

This Document can be made available  
in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE No. **2473**

May 9, 2007

Authored by Kahn

The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

1.1 A bill for an act  
1.2 relating to retirement; statewide and major local retirement plans; updating and  
1.3 clarifying omitted salary deduction provisions; amending Minnesota Statutes  
1.4 2006, sections 352.04, subdivision 8; 352B.02, by adding a subdivision; 353.27,  
1.5 subdivisions 12, 12a, 12b; 353E.01, subdivision 4; 354.51, subdivision 5;  
1.6 354A.12, subdivision 1a; 422A.10, by adding a subdivision; 490.123, by adding  
1.7 a subdivision.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2006, section 352.04, subdivision 8, is amended to read:

1.10 Subd. 8. **Department required to pay omitted salary deductions.** (a) If a  
1.11 department fails to take deductions past due for a period of 60 days or less from an  
1.12 employee's salary as provided in ~~this section~~ subdivision 4, those deductions must be  
1.13 taken on later payroll abstracts.

1.14 (b) If a department fails to take deductions past due for a period in excess of 60 days  
1.15 from an employee's salary as provided in ~~this section~~ subdivision 4, the department,  
1.16 and not the employee, must pay on later payroll abstracts the employee and employer  
1.17 contributions and an amount equivalent to 8.5 percent of the total amount due in lieu of  
1.18 interest, or if the delay in payment exceeds one year, 8.5 percent compound annual interest  
1.19 from the date on which the deduction was due until the date that payment is made.

1.20 (c) If a department fails to take deductions past due for a period of 60 days or less  
1.21 and the employee is no longer in state service ~~so that~~ and the required deductions cannot  
1.22 be taken from the salary of the employee, the department must nevertheless pay the  
1.23 required employer contributions. If any department fails to take deductions past due for a  
1.24 period in excess of 60 days and the employee is no longer in state service, the omitted  
1.25 contributions must be recovered as provided under paragraph (b).

2.1 (d) If an employee from whose salary required deductions were past due for a period  
2.2 of 60 days or less leaves state service before the payment of the omitted deductions and  
2.3 subsequently returns to state service, the unpaid amount is considered the equivalent of a  
2.4 refund. The employee accrues no right by reason of the unpaid amount, except that the  
2.5 employee may pay the amount of omitted deductions as a refund repayment as provided  
2.6 in section 352.23.

2.7 (e) The recovery of omitted deductions is not permitted after the expiration of three  
2.8 calendar years after the calendar year in which the deductions and contributions were  
2.9 due, but were omitted, unless the system has already commenced an action to recover  
2.10 the omitted deductions and contributions. An action to recover omitted deductions and  
2.11 contributions commences on the date that the system mails any written correspondence  
2.12 to the employing unit requesting information from the employing unit upon which to  
2.13 determine whether or not omitted deductions occurred.

2.14 Sec. 2. Minnesota Statutes 2006, section 352B.02, is amended by adding a subdivision  
2.15 to read:

2.16 Subd. 1f. **Omitted salary deductions.** If a department fails to take deductions in a  
2.17 timely manner, the omitted salary deductions must be recovered as provided in section  
2.18 352.04, subdivision 8.

2.19 Sec. 3. Minnesota Statutes 2006, section 353.27, subdivision 12, is amended to read:

2.20 Subd. 12. **Omitted salary deductions; obligations.** (a) In the case of an omission  
2.21 of required deductions from the salary of an employee, the department head or designee  
2.22 shall immediately, upon discovery, report the employee for membership and ~~deduct~~ make  
2.23 the employee deductions under subdivision 4 during the current pay period or during the  
2.24 pay period immediately following the discovery of the omission. Payment for the omitted  
2.25 obligations may only be made in accordance with reporting procedures and methods  
2.26 established by the executive director.

2.27 (b) When the entire omission period of an employee does not exceed 60 days, the  
2.28 governmental subdivision ~~may~~ must report and submit payment of the omitted employee  
2.29 deductions and the omitted employer contributions through the reporting processes under  
2.30 subdivision 4.

2.31 (c) When the omission period of an employee exceeds 60 days, the governmental  
2.32 subdivision shall furnish to the association sufficient data and documentation upon which  
2.33 the obligation for the omitted employee and employer contributions can be calculated.  
2.34 The omitted employee deductions must be deducted from the employee's subsequent

3.1 salary payment or payments and must be remitted to the association. The employee shall  
3.2 pay omitted employee deductions due for the 60 days prior to the end of the last pay  
3.3 period in the omission period during which salary was earned. The employer shall pay  
3.4 any remaining omitted employee deductions and any omitted employer contributions, plus  
3.5 cumulative interest at an annual rate of 8.5 percent compounded annually, from the date  
3.6 or dates each omitted employee contribution was first payable on the date that payment  
3.7 is made.

