

**Background Information on  
Public Pension Plan Revenue Potentially Lost from  
1982 Budget Balancing Legislation  
("PERA 2% Issue")**

1. Background Information on the "Borrowed" Pension Asset Issue.

- a. Budget Crisis Resolution Legislation. Individuals who express concern about the assets that were "borrowed" by the state from the Public Employees Retirement Association (PERA), the most frequent source of these complaints, or other pension plans, are usually referring to an attempted solution to a 1982 state budget crisis involving the various public pension plans and utilizing an increase in member contributions and an accelerated decrease in employer contributions, known as the 2% contribution legislation (3rd Spec. Sess. Laws 1982 Ch. 1, Art. 2, Sec. 2, Subd. 1, Para. (v)).

The 2% legislation involved a temporary (six-month period) 4% of covered pay employer contribution reduction and a temporary (one-year period) 2% of covered pay member contribution increase. The decreased employer contribution and increased member contribution legislation involved all Minnesota public pension plans that required member contributions (which are all but volunteer firefighter relief associations), including the Legislators Retirement Plan, the Elective State Officers Retirement Plan, and the Judges Retirement Plan. The decrease/increase provision for the Judges Retirement Plan was expressly made severable from all other public pension plan contribution decreases/increases.

The estimated amounts of reduced employer contributions and the reduced appropriations or State General Fund remittances set forth in the 1982 legislation were as follows:

<u>Retirement Plan(s)</u>	<u>Employer Contribution Reduction</u>
State Sponsored Plans (Minnesota State Retirement System, MSRS-Correctional, State Patrol, Legislators, Elective State Officers, Judges, Unclassified Employees) <sup>1</sup>	\$12,373,600 (\$9,781,600 for state agencies, \$1,512,000 for the Univ. of Minn., and \$1,080,000 for Metropolitan Agencies)
Public Employees Retirement Association <sup>2</sup>	\$24,440,800
Minneapolis Employees Retirement Fund <sup>2</sup>	\$ 1,800,000
50 Local Police and Paid Firefighters Relief Associations <sup>2</sup>	\$ 1,790,400
Teachers Retirement Association <sup>1</sup>	\$26,400,000
Three First Class City Teacher Retirement Fund Associations <sup>1</sup>	<u>\$ 3,440,000</u>
Total	\$70,244,800

The public pension contribution reductions/increases were accompanied by an \$8,480,000 appropriation, of which \$5,840,000 was to be apportioned to cover any shortfall in increased member contributions when compared to reduced employer contributions, \$2,000,000 was to be apportioned to cover any loss of investment income resulting from the time period difference between the employer contribution reduction and the member contribution increase, and \$640,000 was to be apportioned to cover any increased refunds of member contributions occurring during the period.

- b. Litigation Over the 2% Contribution Legislation. In AFSCME Councils 6, 14, 65, and 96 v. Sundquist, 338 N.W. 2d 560 (Minn. 1983), the constitutionality of Laws 1982, Third Special Session Chapter 1, Article 2, Section 2, Subdivision 1, Paragraph (v) was decided by the Minnesota Supreme Court. A divided Supreme Court upheld the 1982 legislation, concluding that there never had been a legislative promise to keep employer contribution rates fixed, to set member contribution rates in strict conjunction with employer contribution rates, or to accompany member contribution increases with benefit increases. The Court, with three justices dissenting, supported its conclusion by observing that contribution rates had fluctuated over time and that fluctuation does not support any reliance by pension plan members on current contribution rates as fixed amounts. It also found that there were long-term tax advantages in the legislation that would, over time, fully compensate public employees for the temporary reduction in take-home pay.
- c. Relevant Post 1982 Pension Funding and Pension Benefit Legislation.
- 1) 1983 Legislation Reimbursing Some Excess Member Contributions. In 1983, the Legislature shortened the duration period for the 1982 special member contribution rate increase from one year to six months, ending July 1, 1983, and provided for a reimbursement of any excess member contributions made by public pension plan retirees who retired between January 1,

<sup>1</sup> Reduced employer contribution implemented with reduction in state appropriation

<sup>2</sup> Reduced employer contribution implemented with remittance of employer contribution reduction to the State's General Fund

1983 and June 30, 1985 (Laws 1983, Ch. 301, Sections 53, 224-227). The legislation also required a review by the 1984 Legislature of any adverse consequences of the shortened member contribution rate increase period.

