

necessary for safe and effective operation by the handicapped person .

Every company or agent violating any of the foregoing provisions shall be fined not less than \$50, ~~not~~ more than \$100 per violation, and every officer, agent, or solicitor violating the same shall be guilty of a misdemeanor. The commissioner of insurance is authorized to treat violations of this section as an unfair insurance practice and to enforce this section using the procedures, remedies, and penalties provided in sections 72A.17 to 72A.32.

Sec. 2. Minnesota Statutes 1978, Section 65B.131, is repealed.

Approved May 25, 1979.

CHAPTER 216—H.F.No.747

An act relating to retirement; miscellaneous amendments to the public employees retirement law; contributions and benefits of the Moorhead police and firefighters' relief associations; amending Minnesota Statutes 1978, Sections 353.01, Subdivisions 2b, 10, 16, and 27; 353.017, Subdivision 2; 353.03, Subdivisions 1 and 3; 353.29, Subdivisions 2 and 8; 353.31, Subdivision 1; 353.32, Subdivisions 1, 3, and 9; 353.33, Subdivision 1; 353.34, Subdivision 3; 353.35; 353.64, Subdivision 1; 353.65, Subdivision 2; 353.656, Subdivision 2; 353.71, Subdivision 5; Laws 1967, Chapter 775, Sections 2; 4; 5; 6; and 7; and by adding a section; Laws 1955, Chapter 75, Sections 10, Subdivision 3; 14, Subdivisions 1, 2, 4, 5, 6, and by adding a subdivision; 16; and 19, as added, amended or renumbered; repealing Laws 1967, Chapter 775, Section 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1978, Section 353.01, Subdivision 2b, is amended to read:

Subd. 2b. **EXCLUDED EMPLOYEES.** The following persons are excluded from the meaning of "public employee":

(a) Persons employed for professional services where such service is incidental to regular professional duties.

(b) Election officers.

(c) Independent contractors and their employees.

(d) Patient and inmate help in governmental subdivision charitable, penal and correctional institutions.

(e) Members of boards, commissions, bands and others who serve the governmental subdivision intermittently.

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(f) Employees who hold positions of an essentially temporary or seasonal character, provided such employment does not continue for a period in excess of 120 working days in any calendar year. Immediately following the expiration of such 120 working days if such employees continue in public service and earn in excess of \$250 in any one calendar month, the department heads must then report all such employees for membership and must cause employee contributions to be made on behalf of such employees in accordance with section 353.27, subdivision 4, and they shall remain members until termination of public service.

(g) Part-time employees other than firefighters who receive monthly compensation not exceeding \$250, and part-time employees other than firefighters and elected officials whose annual compensation is stipulated in advance to be not more than \$3,000 per year, except that members shall continue their membership until termination of public service.

(h) Persons who first occupy an elected office after March 1, 1978, the compensation for which does not exceed \$250 per month.

(i) Emergency employees who are employed by reason of work caused by fire, flood, storm or similar disaster.

(j) Employees who by virtue of their employment are required to contribute to any other pension, relief or retirement fund established for the benefit of officers and employees of a governmental subdivision, except as an act of the legislature has specifically enabled participation by employees of a designated governmental subdivision in a plan supplemental to the public employees retirement association; provided that this clause shall not prevent a person from contributing to the public employees retirement association and also belonging to or contributing to another public pension fund for other service occurring during the same period of time.

(k) Police matrons employed in a police department of any city who are transferred to the jurisdiction of a joint city and county detention and corrections authority.

(l) Chaplains and nuns who have taken a vow of poverty as members of a religious order.

(m) Full-time students who are enrolled and are regularly attending classes at an accredited school, college or university; provided, no person employed full-time public employees by a governmental subdivision shall be exempt under this paragraph ~~and any such employees presently exempt hereunder shall become members as of July 1, 1976.~~

(n) Resident physicians, medical interns and pharmacist interns who are serving in public hospitals.

(o) Appointed or elected officers, paid entirely on a fee basis, and who were not members on June 30, 1971.

(p) Nothing in Laws 1973, Chapter 753 shall be interpreted to impair or revoke any option exercised under Laws 1963, Chapter 793.

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

(r) Town, city or county assessors elected or appointed pursuant to chapter 273 who do not receive compensation in excess of \$250 per month from any one employing governmental subdivision or who are employed pursuant to an employment contract which sets forth the total compensation to be paid and the length of service, not to exceed three months in duration, required for the performance of the contract and which was entered into in advance of the commencement of employment.

(s) Volunteer firefighters as defined in section 21.

Sec. 2. Minnesota Statutes 1978, Section 353.01, Subdivision 10, is amended to read:

Subd. 10. **SALARY.** "Salary" means the periodical compensation of any public employee, before deductions for deferred compensation or supplemental retirement plans, and also means "wages" and includes net income from fees. Lump sum annual leave payments and ~~annual leave payments made after termination of public service~~ severance payments shall not be deemed to be salary. Prior to the time that all sick leave has been used amounts paid to an employee, under a disability insurance policy where the employer paid the premiums, shall be considered salary; after all such sick leave has been used, such payment shall not be considered salary. Workers' compensation payments are not salary.

Sec. 3. Minnesota Statutes 1978, Section 353.01, Subdivision 16, is amended to read:

Subd. 16. **ALLOWABLE SERVICE.** "Allowable service" means:

(1) Service during years of actual membership in the course of which employee contributions were currently made; periods covered by payments in lieu of salary deductions made as provided in section 353.35, and service in years during which the public employee was not a member but for which he later elected, while a member, to obtain credit by making payments to the fund as permitted by any law then in effect.

(2) Any period of authorized leave of absence with pay from which deductions for employee contributions are made, deposited, and credited to the fund.

