

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director

RE: S.F. 433 (Betzold); H.F. 2112 (Smith); Judges Retirement Plan; Clarification and Revisions

DATE: March 28, 2005

General Summary of S.F. 433 (Betzold); H.F. 2112 (Smith)

S.F. 433 (Betzold); H.F. 2112 (Smith) amends or repeals various provisions of Minnesota Statutes, Chapter 490, the governing law for the old law judges retirement plans, the Uniform Retirement and Survivors' Annuities for Judges plan, and the Board on Judicial Standards, by eliminating the provisions of the old law judges retirement plans that are obsolete, by updating and recodifying the 1973 Uniform Retirement and Survivors' Annuities for Judges plan, and by transferring the Board of Judicial Standards provisions to a separate chapter, new Minnesota Statutes, Chapter 490A.

Background Information on Retirement Coverage for Judges

- a. In General. There have been six retirement plans for Minnesota judges and their survivors, five old law plans and the current judges' retirement plan, the Uniform Retirement and Survivors' Annuities for Judges Plan.
- b. Old Law Judicial Retirement Plans. The Supreme Court Justices Retirement Plan was established by legislative enactment in 1943 and provided retirement annuity and disability benefit coverage for justices of the Minnesota Supreme Court who entered service prior to January 1, 1974. The District Court Judges Retirement Plan was established in 1925, also by legislative enactment, and provided retirement annuity and disability benefit coverage for the judges of the various district courts in Minnesota who entered service as a judge prior to January 1, 1974. The Probate and County Court Judges Retirement Plan was established by legislative enactment in 1931 and it provided retirement annuity and disability benefit coverage for the judges of the various probate courts or subsequent county courts who entered into service prior to January 1, 1974.

The Supreme Court Justices and District Court Judges Survivor Benefit Plan was established in 1959 to provide survivor benefit coverage to the surviving spouses of deceased active or retired Supreme Court justices or District Court judges. The Probate and County Court Judges Survivor Benefit Plan was established in 1967 to provide survivor benefit coverage to the surviving spouse of deceased active or retired Probate or County Court judges. The various justices and judges obtaining the survivor coverage were required to make a member contribution to fund the coverage, which was intended to be the sole financing of the coverage and was to be periodically revised based on the financial condition of the survivor funds.

- c. Uniform Retirement and Survivors' Annuities for Judges Plan. The Uniform Judicial Retirement Plan, Minnesota Statutes, Sections 490.121 to 490.133, was enacted in 1973. The Uniform Judicial Retirement Plan is the successor to the several prior judicial retirement plans.

In 1973, at the request of the Judicial Compensation Committee of the Minnesota State Bar Association, and in conjunction with the Committee on Retirement of the District Judges Association and the County Judges Association, the Legislature considered and enacted a uniform judicial retirement plan. The plan standardized benefits for the judges in the various levels of courts, allowed existing judges to retain their prior coverage if they so desired and extended Social Security coverage to existing judges on an individual election (referendum) basis and to newly appointed or elected judges on a mandatory basis. The uniform judicial retirement plan was apparently intended to provide better portability for individuals with varied judicial service, provide earlier vesting based on service credit only, improve deceased active member survivor benefit coverage, establish optional annuity forms for improved retired member survivor benefit flexibility, establish a pension fund for the plan with regular financing, and provide regular post retirement adjustments.

Since 1973, there have been a number of modifications in the uniform judicial retirement plan. In 1975, in addition to the settlement of the Sylvestre lawsuit (involving old law District and Supreme Court judges post retirement escalation) issue, a proportionate annuity based on accrued service credit at the mandatory retirement age was authorized by the Legislature. In 1978, the Legislature authorized fractional (portion of a year) service credit and authorized a refund to the survivor or estate of a deceased judge who is not eligible for survivor benefit coverage. In 1980, the retirement annuity benefit accrual rate was increased by legislation from 2.5 percent to 3.0 percent for each year of service rendered after

June 30, 1980, and the member contribution rate was increased by one half of one percent of salary, with a 7.0 percent aggregate (inclusive of the Social Security employee contribution) contribution. The 1981 Legislature approved an extension of active member survivor coverage to deferred annuitants during the period of that deferral and eliminated the surviving spouse or estate death refund. In 1982, with the creation of the Court of Appeals, judicial service with that court was included in coverage by the judges' plan. In 1983, the Legislature provided that the initial disability benefit coverage, which is a two-year continuation of salary, may not exceed the mandatory retirement age. In 1984, the reduction factor used to calculate a reduced early retirement annuity was reset from 6.67 percent per year under age 65 to 6.00 percent per year under age 65.