- 2) 1984 Legislation Affecting the 2% Contribution Increase. In 1984, the Legislature provided a refund of any excess member contributions required under the 1982 Third Special Session budget crises legislation (Laws 1984, Ch. 564, Sec. 45). Amounts of employee contribution increases from local police or salaried firefighter relief associations that remained unpaid to the State's General Fund were allowed to be retained by the applicable relief associations and the \$8,480,000 appropriation accompanying the 1982 Third Special Session contribution rate changes was reallocated, with most of the appropriation allocated to the four teacher retirement funds (Laws 1984, Ch. 654, Art. 2, Sec. 143-145). Additionally, the 1984 Legislature (Laws 1984, Ch. 564) restructured the manner in which actuarial services for the statewide and major public pension plans would be handled, revised the manner in which pension funding obligations would be determined, revised member and employer contribution rates for various plans in response to the pension funding obligation revisions, and adopted numerous benefit enhancements (including the temporary "Rule of 85" early normal retirement provision).
- 3) 1987 Legislation Disallowing Borrowing of Pension Plan Assets. The 1987 Legislature enacted legislation that disallows governmental borrowing of public pension plan assets (Laws 1987, Ch. 296, Sec. 32; Ch. 372, Art. 6, Sec. 1). The no-borrowing provision was largely in reaction to the perceived impropriety of the 1982 Third Special Session 2% employer contribution decrease legislation.
- 4) Benefit Increase Legislation 1987-1996. During the period 1987-1996, the Legislature has granted a number of pension increases and benefit improvements for members of the Public Employees Retirement Association (PERA). These benefit increases and pension improvements are likely to have had an actuarial value far in excess of the impact of the employer contribution not remitted to PERA by virtue of the 1982 legislation and not offset by increased member contributions because of their refunding under 1983 and 1984 legislation. The benefit increases are as follows:

Year	Benefit Increase or Pension Improvement
1987	Five-Year Vesting; Combined Service Disability Benefit Provision; Combined Service Survivor Benefit Provision.
1988	Various Death-While-Eligible Survivor Benefit Provision Improvements.
1989	Three Year Vesting; Increased Interest on Refunds; Automatic Subsidized Optional Joint and Survivor Annuity Bounceback Provision; Benefit Accrual Rate Increase; Early Retirement Benefit Reduction Amount Downsizing.
1991	Survivor Benefit Improvements.
1992	Minnesota Post Retirement Investment Fund Post Retirement Adjustment Mechanism Improvement; Repetitive Leave Service Credit Authorization; Revision in Reemployed Annuitant Earnings Limit.
1993	Survivor Benefit Improvements.

- 5) 1997 Benefit Uniformity Legislation. In 1997 (Laws 1997, Ch. 233), the Legislature granted a major benefit increase to the Public Employees Retirement Association (PERA) and created a special State aid program for PERA-participating employing units to offset an increase in the PERA employer contribution rate. Among other benefit improvements, the benefit accrual rate was increased for both the "level benefit" benefit tier and the "Rule of 90" benefit tier. The additional funding required of PERA-participating employers, covered by a new state aid program, is in excess of \$22 million annually.

## 2. Analysis of the Validity of the "Borrowed Pension Assets" Claim.

- a. Legitimacy of Borrowing Allegation. If the events of 1982-1983 are evaluated narrowly, without reference to the major pension funding requirement, pension financing, and pension benefit increase changes that occurred in 1984, all of the benefit changes that have occurred since 1982, and the new PERA state aid created in 1997, an argument can be made that the various pension plans were injured by the 1982 2% contribution legislation. However, placed in the context of developments over the past 17 years, that narrow argument loses force and is no longer viable. For whatever reason, PERA and interests connected to PERA periodically raise the issue with legislators and demand legislative efforts to gain a resolution of the perceived injury.