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(3) Any period of authorized leave of absence without pay which does not exceed one year, and during or for which a member obtained credit by payments to the fund made in lieu of salary deductions, provided that such payments are made in an amount or amounts based on his average salary on which deductions were paid (a) for the last six months of public service, or (b) that portion of the last six months while he was in public service, to apply to the period in either case immediately preceding commencement of such leave of absence; provided, however, that if the employee elects to pay employee contributions for the period of any leave of absence without pay, or for any portion thereof, he shall also, as a condition to the exercise of such election, pay to the fund an amount equivalent to both the required employer and additional employer contributions therefor, such payment to be made currently or within one year from the date the leave of absence terminates, unless the employer by appropriate action of its governing body and made a part of its official records, prior to the date of the first payment of such employee contribution, certifies to the association in writing that it will cause to be paid such employer and additional employer contributions from the proceeds of a tax levy made pursuant to section 353.28. Payments under this clause shall include interest at the rate of six percent per annum from the date of the termination of the leave of absence to the date payment is made.

(4) Any period during which a member is on an authorized sick leave of absence, with or without pay, or an authorized temporary layoff.

(5) Any period during which a member is on an authorized leave of absence to enter military service, provided that the member returns to public service upon discharge from military service pursuant to section 192.262, and pays into the fund employee contributions based upon his salary at the date of return from military service. The amount of these contributions shall be in accord with the contribution rates and salary limitations, if any, in effect during such leave, plus interest thereon at six percent per annum compounded annually from the date of return to public service to the date payment is made. In such cases the matching employer contribution and additional employer contribution provided in section 353.27, subdivisions 3 and 3a, shall be paid by the department employing such member upon his return to public service and the governmental subdivision involved is hereby authorized to appropriate money therefor. Such member shall not receive credit for any voluntary extension of military service at the instance of the member beyond the initial period of enlistment, induction or call to active duty.

Sec. 4. Minnesota Statutes 1978, Section 353.01, Subdivision 27, is amended to read:

Subd. 27. **BENEFIT.** "Benefit" means a monthly survivor benefit paid or payable by the fund to a surviving ~~dependent~~ spouse or a dependent child and also includes a monthly disability benefit paid or payable by the fund to a member who is totally and permanently disabled.

Sec. 5. Minnesota Statutes 1978, Section 353.017, Subdivision 2, is amended to read:

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Subd. 2. **ELECTION.** A person described in subdivision 1 will be covered by the association if written election to be covered is delivered to the board ~~before July 1, 1978~~ or within 30 days of being employed by such labor organization; ~~whichever is later.~~

Sec. 6. Minnesota Statutes 1978, Section 353.03, Subdivision 1, is amended to read:

353.03 BOARD OF TRUSTEES. Subdivision 1. **MANAGEMENT; COMPOSITION; ELECTION.** The management of the public employees retirement fund is hereby vested in a board of trustees consisting of 15 members, who shall be known as the board of trustees. This board shall consist of four trustees, one of whom shall be designated by each of the following associations or organizations, Minnesota school boards association, League of Minnesota Cities, Association of Minnesota Counties and the executive committee of the statewide general labor organization which includes among its membership the employee organizations, as defined in section 179.63, subdivision 5, which represent the largest number of employees who are association members; nine area trustees, who shall be elected from the membership employed in one of the areas described below by the members employed in such area except members of the police and fire fund; one trustee who shall be a retired annuitant elected at large by other annuitants; and one trustee who is a member of the police and fire fund elected at large by the membership of the police and fire fund. Elected Trustees elected by the membership of the association or by the annuitants of the association shall hold office be elected for a term of four years. Trustees designated by an association or organization or elected or selected by the use of a procedure other than direct election by the membership of the association or by the annuitants of the association shall hold office for a term of two years or until the designation, election or selection procedure is changed, if that occurs earlier. For seven days beginning December 1 of each year, the association shall accept at its office filings in person or by mail of candidates for the board of trustees. An area candidate shall submit at the time of filing a nominating petition signed by 25 or more members of the fund from the area of the candidate, a retired annuitant candidate, a nominating petition signed by 25 or more such annuitants, and a police and fire fund candidate, a nominating petition signed by 25 or more members of such fund. No nominee may withdraw his name from nomination after December 15. By January 10 of each year in which elections are to be held the board shall distribute by mail to the members and annuitants ballots listing the candidates. No member may vote for more than one candidate but a blank line shall be provided for a write in vote. A ballot indicating a vote for more than one person shall be void. No special marking may be used on the ballot to indicate incumbents. The last day for mailing ballots to the fund shall be January 31. Except as provided in this section, all terms expire on January 31 of the fourth year, and the position shall remain vacant until the newly elected member is qualified. The ballot envelopes shall be so designed and the ballots shall be counted in such a manner as to insure that each vote is secret. For the purpose of electing the nine area trustees, the state shall be divided into three areas as follows: Area one shall include Anoka, Hennepin, Ramsey and Washington counties. Area two shall include Big Stone, Swift, Kandiyohi, Meeker and Wright counties and all counties south thereof, except counties in area one. Area three shall include all the remaining counties of the state. If any governmental unit is located in more than one area, place of employment shall be deemed to be in the area in which the main office of the governmental unit is located. Each year for three years one area trustee shall be elected to a four-year term from each

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area by the members employed in the respective areas. In the fourth year one trustee shall be elected at large by the police and fire fund membership and one trustee elected at large by the annuitants.

Notwithstanding the foregoing, however, in order to provide for a transition to regional elections, in the year 1978 only, a retired trustee shall be elected by the annuitants, and three trustees shall be elected from each of the three areas by the members of the area who may vote for only one candidate. The annuitant candidate receiving the most votes shall serve a three-year term, the candidate in each area receiving the largest number of votes shall serve a four-year term, the candidate in each area receiving the second largest number of votes shall serve a two-year term and the candidate in each area receiving the third largest number of votes shall serve a one-year term. The elections shall be supervised by the secretary of state. It shall be the duty of the board of trustees to faithfully administer the law without prejudice and consistent with the expressed intent of the legislature. They shall act as trustees with a fiduciary obligation to the state of Minnesota which created the fund, the taxpayers of the governmental subdivisions which aid in financing it and the public employees who are its beneficiaries.

Sec. 7. Minnesota Statutes 1978, Section 353.03, Subdivision 3, is amended to read:

Subd. 3. **OFFICERS; EMPLOYEES; BYLAWS.** The board shall elect a chairman and vice-chairman, and shall appoint an executive director and other employees and may adopt bylaws, and procure other services as it may reasonably deem necessary and fix their compensation subject to subdivision 2 hereof. ~~Except in subdivision 3a, whenever the terms "secretary", "secretary of the board" or "secretary of the board of trustees" appear in this chapter the revisor of statutes is herein directed to substitute therefor, "executive director"~~.