3.8 (d) An employer shall not hold an employee liable for omitted employee deductions  
3.9 beyond the pay period dates under paragraph (c), nor attempt to recover from the  
3.10 employee those employee deductions paid by the employer on behalf of the employee.  
3.11 Omitted deductions due under paragraph (c) which are not paid by the employee constitute  
3.12 a liability of the employer that failed to ~~deduct~~ make the omitted deductions from the  
3.13 employee's salary. The employer shall make payment with interest at an annual rate of  
3.14 8.5 percent compounded annually. Omitted employee deductions are no longer due if an  
3.15 employee terminates public service before making payment of the omitted employee  
3.16 deductions to the association, but the employer remains liable to pay omitted employer  
3.17 contributions plus interest at an annual rate of 8.5 percent compounded annually from the  
3.18 date the contributions were first payable to the date that payment is made.

3.19 (e) The association may not commence an action for the recovery of omitted  
3.20 employee deductions and employer contributions after the expiration of three calendar  
3.21 years after the calendar year in which the contributions and deductions were omitted.  
3.22 Except as provided under paragraph (b), no payment of omitted deductions or  
3.23 contributions may be made or accepted unless the association has already commenced  
3.24 an action for recovery of omitted deductions. An action for recovery commences on the  
3.25 date of the mailing of any written correspondence from the association to the employing  
3.26 unit requesting information from the governmental subdivision upon which to determine  
3.27 whether or not omitted deductions occurred.

3.28 Sec. 4. Minnesota Statutes 2006, section 353.27, subdivision 12a, is amended to read:

3.29 Subd. 12a. **Terminated employees: omitted deductions.** A terminated employee  
3.30 who has a period of employment in which previously omitted employer contributions  
3.31 were made under subdivision 12 but for whom no, or only partial, omitted employee  
3.32 contributions have been made, or a member who had prior coverage in the association  
3.33 for which previously omitted employer contributions were made under subdivision  
3.34 12 but who terminated service before required omitted employee deductions could be  
3.35 withheld from salary, may pay the omitted employee deductions for the period on which

4.1 omitted employer contributions were previously paid ~~plus~~. The payment must include  
 4.2 interest at an annual rate of 8.5 percent compounded annually from the date on which the  
 4.3 contribution should have been made until the date on which the payment is made. A  
 4.4 terminated employee ~~may~~ must pay the omitted employee deductions plus interest at the  
 4.5 rate of 8.5 percent per year within six months of an initial notification from the association  
 4.6 of eligibility to pay those omitted deductions. If a terminated employee is reemployed in a  
 4.7 position covered under a public pension fund ~~under~~ listed in section 356.30, subdivision 3,  
 4.8 and elects to pay the omitted employee deductions, payment must be made no later than  
 4.9 six months after a subsequent termination of public service.

4.10 Sec. 5. Minnesota Statutes 2006, section 353.27, subdivision 12b, is amended to read:

4.11 Subd. 12b. **Terminated employees: immediate eligibility.** If deductions were  
 4.12 omitted from salary adjustments or the final salary of payable to a terminated employee  
 4.13 who is immediately eligible to draw a monthly benefit, the employer shall pay the omitted  
 4.14 employer and employer additional contributions plus interest on both the employer and  
 4.15 employee amounts due at an annual rate of 8.5 percent compounded annually from the  
 4.16 date on which the contribution should have been made until the date on which the payment  
 4.17 is made. The employee shall pay the employee deductions within six months of an initial  
 4.18 notification from the association of the employee's eligibility to pay omitted deductions  
 4.19 or the employee forfeits the right to make the payment.

4.20 Sec. 6. Minnesota Statutes 2006, section 353E.01, subdivision 4, is amended to read:

4.21 Subd. 4. **Collection of contributions.** The collection of member and employer  
 4.22 contributions is governed by section 353.27, subdivisions 4, 7, 7b, 10, 11, ~~and~~ 12, 12a,  
 4.23 and 12b.

4.24 Sec. 7. Minnesota Statutes 2006, section 354.51, subdivision 5, is amended to read:

4.25 Subd. 5. **Payment of shortages.** (a) Except as provided in paragraph (b), ~~in the~~  
 4.26 ~~event that~~ if full required member contributions are not deducted from the salary of a  
 4.27 teacher, payment must be made as follows:

4.28 (1) Payment of shortages in member deductions on salary earned after June 30,  
 4.29 1957, and before July 1, 1981, may be made any time before July 1, 2007, or retirement,  
 4.30 whichever is earlier. Payment must include interest at an annual rate of 8.5 percent  
 4.31 compounded annually from the end of the fiscal year in which the shortage occurred to  
 4.32 the end of the month in which payment is made ~~and~~. The interest must be credited to the

5.1 fund. If payment of a shortage in deductions is not made, the formula service credit of the  
 5.2 member must be prorated under section 354.05, subdivision 25, clause (3).

