

**HF 3788 (Nelson, M.); SF 3658 (Senjem) and
HF 3789 (Nelson, M.); SF 3659 (Senjem):
Supplemental contributions by the City and School District of
St. Paul to Multiemployer Plans for Trades Employees**

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ATTACHMENT: Laws 2019, First Special Session, Chapter 8, Article 6, Sections 4 and 5

Introduction

During the 2019 legislative session, staff informed the Legislative Commission on Pensions and Retirement (Commission) that the City of St. Paul and the St. Paul School District have been making employer contributions to a number of multiemployer plans on behalf of employees in the building and construction trades in violation of Minn. Stat. § 356.24, Subd. 1. This statute generally prohibits contribution of public funds to "supplemental plans" unless the supplemental plan is included in the list of exceptions in the statute. The list of exceptions includes multiemployer plans for five of the trades, but only up to specified dollar limits, per employee annually. The City and School District were exceeding the limits in some cases and, in other cases, were making contributions to multiemployer plans for trades not listed.

The Commission approved a session law as part of the 2019 omnibus retirement bill that:

- Authorizes the City and School District to continue making contributions to both PERA and multiemployer plans in violation of the statute for one more year; and
- Requires the two employers and the affected trade employee labor organizations to work with Commission staff to prepare legislation for the 2020 legislative session that would resolve the statutory violations.

The session law, Laws 2019, 1st Special Session, Chapter 8, Article 6, Section 4 and 5, is attached.

Since the end of the 2019 session, Commission staff participated in six meetings with representatives from the City of St. Paul, the St. Paul School District, the building and construction trades, city and county associations, and the Public Employees Retirement Association (PERA) to gather the information needed to understand the issues and to prepare legislation that resolves the non-compliance and is acceptable to all participants.

HF 3788 (Nelson, M.); SF 3658 (Senjem) and HF 3789 (Nelson, M.); SF 3659 (Senjem) are the bills that resulted from the work of this group. Representatives from the trades, the City of St. Paul, St. Paul School District, and PERA agree that the bills represent an acceptable compromise. Commission staff

received valuable assistance with drafting the legislation and understanding the retirement benefits negotiated by the different trades from Brendan Cummins, legal counsel for the Painters Local.

Background

Minnesota Statutes, Section 356.24, subdivision 1, prohibits school districts, local governments, and state agencies from contributing public funds to pension or deferred compensation plans that are in addition to the primary pension program that covers public employees. The statute refers to these plans as "supplemental," to distinguish them from the "primary" pension plans. Primary pension plans include the statewide pension plans administered by the Minnesota State Retirement System (MSRS), the Public Employees Retirement Association (PERA), and the Teachers Retirement Association (TRA).

For example, the employees of a city are required to participate in the General Employee Retirement Plan of the Public Employees Retirement Association (PERA General) and the city is required to contribute to PERA General. This pension plan would be considered the primary pension plan. If a city wanted to adopt its own pension plan for its employees, to provide an additional retirement benefit to which public funds would be contributed, that pension plan would be considered a supplemental plan and is prohibited under Section 356.24, subdivision 1, unless an exception applies.

Section 356.24, subdivision 2, takes this a step further, stating:

No change in benefits or employer contributions in a supplemental pension plan to which this section applies that occurs after May 6, 1971, is effective without prior legislative authorization.

So even if a public employer is permitted to sponsor a supplemental pension or retirement plan under one of the exceptions listed in subdivision 1, the employer is not permitted to make a change in benefits or the amount of the employer contributions without "prior legislative authorization."

History and legislative intent.

Section 356.24 was added to the Minnesota Statutes in 1971 and, at that time, was a blanket prohibition on any supplemental pension or deferred compensation plan, except those already in existence in 1971. The Commission's legislative history files date back only until 1975, so we are not able to verify legislative intent, but it is likely that the law was the result of concern on the part of the legislature that if the State makes available publicly-funded pension plans for public employees, individual governmental employers should not be permitted to spend public funds to establish and maintain another ("supplemental") pension or retirement plan.

The language of subdivision 2 quoted above was included in the original language of Section 356.24. It was broken out into a separate paragraph in 1988, and into subdivision 2 in 1992.

Since 1971, Section 356.24 has been amended numerous times to add more exceptions, starting with an exception in 1980 for severance pay plans. Exceptions now include group health, disability, severance, post-retirement medical, and death benefit plans, the Minnesota Deferred Compensation Plan, other individual account plans, and a number of multiemployer pension funds.

Exceptions for multiemployer plans.

Multiemployer pension plans, also known as "Taft-Hartley plans," are collectively bargained plans maintained by more than one employer, usually within the same or related industries, and a labor union. They are typically governed by a board of trustees, on which labor and management are equally represented. According to the Pension Benefit Guaranty Corporation (PBGC), there are about 1,400 multiemployer defined benefit pension plans, covering about 10 million participants, many of whom are employed in the building and construction industries.