Sec. 8. Minnesota Statutes 1978, Section 353.29, Subdivision 2, is amended to read:

Subd. 2. **AVERAGE SALARY.** In calculating the annuity under subdivision 3, "average salary" means an amount equivalent to the average of a member's highest salary upon which employee contributions were paid for any five successive years of allowable service, based on dates of salary periods as listed on salary deduction reports.

Sec. 9. Minnesota Statutes 1978, Section 353.29, Subdivision 8, is amended to read:

Subd. 8. **ANNUITIES; PAYMENT; EVIDENCE OF RECEIPT.** Payment of any annuity or benefit for a given month shall be mailed by the association to the annuitant, recipient of a disability benefit, or survivor, during the first week of that month. Evidence of receipt of every warrant issued by the association in payment of an annuity or benefit shall be submitted by the payee thereof to the association quarterly semi-annually, together with a written declaration that the annuitant or recipient of a disability benefit has or has not returned to public service; that the surviving dependent spouse has or has not remarried; and shall be furnished on forms provided by the executive director thereof, before the association shall pay to the annuitant, disability recipient, or survivor for the next ensuing month, the annuity or benefit to which he otherwise may be entitled.

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Sec. 10. Minnesota Statutes 1978, Section 353.31, Subdivision 1, is amended to read:

353.31 SURVIVOR BENEFITS. Subdivision 1. BENEFITS FOR SURVIVING SPOUSE AND DEPENDENT CHILDREN; BEFORE RETIREMENT. Upon the death of a "basic member" before retirement or upon the death of a "basic member" who was disabled and receiving disability benefits pursuant to section 353.33 at the time of his death who has had at least 18 months of credited allowable service, his surviving spouse and dependent children, as defined in section 353.01, subdivisions 15 and 20, shall receive the monthly benefit provided below:

- | | |
|---|--|
| (a) Surviving dependent spouse | 30 percent of the member's monthly average salary in effect over the last full six months of allowable service preceding death |
| (b) Each dependent child | 10 percent of the member's monthly average salary in effect over the last full six months of allowable service preceding death |

Payments for the benefit of any dependent child, as defined in section 353.01, subdivision 15, shall be made to the surviving parent, or if there be none, to the legal guardian of such child. The maximum monthly benefit for any one family shall not exceed \$450, and the minimum benefit per family shall not be less than 30 percent of the "basic member's" said average salary, subject to the aforementioned maximum. The surviving spouse benefit shall terminate upon his or her remarriage, and the dependent children's benefit shall be reduced pro tanto when any child is no longer dependent.

Any survivor of a "basic member" whose average salary was less than \$75 per month shall not be entitled to the benefits provided in this subdivision.

Under the terms of this subdivision there are no survivor benefits, as such, payable to the surviving spouse or dependent children of any deceased "coordinated member".

Sec. 11. Minnesota Statutes 1978, Section 353.32, Subdivision 1, is amended to read:

353.32 REFUNDS AFTER DEATH OF MEMBER OR FORMER MEMBER. Subdivision 1. BEFORE RETIREMENT. If a member or former member who terminated public service after June 30, 1973, dies before retirement or before he has received any retirement annuity and no other payment of any kind is or may become payable to any person, a refund shall be paid to his designated beneficiary or, if there be none, to his surviving spouse, or, if none, to the legal representative of his estate. Such refund shall be in an amount equal to his accumulated deductions plus interest thereon at the rate of 3-1/2 percent per annum compounded annually less the sum of any disability or ~~other~~ survivor benefits, if any, that may have been paid by the fund; provided that a survivor who has a right to benefits pursuant to section 353.31 may waive such benefits in writing,

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except such benefits for a dependent child under the age of 18 years may only be waived pursuant to an order of the district court.

Sec. 12. Minnesota Statutes 1978, Section 353.32, Subdivision 3, is amended to read:

Subd. 3. OPTIONAL SURVIVOR ANNUITIES; DESIGNATED BENEFICIARY.

If a former member selected an optional annuity by the terms of which an optional survivor's annuity was paid to a survivor after his death, upon the death of the survivor there shall be paid to the former member's designated beneficiary a refund of his accumulated deductions less the total payments of all kinds made by the fund to the former member during his lifetime or to any authorized person after his death. If said beneficiary should die before making application for such refund, the same shall be paid to the legal representative of the estate of the former member. ~~The refunds provided in this section shall not be interpreted to apply in any case where survivor's benefits are paid pursuant to section 353.31.~~

Sec. 13. Minnesota Statutes 1978, Section 353.32, Subdivision 9, is amended to read:

Subd. 9. PAYMENT TO A MINOR. If a member or former member dies having named as his beneficiary a person who is a minor at the time of the application for refund and the amount of the refund does not exceed \$1,500, exclusive of interest, the board of trustees in the absence of guardianship or probate proceedings may make payment to the natural guardian having custody of such minor beneficiary, for the benefit of such child. Any annuity or disability benefit payable at the time of death of an annuitant or recipient of a disability benefit, which is payable to a beneficiary who is a minor, may be paid in the same manner. Such payment shall be a bar to recovery by any other person or persons.

Sec. 14. Minnesota Statutes 1978, Section 353.33, Subdivision 1, is amended to read:

353.33 TOTAL AND PERMANENT DISABILITY BENEFITS. Subdivision 1. **AGE, SERVICE AND SALARY REQUIREMENTS.** ~~After June 30, 1973~~ Any member who becomes totally and permanently disabled before age 65 and after ten years of allowable service or after age 50 but before age 65 with five years of allowable service, whichever is sooner, shall be entitled to a disability benefit in an amount provided in subdivision 3. If such disabled person's public service has terminated at any time, at least five of the required ten years of allowable service must have been rendered after last becoming a member. Any member whose average salary is less than \$75 per month shall not be entitled to a disability benefit. No repayment of a refund otherwise authorized pursuant to section 353.34 and no purchase of prior service or payment made in lieu of salary deductions otherwise authorized pursuant to sections 353.01, subdivision 16, 353.017, subdivision 4, or 353.36, subdivision 2 may be made after the occurrence of the disability for which an application pursuant to this section is filed.

