participant's choice that is licensed to do business in the state.

Subd. 4. **Disability of participant.** If an active participant becomes permanently and totally disabled as defined in section 353.01, subdivision 19, that participant may withdraw from the account in equal monthly installments an amount, designated by the participant in increments of \$100 but not to exceed ten times the joint employer and employee contribution for the month preceding disability. The option must be exercised by filing an application on a form prescribed by the executive director. Payments begin on the first day of the month following the month in which the disability occurred. Payments end when the participant's disabled status ends or the account balance is exhausted, whichever occurs first.

Subd. 5. MS 1987 Supp [Repealed, 1988 c 709 art 5 s 42]

Subd. 5. **Death of a participant.** If an active participant dies, the total value of the account must be paid in a lump sum to the designated beneficiary or, if none, the heirs at law of the decedent.

**History:** *1987 c 372 art 5 s 7; 1988 c 709 art 5 s 35-37; 1990 c 570 art 8 s 9; 1991 c 341 s 39,40; 1992 c 432 art 2 s 42,43; 1993 c 307 art 4 s 50*

**353D.071 FEDERAL COMPLIANCE.**

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

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

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

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

(e) "Required beginning date" means the later of April 1 of the calendar year following the calendar year that the member attains age 70 years, six months, or April 1 of the calendar year following the calendar year in which the member terminates employment.

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

Subd. 2. **Required minimum distributions.** (a) The provisions of this subdivision shall apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year and will take precedence over any inconsistent provisions of the plan. All distributions required under this section will be determined and made in accordance with the treasury regulations under section 401(a)(9) of the Internal Revenue Code, including regulations providing special rules for governmental plans, as defined under section 414(d) of the Internal Revenue Code, that comply with a reasonable good faith interpretation of the minimum distribution requirements.

(b) The member's entire interest will be distributed to the member in a lump sum no later than the member's required beginning date.

(c) If the member dies before the required minimum distribution is made, the member's entire interest will be distributed in a lump sum no later than as follows:

(1) if the member's surviving spouse is the member's sole designated beneficiary, the distribution must be made by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age 70 years, six months, whichever is later;

(2) if the member's surviving spouse is not the member's sole beneficiary, or if there is no designated beneficiary as of September 30 of the year following the year of the member's death,

the member's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death as directed under section 353D.07, subdivision 5; or

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

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

**History:** 2008 c 349 art 5 s 25

### **353D.08 PORTABILITY.**

Participating ambulance service personnel who change employment or membership among participating ambulance services shall continue participation in the plan if termination from one participating ambulance service and commencement in another participating ambulance service occurs within 30 days.

**History:** 1987 c 372 art 5 s 8; 1988 c 709 art 5 s 38; 1990 c 570 art 8 s 10

### **353D.09 TAX QUALIFICATION.**

The Public Employees Retirement Association shall adopt rules necessary for administration of the plan. The proposed plan shall be formulated and adopted in accordance with applicable restrictions and standards of the Internal Revenue Code and rulings and regulations of the Internal Revenue Service in order to assure the tax-exempt status of the plan as a qualified pension plan. Contributions may be accepted only after approval by the Internal Revenue Service.

**History:** 1987 c 372 art 5 s 9; 1990 c 570 art 8 s 11

### **353D.091 [Never effective]**

### **353D.10 NOT CONSIDERED A LOCAL PLAN.**

The plan is not a local governmental pension plan or fund for purposes of section 356.25.

**History:** 1987 c 372 art 5 s 10

### **353D.11 [Repealed, 1996 c 438 art 6 s 7]**

### **353D.12 CONTRIBUTIONS FOR PRIOR ELECTED SERVICE.**

Subdivision 1. **Eligibility; contributions.** An elected local government official who participates in the defined contribution plan under this chapter may make contributions to the plan for the service as an elected public officer rendered before June 30, 1991, that was not covered by a public or private employer contributory pension plan, including a plan administered by the public employees retirement association under chapter 353. An elected local government official may make contributions for prior elected service to the defined contribution plan even if eligibility criteria for the defined benefit plan under chapter 353 were not met at the time service was rendered. The association shall not accept contributions for prior elected service from a former elected official after the end of the tax year in which the elected official ceases to hold office. Employer contributions on behalf of the former elected official must be made to the association no later than 30 days after April 15 following the end of the tax year under section 415

of the federal Internal Revenue Code, as amended. Employee contributions must be made to the association no later than 30 days after the close of the limitation year under section 415 of the federal Internal Revenue Code, as amended.

**Subd. 2. Amount of prior service contributions.** (a) The employee purchase amount is that amount that the participating elected local government official specifies, but combined with subdivision 6 may not exceed in total the amount of the employee and employer contributions that would have been payable under section 353.27, subdivisions 2, 3, and 3a, based on the actual salary or compensation of the elected local government official from public sources during the prior service and based on the rates in effect during the prior service, plus interest at an annual compound rate of six percent.

(b) In any year, the purchase amount to be paid in is subject to the limitation for defined contribution plans under section 415(c) of the federal Internal Revenue Code, as amended, or comparable contribution limitation set forth in the federal Internal Revenue Code, and applicable regulations and revenue rulings, remaining after subtracting the funding amounts under section 353D.03, paragraph (a), for that year.

**Subd. 3. Installment payments.** The purchase amount may be made in annual installments but may not exceed, combined with subdivision 6, in any installment the limitation set forth in subdivision 2, paragraph (a), or in total the limitation set forth in subdivision 2, paragraph (a).

**Subd. 4. Authorized rollovers.** To the extent allowed by federal law, the employee purchase amount may be made with funds distributed from: (1) a plan qualified under section 401(a) of the federal Internal Revenue Code, as amended; (2) an annuity qualified under section 403(a) of the federal Internal Revenue Code, as amended; (3) an individual retirement account used solely to receive a nontaxable rollover from that type of plan or annuity; (4) the state deferred compensation plan authorized under section 352.965 and qualified under section 457 of the federal Internal Revenue Code, as amended; or (5) another tax qualified plan or annuity that authorizes rollovers. The participating elected local government official shall supply sufficient written documentation that the transfer amounts are eligible for tax-free rollover treatment. An authorized tax-free rollover, plus any other purchase amount payments under this section, including subdivision 6, may not exceed the limitation in subdivision 2, paragraph (a). Notwithstanding any provision of state law or rule to the contrary, to the extent permitted under federal law, the employee purchase amount may be transferred from the state deferred compensation plan before the employee terminates public employment.

**Subd. 5. Prior service and compensation documentation.** The participating elected local government official shall supply sufficient documentation of the person's prior uncredited service and compensation for which the purchase payment is made.

**Subd. 6. Employing unit payment.** The employing unit of the participating elected local government official shall pay the amount of the employer contributions that could have been payable under section 353.27, subdivisions 3 and 3a, based on the actual salary or compensation of the elected local government official from public sources during the prior service, plus interest at an annual compound rate of six percent. This amount combined with any employee purchase amount and any contributions under section 353D.03, paragraph (a), must in any year comply with the limitation set forth in subdivision 2, paragraph (a).

**History:** 1990 c 570 art 8 s 13; 1991 c 341 s 41; 1992 c 432 art 2 s 44; 2008 c 349 art 11 s 5

**NOTE:** This section is repealed by Laws 2010, chapter 359, article 5, section 28, paragraph (c), effective July 1, 2011.