

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: S.F. 438 (Betzold); H.F. 2093 (Smith); Uniform Public Pension Plan Exemption From Legal Process

DATE: March 28, 2005

Summary of S.F. 438 (Betzold); H.F. 2093 (Smith)

S.F. 438 (Betzold); H.F. 2093 (Smith) amends the exemption from legal process provisions of Minnesota Statutes, Chapters 3A; 352; 352B; 353; 354; 422A; 423B; 423C; and 490, by generally replacing the provision with a reference to new Minnesota Statutes, Section 356.401, a comprehensive statement of the general exemption of retirement benefits from assignment or legal process. New Minnesota Statutes, Section 356.401, also is extended to several retirement plans without any current statutory anti-assignment and legal process exemption provisions.

Background Information on Anti-Assignment and Legal Process Exemption Provisions

Prohibitions on the assignment of retirement annuities or other retirement benefits and exemptions of retirement annuities and benefits from execution, levy, attachment, or other legal process have existed with Minnesota public pension laws essentially since the creation of those plans.

An attachment prohibition and legal process exemption was incorporated into the initial enactment of the Minneapolis Employees Retirement Fund (MERF) pension plan law in 1919 (Laws 1919, Chapter 572, Section 21), into the initial enactment of the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) law in 1929 (Laws 1929, Chapter 191, Section 17), into the initial enactments of the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) law and of the Teachers Retirement Association (TRA) law in 1931 (Laws 1931, Chapter 307, Section 18, and Chapter 406, Section 10), into the reenactment of the Minneapolis Firefighters Relief Association law in 1933 (Laws 1933, Chapter 177, Section 27), and into the reenactment of the Minneapolis Police Relief Association law in 1953 (Laws 1953, Chapter 127, Section 7).

The provisions generally disallow any assignments or attempted assignments of retirement annuities and benefits in law or in equity, exempt retirement annuities and benefits from the State’s estate tax, and exempt retirement annuities and benefits from execution, levy, attachment, garnishment, or other legal process other than as part of a division of retirement annuities or benefits as marital property.

Some Minnesota public retirement plan governing laws have no anti-attachment and legal process exemption provision. These plans are the Elective State Officers Retirement Plan, the Public Employees Defined Contribution Retirement Plan, the first class city teachers retirement fund associations, the Individual Retirement Account Plan (IRAP), and the Higher Education Supplemental Retirement Plan.

Some Minnesota public retirement plan governing laws have specific direct deposit and joint account authority, and some also have retiree medical and dental insurance, but other plans are silent on these points.

The following compares the anti-assignment and legal process exemption provisions of the various retirement plans:

Plan	No Assignment
MSRS-General	No money, annuity, or benefit assignable in law or equity.
PERA-General	No money, annuity, or benefit assignable in law or equity.
TRA	No money, annuity, or benefit assignable. Assignment or attempted assignment is void.
Legislators	MSRS-General Plan provision applies.
State Patrol	No money, annuity, or benefit assignable in law or equity.
MERF	No money, annuity, or benefit assignable in law or equity.

Plan	No Assignment
Judges	No money, annuity, or benefit assignable in law or equity.

Plan	No Estate Tax
MSRS-General	No money, annuity, or benefit is subject to State estate tax.
PERA-General	No money, annuity, or benefit is subject to State estate tax.
TRA	No money, annuity, or benefit is subject to State estate tax.
Legislators	MSRS-General Plan provision applies.
State Patrol	No provision.
MERF	No money, annuity, or benefit is subject to State estate tax upon a transfer to a surviving spouse or surviving child or to a trust for their benefit.
Judges	No provision.

Plan	No Legal Process
MSRS-General	No money, annuity, or benefit is subject to execution, levy, attachment, garnishment, or other legal process other than direct deposit or marriage dissolution order.
PERA-General	No money, annuity, or benefit is subject to execution, levy, attachment, garnishment, or other legal process other than direct deposit or marriage dissolution order.
TRA	Teacher's interest or beneficiary's interest in the fund exempt from garnishment, levy under attachment, or execution other than direct deposit or marriage dissolution order.
Legislators	MSRS-General Plan provision applies.
State Patrol	No money, annuity, or benefit is subject to execution, levy, attachment, garnishment, or other legal process other than direct deposit or marriage dissolution order.
MERF	No money, annuity, or benefit is subject to execution, levy, attachment, garnishment, or other legal process other than direct deposit or marriage dissolution order.
Judges	No money, annuity, or benefit is subject to execution, levy, attachment, garnishment, or other legal process other than direct deposit or marriage dissolution order.