Sec. 15. Minnesota Statutes 1978, Section 353.34, Subdivision 3, is amended to
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read:

Subd. 3. **DEFERRED ANNUITY; ELIGIBILITY; COMPUTATION.** Any person with at least ten years of allowable service when termination of public service occurs may at his option leave his accumulated deductions in the fund and thereby be entitled to a deferred annuity commencing at age 65, except that any person who terminates public service after June 30, 1973, may qualify for early retirement under section 353.30 ; ~~subdivisions 1 and 1a~~ . The deferred annuity shall be computed in the manner provided in section 353.29, subdivisions 2 and 3, on the basis of the law in effect on the date of termination of public service and shall be augmented as provided in section 353.71, subdivision 2. Such person may revoke this option at any time prior to the commencement of deferred annuity payments by making application for a refund. Such person shall be entitled to a refund of his accumulated deductions within 30 days following date of receipt of such application by the executive director of the association.

Sec. 16. Minnesota Statutes 1978, Section 353.35, is amended to read:

353.35 CONSEQUENCES OF REFUND; REPAYMENT, RIGHTS RESTORED. When any former member accepts a refund all existing service credits and all rights and benefits to which the member was entitled prior to the acceptance of such refund shall terminate and shall not again be restored until the former member acquires not less than 18 months allowable service credit subsequent to taking his last refund and repays all refunds taken and interest received under section 353.34, subdivisions 1 and 2, plus interest at six percent per annum compounded annually. If more than one refund has been taken, all refunds must be repaid by the member with interest at six percent per annum compounded annually.

Sec. 17. Minnesota Statutes 1978, Section 353.64, Subdivision 1, is amended to read:

353.64 MEMBERSHIP; QUALIFICATIONS; POLICE OFFICER, FIRE FIGHTER. Subdivision 1. Any person who prior to July 1, 1961, was a member of the police and fire fund, by virtue of being a police officer or fire fighter, shall as long as he remains in either position, be deemed to continue his membership in said fund. Any other employee serving on a full-time basis as a police officer or fire fighter on or after July 1, 1961, shall become a member of the public employees police and fire fund. Any employee serving on less than a full-time basis as a police officer ~~or fire fighter~~, as determined by the rules which shall be prescribed by the board of trustees on or before January 1, 1980, shall become a member of the public employees police and fire fund only after a resolution is adopted by the governing body of the governmental subdivision employing ~~such the~~ person declaring that the position ~~such~~ which the person holds is ~~either~~ that of a police officer ~~or fire fighter~~. Any employee serving on less than a full time basis as a firefighter, other than a volunteer firefighter as defined in section 21, as determined by rules which shall be prescribed by the board of trustees on or before January 1, 1980, shall become a member of the public employees police and fire fund only after a resolution is adopted by the governing body of the governmental subdivision employing the person declaring that the position which the person holds is that of a firefighter and that the position will be compensated at an hourly wage payment rate which will yield a

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salary on an annual basis in an amount in excess of \$3,000. Any police officer or fire fighter who by virtue of his employment is required to contribute to any other pension, relief, or retirement fund established for the benefit of officers ~~and~~ or employees of a governmental subdivision other than a volunteer firefighters relief association to which sections 69.771 to 69.776 apply shall not be a member of this fund.

Sec. 18. Minnesota Statutes 1978, Section 353.65, Subdivision 2, is amended to read:

Subd. 2. The employee contribution shall be an amount equal to eight percent of the total salary of every member. This contribution shall be made by deduction from salary in the manner provided in subdivision 4. Where any portion of a member's salary is paid from other than public funds, such member's employee contribution shall be based on the total salary received from all sources. If the member is a firefighter employed on less than a full time basis, the member's total salary shall not include any reimbursement payments for fire calls.

Sec. 19. Minnesota Statutes 1978, Section 353.656, Subdivision 2, is amended to read:

Subd. 2. **BENEFITS PAID UNDER WORKERS' COMPENSATION LAW.** If a member, as described in subdivision 1, is injured under circumstances which entitle him to receive benefits under the workers' compensation law, he shall receive the same benefits as provided in subdivision 1, less ~~the all amount amounts~~ paid to him in weekly benefits under the workers' compensation law, after deduction of amount of attorney fees, authorized under applicable workers' compensation laws, paid by a disabiltant.

Sec. 20. Minnesota Statutes 1978, Section 353.71, Subdivision 5, is amended to read:

Subd. 5. **EARLY RETIREMENT.** The requirements and provisions for retirement prior to age 65 contained in section 353.30, ~~subdivisions 4 and 4a~~ shall also apply to a person fulfilling such requirements with a combination of service as provided in subdivision 1.

Sec. 21. **[353.01] [Subd. 34.] VOLUNTEER FIREFIGHTER; DEFINITION.** A volunteer firefighter is any person who serves on a regular basis as an active member of a municipal fire department or an independent nonprofit firefighting corporation, who actually receives annual compensation from hourly wage payments for service as a firefighter in an amount which does not exceed \$3,000 and who is annually stipulated by the employing municipality or independent nonprofit firefighting corporation in advance on a form prescribed by the executive director as not being eligible during the year for annual compensation from hourly wage payments for service as a firefighter in excess of \$3,000.

Sec. 22. **[356.455] CORRECTION OF ERRONEOUS INTERPRETATION OF EXCLUSION OF CERTAIN EMPLOYEES IN CERTAIN FEDERAL PROGRAMS.** The employment of a person as an enrollee under the federal comprehensive employment

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and training act in a subsidized on-the-job training, work experience or public service employment position shall not be deemed to be two employments for purposes of implementing the exclusion from retirement fund coverage provided for in Laws 1978, Chapter 720, even though the compensation for the person is paid in part from federal comprehensive employment and training act subsidy funds and is paid in part from local supplementary revenue sources other than funds provided under the federal comprehensive employment and training act, and any contrary prior administrative interpretation of the provisions of Laws 1978, Chapter 720 is deemed to be erroneous. This section shall be deemed to be remedial in nature and shall be effective retroactively to March 30, 1978. Any employee contributions and any employer and employer additional contributions taken from or on behalf of any person who would have been excluded from retirement fund coverage pursuant to Laws 1978, Chapter 720 except for the erroneous prior administrative interpretation shall be deemed to be erroneous deductions and shall be refunded as soon as practicable to the person and employing unit involved. The refund shall be accompanied by interest at the rate of five percent per annum compounded, payable from the date that the erroneous deduction was taken to the first day of the month in which the refund is processed.

