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April 17, 2023

Representative Kaohly Vang Her, Chair, Legislative Commission on Pensions and Retirement
Senator Nick A. Frentz, Vice Chair, Legislative Commission on Pensions and Retirement
Members of Legislative Commission on Pensions and Retirement

**RE: LCRP Topics for Study 2023-2024 Interim
Minnesota Statutes section 356.24, subdivision 3 & Deferred Compensation Plans**

Dear Chair Her, Vice Chair Frentz and Members of the Legislative Commission on Pensions and Retirement:

I am an attorney, a proud parent of two children who attend public schools and I served on the Saint Paul Public Schools Budget and Finance Advisory Committee from 2008-2010 and from 2018-2019. I know and appreciate that school finance and staffing is complex.

I encourage the Legislative Commission on Pensions and Retirement (LCRP) to study Minnesota Statutes section 356.24, subdivision 3 and particularly the compliance of public funds being contributed to deferred compensation plans for public school superintendents.

Section 356.24, subdivision 3(d) defines the type of deferred compensation plans that are allowed for school district employees and enrollment must be provided by the public school district personnel policy or a collective bargaining agreement. Superintendents have employment contracts that must not exceed a period of three years pursuant to Section 123B.143.

Section 356.24, subdivision 3(f) limits public contributions to a deferred compensation plan only in an amount that matches the employee contribution on a dollar for dollar basis and the employer contribution cannot exceed the lesser of (1) the maximum authorized under the personnel policy in paragraph (d) that provides for enrollment in the plan, or (2) one-half of the annual limit on elective deferrals under section 402(g) of the Internal Revenue Code.

For employees age 50 in 2023, the maximum annual elective deferral under IRS rules is \$30,000, which means that Section 356.24 limits the 2023 employer contribution to a deferred compensation plan to no more than \$15,000 but only if it is a match of the employee's contribution.

I have reviewed over 20 superintendent employment contracts obtained through public data requests from the largest Minnesota school districts.

Two districts have employer deferred compensation amounts that do not mention any employee match and appear to violate the statute.

Four other districts have more serious noncompliance with the statute. One district will pay annual deferred compensation from public funds in three areas starting with the July 1, 2023 contract: (1) up to \$9,000 of matching funds; (2) \$10,000 that is not based on any match; and (3) a contribution to a deferred compensation plan called a "Longevity Plan" that is based on a percentage of annual salary (5% in Year 1, 7% in Year 2 and 10% in Year 3). The total deferred compensation in this district, assuming the maximum match is received, would be over \$31,000 in Year 1 and over \$45,000 in Year 3, which exceeds the amount permitted by statute. This district's previous contract for the same superintendent limited the employer annual contribution to only \$9,000.

Another district has a retirement allocation of 10% of the base salary of \$275,000 that is not tied to any match. This amount of annual deferred compensation is \$27,500, which exceeds the amount permitted by statute.

A third district has an employer annual contribution starting in July 1, 2023 of up to \$17,800 as a district match, which may exceed the amount permitted by statute depending on the IRS limit is for 2024.

A fourth district has an employer deferred compensation contribution that is called "Retention Incentive Pay" with an amount that is equal to 1 ½ months of pay and would be approximately \$28,900 to be paid in one year.

Many school districts do comply with the employer limits in Section 356.24 but the four districts above clearly do not.

Please study the issue of deferred compensation for public school districts and provide outreach to districts to ensure compliance with Section 356.24.

Thank you for your work on the Commission.

Sincerely,



Peter M. Hendricks