Plan	Marriage Dissolution Exception
MSRS-General	Annuity or benefit is subject to marital property division, surviving spouse benefit award, or income withholding in a marriage dissolution action.
PERA-General	Annuity or benefit is subject to marital property division, surviving spouse benefit award, or income withholding in a marriage dissolution action.
TRA	Annuity or benefit is subject to marital property division, surviving spouse benefit award, or income withholding in a marriage dissolution action.
Legislators	MSRS-General Plan provision applies.
State Patrol	Annuity or benefit is subject to marital property division, surviving spouse benefit award, or income withholding in a marriage dissolution action.
MERF	Annuity or benefit is subject to marital property division, surviving spouse benefit award, or income withholding in a marriage dissolution action.
Judges	Annuity or benefit is subject to marital property division, surviving spouse benefit award, or income withholding in a marriage dissolution action.

Plan	Automatic Deposit Authorization
MSRS-General	Annuity, benefit, or refund open to be remitted by executive director by automatic deposit to financial institution associated with National Automated Clearinghouse Association or comparable successor that is trustee for the recipient, subject to board-prescribed conditions.
PERA-General	Annuity, benefit, or refund open to be remitted by executive director by automatic deposit to financial institution associated with National Automated Clearinghouse Association or comparable successor that is trustee for the recipient, subject to board-prescribed conditions.
TRA	Annuity, benefit, or refund open to be remitted by executive director by automatic deposit to financial institution associated with National Automated Clearinghouse Association or comparable successor that is trustee for the recipient, subject to board-prescribed conditions.
Legislators	MSRS-General Plan provision applies.
State Patrol	No provision.
MERF	No provision.
Judges	No provision.

Plan	Joint Account Authorization
MSRS-General	Annuity, benefit, or refund open to be remitted to joint account on direct deposit upon recipient request, subject to Board-prescribed conditions.
PERA-General	Annuity, benefit, or refund open to be mailed or electronically transferred to joint account on direct deposit upon recipient request, subject to Board-prescribed conditions.
TRA	Annuity, benefit, or refund open to be mailed or electronically transferred to joint account on direct deposit upon recipient request, subject to Board-prescribed conditions. Any joint account overpayment after the death of the annuitant or recipient must be repaid by the joint tenant if it is not repaid by the financial institution involved.
Legislators	MSRS-General Plan provision applies.
State Patrol	No provision.
MERF	No provision.
Judges	No provision.

Plan	Health and Dental Insurance Deduction
MSRS-General	Board has discretion to direct health and dental insurance premiums to an insurance carrier covering State employees, if insurance carrier certifies recipient signed authorization, refunds erroneous deductions, and reimburses fund for deduction administrative expenses, subject to Board-prescribed conditions.
PERA-General	No provision.
TRA	No provision.
Legislators	The MSRS Executive Director must deduct health insurance premiums from the retirement allowance and transfer them to the insurance carrier if requested by a retired legislator who is enrolled in the State health insurance program.
State Patrol	No provision.
MERF	No provision.
Judges	No provision.

Plan	Other
MSRS-General	Direct refund transfer to individual retirement savings account or qualified retirement plan.
PERA-General	If Executive Director judges conditions warrant, payment may be made to a public body on behalf of the annuitant or benefit recipient on terms prescribed by the Executive Director.

Plan	Other
TRA	If Executive Director judges conditions warrant, payment may be made to a public body on behalf of the annuitant or benefit recipient on terms prescribed by the Executive Director. The right to a benefit from the fund is a personal right of the teacher. Any money in fund to the credit of a teacher or payable to a teacher belongs to the State of Minnesota until actually paid. The plan may acknowledge a properly completed power of attorney form. Beneficiary designations may be changed on a TRA form and must be received before the death of the member or retiree to be valid. If an active or retired member dies without a beneficiary, the member's estate is the beneficiary.
Legislators	MSRS-General Plan pro-vision applies.
State Patrol	No provision.
MERF	No provision.
Judges	No provision.

Discussion and Analysis

S.F. 438 (Betzold); H.F. 2093 (Smith) would centralize most of the current public retirement plan legal process exemption provisions into a single generally applicable legal process exemption provision, replacing the existing provisions. It will also extend the legal process exemption provisions to those Minnesota retirement plans lacking the provisions, except for volunteer firefighter relief associations.