Sec. 23. BENEFIT ADJUSTMENTS FOR CERTAIN OMITTED SURVIVOR BENEFIT RECIPIENTS. In addition to the benefit increase granted pursuant to Laws 1978, Chapter 665, Section 2, each public pension fund to which Minnesota Statutes, Section 356.41 applies shall pay an increase equal to four percent to eligible survivors who are recipients of automatic survivor annuities of retirees where the retiree began initial receipt of the retirement annuity prior to July 1, 1976, and who did not receive an increase from or an increase equal to the increase from the Minnesota adjustable fixed benefit fund paid or payable on January 1, 1978, and who did not receive an increase pursuant to Laws 1978, Chapter 665, Section 2. The increase shall be payable from the first day of the month next following the effective date of this section and shall include retroactive payments to July 1, 1978.

Sec. 24. REINSTATEMENT OF CERTAIN DISABILITY BENEFITS. A former member of the public employees retirement association who was a former employee of the Nopeming Sanatorium, who became eligible for total and permanent disability benefits on November 20, 1969, and whose total and permanent disability benefits were discontinued as of March 21, 1972, pursuant to Minnesota Statutes, Section 353.33, Subdivision 6, shall again be entitled to total and permanent disability benefits upon application therefor and compliance with Minnesota Statutes, Section 353.33, commencing upon the effective date of this act, notwithstanding the fact that more than three years have elapsed following termination of public service.

Sec. 25. Laws 1978, Chapter 796, Section 28, shall be effective retroactively to July 1, 1977. Notwithstanding any provision of law to the contrary, the board of trustees position established pursuant to Laws 1978, Chapter 796, Section 28, shall be deemed to eliminate and replace the board of trustee position elected by the governing bodies of employee organizations, as defined in Minnesota Statutes, Section 179.63, Subdivision 5, representing public employees retirement association members.

Sec. 26. A member of the public employees retirement association and employee of
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Clearwater County who became totally and permanently disabled after more than ten years of service shall be entitled to total and permanent disability benefits pursuant to Minnesota Statutes, Section 353.33 commencing upon the effective date of this act, notwithstanding the fact that repayment of a refund of employee contributions was not made until after the date of disability.

Sec. 27. Laws 1967, Chapter 775, Section 2, is amended to read:

Sec. 2. **MEMBER'S CONTRIBUTIONS.** Each member of the Association shall pay into the retirement funds of the Association during his term of covered employment, for retirement, disability and survivor benefits, a contribution of 6 eight percent of his total salary. The contributions shall be deducted from his salary by the City of Moorhead, transmitted to the Association, and deposited to the credit of the proper fund thereof. For the purposes of this section, covered employment shall be 30 35 years, so that no member shall be required to make contributions to the Association for any term of employment in excess of 30 35 years.

Sec. 28. Laws 1967, Chapter 775, is amended by adding a section to read:

Sec. 3a. RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC SERVICE. Upon separation from public service, any member of the association who has attained the age of at least 55 years and who has received credit for not less than ten years of allowable service is entitled upon application to a retirement annuity. The annuity shall be determined by multiplying the average of the highest salary earned as a police officer upon which employee contributions were paid for any five successive years of allowable service by 2-1/2 percent per year of allowable service for the first 20 years of service and two percent per year of allowable service thereafter, to a maximum of 35 years.

Sec. 29. Laws 1967, Chapter 775, Section 4, is amended to read:

Sec. 4. **DEFERRED ANNUITY.** A member of the Association may elect to withdraw from membership upon termination of his employment as a ~~police~~ police officer. In case of withdrawal from membership the Association shall refund the member's contributions plus interest thereon at the rate of three percent compounded annually, except that on the request of a withdrawing member with 4 four or more years of membership credit who was employed prior to July 1, 1979, or a member with ten or more years of membership credit who was employed on or after July 1, 1979, the Association shall, in lieu of a refund, issue to him a deferred pension certificate providing for pension payments to commence at the time he would be entitled to receive a retirement pension if he had continued his membership in the Association.

The amount of the monthly payments under the deferred pension certificate shall be the proportion of the monthly pension to which he would be entitled if he had the necessary minimum age and minimum years of service for retirement at the time of withdrawal, as his actual years of service at the time of withdrawal bear to the minimum years of service required for retirement. The monthly annuity payments shall commence upon the date the withdrawing member would have first been entitled to a retirement

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annuity had he continued his employment.

In the case of the death before commencement of payments to a holder of a deferred pension certificate, his contributions on which the certificate was based shall be paid to his surviving spouse, if living, otherwise to his designated beneficiary, if any, otherwise to his heirs. The surviving spouse or a person appointed by the court to act for any minor children may elect to take a retirement annuity based on a regular survivor's benefit on the proportion of the monthly pension to which the person would have been entitled under the deferred pension certificate on the date of death.

Sec. 30. Laws 1967, Chapter 775, Section 5, is amended to read:

Sec. 5. **DISABILITY BENEFIT.** Should a member of the Association become totally and permanently disabled from performing his duties as a police officer for the City of Moorhead, he shall be paid a disability benefit for the term of his life in accordance with the following schedule:

0 to 10 years of membership, \$75 per month

10 to 11 1/2 years of membership, 11/20 of his retirement annuity

11 1/2 to 12 1/2 years of membership, 12/20 of his retirement annuity

12 1/2 to 13 1/2 years of membership, 13/20 of his retirement annuity

13 1/2 to 14 1/2 years of membership, 14/20 of his retirement annuity

14 1/2 to 15 1/2 years of membership, 15/20 of his retirement annuity

15 1/2 to 16 1/2 years of membership, 16/20 of his retirement annuity

16 1/2 to 17 1/2 years of membership, 17/20 of his retirement annuity

17 1/2 to 18 1/2 years of membership, 18/20 of his retirement annuity

18 1/2 to 19 1/2 years of membership, 19/20 of his retirement annuity

19 1/2 to 20 years or more of membership, his retirement annuity equal to the annuity which he would have received under section 2 of this act if he had retired with 20 years of service on the date he became disabled and was on that date at least 55 years of age. If he has not been employed by the police department of the City of Moorhead for five years, the average salary for the years during which he was employed shall be used in computing the benefit to which he is entitled.