5.3 (2) Payment of shortages in member deductions on salary earned after June 30,  
 5.4 1981, which are past due for a period of 60 days or less are payable by the teacher and the  
 5.5 employing unit must deduct the shortage amount from the teacher's subsequent salary.

5.6 (3) Payment of shortages in member deductions on salary earned after June 30,  
 5.7 1981, which are past due for a period of more than 60 days are the sole obligation of the  
 5.8 employing unit and are payable by the employing unit upon notification by the executive  
 5.9 director of the shortage with interest at an annual rate of 8.5 percent compounded annually  
 5.10 from the end of the fiscal year in which the shortage occurred to the end of the month in  
 5.11 which payment is made and the interest must be credited to the fund. ~~Effective July 1,~~  
 5.12 ~~1986,~~ The employing unit shall also pay the employer contributions as specified in section  
 5.13 354.42, subdivisions 3 and 5 for the shortages. If the shortage payment is not paid by the  
 5.14 employing unit within 60 days of notification, the executive director shall certify the  
 5.15 amount of the shortage payment to the applicable county auditor, who shall spread a levy  
 5.16 in the amount of the shortage payment over the taxable property of the taxing district of  
 5.17 the employing unit if the employing unit is supported by property taxes, or shall certify  
 5.18 the amount to the commissioner of finance, who shall deduct the amount from any state  
 5.19 aid or appropriation amount applicable to the employing unit if the employing unit is  
 5.20 not supported by property taxes.

5.21 ~~(3)~~ (4) Payment may not be made for shortages in member deductions on salary  
 5.22 earned before July 1, 1957, for shortages in member deductions on salary paid or payable  
 5.23 under paragraph (b), or for shortages in member deductions for persons employed by the  
 5.24 Minnesota State Colleges and Universities system in a faculty position or in an eligible  
 5.25 unclassified administrative position and whose employment was less than 25 percent  
 5.26 of a full academic year, exclusive of the summer session, for the applicable institution  
 5.27 that exceeds the most recent 36 months.

5.28 (b) For a person who is employed by the Minnesota State Colleges and Universities  
 5.29 system in a faculty position or in an eligible unclassified administrative position and  
 5.30 whose employment was less than 25 percent of a full academic year, exclusive of the  
 5.31 summer session, for the applicable institution, upon the person's election under section  
 5.32 354B.21 of retirement coverage under this chapter, the shortage in member deductions  
 5.33 on the salary for employment by the Minnesota State Colleges and Universities system  
 5.34 institution of less than 25 percent of a full academic year, exclusive of the summer session,  
 5.35 for the applicable institution for the most recent 36 months and the associated employer  
 5.36 contributions must be paid by the Minnesota State Colleges and Universities system

6.1 institution, plus annual compound interest at the rate of 8.5 percent from the end of the  
6.2 fiscal year in which the shortage occurred to the end of the month in which the Teachers  
6.3 Retirement Association coverage election is made. If the shortage payment is not made  
6.4 by the institution within 60 days of notification, the executive director shall certify the  
6.5 amount of the shortage payment to the commissioner of finance, who shall deduct the  
6.6 amount from any state appropriation to the system. An individual electing coverage  
6.7 under this paragraph shall repay the amount of the shortage in member deductions, plus  
6.8 interest, through deduction from salary or compensation payments within the first year of  
6.9 employment after the election under section 354B.21, subject to the limitations in section  
6.10 16D.16. The Minnesota State Colleges and Universities system may use any means  
6.11 available to recover amounts which were not recovered through deductions from salary or  
6.12 compensation payments. No payment of the shortage in member deductions under this  
6.13 paragraph may be made for a period longer than the most recent 36 months.

6.14 (c) The recovery of shortages is not permitted after the expiration of three school  
6.15 years after the school year in which the member deductions were due, but were unpaid,  
6.16 unless the Teachers Retirement Association has already commenced an action to recover  
6.17 the shortages. An action to recover shortages begins on the date that the association  
6.18 mails any written correspondence to the employing unit requesting information from the  
6.19 employing unit upon which to determine whether or not shortages occurred.

6.20 Sec. 8. Minnesota Statutes 2006, section 354A.12, subdivision 1a, is amended to read:

6.21 Subd. 1a. **Obligation for omitted salary deductions.** (a) If the full required  
6.22 contributions are not deducted from the salary of a teacher and are past due for a period of  
6.23 60 days or less, the omitted salary deductions are payable by the teacher, and the employing  
6.24 unit must deduct the omitted amount from the subsequent salary payments of the teacher.

