



H.F. 3221
(Murphy, M., by request)

S.F. 2655
(Betzold)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): MSRS Deferred Compensation Plan
Relevant Provisions of Law: Minnesota Statutes, Section 352.96
General Nature of Proposal: Clarification of existing provision and request to offer Roth 457 and Roth IRA
Date of Summary: March 26, 2008

Specific Proposed Changes

- Clarification of existing provision by recodification
- Requesting authority to offer Roth 457 and Roth IRA
- Requesting authority to provide investment advice to plan participants

Policy Issues Raised by the Proposed Legislation

1. Sufficient need to offer Roth plans.
2. Request to offer Roth 457 plan premature; federal legislation authorizing these plans not yet enacted.
3. Need to clarify "after tax deferred compensation plan" references.
4. Justification for changing required implementation time from 30 days to 60 days.
5. Need to correct subdivision 5 so that it is operational.
6. Lack of statement for allocating cost.
7. Legal implications of providing investment advice; risk of suits.

Potential Amendments

H3221-1A removes the authority to establish Roth plans.

H3221-2A, which can be used if H3221-1A is not used, would permit MSRS to operate a Roth 457 plan if authorized under the Internal Revenue Code, and removes language which would permit MSRS to offer a Roth IRA.

H3221-3A, which can be used if H3221-1A and -2A are not used, would permit MSRS to operate a Roth 457 plan if authorized under the Internal Revenue Code, and offer a Roth IRA.

H3221-4A change the time limit for an employer to provide access for its employees to the MSRS deferred compensation plan from 60 days to a number to be set by the Commission. Existing law allows 30 days.

H3221-5A corrects subdivision 5, by deleting "when selecting consultants," on line 4.20.

H3221-6A adds authority allowing the SBI to charge a proportional share of all costs related to the periodic review to each company currently under contract, and a share of all costs relating to soliciting and evaluating bids.

H3221-7A removes the authority to have a third-party investment consultant to provide investment advice to plan participants.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: H.F. 3221 (Murphy, M., by request); S.F. 2655 (Betzold): MSRS Deferred Compensation Plan; Recodification and Offering Roth Plans

DATE: March 26, 2008

Summary of H.F. 3221 (Murphy, M., by request); S.F. 2655 (Betzold)

H.F. 3221 (Murphy, M., by request); S.F. 2655 (Betzold) contains the following provisions:

1. The existing Minnesota State Retirement System (MSRS) deferred compensation plan (Minnesota Statutes, Section 352.96) is recodified as new Section 352.965, and conforming changes are made;
2. The deferred compensation plan administration is clarified;
3. The MSRS board is authorized to establish and administer an after-tax deferred compensation or Roth IRA plan;
4. The MSRS board is permitted to retain a third-party investment consultant to provide investment information and advice; and
5. The existing MSRS Deferred Compensation Plan provision and related Minnesota Rules are repealed.

Background Information

- Attachment A contains information on the MSRS Deferred Compensation Plan.
- Attachment B contains information on Roth IRA and Roth 457 Plans.

Discussion and Analysis

David Bergstrom, Executive Director, MSRS, has indicated that much of the bill is a technical recodification. Currently, items dealing the governance and administration of the plan are spread between statutes, rules, and the plan document, and Mr. Bergstrom indicates that MSRS wishes to eliminate the rules, specifying the plan in law and the plan document. But there are a few new items. One identified is that the bill includes authority for MSRS to offer Roth IRAs and/or a Roth 457 plan. A second change is the inclusion of specific authority for MSRS to retain a third-party investment consultant to provide investment advice to participants. These, and several other changes, are discussed below.

The proposed legislation raises several pension and related public policy issues for Commission consideration and potential discussion, as follows:

1. Sufficient Need for Change. The issue is whether there is sufficient need for change. Much of the bill is a restatement of the MSRS Deferred Compensation Plan specified in Minnesota Statutes Section 356.96. While the bill does add some clarification, there may not be sufficient need at this time to recodify this provision, and it is unclear why MSRS needs the few items in the bill that represent any substantive change. The Commission may wish to have brief testimony from MSRS regarding why this bill is needed and what MSRS seeks to accomplish.
2. Roth Issue: Sufficient Need to Offer These Investments. The bill includes a request to permit MSRS to offer a Roth IRA product and/or a Roth 457 plan. The issue is why one or both of those products should be offered, and whether they should be offered by MSRS. The Commission may wish to determine through testimony why MSRS wants to offer these products. Anyone with earned income that does not exceed the limits established by the federal government can create and contribute to a Roth IRA; they do not need MSRS to access this product. There is no clear reason why MSRS should be providing a product which is already so widely available.
3. Roth 457 Issue: Premature Request. The issue is whether this request for Roth 457 plan authority is premature. Mr. Bergstrom has indicated that federal legislation permitting Roth 457 plans is pending in Congress, but has not yet been approved. It is uncertain whether that authority will be provided, and if it is, it is too early to know how Minnesota law will need to be written or revised to create and

administer such a plan. If the Commission does allow MSRS to set up such a plan, MSRS would be taking that action without any specific language in law stating how that plan is to be administered. The Commission may wish to consider whether it would be better to wait until after federal approval has been given to these plans before authorizing MSRS to set up such a plan. The only language specific to Roth plans is found on page 2, lines 30 to 32, which would authorize MSRS to create a Roth IRA and/or Roth 457 plan. At a minimum, the Commission may wish to consider adding some language stating that authority to create a Roth 457 plan is contingent upon the federal government passing legislation authorizing this type of investment plan.

4. Roth 457 Issue: Need for Clarification. Page 2, line 30 to 32, authorizes the MSRS Board to administer an “after tax deferred compensation plan or individual retirement account as defined under section 408A of the Internal Revenue Code.” Presumably, “after tax deferred compensation plan” is intended as a reference to a Roth 457 plan. However, “deferred compensation” plans generally refer to pre-tax plans where the tax deferral is achieved by avoiding constructive receipt of that portion of salary. An “after tax deferred compensation plan” is literally an after-tax pre-tax plan. The Commission may wish to clarify this wording.
5. Roth Issue: Compatibility with Section. The issue is whether the request for authority to provide Roth investment plans, as stated on page 2, line 30 to 32, is compatible with the remainder of the section. The section deals specifically with deferred compensation plan matters, and a Roth plan is not a deferred compensation plan. For example, subdivision 2, on page 3, lines 11 to 13, requires the “appointing authority to defer the payment of part of the compensation of the public officer or employee through payroll deduction.” That is appropriate for a deferred compensation plan to avoid constructive receipt, but it will not work as stated for a Roth 457 plan, where the contributions to the plan must come from after tax income. More language will be needed in this section, or in some other new section, to specify procedures and treatment needed for a Roth 457 plan, and to maintain adequate separation for the two types of 457 plans.
6. Implementation Timing. Page 3, lines 18 to 20, states that a public employer must provide access to the MSRS deferred compensation plan within 60 days of a request by an employee that access to the plan be permitted. Much of the language on page 3, lines 9 to 27, is borrowed from the existing MSRS deferred compensation provision, Minnesota Statutes, Section 352.96, except that the time requirement is 30 days in that existing law, not 60 days. The Commission may wish to inquire why MSRS proposes to change from 30 days to 60 days.
7. Drafting Problem, Subdivision 5. Much of the language of subdivision 5, paragraph (a) on page 4 is borrowed from a Higher Education Individual Retirement Account provision, Minnesota Statutes, Section 354B.25, Subdivision 3. However, an apparent error has been made. The list on page 4, lines 22 to 28, is referring to selection of investment products which the State Board of Investment may offer in the deferred compensation plan. As drafted in this bill, that list is to be used to select investment consultants. It does not work as drafted. The Commission may need to delete “when selecting consultants,” on page 4, line 20.
8. Allocation of Cost. Much of the language of subdivision 5, paragraph (b), is borrowed from the existing Section 352.96, but Section 352.96 includes a sentence allowing the State Board of Investment to charge a proportional share of all costs related to periodic reviews of investment companies to each company currently under contract. The proposed new section lacks that language. The issue for the Commission is why that language is missing, and whether similar language should be added to the proposal.
9. Provision of Investment Advice. Page 5, lines 26 to 30, authorize MSRS to authorize a third-party investment consultant to provide investment information and advice to plan participants. This is new authority. The issue is whether that is appropriate, and whether MSRS is exposing itself to potential lawsuits by providing that service.