Determination of disability shall be made by a physician designated by the council, at Association expense. Should either the council or the member not be satisfied with the decision of the physician engaged by the council, the matter shall be referred to a board of three physicians, one selected by the council, one selected by the member, and the third

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to be selected by the two physicians so selected. In default of the two physicians so selected to agree upon a third, the third shall be appointed within one month by the chief judge of the judicial district in which the City of Moorhead is located. The decision of the board of physicians shall be final. The costs of the panel of physicians shall be paid by the city. Their determination, however, shall not be construed to prevent the member from bringing action against the Association to recover disability benefits.

Disability benefits shall commence 90 days after the date of the disability except that where the member is receiving salary continuation under injury on duty provisions, annual or sick leave provisions of his employment with the City of Moorhead, the disability benefits shall commence on the date the injury on duty or annual or sick leave terminates, not to commence, however, less than 90 days from the date of disability. Disability payments hereunder shall be reduced by the amount, if any, which a member receives by way of ~~Workmen's~~ workers' compensation benefits.

Sec. 31. Laws 1967, Chapter 775, Section 6, is amended to read:

Sec. 6. **SURVIVOR BENEFIT.** Upon the death of a member before retirement or upon the death of a member who was disabled and receiving disability benefits at the time of his death or upon the death of a retired member, his the surviving dependent spouse and dependent children under the age of 18 shall receive the monthly benefit provided below:

(a) Surviving dependent spouse, ~~\$75 per month or 50 percent of the earned retirement~~ at 30 percent of the member's average salary during the most recent six months of employment prior to the date of death.

(b) Each dependent child, ~~\$20 per month ten percent of the member's average monthly salary during the most recent six months of employment prior to the date of death.~~

The payment to a surviving dependent spouse shall terminate upon her remarriage. The payment to a surviving dependent child may continue to the age of 22, provided the surviving dependent child is a full-time student. Total survivor benefits to the dependent spouse and all the dependent children of any one deceased member shall not exceed the sum of \$100 \$450 per month. Payments for the benefit of a dependent child shall be made to the surviving parent or, if none, to the legal guardian of the child.

Sec. 32. Laws 1967, Chapter 775, Section 7, is amended to read:

Sec. 7. **NO ESCALATION.** No benefits payable hereunder shall be altered by reason of change in salary or other benefits paid to active members of the Association. Any member who has retired prior to the effective date of this act July 1, 1979, upon either his a retirement annuity or his disability annuity, shall continue to receive the same monthly benefit which he was receiving on the effective date of this act a 20 percent increase in said annuity commencing July 1, 1979. Any survivor who was receiving or was entitled to receive benefits on the effective date of this act July 1, 1979 shall continue to receive the same benefits he was receiving or entitled to receive on the effective date of

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this act a 20 percent increase in said benefits commencing July 1, 1979.

Sec. 33. Laws 1967, Chapter 775, Section 3, is repealed.

Sec. 34. Laws 1955, Chapter 75, Section 10, Subdivision 3, as added by Laws 1969, Chapter 138, Section 1, is amended to read:

Subd. 3. Each member of the association who is a regular, full time ~~fireman~~ firefighter shall pay into the retirement funds of the association during his term of covered employment, for retirement, disability, and survivor benefits, a contribution of ~~six~~ eight percent of his salary. The contributions shall be deducted from his salary by the city of Moorhead, transmitted to the association, and deposited to the credit of the proper fund thereof. The contributions of a member who is a volunteer ~~fireman~~ firefighter shall be in an amount prescribed by the bylaws and shall be paid to the treasurer of the association, who shall place the same in a special fund to the credit of the individual ~~fireman~~ firefighter. No member shall be required to make contributions to the association for any term of service in excess of ~~30~~ 35 years.

Sec. 35. Laws 1955, Chapter 75, Section 14, Subdivision 2, as added by Laws 1965, Chapter 190, Section 1, renumbered and amended by Laws 1969, Chapter 138, Section 1, and amended by Laws 1975, Chapter 120, Section 1, is amended to read:

Subd. 2. **MOORHEAD, CITY OF; FIREFIGHTERS' RELIEF FUNDS AND PENSIONS.** The funds of the association shall be invested in securities that are designated by Minnesota Statutes, Section 11.16, as legal investments for funds of the state employees retirement association. The investment of such funds shall be subject to all the restrictions provided in Minnesota Statutes, Section 11.16, except that the percentage of the funds which may be invested in common and preferred stocks in any year is not restricted, and up to ~~\$20,000~~ \$10,000 may be invested in the stock of any one corporation. The advice of a trust company concerning investments shall be given with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived. The trust company shall have the duty to advise the association relative to the sale, conveyance, and exchange of such securities, and investment and reinvestment of funds, when it deems it desirable to do so. The trust company shall sell securities upon request of the association, when the association determines that funds are needed for the ~~firemen's~~ firefighter's relief association.

Sec. 36. Laws 1955, Chapter 75, Section 16, as amended by Laws 1965, Chapter 190, Section 1, and renumbered and amended by Laws 1969, Chapter 138, Section 1, and Laws 1975, Chapter 120, Section 2, is amended to read:

Sec. 13. The amounts paid to the relief association by the state and city, including deductions from ~~firemen's~~ firefighters' salaries together with the earnings on the special fund, and set aside as the "association special fund" shall be appropriated and disbursed only for:

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(a) the payment of survivors' benefits to widows and orphans of members of the association,

(b) the payment of disability or service pensions to members of the association,

(c) the payment of premiums on the official bonds of officers of the association,

(d) the payment of salaries to the officers of the association but not to exceed ~~\$500~~ \$2,000 per year in total of all salaries,

(e) necessary administrative expenses including, but not limited to, actuarial, auditing, trustee's fees, and legal expenses,

(f) the payment of dues to the Minnesota volunteer firemen's firefighters' benefit association.

Sec. 37. Laws 1955, Chapter 75, Section 14, Subdivision 1, as added by Laws 1969, Chapter 138, Section 1, and amended by Laws 1975, Chapter 120, Section 3, is amended to read:

Sec. 14. Subdivision 1. **RETIREMENT BENEFIT; FULL TIME FIREFIGHTERS.**

The basic retirement benefit for a full time fireman firefighter shall be 50 percent of the average salary of the fireman during the last ten years of employment. For all years of employment prior to the calendar year 1967, the average salary for such employment shall be the salary paid to said fireman during the calendar year 1967. A fireman who has been a member of the relief association for not less than 20 years shall be eligible to retire at the conclusion of 20 years of employment as a full time fireman; or at the conclusion of a period or periods with the fire department as a regular full time fireman equal to ten years and a combined record of active service with the fire department as a regular full time fireman and volunteer fireman equal to 20 years, if he was on January 1, 1965, a member of the association. For every year of service in excess of 20 years, the retirement benefit shall increase by one half of one percent of the average salary for the last ten years of employment, said total retirement benefit not to exceed, however, 55 percent of the average salary for the last ten years of employment firefighter based on the average salary of the highest five successive years of service. A firefighter shall be eligible to retire at the conclusion of 20 or more years of service as a full time firefighter; or at the conclusion of a period or periods of service with the fire department as a full time firefighter and a volunteer firefighter totaling 20 or more years, provided at least ten years of such service are as a full time firefighter, if he was a member of the association on January 1, 1965. Retirement shall be based on 2-1/2 percent per year of average salary for 20 years of service and two percent per year thereafter, to a maximum of 35 years. The minimum age at which retirement benefits may be drawn is the age of 55 years, except that a member with 18 years of service on July 1, 1967, may draw retirement benefits at the age of 50 years.

Sec. 38. Laws 1955, Chapter 75, Section 14, Subdivision 2, as added by Laws 1969, Chapter 138, Section 1, is amended to read:

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Subd. 2. **RETIREMENT BENEFIT; VOLUNTEER FIREFIGHTERS.** A member of said association, who has completed a period or periods of service within the fire department as a volunteer ~~fireman~~ firefighter equal to 20 years or more; or a member of said association who is not eligible for the maximum service pension, but who has served as a volunteer ~~fireman~~ firefighter and as a regular full time ~~fireman~~ firefighter, the combined record of service with the fire department as a regular full time ~~fireman~~ firefighter and as a volunteer ~~fireman~~ firefighter being equal to 20 years, shall after he has arrived at the age of 60 years and has retired from the payroll of the fire department, be entitled to receive a service pension of \$40 ~~\$48~~ per month.

Sec. 39. Laws 1955, Chapter 75, Section 14, Subdivision 4, as added by Laws 1969, Chapter 138, Section 1, is amended to read:

Subd. 4. **DEFERRED ANNUITY.** A member of the association may elect to withdraw from membership upon termination of his employment as a full time or volunteer ~~fireman~~ firefighter. In case of withdrawal from membership the association shall refund the member's contributions, plus interest thereon at the rate of three percent compounded annually, except that on the request of a withdrawing member with four or more years of membership credit, the association shall, in lieu of a refund, issue to him a deferred pension certificate providing for pension payments to commence at the time he would be entitled to receive a retirement pension if he had continued his membership in the association. A member first becoming such after July 1, 1979 shall not acquire a vested interest in a deferred pension until completion of ten years of service.

The amount of the monthly payments under the deferred pension certificate shall be the proportion of the monthly pension to which he would be entitled if he had the necessary minimum age and minimum years of service for retirement at the time of withdrawal, as his actual years of service at the time of withdrawal bear to the minimum years of service required for retirement. The monthly annuity payments shall commence upon the date the withdrawing member would have first been entitled to a retirement annuity had he continued his employment.

In the case of the death before commencement of payments to a holder of a deferred pension certificate, his contributions on which the certificate was based shall be paid to his surviving spouse, if living, otherwise to his designated beneficiary, if any, otherwise to his heirs. The surviving spouse or a person appointed by the court to act for any minor children may elect to take a retirement annuity based on a regular survivor's benefit on the proportion of the monthly pension to which the person would have been entitled under the deferred pension certificate on the date of death.

Sec. 40. Laws 1955, Chapter 75, Section 14, Subdivision 5, as added by Laws 1969, Chapter 138, Section 1, is amended to read:

Subd. 5. **DISABILITY BENEFIT.** If a member of the association who is a full time ~~fireman~~ firefighter becomes totally and permanently disabled from ~~performing being able~~ to perform his duties as a ~~fireman~~ firefighter he shall be paid a disability benefit for the term of his disability equal to the retirement benefit which he would have received under subdivision 1 if he had retired with 20 years of service on the date he becomes disabled

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and were on that date at least 55 years of age. If he has not then been employed by the fire department for ~~ten~~ five years, the average salary for the years during which he was employed shall be used in computing the benefit to which he is entitled. If a member of the association who is a volunteer ~~fireman~~ firefighter becomes totally and permanently disabled from performing his duties as a ~~fireman~~ firefighter he shall be paid a disability benefit for the term of his disability in such amount, not to exceed \$150 per month, as the bylaws of the association may prescribe.

Determination of disability shall be made by a physician designated by the Moorhead city council, at association expense. Should either the council or the member not be satisfied with the decision of the physician engaged by the council, the matter shall be referred to a board of three physicians, one selected by the council, one selected by the member, and the third to be selected by the two physicians so selected. In default of the two physicians so selected to agree upon a third, the third shall be appointed within one month by the chief judge of the judicial district in which the city of Moorhead is located. The decision of the board of physicians shall be final. The costs of the panel of physicians shall be paid by the city. Their determination, however, shall not be construed to prevent the member from bringing action against the association to recover disability benefits.