In 1988, the service credit requirement for vesting for a normal or early retirement was reduced from ten years to five years, an unsubsidized bounce-back joint and survivor optional retirement annuity form was authorized, the Social Security benefit offset from the Coordinated Program retirement annuity was reduced from 75 percent of the primary benefit amount to 50 percent, and the Coordinated Program member contribution rate was increased by 0.75 percent of salary. In 1989, the Combined Service Annuity portability mechanism was extended to the uniform judges retirement plan former judges who return to judicial service were authorized to repay any prior refunds of member contributions and interest.

In 1991, the terminal employer funding procedure for the fund was replaced with a regular concurrent employer contribution procedure, with an employer rate of 22 percent of salary, the Coordinated Program member contribution was revised to four percent of salary, and the continuation of full salary initial judicial disability benefit was reduced from two years to one year. Prior to 1991, the employer contributions to the fund occurred only when benefits became payable--when the fund was required to transfer the full actuarial reserves to the State Board of Investment (SBI) Post Retirement Fund. In 1992, the 30-day time limit on electing an optional retirement annuity form was eliminated, the Social Security benefit offset from the Coordinated Program retirement annuity was repealed, the Coordinated Program member contribution was increased from four percent to 6.27 percent of pay, judges covered by the Basic Program were provided a second chance opportunity to elect prospective Social Security coverage, and the interest rate payable on refund repayments was increased from six percent to 8.5 percent. In 1993, it was clarified that disabled judges earn a year of service credit for the year of full salary continuation, with the applicable salary rate credited in determining a final average salary for benefit computation, and with member contributions payable on that salary amount. In 1996, with respect to judges who die without a survivor benefit consequently payable, a death refund payable to the applicable estate was authorized. In 1997, the annual benefit accrual rates were increased to 2.7 percent from 2.5 percent for pre-7/1/1980 service, and to 3.2 percent from 3.0 percent for post-6/30/1980 service while future annual post-retirement adjustments were reduced by one percent.

In 1998, the member contribution rate was increased from 6.27 percent to 8.00 percent, the employer contribution rate was reduced from 22 percent to 20.5 percent, and the salaries of judges were increased by 1.5 percent.

In 2000, the previous percentage benefit maximum was converted to a service credit maximum, retirement coverage for judges serving beyond the service credit maximum was shifted to coverage by the MSRS-Unclassified Employees Retirement Program (MSRS-Unclassified), and the maximum benefit accrual rate for judges computing retirement annuities under the Combined Service Annuity portability provision was increased from 2.5 percent per year to 3.2 percent per year.

In 2004, the early reduced benefit retirement age was downset from age 62 to age 60 and the basis for interest on refunds was modified from interest on quarterly balances to daily interest.

Clarification Amendment LCPR05-051

The proposed legislation was circulated to the Chief Justice of the Supreme Court, the Executive Director of the Minnesota State Retirement System (MSRS), and to a representative of the District Court Judges Association, who provided comments and suggestions. Those comments and suggestions are addressed or implemented in Amendment LCPR05-051, which is essentially an author's amendment.

Discussion and Analysis

S.F. 433 (Betzold); H.F. 2112 (Smith) revises the language and style of the Uniform Retirement and Survivors Annuities for Judges plan, updates various provisions of that plan, repeals obsolete old law judges retirement plan provisions, and transfers the Board on Judicial Standards to its own statute chapter, Minnesota Statutes, new Chapter 490A.

The proposed legislation raises several pension and related public policy issues that may merit Commission consideration and discussion, as follows:

1. Appropriateness of Eliminating the Old Law Judges Retirement Plans. The policy issue is the appropriateness of the proposed elimination of the pre-1973 judges' retirement plans. The Uniform Judicial Retirement Plan was enacted in 1973 and was intended to replace the prior judges retirement plans, which varied in their benefit levels and provisions based on the level of the court involved. Only one judge as of August 15, 2004, has service that pre-dates, a judge in the Fourth District who is currently age 66, and that judge elected Uniform Judicial Retirement Plan in 1973-1974, so there are no current active judges covered by the old law judges retirement plan according to the Minnesota State Retirement System (MSRS). While there may be some deferred judges (i.e., judges who have terminated active judicial service with sufficient service to qualify for an eventual retirement annuity but who have not yet reached the age for immediate annuity payment or who have not yet applied for an annuity) covered by the old law judges retirement plans, those deferred annuitants are covered by the law as it was on the date when they terminated active service and would be unaffected by any subsequent repeal. The proposed legislation also includes an indication that the repeal is not intended to diminish the benefits of any deferred, active, or retired judge and a procedure is established for correcting any inadvertent benefit diminishment that might occur. Since the old law plans lack any active members and are not needed on an ongoing basis for any potential deferred members, retaining the old law judges retirement plan provisions on the statute books does not seem to serve any good identifiable policy purpose.
2. Appropriateness of Requiring a Gubernatorial Certification of Judicial Disabilities (Sections 11 and 34). The policy issue is the appropriateness of the addition of a requirement that the Governor certify the determination of a disability of a judge to the judge, the Minnesota Supreme Court Chief Justice, the State Court Administrator, and the Executive Director of the Minnesota State Retirement System (MSRS). Currently, Minnesota Statutes, Chapter 490, is silent on who the Governor notifies if the Governor determines that a judge is disabled. If the proposed certification requirement matches the current practice, the addition raises no issues. If the proposed certification requirement adds to the current practice, some examination of the rationale for each certification will be needed. Since the Governor is empowered to determine that a judge is disabled without an application by or the concurrence of the judge, the judge who is determined to be disabled has an interest in knowing what the Governor decided. Since the Chief Justice of the Minnesota Supreme Court oversees the state judiciary and appoints retired judges to cover vacancies and personnel shortages and since the State court Administrator is in charge of the court personnel and payroll systems, these two individuals need to know of the disability for operational reasons. Since the MSRS Executive Director is responsible for administering the Uniform Judges Retirement Plan and the retention of records of service credit and needs to know about employment terminations, early notification of a disability determination by the Governor would be helpful and appropriate.
3. Appropriateness of the Extension of the Pre-1993 Additional Employer Contribution Requirement (Section 28). The policy issue is the appropriateness of making the additional employer contribution of Minnesota Statutes, Section 490.123, Subdivision 1c, applicable in the future, if ever necessary, rather than just before July 1, 1993. On its face, the additional employer contribution is obsolete and only applied if the accumulated member contributions, the current employer regular contributions, and the assets of the plan other than the Minnesota Post Retirement Investment Fund are insufficient to make a Minnesota Post Retirement Investment Fund transfer upon the retirement of a judge. The provision was needed when the Judges Retirement Plan shifted from terminal funding to concurrent employer funding in the early 1990s. Given the size of the current employer contribution to the Judges Retirement Plan (20.5 percent of pay) and the current size of the plan's assets outside of the Minnesota Post Retirement Investment Fund (\$27.5 million as of July 1, 2003), it is unlikely that the Judges Retirement Plan would ever have insufficient amounts to make future Minnesota Post Retirement Investment Fund transfers and the proposed extension would have no actual future adverse financial impact on the State. However, if the funding of the Judges Retirement Plan ever were to become deficient, the proposed extension will eliminate a problematic potential reduction in judicial pensions. Alternatively, if the extension is not deemed to be appropriate, the provision should be repealed as obsolete. Amendment LCPR04-255 adds the provision to the repealer section.
4. Appropriateness of Moving the Judicial Standards Board Governing Statutes from Minnesota Statutes, Chapter 490 (Sections 47 and 48). The policy issue is the appropriateness of moving the governing statutes for the Judicial Standards Board from Minnesota Statutes, Chapter 490, to newly created Minnesota Statutes, Chapter 490A. Minnesota Statutes, Chapter 490, is currently a retirement chapter, with the exception of the Judicial Standards Board governing statutes. For the clarity that the move would provide and for the ease that the transfer would provide for members of the public seeking to find the Judicial Standards Board governing law, the change would be appropriate. With only two sections, however, new Minnesota Statutes, Chapter 490A, would be extremely short in length.

Section-By-Section Summary of S.F. 433 (Betzold); H.F. 2112 (Smith)