The proposed legislation, while largely promoting consistency and conformity, does raise some pension and related policy issues that may merit Commission consideration and discussion, as follows:

1. Appropriateness of Extending Legal Process Exemption to Various Retirement Plans Without the Exemption. The policy issue is the appropriateness of extending the assignment prohibition/legal process exemption provision to the Elected State Officers Retirement Plan, the first class city teacher retirement fund associations, the Minnesota State Colleges and Universities System (MnSCU) Individual Retirement Account Plan (IRAP), the MnSCU Higher Education Supplemental Retirement Plan, and the Public Employees Defined Contribution Plan. The no assignment/legal process exemption provisions date back to the enactment of the various retirement plans generally, so the original expressed legislative rationale for the provisions has been lost to history, but undoubtedly the provisions were intended to protect the retirement plan from the administrative burden and hassle of handling garnishments and attachments and to protect plan members from a loss of retirement income security from pre-retirement financial difficulties. Both of those considerations still apply and would be applicable to the plans which are currently not covered by a legal process exemption. The absence of a legal process exemption is an advantage to the potential creditors of pension plan members, but does not provide any advantage to the pension plan or to pension plan members.
2. Appropriateness of the Extension of Automatic Pension Benefit Deposit Provisions. The policy issue is the appropriateness of extending the automatic benefit deposit provision to the State Patrol Retirement Plan, the Minneapolis Employees Retirement Fund (MERF), the Judges Retirement Plan, the Minneapolis Firefighters Relief Association, and the Minneapolis Police Relief Association. These plans have legal process exemption provisions, but those provisions lack the automatic benefit deposit provisions currently found in the three major statewide general employee retirement plan laws. The plans may have actually implemented automatic deposit procedures without specific legislation, so the extension may simply represent legislation that is catching up with actual practice, even if that sequence is not consistent with model legislation. The retirement plan administrators involved perhaps should be invited to provide testimony on their current practices with respect to automatic benefit deposits.
3. Appropriateness of the Extension of Automatic Deposits to Joint Bank Accounts. The policy issue is the appropriateness of permitting automatic deposits of retirement annuities and benefits into a joint bank account. Joint bank account automatic deposit authority exists for the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), the Public Employees Police and Fire Plan (PERA-P&F), the Teachers Retirement Association (TRA), and the Legislators Retirement Plan. With automatic deposit and with deposits to joint accounts, it potentially becomes more difficult to determine whether or not a retired member or other benefit recipient is still living and is still eligible for the annuity or benefit receipt. Only TRA

has any statutory language that specifically addresses the problem of an annuity or benefit overpayment to a joint account and the recovery of the overpayment. The general legal process exemption/assignment prohibition provision proposed for inclusion in Minnesota Statutes, Chapter 356, replicates the TRA provision for all plans gaining or retaining the joint account authority. Testimony perhaps should be sought from the various retirement plan administrators on the extent of joint account direct deposit overpayment problems and the manner in which overpayments are identified and recovered before an extension is made to the 14 plans currently without this statutory authorization.

4. Appropriateness of a Potential Extension of Health/Dental Insurance Premium Deduction Authority. The policy issue is the appropriateness of modifying the proposed legislation to permit retirement plans beyond the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) and the Legislators Retirement Plan to deduct health or dental insurance premiums from the retirement annuity or benefit. The Legislators Retirement Plan is a single employer retirement plan and the MSRS-General Plan is essentially a single employer retirement plan, so the number of insurance plans involved and the potential administrative problems for the retirement plan are limited. Several of the other retirement plans are limited in the number of covered employing units involved, but several of the other retirement plans cover multiple employers, which would add administrative complexity. The Commission should perhaps consider taking testimony from interested parties about the extent of retiree health or dental insurance coverage and the capability of the remaining retirement plans to accommodate deduction authority. Amendment LCPR05-167 would add health/dental insurance premium deduction authority to the proposed uniform provision.
5. Appropriateness of the Potential Extensions of Public Body Payment and Direct Refund Transfer Provisions. The policy issue is the appropriateness of potential amendments to the proposed legislation to permit additional retirement plans to pay retirement annuities or benefits directly to public bodies when circumstances warrant or to permit the direct transfer of refunds to other retirement arrangements. Currently, the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), the Public Employees Police and Fire Plan (PERA-P&F), and the Teachers Retirement Association (TRA) have the direct payment to public bodies authority, and the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional), and the Legislators Retirement Plan have the direct refund transfer authority. It is unclear what prompted either provision and whether the factors that prompted the provisions still exist and still are important to consider. Amendment LCPR05-168 would add a public body payment authorization to the proposed uniform provision.
6. Failure of Retirement Plans to Address Obvious Administrative Issue. The policy issue is the failure of the various statewide and major local retirement plans to address an obvious administrative issue previously in compliance with Minnesota Statutes, Section 356B.01. Minnesota Statutes, Section 356B.01, was enacted in 1994 (Laws 1994, Chapter 528, Article 1, Section 13), at the request of the various statewide and major local retirement plans, and sets a deadline date for the submission of proposed administrative legislation, sets a deadline for written responsive comments from the Commission staff, specifies five priority administrative issues (leaves of absence, disability benefit offsets, service credit purchases, reemployed annuitant earnings limits, and retroactive annuity or benefit applications), requires the presentation of uniform administrative provisions across the various plans within the bounds of what is possible and desirable, and requires the submission of supporting documentation presenting the policy rationale for proposed changes. While the various retirement plans have generally observed the proposed administrative legislation deadline due date under Minnesota Statutes, Section 356B.01, the various plans have not yet addressed the mandatory priority topics over the 11-year existence of the requirement, have not undertaken the formulation of uniform corrective provisions and rarely present supporting policy rationale documentation for proposed administrative legislation. In addition to not addressing the five mandatory topics specified in Minnesota Statutes, Section 356B.01, the various retirement plans have not addressed this topic, which is not currently uniform and which could benefit from a more uniform reformulation. The commitment of the various retirement plans to achieving greater consistency and uniformity in basic retirement plan administrative provisions is obviously lacking. The Commission should consider a moratorium on any retirement plan-sponsored administrative legislation until the retirement plans make a serious attempt to address the five mandatory topics for administrative legislation and actually formulate uniform proposed legislation to update the revise the areas.