6.25 (b) If the full required contributions are not deducted from the salary of a teacher  
6.26 and are past due for a period of more than 60 days, payment of the shortage in such  
6.27 deductions is the sole obligation of the employing unit during the three-year period  
6.28 following the end of the fiscal year in which the shortage occurred. The shortage is  
6.29 payable by the employing unit upon notification of the shortage by the executive director  
6.30 of the applicable retirement fund association.

6.31 (c) under either paragraph (a) or (b), the employing unit shall also pay any employer  
6.32 contributions related to the shortage.

6.33 (d) The amount of the shortage in employee contributions and associated employer  
6.34 contributions ~~is~~ are payable with interest at the preretirement interest assumption for the  
6.35 retirement fund as specified in section 356.215, subdivision 8, stated as a monthly rate

7.1 from the date due until the date payment is received in the office of the association, with a  
7.2 minimum interest charge of \$10.

7.3 (e) If the shortage payment and interest is not paid by the employing unit under  
7.4 paragraph (b) within 60 days of notification, the executive director or executive secretary  
7.5 shall certify the amount of the shortage payment and interest to the commissioner  
7.6 of finance, who shall deduct the amount from any state aid or appropriation amount  
7.7 applicable to the employing unit.

7.8 Sec. 9. Minnesota Statutes 2006, section 422A.10, is amended by adding a subdivision  
7.9 to read:

7.10 Subd. 6. **Omitted salary deductions.** (a) In the case of an omission of required  
7.11 deductions from the salary of an employee of the contributing class, the employing unit  
7.12 shall immediately, upon discovery, make the employee deductions under subdivision  
7.13 1 during the current pay period or during the pay period immediately following the  
7.14 discovery of the omission.

7.15 (b) When the entire omission period of an employee does not exceed 60 days, the  
7.16 employing unit must report the omission and submit the payment of the omitted employee  
7.17 deductions and the omitted employer contributions.

7.18 (c) If the entire omission period of an employee exceeds 60 days, the employing unit  
7.19 shall furnish the retirement plan with sufficient data and documentation upon which the  
7.20 obligation for the omitted employee and employer contributions can be calculated. The  
7.21 employing unit must pay the omitted employee and employer contributions and an amount  
7.22 equivalent to 8.5 percent of the total amount due in lieu of interest, or if the delay in  
7.23 payment exceeds one year, 8.5 percent compound annual interest from the date on which  
7.24 the contribution was due to the date on which the payment is made.

7.25 (d) The recovery of omitted deductions is not permitted after the expiration of three  
7.26 calendar years after the calendar year in which the deductions were due, but were omitted,  
7.27 unless the retirement plan administration has already commenced an action to recover  
7.28 the omitted deductions. An action to recover omitted deductions commences on the date  
7.29 that the retirement plan administration mails any written correspondence to the employing  
7.30 unit requesting information from the employing unit from which to determine whether or  
7.31 not omitted deductions occurred.

7.32 Sec. 10. Minnesota Statutes 2006, section 490.123, is amended by adding a subdivision  
7.33 to read:

8.1           Subd. 1f. **Omitted salary deductions.** (a) In the case of an omission of required  
8.2 deductions from the salary of a judge, the state court administrator shall immediately,  
8.3 upon discovery, make the member contribution deductions under subdivision 1a during  
8.4 the current pay period or during the pay period immediately following the discovery of  
8.5 the omission.

8.6           (b) When the entire omission period of a judge does not exceed 60 days, the state  
8.7 court administrator must report the omission and submit the payment of the omitted  
8.8 member contribution deductions and the omitted employer contributions.

8.9           (c) If the entire omission period of a judge exceeds 60 days, the state court  
8.10 administrator shall furnish the Minnesota State Retirement System with sufficient data  
8.11 and documentation upon which the obligation for the omitted member and employer  
8.12 contributions can be calculated. The state court administrator must pay the omitted  
8.13 member and employer contributions and an amount equivalent to 8.5 percent of the total  
8.14 amount due in lieu of interest, or if the delay in payment exceeds one year, 8.5 percent  
8.15 compound annual interest from the date on which the contribution was due to the date  
8.16 on which the payment is made.

8.17           (d) The recovery of omitted deductions is not permitted after the expiration of three  
8.18 calendar years after the calendar year in which the deductions were due, but were omitted,  
8.19 unless the Minnesota State Retirement System has already commenced an action to  
8.20 recover the omitted deductions. An action to recover omitted deductions commences on  
8.21 the date that the Minnesota State Retirement System mails any written correspondence to  
8.22 the state court administrator requesting information from the administrator from which  
8.23 to determine whether or not omitted deductions occurred.

8.24           Sec. 11. **EFFECTIVE DATE.**

8.25           Sections 1 to 10 are effective July 1, 2007.