Multiemployer plans have been in the news in the last several years because many of them are seriously underfunded. Under laws enacted in 2014, multiemployer plans are permitted to cut otherwise protected pension benefits, including to retirees in pay status, if the plan is projected to run out of money before paying all pension benefits. Over the past couple of years, Congress has been trying to come up with a plan to provide financial assistance, including a bailout, to these ailing pension plans, because of the significant negative financial impact pension cuts are having and will have on millions of current employees and retirees.

Five of the exceptions listed in Section 356.24, subdivision 1, to the prohibition against supplemental plans are for multiemployer plans. These are supplemental plans because the employees covered by these plans are, in general, also in the PERA General Plan. All except one of the excepted multiemployer plans are subject to a dollar limit on the amount of public funds that may be contributed to the multiemployer plan. For example, in the case of the laborers national industrial or local pension fund, the employer contribution cannot exceed \$7,000 per year per employee.

Commission members may recall that the laborers pension funds were the subject of a bill introduced in 2016 and included in the 2018 omnibus pension bill, to raise the employer contribution limit per year per employee from \$5,000 to \$7,000. The national fund was in "critical status" or "red zone" status, which means that the fund is less than 65% funded. This underfunded status caused the national fund to implement an annual 10% increase in the employer contributions to be paid by each participating employer, among other rehabilitation measures. This was, in part, the reason union representatives requested legislation in 2016 to increase the \$5,000 per employee annual employer contribution limit under the statute.

It is nearly impossible for an employer to disengage from a multiemployer plan, short of bankruptcy, which is not likely to occur in the case of a public employer. If an employer withdraws from a multiemployer plan, the employer is required to pay withdrawal liability that is generally equal to the employer's proportionate share of the plan's unfunded vested liabilities, as determined under a statutory formula. Thus, once a public employer begins contributing on behalf of its union employees to a multiemployer plan, there is little that can be done to end participation in the plan.

Contributions to Multiemployer Plans by the City and School District of St. Paul.

Data on this topic will be separately provided before the Commission meeting on March 3, 2020.

Trades employees of the City and School District of Minneapolis.

Commission staff contacted representatives of the City of Minneapolis to determine whether Minneapolis employs trades employees and is contributing to multiemployer plans on their behalf. The representatives informed us that there are a number of special laws that permit the city to make contributions to multiemployer plans on behalf of their trades employees.

These special laws permit the City of Minneapolis, Special School District No. 1, Minneapolis, and the Municipal Trade Commission to make contributions to multiemployer plans for trades employees, as long as the trades employees are not covered by PERA, among other requirements.

The City of Minneapolis also makes contributions to multiemployer plans under the exceptions provided in Section 356.24. For 2018, approximately 840 employees of the City who are employed pursuant to collective bargaining agreements as laborers, operating engineers, machinists, and plumbers, are covered by PERA and the City makes employer contributions to PERA on their behalves. In addition, the City makes contributions to the respective multiemployer plans for each union but only up to the annual per employee limit set forth in the exceptions in Section 356.24.

Contributions to multiemployer plans by other public employers.

Working with Commission staff, the League of Minnesota Cities, and the Association of Minnesota Counties conducted an informal survey of the larger cities and counties to determine whether any of these public employers were making contributions to multiemployer plans, which plans and whether the contributions were within the statutory limits. Although there was not enough participation to reach definitive conclusions, the responses indicate that other public employers are making contributions to multiemployer plans, primarily to the operating engineers plan, but are staying within the annual per employee limit.

One large public employer was interested in becoming more involved in the issue to ensure that the limit on employer contributions to the multiemployer plan for operating engineers was not increased. This employer was hoping to end its participation in multiemployer plans entirely, because of the uncertainty regarding their funded status.

Interest was expressed by the representatives of the labor organizations that are listed in the exceptions to Section 356.24, specifically, the operating engineers, machinists, and pipe trades, in increasing the per employee annual limit of \$5,000. Because of the opposition to increasing the limit, expressed by one of the cities and supported by the League, further discussion on this topic was deferred until after the 2020 legislative session.

Alternatives Considered and Consensus Reached

Alternatives considered by the group included:

- (1) Amending the exceptions in Section 356.24 by combining all the exceptions for multiemployer plans into one blanket exception that would permit public funds to be contributed to any

multiemployer plans for construction and building trades employees, which would apply when the public employer is also making employer contributions to PERA on behalf of the trades employee;

- (2) Excluding all construction and building trades employees from participation in PERA on a prospective basis, so no additional employer contributions would be made to PERA on behalf of any construction and building trades employees for whom employer contributions were also made to multiemployer plans. This would mean that accruals under the PERA General Plan for trades employees would cease and whatever their pension benefit is as of the freeze date would be the employee's pension at normal retirement age. No new hires would be covered by PERA if the employee is also covered by a multiemployer plan.