Section-By-Section Summary of S.F. 438 (Betzold); H.F. 2093 (Smith)

Sec.	Page, Lines	Statutory Provision	Retirement Plan	Summary
1	Page 1, lines 13 to 24	Section 3A.13	Legislators Retirement Plan	Changes cross-reference from MSRS-General Plan provision to new general provision.
2	Page 1, lines 25 to 28 Page 2, lines 1 to 6	Section 352.15, Subdivision 1	MSRS-General	Replaces legal process exemption with a cross-reference to the new general provision.
3	Page 2, lines 7 to 22	Section 352.15, Subdivision 3	MSRS-General	Clarifies the language and style of a health insurance deduction provision.
4	Page 2, lines 23 to 30	Section 352.15, Subdivision 4	MSRS-General	Clarifies the language and style of the direct transfer of refund provision.
5	Page 2, lines 31 to 36 Page 3, lines 1 to 3	Section 352B.071	State Patrol	Replaces legal process exemption with a cross-reference to the new general provision.
6	Page 3, lines 4 to 12	Section 353.15, Subdivision 1	PERA-General	Replaces legal process exemption with a cross-reference to the new general provision.
7	Page 3, lines 13 to 19	Section 353.15, Subdivision 3	PERA-General	Clarifies the language and style of the payment to public bodies provision.
8	Page 3, lines 20 to 36	Section 354.10, Subdivision 1	TRA	Adds a cross-reference to the new general law provision to replace the current legal process exemption provision.
9	Page 4, lines 1 to 7	Section 354.10, Subdivision 3	TRA	Clarifies the language and style of the payment to public bodies provision.
10	Page 4, lines 8 to 20	Section 354.10, Subdivision 4	TRA	Divides designated beneficiary change provision into paragraphs.
11	Page 4, lines 21 to 36 Page 5, lines 1 to 36 Page 6, lines 1 to 19	New Section 356.401	Various Plans	Exempts public pension plan benefits from assignment, State estate taxes, or legal process other than marriage dissolution-related benefit divisions. Permits automatic deposits of benefits to single or joint accounts. Applies to 20 Minnesota public pension plans, including five statewide general employee defined benefit plans, five statewide general employee defined contribution plans, four statewide public safety defined benefit plans, four major local general employee defined benefit plans, and two major local public safety defined benefit plans.
12	Page 6, lines 20 to 32	Section 422A.24	MERF	Replaces legal process exemption provision with a cross-reference to the new general provision.
13	Page 6, lines 33 to 36 Page 7, lines 1 to 7	Section 423B.17	Minneapolis Police	Replaces legal process exemption provision with a cross-reference to the new general provision.
14	Page 7, lines 7 to 19	Section 423C.09	Minneapolis Fire	Replaces legal process exemption provision with a cross-reference to the new general provision.
15	Page 7, lines 20 to 28	Section 490.126, Subdivision 5	Judges Plan	Replaces legal process exemption provision with a cross-reference to the new general provision.
16	Page 7, lines 29 to 31	Repealer	--	Repeals MSRS-General, PERA-General, and TRA legal process exemption provision subdivisions made obsolete by new general law.
17	Page 7, lines 32 to 33	Effective Date	--	Provisions are effective on July 1, 2005.