Potential Amendments for Commission Consideration

1. Amendment H3221-1A removes the authority to establish Roth plans.
2. Amendment H3221-2A, which can be used if Amendment H3221-1A is not used, would permit MSRS to operate a Roth 457 plan if authorized under the Internal Revenue Code, and removes language which would permit MSRS to offer a Roth IRA.

3. Amendment H3221-3A, which can be used if Amendments H3221-1A and -2A are not used, would permit MSRS to operate a Roth 457 plan if authorized under the Internal Revenue Code, and offer a Roth IRA.
4. Amendment H3221-4A can be used to change the time limit for an employer to provide access for its employees to the MSRS deferred compensation plan from 60 days to a number to be set by the Commission. Existing law allows 30 days.
5. Amendment H3221-5A corrects subdivision 5, by deleting “when selecting consultants,” on line 4.20.
6. Amendment H3221-6A would add authority (found in the existing law but not in this proposal) to allow the State Board of Investment to charge a proportional share of all costs related to the periodic review to each company currently under contract, and a share of all costs relating to soliciting and evaluating bids.
7. Amendment H3221-7A would remove the authority to have a third-party investment consultant to provide investment advice to plan participants. This could be used if the Commission is concerned that providing that function would expose MSRS to lawsuits when individuals follow the advice and poor returns occur.

Attachment A

Background Information on the Minnesota State Retirement System Deferred Compensation Plan, Minnesota Statutes, Section 356.24

- a. In General. The State Deferred Compensation Program is an Internal Revenue Code Section 457 deferred compensation plan. The State Deferred Compensation Program is governed by Minnesota Statutes, Section 352.96. The State Deferred Compensation Program is the sole government sponsored retirement thrift or savings program for most public employees by virtue of a restriction on supplemental retirement plans and employer-funded deferred compensation programs under Minnesota Statutes, Section 356.24. Although the plan is administered by the Minnesota State Retirement System (MSRS), public employees throughout the state are authorized to participate. For purposes of the State Deferred Compensation Program, public employment includes volunteer firefighters. The State Deferred Compensation Program, akin to the somewhat similar Internal Revenue Code Section 403(b) plans, function to encourage additional saving for retirement, supplementing income during retirement from the primary public pension plan, Social Security, or other income sources.
- b. Historical Development of Minnesota Statutes, Section 356.24. Minnesota Statutes, Section 356.24, when initially enacted in 1971 (Laws 1971, Chapter 222, Section 1), was intended to end a growing practice in local government (primarily by school districts) of creating supplemental employer-funded pension plans beyond the regularly applicable statewide pension plan for that type of public employee. At that time, public pension benefits were considerably more modest than they are currently and some of the more affluent jurisdictions were attempting to readjust their employees' pension coverage by local action, without the approval of or notice to the Legislature. The Legislature decided that this practice was inappropriate and that the creation of additional pension plans was an unwise policy. The Legislature also apparently felt that pension benefits should be as uniform as possible throughout public employment. In 1973, the Legislature considerably improved pension benefits payable under the public employees primary pension coverage by moving from career average salary plans to pensions that were based on the average salary of the individual close to retirement. The intent at the time was to provide an adequate benefit through the primary pension plan and eliminate the need, or the ability, to create supplemental plans. Those supplemental plans that were in effect prior to 1971 were grandfathered. Substantial benefit increases occurred in 1980, 1989, 1992, and 1997.
- c. State Deferred Compensation Program. The State Deferred Compensation Program was established in 1971, by Extra Session Laws 1971, Chapter 32, Section 19. The program was established without any specific Federal Internal Revenue Code authority, initially depending instead on a federal IRS Revenue Ruling implementing the notion of the lack of actual or constructive receipt of salary when a portion of an employee's salary is deferred and the amount invested by the employer is subject to claims of the employer's general creditors.

The program initially was open only to state employees and was administered by the Minnesota State Retirement System (MSRS), with rules, regulations and procedures established by the Commissioner of Administration, and invested by the State Board of Investment in a state operated investment fund substantially similar to a mutual fund, known then as the Minnesota Supplemental Retirement Fund. The program specifically prohibited an employer contribution initially and provided that the state employee was to bear the full risk of any investment loss incurred.

In 1975 (Laws 1975, Chapter 273), the State Deferred Compensation Program was broadened in its coverage, with access to the program extended to any political subdivision employee or any public pension plan member. The applicable governing law was also moved from Minnesota Statutes 1974, Chapter 16A (governing the Department of Finance) to Minnesota Statutes, Section 352.96. The power to establish rules, regulations, and procedures for the State Deferred Compensation Program was also transferred to the Executive Director of MSRS.

In 1977 (Laws 1977, Chapter 300, Sections 1-3), the State Deferred Compensation Program was broadened in its investment options. The 1977 legislation authorized fixed and variable annuity products of insurance companies as investment options for the State Deferred Compensation Program in addition to the various investment account approaches provided through the Minnesota Supplemental Retirement Fund operated by the State Board of Investment. The insurance company products were required to be selected through open bidding procedures.

In February, 1978, the Internal Revenue Service promulgated proposed regulations that would have prevented deferred compensation plans for state and local government employees, in part, because of the virtually unlimited potential as to amount for deferrals to deferred compensation plans. The Congress reversed the Internal Revenue Service in the Revenue Act of 1978 by enacting Internal Revenue Code

Section 457, which authorizes state and local government employee deferred compensation plans, but which places specific limitations on the amounts available for deferral.

In 1980, the State Board of Investment implemented the 1977 State Deferred Compensation Program legislation and formally requested insurance company annuity option proposals. After analysis by a consultant and review by the Board, the State Board of Investment selected a proposal submitted by the Great-West Life Assurance Company, marketed by National Benefits, Inc., and a proposal submitted by the Minnesota Mutual Life Insurance Company and the Northwestern National Life Insurance Company, marketed by the Ochs Agency. Also in 1980 (Laws 1980, Chapter 607), the Minnesota Supplemental Retirement Fund was renamed the Minnesota Supplemental Investment Fund.