The bills are a compromise between these two alternatives. Contributions to multiemployer plans for trades employees that are being made by the City of St. Paul and the St. Paul School District are permitted to continue with no annual per employee limit, along with contributions to PERA, for all trades employees employed before July 1, 2020. Trades employees hired on or after July 1, 2020, will not be covered by PERA. Section 356.24 will not apply to contributions to multiemployer plans for new hires since the multiemployer plans will not be considered supplemental plans.

**HF 3788 (Nelson, M.); SF 3658 (Senjem):
Authorizing contributions by the City of St. Paul and Independent
School District No. 625, St. Paul, to multiemployer plans**

Section-by-Section Summary

HF 3788 (Nelson, M.); SF 3658 (Senjem) adds new Section 356.27 to the Minnesota Statutes. The section is titled "City of St. Paul and Independent School District No. 625, St. Paul; Trade Union Agreements." There is only one section in the bill, so the following describes the bill by subdivision.

Subdivision 1

Section 1 begins new Section 356.27 with subdivision 1 for definitions. Definitions are provided for "building and construction trades," "employers," "grandfathered trades employees," "multiemployer plan," "PERA," and "trades employees." "Building and construction trades" is a list of the trades and includes the statement that the term does not include machinists or teamsters. "Employers" are the City of St. Paul and the St. Paul School District. "Grandfathered trades employees" is defined as all employees who are members of the building and construction trades and for whom the employers were or are making contributions to both PERA and a multiemployer plan on or before June 30, 2020.

Subdivision 2

Subdivision 2 authorizes the employers to negotiate with the labor organizations representing the trades employees and agree to make contributions to multiemployer plans. The collective bargaining agreement is required to identify the multiemployer plan and, after July 1, 2020, must note the employer identification number and plan number unique to the plan. This requirement will allow the employers, the legislature, and the public to locate publicly available information on the plan regarding its funded status and other information.

Subdivision 3

Subdivision 3, paragraph (a), prohibits trades employees hired on or after July 1, 2020, from participating in PERA. These employees can continue participating in the multiemployer plans but cannot also participate in PERA. There is an exception for trades employees who participate in both PERA and multiemployer plans under Minnesota Statutes, Section 356.24, subdivision 1, clauses 8, 9, and 10. These clauses are part of the list of exceptions to the general prohibition on contributing public funds to supplemental plans. Clauses 8, 9, and 10 permit contributions as follows:

- (8) to the laborers national industrial pension fund or to a laborers local pension, but not to exceed an employer contribution of \$7,000 per year per employee;
- (9) to the plumbers and pipefitters national pension fund or to a plumbers and pipefitters local pension fund, but not to exceed an employer contribution of \$5,000 per year per employee;
- (10) to the international union of operating engineers pension fund, but not to exceed an employer contribution of \$5,000 per year per employee.

Subdivision 3, paragraph (b), confirms that grandfathered trades employees continue to participate in PERA and multiemployer plans, as authorized by subdivision 2, and are not subject to the general prohibition on contributions to supplemental plans under Section 356.24 or the limits set forth in the exceptions.

Subdivision 4

Subdivision 4 imposes a reporting requirement on the employers. The City of St. Paul and the St. Paul School District are required to report to the Commission annually, no later than 60 days after the end of the employer's fiscal year, on the number of grandfathered trades employees for whom contributions were made during the prior fiscal year, by labor organization. The employer is required to provide additional information, if requested by the Commission. The reporting requirement expires with the year in which the employer makes its last contribution to PERA on behalf of a grandfathered trades employee.

Effective Date

All subdivisions are effective the day following final enactment.

HF 3789 (Nelson, M.); SF 3659 (Senjem) Revising the exclusions from PERA General plan coverage.

Section-by-Section Summary

HF 3789 (Nelson, M.); SF 3659 (Senjem) makes two unrelated changes:

- (1) the bill amends PERA's eligibility provision to add an exclusion from PERA coverage for trades employees hired on or after July 1, 2020, to conform with new Section 356.27 (described above); and
- (2) the bill repeals the requirement set forth in Minnesota Statutes, Section 356.24, subdivision 2, that requires legislative authorization for any change in benefits or employer contributions to a supplemental plan.

Section 1

Section 1 amends subdivision 2b of Minnesota Statutes, Section 353.01, which lists all the categories of public employees that are excluded from participating in the PERA plans. Subdivision 2b lists excluded categories, including (i) five categories for trades employees who have coverage under a multiemployer plan and were hired after a specified date or, if hired before that date, elected to be excluded from PERA, and (ii) one category for certain trades employees of Minneapolis Park and Recreation Board who are excluded if hired before a particular date and elected to be excluded.

Section 1 combines all the categories for trades employees into one clause that begins "*employees in the building and construction trades, as follows: ...*" and is followed by items (i) through (vii). The first six are the categories for excluded trades employees in current law. New item (vii) excludes trades employees as defined in the new Section 356.27 (added by HF 3788; SF 3658, summarized on the previous pages) first hired by the City of St. Paul or the St. Paul School District on or after July 1, 2020, except for the trades employees that are permitted to be in both PERA and a multiemployer plan under the exceptions in Section 356.24, subdivision 1, which are subject to the \$5,000 or \$7,000 annual limits.

Section 2

Section 2 repeals subdivision 2 of Section 356.24. As noted on page 2, this subdivision requires legislative authorization for any "*change in benefits or employer contributions in a supplemental pension plan to which this section applies that occurs after May 6, 1971.*" We were unable to find any record of requests being made for legislative authorization for such changes or any record that the legislature or the Commission provided the authorization required by this subdivision.

If we look at only two of the categories of supplemental plans, multiemployer plans and 403(b) individual account arrangements offered by school districts, to which they are required by collective bargaining agreements to make employer contributions, it is likely there have been many, even thousands, of changes in benefits and employer contributions to these plans since 1971. Commission staff is not aware of any of these changes having been brought to the legislature for its approval.

Because there has likely been no compliance with this subdivision in many years, if ever at all, the repeal of this subdivision is proposed.

Effective Date

Both sections are effective the day following final enactment.

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Laws 2019, 1st Special Session, Chapter 8, Article 6, Sections 4-5

Sec. 4. CITY OF ST. PAUL; ST. PAUL SCHOOL DISTRICT; TEMPORARY SUPPLEMENTAL PENSION PLAN CONTRIBUTION RESTRICTION EXEMPTION.

Notwithstanding Minnesota Statutes, section 356.24, subdivision 1, until June 30, 2020, the city of St. Paul and Independent School District No. 625, St. Paul, shall be permitted to levy taxes for or contribute public funds to a supplemental pension or deferred compensation plan established, maintained, and operated in addition to a primary pension program for the benefit of the governmental subdivision employees if and to the extent permitted or allocated under the applicable collective bargaining agreements to any of the following retirement funds:

- (1) the international union of operating engineers pension fund;
- (2) the International Association of Machinists national pension fund;
- (3) the laborers national industrial pension fund or a laborers local pension fund;
- (4) the plumbers and pipefitters national pension fund or a plumbers and pipefitters local pension fund;
- (5) the sheet metal workers national defined benefit pension fund, a sheet metal workers local defined benefit pension fund, or a sheet metal workers local defined contribution retirement fund;
- (6) the elevator constructors national pension fund or the elevator constructors annuity and 401(k) retirement plan;
- (7) the national electrical benefit fund, an electricians local defined benefit pension fund, or an electricians local defined contribution pension fund;
- (8) the carpenters and joiners defined benefit pension fund or the carpenters and joiners defined contribution pension fund;
- (9) the sprinkler fitters national defined benefit pension fund or the sprinkler fitters supplemental defined contribution pension fund;
- (10) the painters and allied trades national pension fund or a painters and allied trades local pension fund; or
- (11) the national roofing industry pension fund or a roofers local defined contribution fund.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. DIRECTION TO PREPARE DRAFT LEGISLATION.

Representatives of the city of St. Paul, Independent School District No. 625, St. Paul, and the local trade unions participating in the funds listed in section 4 shall work with the staff of the Legislative Commission on Pensions and Retirement to prepare draft legislation for consideration during the 2020 legislative session and submit the draft legislation to the executive director of the Legislative Commission on Pensions and Retirement no later than November 30, 2019. The draft legislation must eliminate the need to identify in Minnesota Statutes, section 356.24, specific multiemployer funds in which the city of St. Paul or Independent School District No. 625, St. Paul, participate, including the funds listed in section 4, by:

- (1) excluding from eligibility under a pension plan administered by the public employees retirement association or the teachers retirement association, as applicable, any employee accruing a retirement benefit under a multiemployer fund in which the city of St. Paul or Independent School District No. 625, St. Paul, participate, including the funds listed in section 4, who is or becomes employed by the city of St. Paul and Independent School District No. 625, St. Paul, for any year that the employee participates in the multiemployer fund; or
- (2) requiring reporting to the Legislative Commission on Pensions and Retirement or another entity with oversight information on the specific funds, including funding information for each fund, annual contribution rates per employee, and the number of employees participating; or
- (3) providing other safeguards that take into account the needs of the city of St. Paul, Independent School District No. 625, St. Paul, the trade unions, and the state of Minnesota with regard to the use of public funds for supplemental pension and deferred compensation plans.

EFFECTIVE DATE. This section is effective the day following final enactment.