Disability benefits shall commence 90 days after the date of the disability except that where the member is receiving salary continuation under injury on duty, annual or sick leave provisions of his employment with the city of Moorhead, the disability benefits shall commence on the date the injury on duty, annual or sick leave terminates, not to commence, however, less than 90 days from the date of disability. Disability payments hereunder shall be reduced by the amount, if any, which a member receives by way of ~~workmen's~~ workers' compensation benefits.

Sec. 41. Laws 1955, Chapter 75, Section 14, Subdivision 6, as added by Laws 1969, Chapter 138, Section 1, and as amended by Laws 1975, Chapter 120, Section 4, is amended to read:

Subd. 6. **SURVIVOR BENEFIT.** Upon the death of a member before retirement or upon the death of a member who was disabled and receiving disability benefits at the time of his death or upon the death of a retired member, his surviving dependent spouse and dependent children under the age of 18 shall receive the monthly benefit provided below:

(a) If the member was a full time ~~fireman~~ firefighter prior to his death, disability, or retirement, the surviving dependent spouse shall receive 30 percent of the member's average monthly salary for the six months prior to his death, disability or retirement, and each dependent child shall receive ten percent of the member's average monthly salary for the six months prior to his death, disability or retirement.

(b) If the member was a volunteer ~~fireman~~ firefighter prior to his death, disability, or retirement, the surviving dependent spouse shall receive \$40 per month and each dependent child shall receive such amount not less than \$15 per month as the board of trustees of the association may prescribe.

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The payment to a surviving dependent spouse shall terminate upon her remarriage. The payment to a surviving dependent child may continue to the age of 22, provided the surviving dependent child is a full time student. The total amount of survivor benefits to all the dependent children and the dependent spouse of any one deceased member shall not exceed the sum of \$400 ~~\$450~~ per month. Payments for the benefit of a dependent child shall be made to the surviving parent, or if there be none, to the legal guardian of the child.

No allowance for disability shall be made unless notice of such disability and application on account thereof shall be made on behalf of the disabled member to the secretary of the association within 30 days after the beginning of such disability.

Sec. 42. Laws 1955, Chapter 75, Section 14, as added by Laws 1969, Chapter 138, Section 1, is amended by adding a subdivision to read:

Subd. 7. ESCALATION PROHIBITED. No benefits payable pursuant to this section shall be altered by reason of change in salary or other benefits paid to active members of the association. Any member who is retired prior to July 1, 1979 upon either a retirement annuity or disability annuity, shall receive a 20 percent increase in said annuity commencing July 1, 1979. Any survivor who was receiving or was entitled to receive benefits on July 1, 1979, shall receive a 20 percent increase in said benefits commencing July 1, 1979.

Sec. 43. Laws 1955, Chapter 75, Section 19, as amended by Laws 1965, Chapter 190, Section 1, renumbered and amended by Laws 1969, Chapter 138, Section 1, is amended to read:

Sec. 16. If a member, subsequent to his entry into the service of such fire department, has served in the military forces of the United States during any war or emergency or entered the employment of the government of the United States and in such service rendered fire prevention service during any war or emergency and has returned after his honorable discharge from such service and resumed active duty in said fire department, the period of his absence in such service of the United States shall not be deducted in computing the period of service for the purpose of any benefit under Laws 1955, Chapter 75, as amended, but shall be construed and counted as a part and portion of his active duty in said fire department, provided that credit allowed for such service shall not exceed a total of five years. Any such member, who was a full time regular ~~fireman~~ firefighter at the time of his entry into government service, who seeks credit for such military service shall, upon his return to employment in the department, pay into the association's special fund for each year of military service, prior to January 1, 1965, three percent of his last full year's salary paid by the city; and for each year of such service subsequent to January 1, 1965, six percent of such salary; and for each year of service subsequent to July 1, 1979, eight percent of such salary. If such member be a volunteer member of the fire department at the time of his entry into government service, he shall pay into the association's special fund the sum prescribed in the bylaws.

Sec. 44. Sections 27 to 43 are effective upon approval by the Moorhead city council and upon compliance with Minnesota Statutes, Section 645.021. Changes in benefits and
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contributions shall be effective July 1, 1979.

Sec. 45. **LIMITATION ON NONFORFEITABLE ENTITLEMENT TO BENEFIT INCREASE.** No current annuitant, disabilitant or survivor benefit recipient and no active or inactive member of any retirement fund to which this act applies shall acquire a nonforfeitable interest in, or entitlement to, any modification in the benefit plan of the fund contained in this act or be entitled to bring any action based on any modification in the benefit plan of the fund contained in this act until a period of two years commencing with the date on which the benefit plan modification becomes effective has expired.

Sec. 46. Sections 1, 6, 7, 17, 18, and 21 to 26, are effective the day following final enactment. The balance of this act shall be effective July 1, 1979.

Approved May 25, 1979.

CHAPTER 217—H.F.No.749

An act relating to retirement; teachers retirement fund associations in cities of the first class; codification of a coordinated program for the Minneapolis and St. Paul teachers retirement fund associations; recodification of the law governing first class city teachers retirement fund associations; amending Minnesota Statutes 1978, Sections 354A.05; 354A.08; 354A.09; 354A.091; 354A.11; 354A.12; 354A.21; 356.32, Subdivision 2; and Chapter 354A by adding sections; repealing Minnesota Statutes 1978, Sections 354A.01; 354A.02; 354A.03; 354A.04; 354A.10; 354A.13; 354A.22; Laws 1976, Chapter 238, Section 12; and Laws 1977, Chapter 429, Section 60.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1978, Chapter 354A, is amended by adding a section to read:

[354A.01] DEFINITIONS. Subdivision 1. TERMS. For purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended, the following terms shall have the meanings ascribed to them.

Subd. 2. ACADEMIC YEAR. "Academic year" means the 12 month period beginning on September 1 of one calendar year and ending on August 31 of the following calendar year.

Subd. 3. ACCUMULATED CONTRIBUTIONS. "Accumulated contributions" means the total of member or employee contributions made by salary deductions and assessments or payments made in lieu of salary deductions, if authorized, which are credited by the teachers retirement fund association to the member's individual account.

Subd. 4. ALLOWABLE SERVICE. "Allowable service" means any service rendered by a member during a period in which the member receives salary from which

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