

HF 1669 (Anderson, P.H.): Public Employees Defined Contribution Plan; Amending eligibility to permit appointed local government officials to participate

Prepared by: Susan Lenczewski, Executive Director

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Introduction

- Affected Plan:** Public Employees Defined Contribution Plan (DC Plan)
- Laws Amended:** Minnesota Statutes, Sections 353D.01, 353D.02, and 353D.03, and adds an uncodified session law
- Brief Description:** The bill, as amended by Amendment H1669-3A:
- permits local government officials who are appointed, rather than elected, to participate in the DC Plan, and
 - allows for officials whose participation ceased after 2019 because the official became an appointed official to rejoin the DC Plan and make catch-up contributions that will be matched by the local governmental employer.
- Attachment:** [Amendment H1669-3A](#)

Background

One purpose of the PERA Defined Contribution Plan is to provide a retirement benefit to public employees who are not paid enough for their services to a governmental employer to be required to participate in the PERA General Plan. The salary threshold for being required to participate in the General Plan is \$5,100 annually or \$425 per month. Therefore, these officials are making less than \$425 per month.

One category of employees eligible to participate are “local government officials.” This term is not defined but is limited to “elected” local government officials. Under current law, in Section 353D.01, subdivision 2, paragraph (b), if an elected official becomes an “appointed” official, the official is no longer able to participate in the DC Plan and continue contributing to the official’s account in the plan.

Elected local government officials may elect to participate in the DC Plan after being elected or appointed to public office (“appointed” in this context is ignored as it conflicts with other provisions). If an official does elect to participate, Section 353D.03, subdivision 1, requires the official to contribute by payroll deduction 5% of salary, which is required to be matched by the governmental employer. Note that this means that the most the official can contribute each month is \$21.25, and this same amount is required to be contributed as a match by the employer.

The bill would have expanded the category of “local government official” who may participate in the DC Plan by adding a definition of “local government official” that means a “clerk, treasurer, deputy, and any other employee of a municipality or other governmental subdivision” who cannot participate in one of the PERA plans and is not a “city manager.” City managers have different participation rights and are not addressed in the bill or amendment.

PERA objected to this expansion of the category of employees of local governments who would have been allowed to participate so Amendment 3A deletes this new definition, leaving the phrase undefined.

Summary of the Bill and Amendment H1669- 3A

Section 1 adds a definitions section to Chapter 353D. The definition for “local government official” is deleted by Amendment H1669-3A.

Section 2 revises the eligibility requirements in Section 353D.01, subdivision 2, for “local government officials,” which is clause (1). The revisions add appointed officials, in addition to elected officials, to the category of local government officials.

Section 3 revises the coverage election provision for local government officials in Section 353D.02, subdivision 1, to add appointed officials and conform other language to take into account the addition of appointed officials.

Section 4 revises the contribution provision for local government officials in Section 353D.03, subdivision 1, to delete the word “elected,” removing the limitation that only elected officials can contribute to the DC Plan.

Section 5 is a session law that is substantially amended by Amendment 3A. As amended, subdivision 1 of Section 5 permits any local government official whose participation in the plan ended on or after January 1, 2020, because the official became an appointed official to elect to rejoin the DC Plan by providing notice to the official’s governmental employer no later than 30 days after the effective date of the bill. If the official elects to rejoin the DC Plan, the governmental employer is required to contribute the 5% match and the official is permitted to contribute the 5% employee contribution missed during the period that participation was not permitted.

Subdivision 2 of Section 5 requires employer and employee contributions, as described under Section 353D.01, subdivision 1, to resume for future paychecks if the official has elected to rejoin the DC Plan under subdivision 1 of Section 5.

Effective date. The bill is effective on the day following final enactment.

Staff Comment on Chapter 353D

The defined contribution plan established by Chapter 353D is intended to be a tax-qualified plan under Internal Revenue Code sections 401 through 415. The DC Plan is not and cannot be a 401(k) plan.

Governmental plans are permitted to be “cash or deferred arrangements” under Section 401(k) of the Tax Code only if the plan was established before May 6, 1986. The DC Plan was established July 1, 1987.

Because it is not a 401(k) plan, the DC Plan cannot allow participants to elect into and out of the plan. The DC Plan allows participants to elect into and out of the plan. For this reason, the DC Plan fails to comply with federal requirements and, if it were audited, would be disqualified and participants would be considered as immediately taxable on the value of their accounts, among other consequences.

This plan feature, among other troubling provisions in Chapter 353D, should be amended as soon as possible. PERA staff is aware of these concerns.

Also, in the course of drafting the bill, Commission staff talked with several township employees who were clerks or other employees, and not in the category of “local government officials.” They asked to be included in the DC Plan. These are employees who make less than \$425 per month and so cannot participate in the PERA General Plan. Consideration should be given to opening up participation in the DC Plan to these employees. The extremely modest contribution level of \$21.25 per month, matched by the same employer contribution amount, has value to these employees, many of whom apparently have no other retirement plan available to them.