- d. State Deferred Compensation Program Employer Contribution Match Feature. From 1977 to 1987, the State Deferred Compensation Program was amended periodically, but the amendments had little substantive importance. In 1988, the Program was modified to include a matching employer contribution in addition to the member's deferred compensation amount. The matching employer contribution, authorized under Minnesota Statutes, Section 356.24, was required to be made to the State Deferred Compensation Program, was required to be provided for in either a personnel plan or a collective bargaining agreement, was required to be a dollar for dollar match, and was limited to \$2,000 per year per employee. While not restricted in use to fund retiree health insurance premiums, the employer matching contribution authorization was part of a broader legislative enactment pertaining to retiree health benefits, and the conferees on Laws 1988, Chapter 605, discussed the potential for the savings promoted by the employer matching contribution authorization to be used in part to defray post-retirement health insurance premium costs.
- e. Tax-Sheltered Annuities with Employer Matching Contribution Feature. In 1992 (Laws 1992, Chapter 487, Section 4), similar authority for an employer matching contribution feature for teacher tax-sheltered annuity insurance contracts under federal Internal Revenue Code, Section 403(b), was established. Initially, the number of providers was restricted to no more than 10 companies. In 1999, the number of providers was increased to 20 (Laws 1999, Chapter 222, Article 18, Section 1), and the restriction on the number of providers was removed in 2000 (Laws 2000, Chapter 461, Article 13).

Internal Revenue Code Section 403(b) tax sheltered annuity plans are vehicles for teachers, church workers, and certain other personnel of charitable institutions, to save on a tax deferred basis. These plans are not any public employee's primary retirement coverage; rather they act to supplement the primary plan. This permits eligible employees to have some individual control over their eventual retirement income. Internal Revenue Code Section 403(b) investments are generally referred to as tax-sheltered annuities, although Internal Revenue Code Section 403(b) appears to permit investments in mutual funds in addition to annuities, providing the mutual fund investments are held by a custodian and contributions and disbursements are made only as permitted under Internal Revenue Code Section 403(b). Generally, the maximum permitted employee contribution to Internal Revenue Code Section 403 (b) plans in a year is \$15,500 in 2008, indexed for inflation. For those ages 50 and over, the limit in 2008 is \$20,500. Taxes are due when the money is withdrawn. Withdrawals may begin as early as age 59 and one half and must begin by age 70 and one half. The purpose of these age restrictions is to help ensure that the account is used for retirement purposes rather than intergenerational transfers.

- f. 1997 Deferred Compensation Program Amendments. Laws 1997, Chapter 241, Article 3, Sections 1, 2, and 3, modified the investment options available to be provided by the State Deferred Compensation Program and changed the legal status of the program in conformity with a recently enacted federal law, the Small Business Protection Act/Minimum Wage Bill. The investment options and investment providers to the state deferred compensation plan were expanded to include mutual fund companies, investments managed by registered investment providers, and investments managed by banks and bank holding companies deferred compensation accounts also will be required to be held in trust. The authority of the State Board of Investment was expanded to solicit bids to include the expanded group of providers.
- g. General Comparisons between Internal Revenue Code Section 403(b) and Internal Revenue Code Section 457 Plans. Internal Revenue Code Section 403(b) tax sheltered annuity plans are similar to Internal Revenue Code Section 457 deferred compensation plans in their basic effect to encourage saving by delaying taxes. The tax deferral is achieved, however, differs under the two plan types. Under an Internal Revenue Code Section 403(b) plan, the tax is declared, under law, to be deferred. In contrast, Internal Revenue Code Section 457 deferred compensation plans achieve tax deferral by removing constructive receipt of the deferred income. The deferred income is deemed to be retained by the employer. Since the income is not received by the state employee, no tax is currently due on the deferred amounts or on any investment gain on the deferred amounts. Under current federal law, the deferral limits on Internal Revenue Code Section 403(b) and 457 plans is identical.

Attachment B

Background Information on Roth IRA and Roth 457 Plans

A Roth Individual Retirement Account (Roth IRA) permits individuals to invest after tax income in an account which accumulates tax free and is not taxable upon withdrawal, if withdrawn after age 59.5. The maximum contribution in 2008 is \$5,000, or \$6,000 if the investor is at least 50 years of age. There are income limits for eligibility. As of 2007, single taxpayers were eligible to contribute the maximum permitted amounts if modified adjusted gross income was less than \$99,000. Partial eligibility was permitted with modified adjusted gross income between \$99,001 and \$114,000. Single taxpayers with modified adjusted gross income above \$144,000 were not eligible. Couples filing jointly with adjusted gross income of less than \$156,000 were fully eligible, those with incomes between \$156,000 and \$166,000 were partially eligible, and those with income above \$166,000 were ineligible.

Roth IRAs differ from regular of traditional IRAs. With a Roth IRA the individual pays income tax on the amounts contributed, all investment earnings accumulate tax free, and amounts distributed from the account are also not taxable (providing minimum age and other requirements are met). With a traditional IRA, the contributions are not taxed, all investment earnings accumulate tax free, but all amounts distributed from the plan are taxable as ordinary income when received.

Some years ago, federal legislation passed which permitted private employers to allow employees to contribute to a Roth 401(k) plan, bearing some similarity to a traditional 401(k) plan. With a Roth 401(k) the maximum employee contribution is the same as a 457 deferred compensation plan or a 403(b) plan, currently \$15,500 for most employees, which is much higher than the maximum contribution permitted to a Roth IRA. With a Roth 401(k), the contributions are after tax, but the investments accumulate tax free, and withdrawals are not taxed.

The federal House and Senate are considering legislation to authorize Roth 457 plans, similar to the Roth 401(k). According the MSRS executive director, federal legislation permitting Roth 457 plans has not passed but is pending.

Ed Burek

From: Dave Bergstrom [Dave.Bergstrom@state.mn.us]
Sent: Tuesday, March 25, 2008 7:18 AM
To: Ed Burek
Subject: Re: H.F. 3221; S.F. 2655: MSRS Deferred Compensation Plan Amendments

Yes, the IRS requires we maintain a plan document. Currently, we have things in law, rules and a plan document. We want to get that down to two, law and a plan document.

While most of the bill is technical, the proposal allows us to offer investment advice and offer a Roth IRA or 457 (federal legislation pending to offer a Roth 457 plan). Many private companies and public plans offer investment advice. Computer programs ask the participant to answer questions, and base the advice based on the person's age, etc. using long-standing investment advice principles. The investment advice would be voluntary by the participant.

>>> Ed Burek <edward.burek@lcpr.leg.mn> 03/24 4:41 PM >>>
I am starting to work on H.F. 3221; S.F. 2655: MSRS Deferred Compensation Plan Amendments. I am assuming that this was an MSRS initiative. This recodifies the MSRS deferred compensation plan as a new section, proposed coding as Minnesota Statutes, Section 352.965, and repeals the existing provision, section 352.965, but very little is new. Why is this needed? Was it felt that these changes are needed for the IRS review of your plan?

2007 Minnesota Statutes

352.96 DEFERRED COMPENSATION.

Subdivision 1. **Entitlement to defer compensation.** At the request of an officer or employee of the state, an officer or employee of a political subdivision, or an employee covered by a retirement fund in section 356.20, subdivision 2, the appointing authority shall by payroll deduction defer the payment of part of the compensation of the officer or employee. The amount to be deferred must be as provided in a written agreement between the officer or employee and the employing unit. The agreement must be in a form specified by the executive director of the Minnesota State Retirement System in such a manner as will qualify the deferred amount for benefits under federal and state tax laws, rules, and rulings.

Subd. 1a. **Failure to implement plan.** Implementation of the deferred compensation plan by the employing unit must be completed within 30 days of the request as provided in subdivision 1. If the employing unit fails to implement the deferred compensation plan, the employing unit may not defer compensation under any existing or new deferred compensation plan from the date of the request until the date on which the deferred compensation plan provided for in this section is implemented. The executive director of the Minnesota State Retirement System may order any employing unit that fails to implement the deferred compensation plan provided for in this section upon a valid request to undertake that implementation and may enforce that order in appropriate legal proceedings.

Subd. 2. **Purchase of shares.** The amount of compensation so deferred may be used to purchase:

- (1) shares in the Minnesota Supplemental Investment Fund established in section 11A.17 that are selected to be offered under the plan by the State Board of Investment;
- (2) saving accounts in federally insured financial institutions;
- (3) life insurance contracts, fixed annuity and variable annuity contracts from companies that are subject to regulation by the commissioner of commerce;
- (4) investment options from open-end investment companies registered under the federal Investment Company Act of 1940, United States Code, title 15, sections 80a-1 to 80a-64;
- (5) investment options from a firm that is a registered investment advisor under the Investment Advisers Act of 1940, United States Code, title 15, section 80b-1 to 80b-21;
- (6) investment options of a bank as defined in United States Code, title 15, section 80b-2, subsection (a), paragraph (2), or a bank holding company as defined in the Bank Holding Company Act of 1956, United States Code, title 12, section 1841, subsection (a), paragraph (1); or
- (7) a combination of clause (1), (2), (3), (4), (5), or (6), as provided by the plan as specified by the participant.

All amounts contributed to the deferred compensation plan and all earnings on those amounts will be held for the exclusive benefit of the plan participants and beneficiaries. These amounts will be held in trust, in custodial accounts, or in qualifying annuity contracts as required by federal law and in accordance with section 356A.06, subdivision 1. This subdivision does not authorize an employer contribution, except as authorized in section 356.24, subdivision 1, paragraph (a), clause (5). The state, political subdivision, or other employing unit is not responsible for any loss that may result from investment of the deferred compensation.

Subd. 3. **Executive director to administer section.** This section must be administered by the executive director of the system with the advice and consent of the board of directors under subdivision 4. Fiduciary activities of the deferred compensation plan must be undertaken in a manner consistent with chapter 356A. If the State Board of Investment so elects, it may solicit bids for options under subdivision 2, clauses (2), (3), (4), (5), and (6). The State Board of Investment may retain consulting services to assist it in soliciting and evaluating bids and in the periodic review of companies offering options under subdivision 2, clauses (3), (4), (5), and (6). The periodic review must occur at least every two years. The State Board of Investment may annually establish a budget for its costs in the soliciting, evaluating, and periodic review processes. The State Board of Investment may charge a proportional share of all costs related to the periodic review to each company currently under contract and may charge a proportional share of all costs related to soliciting and evaluating bids to each company selected by the state board. All contracts must be approved before execution by the State Board of Investment. Contracts must provide that all options in subdivision 2 must: be presented in an unbiased manner and in a manner that conforms to rules adopted by the executive director, be reported on a periodic basis to all employees participating in the deferred compensation program, and not be the subject of unreasonable solicitation of state employees to participate in the program. The contract may not call for any person to jeopardize the tax-deferred status of money invested by state employees under this section. All costs or fees in relation to the options provided under subdivision 2, clauses (3), (4), (5), and (6), must be paid by the companies ultimately selected by the State Board of Investment.

Subd. 4. **Executive director to establish rules.** The executive director of the system with the advice and consent of the board of directors shall establish rules and procedures to carry out this section including allocation of administrative costs of the plan to participants. Fees cannot

be charged on contributions and investment returns attributable to contributions made to the Minnesota supplemental investment funds before July 1, 1992. Annual total fees charged for plan administration for the Minnesota supplemental investment funds cannot exceed 40/100 of one percent of the contributions and investment returns attributable to contributions made on or after July 1, 1992. The rules established by the executive director must conform to federal and state tax laws, regulations, and rulings, and are not subject to the Administrative Procedure Act. Except for the marketing rules, rules relating to the options provided under subdivision 2, clauses (2) and (3), must be approved by the State Board of Investment.

Subd. 5. **Other laws not applicable.** No provision of this chapter or other law specifically referring to this chapter applies to this section unless this section is specifically mentioned.

Subd. 6. **Exemption from process.** No amount of deferred compensation is assignable or subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 518.58, 518.581, or 518A.53.

History: 1975 c 273 s 1; 1977 c 300 s 1-3; 1980 c 607 art 14 s 45 subd 1; s 46; 1981 c 208 s 10; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 356 s 8; 1987 c 157 s 3; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 284 art 4 s 2,3; 1988 c 605 s 8; 1989 c 319 art 8 s 12; 1990 c 570 art 10 s 6; 1993 c 192 s 87; 1993 c 300 s 11; 1993 c 307 art 2 s 9,10; 1994 c 528 art 1 s 9; 1997 c 203 art 6 s 92; 1997 c 241 art 3 s 1-3; 1997 c 251 s 1; 1998 c 390 art 2 s 6; 1Sp2003 c 12 art 2 s 2; 2005 c 164 s 29; 1Sp2005 c 7 s 28

- 1.1 moves to amend H.F. No. 3221; S.F. No. 2655, as follows:
- 1.2 Page 2, delete lines 30 to 32
- 1.3 Page 2, line 33, delete "(g)" and insert "(f)"
- 1.4 Page 3, line 3, delete "(h)" and insert "(g)"
- 1.5 Page 3, line 6, delete "(i)" and insert "(h)"

- 1.1 moves to amend H.F. No. 3221; S.F. No. 2655, as follows:
- 1.2 Page 2, line 31, delete everything after "administer"
- 1.3 Page 2, line 32, delete everything before "the" and insert "a Roth 457 plan if
- 1.4 authorized by "

1.1 moves to amend H.F. No. 3221; S.F. No. 2655, as follows:

1.2 Page 2, line 31, delete "an after tax deferred compensation plan" and insert " a
1.3 Roth 457 plan if authorized by the Internal Revenue Code" and before "individual" insert "
1.4 a Roth "

1.1 moves to amend H.F. No. 3221; S.F. No. 2655, as follows:

1.2 Page 3, line 19, delete "60" and insert "..."

1.1 moves to amend H.F. No. 3221; S.F. No. 2655, as follows:

1.2 Page 4, line 20, delete "when selecting consultants,"

1.1 moves to amend H.F. No. 3221; S.F. No. 2655, as follows:

1.2 Page 5, line 2, after "plan." insert "The State Board of Investment may charge a
1.3 proportional share of all costs related to the periodic review to each company currently
1.4 under contract and may charge a proportional share of all costs related to soliciting and
1.5 evaluating bids to each company selected by the State Board of Investment."