Sec.	Page & Line	Plan	Provision	Summary
1	Page 1, Lines 18-24	Old Law Judges Plan	490.025, Subdivision 5	Updates the language and style of a provision permitting service by a retired Supreme Court justice as a court commissioner.
2	Page 1, Lines 25-31;	Uniform Judges Plan	490.121, Subdivision 1	Updates the language and style of the definition introduction section.
3	Page 2, Lines 1-11	Uniform Judges Plan	490.121, New Subdivision 2a	Adds a definition of actuarial equivalency, relating to optional annuity forms.
4	Page 2, Lines 12-23	Uniform Judges Plan	490.121, Subdivision 4	Clarifies that "allowable service" means compensated service as a judge and that service as a retired judge is excluded.
5	Page 2, Lines 24-28	Uniform Judges Plan	490.121, Subdivision 6	Clarifies the language and style of the definition of "annuity."
6	Page 2, Lines 29-34	Uniform Judges Plan	490.121, Subdivision 7	Clarifies the definition of "annuitant" as meaning a former judge who receives a retirement annuity.
7	Page 2, Lines 35-36; Page 3, Lines 1-5	Uniform Judges Plan	490.121, New Subdivision 7a	Adds a definition of "approved actuary."
8	Page 3, Lines 6-11	Uniform Judges Plan	490.121, New Subdivision 7b	Moves the definition of "court" to its appropriate alphabetic placement.
9	Page 3, Lines 12-22	Uniform Judges Plan	490.121, New Subdivision 7c	Moves the definition of "dependent surviving child" to its appropriate alphabetic placement.
10	Page 3, Lines 23-28	Uniform Judges Plan	490.121, Subdivision 13	Clarifies that the definition of "disability" means a medically determinable impairment of function.
11	Page 3, Lines 29-36; Page 4, Lines 1-2	Uniform Judges Plan	490.121, Subdivision 14	Augments the definition of "disability retirement date" by including a reference to a certification of the disability by the governor to the relevant individuals.
12	Page 4, Lines 3-8	Uniform Judges Plan	490.121, Subdivision 15	Clarifies the language of the definition of "disability retirement annuity."
13	Page 4, Lines 9-14	Uniform Judges Plan	490.121, New Subdivision 15a	Moves the definition of "early retirement date" to a more appropriate place.
14	Page 4, Lines 15-20	Uniform Judges Plan	490.121, New Subdivision 15b	Moves the definition of "early retirement annuity" to a more appropriate place.
15	Page 4, Lines 21-34	Uniform Judges Plan	490.121, Subdivision 21	Clarifies the definition of "final average compensation" as it relates the computation of the average with less than ten years of service.
16	Page 4, Lines 35-36; Page 5, Lines 1-2	Uniform Judges Plan	490.121, New Subdivision 21a	Moves the definition of "judge" to a more appropriate position.
17	Page 5, Lines 3-7	Uniform Judges Plan	490.121, New Subdivision 21b	Moves the definition of "judges retirement fund" to a more appropriate place.
18	Page 5, Lines 8-12	Uniform Judges Plan	490.121, New Subdivision 21c	Moves the definition of "mandatory retirement date" to a more appropriate place.
19	Page 5, Lines 13-19	Uniform Judges Plan	490.121, New Subdivision 21d	Moves the definition of "normal retirement annuity" to its appropriate alphabetic placement.
20	Page 5, Lines 20-24	Uniform Judges Plan	490.121, New Subdivision 21e	Moves the definition of "normal retirement date" to a more appropriate place.
21	Page 5, Lines 25-33	Uniform Judges Plan	490.121, Subdivision 22	Clarifies the language usage in the definition of "service credit limit."
22	Page 5, Lines 34-36; Page 6, Line 1	Uniform Judges Plan	490.121, Subdivision 23	Transfers the definition "survivor annuity" to its appropriate alphabetical placement.
23	Page 6, Lines 2-6	Uniform Judges Plan	490.121, Subdivision 24	Transfers the definition of "surviving spouse" to a more appropriate place.

Sec.	Page & Line	Plan	Provision	Summary
24	Page 6, Lines 7-24	Uniform Judges Plan	490.122	Updates the language and style of the judges retirement plan administration provision and divides the provision into subdivisions.
25	Page 6, Lines 25-36; Page 7, Lines 1-3	Uniform Judges Plan	490.123, Subdivision 1	Clarifies the language and style of the provision and replicates the fund creation language of other public pension funds.
26	Page 7, Lines 4-19	Uniform Judges Plan	490.123, Subdivision 1a	Clarifies the language and style of the member contribution provision and adds a payroll deduction requirement.
27	Page 7, Lines 20-33	Uniform Judges Plan	490.123, Subdivision 1b	Clarifies the language and style of the employer contribution provision.
28	Page 7, Lines 34-36; Page 8, Lines 1-8	Uniform Judges Plan	490.123, Subdivision 1c	Extends the pre-1993 backup additional employer contribution provision to any future funding deficiency.
29	Page 8, Lines 9-26	Uniform Judges Plan	490.123, Subdivision 2	Clarifies the language and style of the fund treasurer provision.
30	Page 8, Lines 27-36; Page 9, Lines 1-6	Uniform Judges Plan	490.123, Subdivision 3	Divides the investment provision into paragraphs and clarifies references to MSRS.
31	Page 9, Lines 7-30	Uniform Judges Plan	490.124, Subdivision 1	Clarifies the language and style of the retirement annuity provision and divides it into paragraphs.
32	Page 9, Lines 31-36; Page 10, