

Public Employees Retirement Association (PERA)

60 Empire Dr., Suite 200, St. Paul MN 55103

Employer Fax: 651 296-2493; Employer Lines: 651 296-3636 or 1-888-892-737



Referendum Procedures – Offering Social Security Coverage to Eligible Local Elected Officials in Minnesota

The following procedures are based on Minnesota Statutes Section 355 and Section 218 of the Social Security Act. This document describes the activities to complete to provide Social Security coverage to eligible local elected officials holding positions covered by the Defined Contribution Plan (and excluded from membership in the Coordinated Plan).

1. The **governing body** of the local governmental subdivision adopts a resolution to do the following:
(A sample resolution is online at www.mnpera.org under the Employer Section and Social Security.)
 - a) Request a divided vote referendum be conducted within the subdivision,
 - b) Authorize the appropriate individual within the subdivision to conduct the referendum,
 - c) Establish the effective date of coverage for the officials eligible to vote in the referendum
 - i Coverage may be prospective or retroactive within limits set by Section 218(e) (1) of federal law. If retroactive coverage is sought, it must be restricted under Social Security provisions to five calendar years prior to the year in which the subdivision's 218 agreement modification is mailed by the PERA staff to the Social Security Administration (SSA). For each official, the retroactive period will begin on the later of either: a) the effective date established in the 218 modification, or b) the date the particular individual took office. Once coverage is approved, payment of the retroactive employer and employee taxes will be due in a lump sum.
 - d) Request a modification to Minnesota's section 218 Agreement to provide full Social Security coverage to local elected positions covered by the Defined Contribution Plan, and
 - e) Acknowledge the applicable state and federal laws and regulations regarding employee tax withholdings, employer contributions and record keeping.
2. The authorized representative of the governmental subdivision (**employer**) will:
 - a) Prepare a list of elected officials (names and social security numbers) eligible to participate in the referendum. Those eligible are officials excluded from joining the Coordinated Plan as follows:
 - i Active DCP members who pay 5.0% of their earnings into the DCP instead of paying 6.2% to Social Security (those elected after March 31, 1986 are paying Medicare tax of 1.45%); or
 - ii Eligible elected officials who chose to pay 6.2% to Social Security instead of paying 5.0% into the DCP (those elected after March 31, 1986 will be paying Medicare tax of 1.45%).

Additionally, the elected officials must be in office on two specific dates: I) The date of the referendum and II) the date that the section 218 modification is effective for the subdivision.
3. Submit the adopted resolution and the list of potential referendum participants, by postal mail to:
Attn: State Social Security Administrator
Public Employees Retirement Association
60 Empire Drive, Ste 200
Saint Paul, MN 55103-2088
4. Upon receipt of the resolution and list of eligible DCP members, staff of **PERA** will:
 - a) Work with the employer to establish the date(s) upon which the referendum will be conducted. Under federal requirements, all eligible individuals must be given no less than 90 days' notice regarding the referendum. An additional 10 days notice is required for absentee voting.
The 90-day notice period is required under federal law and may not be shortened. It exists to allow each voter a sufficient period to obtain information about the Social Security program to determine whether it would be advantageous to obtain such coverage for the elective services. PERA staff cannot provide counseling on Social Security benefits; questions should be directed to the SSA (1-800-772-1213). Medicare information is available by calling 1-800-633-4227.
 - b) Provide a sample Notice of Referendum and Ballot to the employer. These documents must be finalized by the employer. The Notice will explain the purpose of the referendum and include the

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coverage effective date established by the governing body. The Ballot will provide for the written election by the individual.

5. The **employer** will conduct the Referendum, which includes:
 - a) Updating, if necessary, the list of elected officials eligible to participate in the referendum.
 - b) Distributing the final Notice and Ballot to each eligible elected official by personal delivery, e-mail, or first class mail on the date established. (If any doubt arises as to the person's eligibility to vote in the referendum, the employer should provide the Notice and Ballot to the person and resolve the eligibility question with help from PERA later.)
 - c) Collecting the signed Ballot(s) by first class mail or personal delivery and ensure that each Ballot is postmarked or personally received on the designated due date(s).

6. At the close of the referendum process, the **employer** must certify the results which means:
 - a) Preparing a Certification of Referendum (paper or electronic format) stating the choice of each eligible official. The Certification will consist of the eligible elected officials' names, Social Security numbers, DCP status (active or eligible) and the person's Social Security election.

The election made by each eligible elected official will be indicated as follows:

YES – individual **desires Social Security coverage** under the section 218 Agreement;

NO – individual **desires not to be covered** under the section 218 Agreement

N/R – the person **did not execute and return** the ballot. A “no response” is treated as if the person chose not to be covered under the section 218 Agreement.

- b) Sending the Certification to PERA and retaining a copy, along with the signed Ballots. Do not send the Ballots to PERA. To avoid misunderstandings, the employer should also notify each elected official on the list what his or her choice was for Social Security coverage.
7. Upon receipt of the Certification, **PERA** will
 - a) Execute the required modification to Minnesota's section 218 Agreement, and
 - b) Upon receipt of a fully executed 218 modification from the SSA, notify the employer of the date that coverage has been accepted and send a copy of the 218 modification to the employer.
8. Once the 218 modification has been executed, the **employer** is responsible for the applicable taxes as required by the Internal Revenue Service (IRS).
 - a) For each active DCP member who voted FOR Social Security, the employer must withhold FICA taxes (7.65%) from the elected official's earnings, match the contribution amounts, and report the earnings and taxes to the IRS on Form 941.
 - b) If retroactive coverage had been requested and approved, the effective date of Social Security participation for an elected official will be the effective date established in the section 218 modification or the date the particular individual took office, whichever is later. Deposit penalties may apply if the full payment for retroactive quarters is not deposited within 30 days after the end of the quarter in which the SSA Regional Office approved the 218 modification. The employer must submit the taxes for the retroactive period each applicable elected official as follows:
 - i If the retroactive period does not exceed three calendar years prior to April 15th of the year immediately following the coverage period, full payment to the IRS must be deposited within 30 days after the end of the quarter in which the SSA Regional Office approved the 218 modification. Report the retroactive earnings and taxes to the IRS on Form 941.
 - ii If the period of retroactive coverage exceeds three calendar years prior to April 15th of the year immediately following the retroactive coverage period, the employer must enter into a closing agreement with the IRS to waive the statute of limitations for assessment before paying the full amount of tax due. To obtain a closing agreement contact the office of Federal, State and Local Governments in writing at the following address:

IRS

SE:T:GE:FSL

Att: FSLG Closing Agreement Coordinator

1111 Constitution Ave

Washington, D.C. 20224