1.1 moves to amend H.F. No. 3221; S.F. No. 2655, as follows:

1.2 Page 5, delete lines 26 to 30

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE NO. 3221

February 19, 2008

Authored by Murphy, M., by request,

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; amending the Minnesota State Retirement System deferred
1.3 compensation plan; amending Minnesota Statutes 2006, sections 352.03,
1.4 subdivision 4; 352.97; 353D.12, subdivision 4; 356.24, subdivision 1; 356B.10,
1.5 subdivision 3; 363A.36, subdivision 1; 383B.914, subdivision 7; 518.003,
1.6 subdivision 8; Minnesota Statutes 2007 Supplement, section 356.96, subdivision
1.7 1; proposing coding for new law in Minnesota Statutes, chapter 352; repealing
1.8 Minnesota Statutes 2006, section 352.96; Minnesota Rules, parts 7905.0100;
1.9 7905.0200; 7905.0300; 7905.0400; 7905.0500; 7905.0600; 7905.0700;
1.10 7905.0800; 7905.0900; 7905.1000; 7905.1100; 7905.1200; 7905.1300;
1.11 7905.1400; 7905.1500; 7905.1600; 7905.1700; 7905.1800; 7905.1900;
1.12 7905.2000; 7905.2100; 7905.2200; 7905.2300; 7905.2400; 7905.2450;
1.13 7905.2500; 7905.2560; 7905.2600; 7905.2700; 7905.2800; 7905.2900.

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

1.15 Section 1. Minnesota Statutes 2006, section 352.03, subdivision 4, is amended to read:

1.16 Subd. 4. **Duties and powers of board of directors.** The board shall:

1.17 (1) elect a chair;

1.18 (2) appoint an executive director;

1.19 (3) establish rules to administer this chapter and chapters 3A, 352B, 352C, 352D,
1.20 and 490 and transact the business of the system, subject to the limitations of law;

1.21 (4) consider and dispose of, or take any other action the board of directors deems
1.22 appropriate concerning denials of applications for annuities or disability benefits under
1.23 this chapter, and complaints of employees and others pertaining to the retirement of
1.24 employees and the operation of the system;

1.25 (5) advise the director on any matters relating to the system and carrying out
1.26 functions and purposes of this chapter. The board's advice shall control; and

1.27 (6) oversee the administration of the state deferred compensation plan established in
1.28 section ~~352.96~~ 352.965.

2.1 The director and assistant director must be in the unclassified service but appointees
2.2 may be selected from civil service lists if desired. The salary of the executive director
2.3 must be as provided by section 15A.0815. The salary of the assistant director must be set
2.4 in accordance with section 43A.18, subdivision 3.

2.5 Sec. 2. [352.965] MINNESOTA STATE DEFERRED COMPENSATION PLAN.

2.6 Subdivision 1. Establishment. (a) The Minnesota state deferred compensation plan
2.7 is established. For purposes of this section, "plan" means the Minnesota state deferred
2.8 compensation plan, unless the context clearly indicates otherwise. The Minnesota State
2.9 Retirement System shall administer the plan.

2.10 (b) The purpose of the plan is to provide a means for a public employee to contribute
2.11 a portion of the employee's compensation to a tax-deferred investment account. The plan
2.12 is an eligible tax-deferred compensation plan under section 457(b) of the Internal Revenue
2.13 Code, United States Code, title 26, section 457(b), and the applicable regulations under
2.14 Code of Federal Regulations, title 26, parts 1.457-3 to 1.457-10.

2.15 (c) The Board of Directors of the Minnesota State Retirement System is the plan
2.16 trustee and the board's executive director is the plan administrator. Fiduciary activities of
2.17 the plan must be undertaken in a manner consistent with chapter 356A.

2.18 (d) The executive director with the approval of the board of directors shall adopt and
2.19 amend, as required to maintain tax-qualified status, a written plan document specifying the
2.20 material terms and conditions for eligibility, benefits, applicable limitations, and the time
2.21 and form under which benefit distributions can be made. With the approval of the board
2.22 of directors, the executive director may also establish policies and procedures necessary
2.23 for the administration of the deferred compensation plan.

2.24 (e) The plan document shall include provisions that are necessary to cause the plan
2.25 to be an eligible deferred compensation plan within the meaning of section 457(b).
2.26 The plan document may provide additional administrative and substantive provisions
2.27 consistent with state law, provided those provisions will not cause the plan to fail to be an
2.28 eligible deferred compensation plan within the meaning of section 457(b) and may include
2.29 provisions for certain optional features and services.

2.30 (f) The board of directors may authorize the executive director to establish and
2.31 administer an after tax deferred compensation plan or individual retirement account as
2.32 defined under section 408A of the Internal Revenue Code.

2.33 (g) All amounts contributed to the deferred compensation plan and all earnings
2.34 on those amounts must be held in trust, in custodial accounts, or in qualifying annuity
2.35 contracts for the exclusive benefit of the plan participants and beneficiaries, as required by

3.1 section 457(g) of the Internal Revenue Code and in accordance with sections 356.001 and
3.2 356A.06, subdivision 1.

3.3 (h) The information and data maintained in the accounts of the participants and
3.4 beneficiaries are private data and shall not be disclosed to anyone other than the participant
3.5 or beneficiary pursuant to a court order or pursuant to section 356.49.

3.6 (i) The plan document is not subject to the rule adoption process under the
3.7 Administrative Procedures Act, including section 14.386, but most conform with
3.8 applicable federal and state law.

3.9 Subd. 2. **Right to participate in the deferred compensation plan.** At the request
3.10 of an officer or employee of the state, an officer or employee of a political subdivision, or
3.11 an employee covered by a retirement fund in section 356.20, subdivision 2, the appointing
3.12 authority shall defer the payment of part of the compensation of the public officer or
3.13 employee through payroll deduction. The amount to be deferred must be as provided
3.14 in a written agreement between the officer or employee and the public employer. The
3.15 agreement must be in a form specified by the executive director of the Minnesota State
3.16 Retirement System and must be consistent with the requirements for an eligible plan under
3.17 federal and state tax laws, regulations, and rulings.

3.18 Subd. 3. **Failure to implement plan.** The public employer must complete
3.19 implementation of the deferred compensation plan within 60 days of the request as
3.20 provided in subdivision 2. If the public employer fails to implement the deferred
3.21 compensation plan, the public employer may not defer compensation under any existing
3.22 or new deferred compensation plan from the date of the request until the date on which the
3.23 deferred compensation plan provided for in this section is implemented. Upon the petition
3.24 of a public officer or employee, the executive director of the Minnesota State Retirement
3.25 System may order the public officer's or employee's public employer to implement the
3.26 deferred compensation plan provided for in this section and may enforce that order
3.27 in appropriate legal proceedings.

3.28 Subd. 4. **Plan investments.** (a) Investments under the plan may include:

3.29 (1) shares in the Minnesota supplemental investment fund established in section
3.30 11A.17 that are selected to be offered under the plan by the State Board of Investment;

3.31 (2) saving accounts in federally insured financial institutions;

3.32 (3) life insurance contracts, fixed annuity and variable annuity contracts from
3.33 companies that are subject to regulation by the commissioner of commerce;

3.34 (4) investment options from open-end investment companies registered under the
3.35 federal Investment Company Act of 1940, United States Code, title 15, sections 80a-1
3.36 to 80a-64;

4.1 (5) investment options from a firm that is a registered investment advisor under the
4.2 Investment Advisers Act of 1940, United States Code, title 15, sections 80b-1 to 80b-21;

4.3 (6) investment options of a bank as defined in United States Code, title 15, section
4.4 80b-2, subsection (a), paragraph (2), or a bank holding company as defined in the Bank
4.5 Holding Company Act of 1956, United States Code, title 12, section 1841, subsection
4.6 (a), paragraph (1); or

4.7 (7) a combination of clause (1), (2), (3), (4), (5), or (6), as provided by the plan as
4.8 specified by the participant.