- b. Accuracy of Alleged Borrowing Numbers. In 1984, when the various public pension plans affected by the 1982 Special Legislation pursued a return of the “borrowed assets,” as reflected in the files maintained by the Legislative Commission on Pensions and Retirement, the actual figures relating to the alleged “borrowing” were as follows:

Plan	Amount
Public Employees Retirement Association (PERA)	\$23,232,855.68
Public Employees Police and Fire Fund (PERA-P&F)	2,091,256.44
Minnesota State Retirement System (MSRS)	16,165,672.00
State Patrol Retirement Plan	418,040.00
Teachers Retirement Association (TRA)	22,206,014.76
Duluth Teachers Retirement Fund Association (DTRFA)	359,607.75
Minneapolis Teachers Retirement Fund Association (MTRFA)	1,074,084.73
St. Paul Teachers Retirement Fund Association (SPTRFA)	1,371,134.69
Minneapolis Employees Retirement Fund (MERF)	1,231,785.25
Total	\$68,150,451.30

Thus, at least for PERA, there is some modest variation in the number for the principal amount of the alleged unpaid “borrowed” assets.

3. 1982 Public Employee Surcharge Legislation Was Not Universally Implemented. Laws 1982, Third Special Session, Chapter 1, Art. 2, Section 2, Subdivision 1, Paragraph (v), was apparently implemented by the various statewide public pension plans, but implementation by the various local public pension plans reportedly was less complete or uniform. The local plans, especially police and paid fire pension plans, opposed the provision when it was considered by the Legislature, resisted implementing the surcharge when it was enacted, and were in the forefront of legislative attempts to repeal it. There was, hence, no loss of pension assets for any pension plan that failed to implement the measure.
4. Issue Was Addressed and Dispensed With Previously. In 1984, the various major and statewide public pension plans attempted to obtain from the Department of Finance a reimbursement of amounts of assets that the plans concluded were lost to them as a result of the 1982 Third Special Session 2% contribution legislation. In 1984, the Department of Finance did not support that attempt, but rather sponsored a package of pension funding and benefit provisions that were eventually enacted. In 1987, proposed legislation was introduced (H.F. 72 (O'Connor)) to reimburse the various pension plans for the amounts calculated as lost by the plans, but that proposed legislation was never favorably considered by the Legislative Commission on Pensions and Retirement or by any other legislative entity. In a form letter from Finance Commissioner Wayne Simoneau early in the 1997 Session on this issue, the Carlson administration indicated that there were funding sufficiencies in 1982 that were recouped by the legislation in question, that the various pension plans are now in very good health generally, and that any pension plans with difficulties have problems because of pre-existing or unrelated factors. The Carlson administration did not support the payment of large lump sum amounts into the various pension plans to address this concern. The Ventura administration does not appear to have taken any position on this issue.
5. Legal Issue. The legal issue of the Legislature’s authority to periodically change contribution amounts has been litigated in AFSCME v Sundquist and the Minnesota Supreme Court found in favor of the Legislature. Given the AFSCME v Sundquist decision, there is no legal claim that can be made by the various pension plans for their assessment of their losses as a result of the 2% contribution legislation. Any claim for these “borrowed” assets would be limited to a moral or policy claim.
6. Continued Viability of Policy or Moral Claim For “Borrowed Assets.” Considering the entirety of legislation during the 1980’s and 1990’s, including the 1984 and the 1997 benefit and funding legislation, there is little reason for the Legislature to attempt to sort out the validity of any policy or moral claim to an asset reimbursement of the Public Employees Retirement Association or of the various other pension plans. The 1984 legislation, in granting both financing and benefit changes sought by the various public pension plans and their members, should have settled the issue. Now, after the 1997 legislation creating a substantial ongoing state aid program to fund an employer contribution increase in the Public Employees Retirement Association (PERA), the issue of any state debt to PERA should be resolved.

The raising of this issue now, 18 years after the initial legislation involved, may have less to do with the actual issue and more to do with some generalized adverse public employee perspective on the Legislature or with some actual or potential lobbying stance, probably the pending issue of an increase in PERA member and employer contribution rates to address an actuarial funding problem in the plan.