



## SF 1213 (Miller); HF 2117 (Repinski): Minnesota State IRAP; requiring MN State to locate the IRAP account of a former employee or pay the former employee \$25,000

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### Introduction

- Affected Plan:** Higher Education Individual Retirement Account Plan (IRAP)
- Affected Employer:** Minnesota State Colleges and Universities (MN State)
- Laws Amended:** [SF1213](#)/[HF2117](#) would be uncodified session laws
- Brief Description:** Requiring MN State to locate an eligible person's missing IRAP account or pay the eligible person \$25,000

### Background

The IRAP was established in the late 1980s to provide state university and college faculty and other employees with retirement benefits through a defined contribution plan, as an alternative to the Teachers Retirement Association (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.

The individual who is the “eligible person” in the bill was employed by Winona State University (WSU) from July 1, 1991, to June 30, 1996. From July 1, 1991, to October 31, 1994, the eligible person contributed to the MN State IRAP. Based on a copy of an election of TRA coverage filed by the eligible person with MN State, the eligible person elected TRA coverage effective November 1, 1994, and continued to contribute to TRA until the end of the eligible person’s employment with WSU on June 30, 1996. The eligible person had requested a distribution of her IRAP account, but MN State has not been able to locate her account, which consists of the funds she contributed to the MN State IRAP between July 1, 1991, and October 31, 1994, and investment earnings.

MN State contacted the current recordkeeper, TIAA, but the recordkeeper was unsuccessful in locating a record of an account for the eligible person. The current recordkeeper was retained by MN State beginning in 2006, which is ten years after the eligible person’s separation from employment. MN State

has suggested that it is possible that the account did not transfer from the former recordkeeper to the current recordkeeper during the conversion and that records may have been lost in connection with the 2019 acquisition of the prior recordkeeper, Wells Fargo Institutional Retirement & Trust, by the Principal Financial Group. The eligible person contacted Principal Financial Group in May 2020, but Principal Financial Group had no information affiliated with the eligible person's social security number.

The eligible person provided paycheck records and the following statement to Commission staff:

*Since January 10, 2019, I have been trying to track down retirement funds taken out of my paycheck by Minnesota State Systems. From approximately (because I am not sure of the exact date of my first check) August 1991, the beginning of my employment with Winona State University, until December 1994. The paystubs I happened to save list a retirement deduction. Starting January 1995 I was part of TRA.*

*I did my due diligence as requested by a Minnesota State Systems employee by contacting a list of possible locations for an account:*

*Franklin Templeton  
Wells Fargo  
Met Life  
Valic, Fidelity  
PERA  
TIAA  
MSRS (only current District 861 information)*

*I also checked <https://mn.gov/commerce/consumers/your-money/find-missing-money/>*

*Furthermore, no statements from any entity that may have this money has been received throughout the years. We have moved only once since living in Winona and have had the same mail carrier who would have delivered it even if it was the old address.*

*In working with various Minnesota State Systems people throughout the years, it was estimated that \$4,134 was taken out of my paychecks. This amount would have earned annualized interest during these 32 years. If the conservative 5% of return was used to calculate the value of this money today, it would be approximately \$19,697. The average rate of return in general is reported to be 5%-10%. A 10% rate of return would be \$87,280 today. An average rate of 7.5% is \$41,825. It would be even more assuming this original \$4134 had been invested in a broad market fund would have accumulated at the rate of roughly 10.7% annualized. There are so many websites with this information.*

Had MN State discovered the eligible person's account, she would have had an option to direct a rollover of that account to another retirement plan or an IRA and thereby defer having to pay state and federal tax on the amount in the account. If MN State cannot find the account, the bill requires MN State to pay a negotiated amount of \$25,000, which will be currently taxable to the eligible person.

## Section- by- Section Summary

[SF1213/HF2117](#) is one section and is a special law provision that includes the following subdivisions:

**Subdivision 1** provides definitions for “board of trustees,” “IRAP,” and “MN State.”

“Board of trustees” is defined as the governing board for the state universities, the community colleges, and the technical colleges established by Section 136F.02.

“IRAP” is defined as “the higher education individual retirement account plan established by Minnesota Statutes, chapter 354B.”

“MN State” is defined as “Minnesota State Colleges and Universities”

**Subdivision 2** provides a definition of the “eligible person” and requires the board of trustees to locate the contributions or pay the eligible person.

The “eligible person” is defined as a person who was employed by WSU from July 1, 1991, to June 30, 1996; and has copies of pay stubs showing payroll deduction contributions to the IRAP dated December 27, 1991, March 20, 1992, August 21, 1992, March 5, 1993, and April 16, 1993, in amounts of \$18.72 or \$19.93.

No later than 60 days after the bill is enacted, the board of trustees is required to either:

- locate the eligible person's account to which payroll deduction contributions were deposited in 1991 through 1994, and provide the eligible person with information regarding:
  - the individual or entity holding the account,
  - an accounting as to the amounts contributed in 1991 through 1994 and investment earnings thereon, and
  - instructions on how to access the account; or
- pay the eligible person an amount equal to \$25,000.

## Effective Date

The bill is effective the day following final enactment.

## Considerations

### Special laws are unconstitutional.

The Minnesota Constitution prohibits special laws, i.e. laws that apply to one individual. The Minnesota Constitution, Article XII, Section 1, states:

*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. . . .*

Not identifying the individual by name in the bill is intended to make special legislation look general, but an argument can be made that that is mere form over substance and cannot reasonably be expected to overcome a constitutional challenge. However, the Commission and the legislature have approved special legislation granting one individual or a small group of individuals a pension benefit for years and these session laws have not been challenged.

### **Special legislation circumvents the IRAP appeals process and a court adjudication.**

By hearing proposed special legislation, the Commission allows the eligible person to circumvent possibly more effective adjudication processes already in place, such as the appeals process likely available under the IRAP and the filing of a claim in district court. The Commission essentially becomes a court room, where testimony is taken, facts are determined, precedent is considered, and law is applied. Fact-finding is limited to the information Commission staff has been able to collect from MN State and the eligible person. The appeals process or a judicial proceeding may be better forums for deciding factual questions and determining the financial loss to the eligible person.

### **\$25,000 is an estimate and does not include tax liability.**

Based on a lack of documentation, the contributions by the eligible person are only an estimate. Additionally, the 5% rate-of-return applied to provide hypothetical earnings over the period at issue is only an approximation of earnings and is likely too conservative, given the variety of investment options available under the IRAP. Finally, had MN State found the IRAP account, the eligible person could have deferred having to pay state and federal income tax by directing a rollover to another retirement plan or an IRA. Receiving \$25,000 directly from MN State will be currently taxable to the eligible person. Therefore, the \$25,000 payment is likely not enough to compensate the eligible person for the loss of her IRAP account.