

Bills authorizing elections to transfer from Minnesota State Higher Education Individual Retirement Account Plan (IRAP) to Teachers Retirement Association (TRA)

- A. **SF 1995 (Seeberger):** Permits a Minnesota State employee covered by the IRAP to elect TRA coverage and receive past service credit
- B. **HF 1499 (Olson, L.)/SF 1420 (McEwen):** Permits four Fond Du Lac Tribal and Community College employees covered by the IRAP to elect TRA coverage and receive past service credit
- C. **LCPR23-021:** General legislation authorizing elections to transfer from the IRAP to TRA and receive past service credit

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Introduction

- Affected Plans:** Minnesota State Higher Education Individual Retirement Account Plan (IRAP)
Teachers Retirement Association (TRA)
- Affected Employer:** Minnesota State Colleges and Universities (MN State)
- Laws Amended:** SF1995 and HF1499/SF1420 would be uncodified session laws.
LCPR23-021 would add new section 354B.215.

Background

The IRAP was established in the late 1980s to provide state university and college teachers and other employees with retirement benefits through a defined contribution plan, as an alternative to TRA, which is a defined benefit pension plan. When the IRAP was established, in 1988 (Laws 1988, Ch. 709, Art. 11), it covered state university, college, and community college faculty and administrators. The plan was expanded to include technical college managerial employees in 1993 and technical college faculty in 1994.

Initially, IRAP coverage was mandatory for new hires without prior service covered by TRA. Employees in eligible positions who had prior TRA service were given an option to elect the IRAP rather than continued membership in TRA. Several statutory changes in the early 1990s expanded the election options for new hires in various circumstances. A blanket right to elect coverage by TRA for new employees was added in 1995. Depending on the employee's circumstances, a new employee might be defaulted initially into TRA or the IRAP, but in either case, had the opportunity to elect the other plan.

The individual who is the “eligible person” in SF 1995 began employment with MN State in 2008. The four individuals who are “eligible persons” in HF1499/SF 1420 began employment with MN State in 2017 through 2020. Since before 2008, section 354B.211, subdivision 4, or its predecessor, section 354B.21, subdivision 2, permitted new employees to elect prospective coverage by TRA and the election had to be made within one year of commencing employment with MN State.

The statute governing these elections was changed in 2011 to add a requirement that MN State provide notice to employees eligible to make the election no later than 90 days before the end of the election period. The statute required the notice to provide:

- The employee’s current coverage, IRAP or TRA;
- The form for electing coverage under either the IRAP or TRA; and
- Website addresses for the plan that currently covers the employee and the plan to which the employee could elect.

The statute also required the coverage forms to include a certification that was to be signed by the employee, stating that the employee received the election forms and information.

For some, but not all new employees, MN State had been providing notice and requiring certification for many years, so the addition of the notice and certification to the statutes in 2011 appears to have been consistent with procedures already in place at some of MN State’s facilities. Adding the notice and certification to the statutes codified existing procedures and may have been an attempt by the legislature to reduce the number of instances of employees coming to the legislature to transfer coverage because they had not received information about their right to elect coverage by TRA.

Notwithstanding the law requiring notice and certification beginning in 2011, none of the four individuals who are “eligible persons” under HF1499/SF 1420 received the required notice.

Summary of the Bills

Two of the three bills are special legislation; that is, they apply to one individual or a small group of individuals. SF 1995 applies to one individual and HF 1499/SF 1420 applies to four individuals (referred to as “special legislation”).

The draft bill, LCPR23-021, is general legislation that would have benefited the five individuals covered by the special bills and is intended to benefit any other individuals who satisfy the definition of “eligible person” (referred to as “general legislation”).

With some variation among them, all the bills include the following:

Definition of eligible person. An eligible person is or was employed by MN State, has an account in the IRAP, and had the right to elect coverage by TRA, but was not provided notice of that right or an election form. The special legislation adds more identifying information, specific to each individual, in an attempt to ensure that only those individuals benefit from the special legislation.

Application by the eligible person. The eligible person must complete an application providing information indicating that the person is eligible for the coverage transfer.

Calculation of required amounts. TRA is required to calculate two amounts, but only after MN State provides salary information for the period of employment to TRA:

- the difference in employee contributions between the eligible person's actual contributions to the IRAP and the contributions the eligible person would have made to TRA had the eligible person been covered by TRA for the entire period of past employment with Minnesota State; and
- the actuarial present value of the pension that the eligible person will receive from TRA based on the service and salary credit being transferred.

Payment of employee contributions. The eligible person must pay or contribute the difference in employee contributions described in the first bullet, above.

Transfer of IRAP account. After the eligible person pays the employee contribution amount, the eligible person's IRAP account is transferred to TRA.

MN State payment of the remainder. MN State must pay the difference between the actuarial present value of the TRA pension based on the service and salary for the years of employment with MN State and the amounts paid by the employee (employee contribution difference plus IRAP account transferred).

TRA grant of membership and credit for past service and salary. Membership in TRA begins as soon as the eligible employee pays the employee contribution amount and TRA is required to grant credit for past service and salary with MN State.

The general legislation and the special legislation for one individual permit an eligible person to elect TRA coverage even if the person is no longer employed by MN State, as long as the person has not taken a distribution of any of the person's IRAP account.

The general legislation includes these additional provisions or changes from the special legislation:

New statute added with its own definitions. The general legislation is a new section in Chapter 354B, which governs the IRAP. The new section 354B.215 has a definitions section.

Eligible person criteria expanded. The criteria for "eligible person" are expanded to encompass all employees who could have transferred coverage from the IRAP to TRA before the law required notice or whose election to transfer coverage was not implemented.

Application process modified. The eligible person must submit the application to MN State and MN State must determine if the criteria for eligible person have been satisfied. MN State must then transmit the application and other information to TRA within 60 days after receiving the application.

Administrative fee may be charged by TRA. TRA is permitted to charge the eligible person an administrative fee of up to \$500 per calculation to cover the cost of doing the actuarial present value calculation of the TRA pension.

Not to be used for Rule of 90 eligibility. Upon transfer from the IRAP to TRA, the credit granted for past service and salary with MN State may not be used to qualify the eligible person for Rule of 90 (full retirement when age plus service equals 90).

MN State required to provide notice and assistance. MN State is required to provide annual notice to all employees of the right to elect a coverage change from IRAP to TRA under new section 354B.215 and must provide assistance to employees in completing the application.

Amounts Required from Each Individual and MN State

The chart below provides the amounts calculated by TRA for each individual, based on salary and service information provided by MN State. These amounts are estimates and will likely change due to changes in each employee’s service, salary, and IRAP account balance between the date of these calculations and the date that the election is implemented.

	<u>M. Mohr</u>	<u>R. Anderson</u>	<u>A. Johnson</u>	<u>E. Resendiz Alonso</u>	<u>R. Willis</u>
Actuarial present value of the TRA pension:	\$336,993.28	\$52,895.37	\$34,105.40	\$39,496.77	\$24,127.58
Transfers or contributions from eligible person:					
IRAP account:	\$232,566.10	\$33,610.10	\$32,586.82	\$26,937.80	\$18,414.92
Employee contribution difference:	\$28,474.42	\$5,058.59	\$201.94	\$3,846.54	\$0
Total from employee:	\$261,040.52	\$38,668.69	\$32,788.76	\$30,784.34	\$18,414.92
Payment from MN State	\$75,952.76	\$14,226.68	\$1,316.64	\$8,712.43	\$5,712.66
Total payments due to TRA	\$336,993.28	\$52,895.37	\$34,105.40	\$39,496.77	\$24,127.58

Need for General Legislation

Why not continue having the Commission hear bills for one individual or small groups of individuals when the problem they all have in common can be resolved by enacting a statute or session law of general applicability?

Special bills are unconstitutional when a general law can be made applicable. The Minnesota Constitution prohibits special laws when a general law can address the concern. The Minnesota Constitution, Article XII, Section 1, states:

In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2 [relating to local government legislation] The legislature shall pass no local or special law . . . granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever. . . .

One of the three bills summarized by this memo is general legislation. The bill is a draft bill and TRA, MN State, and other stakeholders may have changes to suggest, which can still be incorporated. However, the draft bill is a clear indication that a general law can be made applicable to resolve the concerns and enforce the rights of the individuals who will benefit from the special legislation.

Sending individuals to the legislature to fix MN State's errors is inefficient and a hardship on the individuals. The Commission has heard dozens of these individual bills relating to the election to transfer from the IRAP to TRA over the last decade. MN State representatives readily acknowledge, as they have in the case of the individuals who will benefit from the special legislation and in similar cases in the past, that MN State committed error and failed to provide the employee notification of the right to elect TRA coverage within one year of eligibility as required by section 354B.211. MN State informs these individuals that their only recourse is to go to the legislature and encourages them to pursue that remedy. In 2019, the Chair of the Commission, Representative Mary Murphy, directed the representatives from MN State to report back to the Commission at a future date with a recommendation for legislation that would provide a general law fix.

The legislative process is not an efficient way to resolve an individual's problem. It requires the individual to contact one or more legislators to assist with a personal matter, persuade the legislator to prepare and introduce legislation on behalf of the individual, and when the legislation is considered by the Commission and committees, the individual must disclose private details of the individual's retirement circumstances in a public forum. Even after all that, the resolution of the individual's problem is subject to the uncertain outcome of committee hearings, floor sessions, and the governor's veto. Time and energy spent by legislators on these individuals bills is likely time and energy better spent on other matters, when the problem shared by all these individuals could be corrected with general legislation.