4.9 (b) All amounts contributed to the deferred compensation plan and all earnings
4.10 on those amounts must be held for the exclusive benefit of the plan participants and
4.11 beneficiaries. These amounts must be held in trust, in custodial accounts, or in qualifying
4.12 annuity contracts as required by federal law in accordance with section 356A.06,
4.13 subdivision 1. This subdivision does not authorize an employer contribution, except as
4.14 authorized in section 356.24, subdivision 1, paragraph (a), clause (5). The state, political
4.15 subdivision, or other employing unit is not responsible for any loss that may result from
4.16 investment of the deferred compensation.

4.17 Subd. 5. **State Board of Investment to determine investments.** (a) The State
4.18 Board of Investment shall determine the investment products to be made available under
4.19 the plan and may retain appropriate consulting services to assist in making the selections.
4.20 At a minimum, when selecting consultants, the State Board of Investment shall consider
4.21 the following:

4.22 (1) the experience and ability of the financial institution to provide benefits and
4.23 products that are suited to meet the needs of plan participants;

4.24 (2) the relationship of those benefits and products provided by the financial
4.25 institution to their cost;

4.26 (3) the financial strength and stability of the financial institution; and

4.27 (4) the fees and expenses associated with the investment products in comparison to
4.28 other products of similar risk and rates of return.

4.29 (b) If the State Board of Investment so elects, it may solicit bids for options under
4.30 subdivision 4, clauses (2), (3), (4), (5), and (6). The State Board of Investment may retain
4.31 consulting services to assist in soliciting and evaluating bids and in the periodic review of
4.32 companies offering options under subdivision 4, clauses (3), (4), (5), and (6). The periodic
4.33 review must occur at least every two years. The State Board of Investment may annually
4.34 establish a budget for its costs in soliciting, evaluation, and periodic review processes. All
4.35 options in subdivision 4 must be presented in an unbiased manner and in a manner that
4.36 conforms to rules adopted by the executive director, be reported on a periodic basis to all

5.1 participants in the deferred compensation plan, and not be the subject of unreasonable
5.2 solicitation of participants in the plan.

5.3 (c) Under the procedures set forth in the plan document, participants may select the
5.4 funds or combination of funds within which to invest and may reallocate those investments
5.5 as provided in the plan document and procedures established by the executive director.

5.6 (d) This section does not authorize an employer contribution, except as authorized in
5.7 section 356.24, subdivision 1, paragraph (a), clause (5).

5.8 (e) The state, the Minnesota State Retirement System, the executive director and
5.9 board of directors of the system, and participating public employers are not liable and not
5.10 responsible for any loss that may result from investment of the deferred compensation or
5.11 the investment choices made by the participants.

5.12 Subd. 6. **Plan administrative expenses.** (a) The reasonable and necessary
5.13 administrative expenses of the deferred compensation plan may be charged to plan
5.14 participants in the form of an annual fee, an asset-based fee, a percentage of the
5.15 contributions to the plan, or a combination thereof, as set forth in the plan document. The
5.16 executive director of the system at the direction of the board of directors shall establish
5.17 procedures to carry out this section including allocation of administrative costs of the plan
5.18 to participants. Processes and procedures shall be set forth in the plan document. Fees
5.19 cannot be charged on contributions and investment returns attributable to contributions
5.20 made to the Minnesota supplemental investment funds before July 1, 1992.

5.21 (b) The plan document must conform to federal and state tax laws, regulations, and
5.22 rulings, and is not subject to the Administrative Procedure Act.

5.23 (c) The executive director may contract with a third party to perform administrative
5.24 and record keeping functions. The executive director may solicit bids and negotiate such
5.25 contracts.

5.26 (d) The board of directors may authorize a third-party investment consultant to
5.27 provide investment information and advice, provided that the offering of such information
5.28 and advice is consistent with the investment advice requirements applicable to private
5.29 plans under Title VI, subtitle A, of the Pension Protection Act of 2006, Public Law
5.30 109-280, section 601.

5.31 Subd. 7. **Other laws not applicable.** Except as provided in this section, no
5.32 provisions of this chapter or other law specifically referring to this chapter applies to this
5.33 section unless the Minnesota deferred compensation plan is specifically referenced.

5.34 Subd. 8. **Exemption from process.** No amount of deferred compensation is
5.35 assignable or subject to execution, levy, attachment, garnishment, or other legal process,
5.36 except as provided in section 518.58, 518.581, or 518A.53.

6.1 Subd. 9. **Missing participants.** The plan document shall establish procedures to
6.2 assist in locating participants. If a participant cannot be located the participant's benefits
6.3 shall be deemed abandoned and the provisions of section 356.65 shall apply to their
6.4 disposition.

6.5 Sec. 3. Minnesota Statutes 2006, section 352.97, is amended to read:

6.6 **352.97 PRIOR DEFERRED COMPENSATION PLANS; CONSTRUCTION.**

6.7 Sections ~~352.96~~ 352.965 and 352.97 do not preempt, prohibit, ratify, or approve any
6.8 other deferred compensation plan established before or after June 3, 1975.

6.9 Sec. 4. Minnesota Statutes 2006, section 353D.12, subdivision 4, is amended to read:

6.10 **Subd. 4. **Authorized rollovers.**** To the extent allowed by federal law, the employee
6.11 purchase amount may be made with funds distributed from: (1) a plan qualified under
6.12 section 401(a) of the federal Internal Revenue Code, as amended; (2) an annuity qualified
6.13 under section 403(a) of the federal Internal Revenue Code, as amended; (3) an individual
6.14 retirement account used solely to receive a nontaxable rollover from that type of plan or
6.15 annuity; (4) the state deferred compensation plan authorized under section ~~352.96~~ 352.965
6.16 and qualified under section 457 of the federal Internal Revenue Code, as amended; or (5)
6.17 another tax qualified plan or annuity that authorizes rollovers. The participating elected
6.18 local government official shall supply sufficient written documentation that the transfer
6.19 amounts are eligible for tax-free rollover treatment. An authorized tax-free rollover, plus
6.20 any other purchase amount payments under this section, including subdivision 6, may not
6.21 exceed the limitation in subdivision 2, paragraph (a). Notwithstanding any provision of
6.22 state law or rule to the contrary, to the extent permitted under federal law, the employee
6.23 purchase amount may be transferred from the state deferred compensation plan before the
6.24 employee terminates public employment.

6.25 Sec. 5. Minnesota Statutes 2006, section 356.24, subdivision 1, is amended to read:

6.26 **Subdivision 1. **Restriction; exceptions.**** (a) It is unlawful for a school district
6.27 or other governmental subdivision or state agency to levy taxes for, or to contribute
6.28 public funds to a supplemental pension or deferred compensation plan that is established,
6.29 maintained, and operated in addition to a primary pension program for the benefit of the
6.30 governmental subdivision employees other than:

6.31 (1) to a supplemental pension plan that was established, maintained, and operated
6.32 before May 6, 1971;

- 7.1 (2) to a plan that provides solely for group health, hospital, disability, or death
7.2 benefits;
- 7.3 (3) to the individual retirement account plan established by chapter 354B;
- 7.4 (4) to a plan that provides solely for severance pay under section 465.72 to a retiring
7.5 or terminating employee;
- 7.6 (5) for employees other than personnel employed by the Board of Trustees of the
7.7 Minnesota State Colleges and Universities and covered under the Higher Education
7.8 Supplemental Retirement Plan under chapter 354C, but including city managers covered
7.9 by an alternative retirement arrangement under section 353.028, subdivision 3, paragraph
7.10 (a), or by the defined contribution plan of the Public Employees Retirement Association
7.11 under section 353.028, subdivision 3, paragraph (b), if the supplemental plan coverage is
7.12 provided for in a personnel policy of the public employer or in the collective bargaining
7.13 agreement between the public employer and the exclusive representative of public
7.14 employees in an appropriate unit or in the individual employment contract between a city
7.15 and a city manager, in an amount matching employee contributions on a dollar for dollar
7.16 basis, but not to exceed an employer contribution of \$2,000 a year per employee:
- 7.17 (i) to the state of Minnesota deferred compensation plan under section ~~352.96~~
7.18 352.965; or
- 7.19 (ii) in payment of the applicable portion of the contribution made to any investment
7.20 eligible under section 403(b) of the Internal Revenue Code, if the employing unit has
7.21 complied with any applicable pension plan provisions of the Internal Revenue Code with
7.22 respect to the tax-sheltered annuity program during the preceding calendar year;
- 7.23 (6) for personnel employed by the Board of Trustees of the Minnesota State Colleges
7.24 and Universities and not covered by clause (5), to the supplemental retirement plan under
7.25 chapter 354C, if the supplemental plan coverage is provided for in a personnel policy
7.26 or in the collective bargaining agreement of the public employer with the exclusive
7.27 representative of the covered employees in an appropriate unit, in an amount matching
7.28 employee contributions on a dollar for dollar basis, but not to exceed an employer
7.29 contribution of \$2,700 a year for each employee;
- 7.30 (7) to a supplemental plan or to a governmental trust to save for postretirement
7.31 health care expenses qualified for tax-preferred treatment under the Internal Revenue
7.32 Code, if the supplemental plan coverage is provided for in a personnel policy or in the
7.33 collective bargaining agreement of a public employer with the exclusive representative of
7.34 the covered employees in an appropriate unit;
- 7.35 (8) to the laborers national industrial pension fund or to a laborers local pension
7.36 fund for the employees of a governmental subdivision who are covered by a collective

8.1 bargaining agreement that provides for coverage by that fund and that sets forth a fund
8.2 contribution rate, but not to exceed an employer contribution of \$5,000 per year per
8.3 employee;

8.4 (9) to the plumbers and pipefitters national pension fund or to a plumbers and
8.5 pipefitters local pension fund for the employees of a governmental subdivision who are
8.6 covered by a collective bargaining agreement that provides for coverage by that fund and
8.7 that sets forth a fund contribution rate, but not to exceed an employer contribution of
8.8 \$5,000 per year per employee;

8.9 (10) to the international union of operating engineers pension fund for the employees
8.10 of a governmental subdivision who are covered by a collective bargaining agreement that
8.11 provides for coverage by that fund and that sets forth a fund contribution rate, but not to
8.12 exceed an employer contribution of \$5,000 per year per employee;

8.13 (11) to a supplemental plan organized and operated under the federal Internal
8.14 Revenue Code, as amended, that is wholly and solely funded by the employee's
8.15 accumulated sick leave, accumulated vacation leave, and accumulated severance pay; or

8.16 (12) to the International Association of Machinists national pension fund for the
8.17 employees of a governmental subdivision who are covered by a collective bargaining
8.18 agreement that provides for coverage by that fund and that sets forth a fund contribution
8.19 rate, but not to exceed an employer contribution of \$5,000 per year per employee.

8.20 (b) No governmental subdivision may make a contribution to a deferred
8.21 compensation plan operating under section 457 of the Internal Revenue Code for volunteer
8.22 or emergency on-call firefighters in lieu of providing retirement coverage under the federal
8.23 old age, survivors, and disability insurance program.

8.24 Sec. 6. Minnesota Statutes 2007 Supplement, section 356.96, subdivision 1, is
8.25 amended to read:

8.26 Subdivision 1. **Definitions.** (a) Unless the language or context clearly indicates that
8.27 a different meaning is intended, for the purpose of this section, the terms in paragraphs
8.28 (b) to (e) have the meanings given them.

8.29 (b) "Chief administrative officer" means the executive director of a covered pension
8.30 plan or the executive director's designee or representative.

8.31 (c) "Covered pension plan" means a plan enumerated in section 356.20, subdivision
8.32 2, clauses (1) to (4), (10), and (12) to (14), but does not mean the deferred compensation
8.33 plan administered under sections ~~352.96~~ 352.965 and 352.97 or to the postretirement
8.34 health care savings plan administered under section 352.98.

9.1 (d) "Governing board" means the Board of Trustees of the Public Employees
9.2 Retirement Association, the Board of Trustees of the Teachers Retirement Association, or
9.3 the Board of Directors of the Minnesota State Retirement System.

9.4 (e) "Person" includes an active, retired, deferred, or nonvested inactive participant in
9.5 a covered pension plan or a beneficiary of a participant, or an individual who has applied
9.6 to be a participant or who is or may be a survivor of a participant, or a state agency or
9.7 other governmental unit that employs active participants in a covered pension plan.

9.8 Sec. 7. Minnesota Statutes 2006, section 356B.10, subdivision 3, is amended to read:

9.9 Subd. 3. **Contracting procedures.** (a) The commissioner may enter into a contract
9.10 for facilities with a contractor to furnish the architectural, engineering, and related services
9.11 as well as the labor, materials, supplies, equipment, and related construction services on
9.12 the basis of a request for qualifications and competitive responses received through a
9.13 request for proposals process that must include the items listed in paragraphs (b) to (i).

9.14 (b) Before issuing a request for qualifications and a request for proposals, the
9.15 commissioner, with the assistance of the boards, shall prepare performance criteria and
9.16 specifications that include:

9.17 (1) a general floor plan or layout indicating the general dimensions of the public
9.18 building and space requirements;

9.19 (2) design criteria for the exterior and site area;

9.20 (3) performance specifications for all building systems and components to ensure
9.21 quality and cost efficiencies;

9.22 (4) conceptual floor plans for systems space;

9.23 (5) preferred types of interior finishes, styles of windows, lighting and outlets, doors,
9.24 and features such as built-in counters and telephone wiring;

9.25 (6) mechanical and electrical requirements;

9.26 (7) special interior features required; and

9.27 (8) a completion schedule.

9.28 (c) The commissioner shall first solicit statements of qualifications from eligible
9.29 contractors and select more than one qualified contractor based upon experience, technical
9.30 competence, past performance, capability to perform, and other appropriate facts.

9.31 Contractors selected under this process must be, employ, or have as a partner, member,
9.32 coventurer, or subcontractor, persons licensed and registered under chapter 326 to provide
9.33 the services required to design and complete the project. The commissioner does not
9.34 have to select any of the respondents if none reasonably fulfill the criteria set forth in
9.35 this paragraph.

10.1 (d) The contractors selected shall be asked to respond to a request for proposals.
10.2 Responses must include site plans, design concept, elevation, statement of material to
10.3 be used, floor layouts, a detailed development budget, and a total cost to complete the
10.4 project. The proposal must indicate that the contractor obtained at least two proposals
10.5 from subcontractors for each item of work and must set forth how the subcontractors
10.6 were selected. The commissioner, with the assistance of the boards, shall evaluate the
10.7 proposals based upon design, cost, quality, aesthetics, and the best overall value to the
10.8 state pension funds. The commissioner need not select any of the proposals submitted
10.9 and reserves the right to reject any and all proposals, and may terminate the process or
10.10 revise the request for proposals and solicit new proposals if the commissioner determines
10.11 that the best interests of the pension funds would be better served by doing so. Proposals
10.12 submitted are nonpublic data until the contract is awarded.

10.13 (e) The contractor selected must comply with sections 574.26 to 574.261. Before
10.14 executing a final contract, the contractor selected shall certify a firm construction price
10.15 and completion date.

10.16 (f) The commissioner may consider building sites in the city of St. Paul and
10.17 surrounding suburbs.

10.18 (g) Any land, building, or facility leased, constructed, or acquired and any leasehold
10.19 interest acquired under this section must be held by the state in trust for the three retirement
10.20 systems as tenants in common. Each retirement system fund must consider its interest as a
10.21 fixed asset of its pension fund in accordance with governmental accounting standards.

10.22 (h) The commissioner may lease to another governmental subdivision, to a private
10.23 company under contract with the State Board of Investment, or with the Board of Directors
10.24 of the Minnesota State Retirement System, whichever applies, to provide deferred
10.25 compensation services under section ~~352.96~~ 352.965, any portion of the funds' building
10.26 and lands that is not required for their direct use upon terms and conditions they deem to
10.27 be in the best interest of the pension funds. Any income accruing from the rentals must
10.28 be separately accounted for and utilized to offset ongoing administrative expenses and
10.29 any excess must be carried forward for future administrative expenses. The commissioner
10.30 may also enter into lease agreements for the establishment of satellite offices should the
10.31 boards find them to be necessary in order to assure their members reasonable access to
10.32 their services. The commissioner may lease under section 16B.24 any portion of the
10.33 facilities not required for the direct use of the boards.

10.34 (i) The boards shall formulate and adopt a written working agreement that sets forth
10.35 the nature of each retirement system's ownership interest, the duties and obligations of
10.36 each system toward the construction, operation, and maintenance costs of its facilities, and

11.1 identifies one retirement fund to serve as manager for operating and maintenance purposes.
11.2 The boards may contract with independent third parties for maintenance-related activities,
11.3 services, and supplies, and may use the services of the Department of Administration
11.4 where economically feasible to do so. If the boards cannot agree or resolve a dispute
11.5 about operations or maintenance of the facilities, they may request the commissioner of
11.6 administration to appoint a representative from the department's real estate management
11.7 division to serve as arbitrator of the dispute with authority to issue a written resolution
11.8 of the dispute.

11.9 Sec. 8. Minnesota Statutes 2006, section 363A.36, subdivision 1, is amended to read:

11.10 Subdivision 1. **Scope of application.** (a) For all contracts for goods and services in
11.11 excess of \$100,000, no department or agency of the state shall accept any bid or proposal
11.12 for a contract or agreement from any business having more than 40 full-time employees
11.13 within this state on a single working day during the previous 12 months, unless the
11.14 commissioner is in receipt of the business' affirmative action plan for the employment of
11.15 minority persons, women, and qualified disabled individuals. No department or agency of
11.16 the state shall execute any such contract or agreement until the affirmative action plan
11.17 has been approved by the commissioner. Receipt of a certificate of compliance issued by
11.18 the commissioner shall signify that a firm or business has an affirmative action plan that
11.19 has been approved by the commissioner. A certificate shall be valid for a period of two
11.20 years. A municipality as defined in section 466.01, subdivision 1, that receives state
11.21 money for any reason is encouraged to prepare and implement an affirmative action plan
11.22 for the employment of minority persons, women, and the qualified disabled and submit the
11.23 plan to the commissioner.

11.24 (b) This paragraph applies to a contract for goods or services in excess of \$100,000
11.25 to be entered into between a department or agency of the state and a business that is
11.26 not subject to paragraph (a), but that has more than 40 full-time employees on a single
11.27 working day during the previous 12 months in the state where the business has its primary
11.28 place of business. A department or agency of the state may not execute a contract or
11.29 agreement with a business covered by this paragraph unless the business has a certificate
11.30 of compliance issued by the commissioner under paragraph (a) or the business certifies
11.31 that it is in compliance with federal affirmative action requirements.

11.32 (c) This section does not apply to contracts entered into by the State Board of
11.33 Investment for investment options under section ~~352.96~~ 352.965, subdivision 4.

11.34 Sec. 9. Minnesota Statutes 2006, section 383B.914, subdivision 7, is amended to read:

12.1 Subd. 7. **Participation in state deferred compensation plan.** (a) Existing
 12.2 employees of the corporation, at the election of the corporation, if otherwise qualified,
 12.3 are eligible to participate in the Hennepin County supplemental retirement plan under
 12.4 sections 383B.46 and 383B.52.

12.5 (b) Existing and future employees of the corporation, at the election of the
 12.6 corporation, are eligible to participate in the Minnesota state deferred compensation
 12.7 plan under section ~~352.96~~ 352.965, the postretirement health care savings plan under
 12.8 section 352.98, and all other deferred compensation arrangements for which all persons
 12.9 employed by the county whose employment is accounted for in the county enterprise fund
 12.10 for HCMC were eligible.

12.11 Sec. 10. Minnesota Statutes 2006, section 518.003, subdivision 8, is amended to read:

12.12 Subd. 8. **Public pension plan.** "Public pension plan" means a pension plan or
 12.13 fund specified in section 356.20, subdivision 2, or 356.30, subdivision 3, the deferred
 12.14 compensation plan specified in section ~~352.96~~ 352.965, or any retirement or pension plan
 12.15 or fund, including a supplemental retirement plan or fund, established, maintained, or
 12.16 supported by a governmental subdivision or public body whose revenues are derived from
 12.17 taxation, fees, assessments, or from other public sources.

12.18 Sec. 11. **REPEALER.**

12.19 Minnesota Statutes 2006, section 352.96; and Minnesota Rules, parts 7905.0100;
 12.20 7905.0200; 7905.0300; 7905.0400; 7905.0500; 7905.0600; 7905.0700; 7905.0800;
 12.21 7905.0900; 7905.1000; 7905.1100; 7905.1200; 7905.1300; 7905.1400; 7905.1500;
 12.22 7905.1600; 7905.1700; 7905.1800; 7905.1900; 7905.2000; 7905.2100; 7905.2200;
 12.23 7905.2300; 7905.2400; 7905.2450; 7905.2500; 7905.2560; 7905.2600; 7905.2700;
 12.24 7905.2800; and 7905.2900, are repealed.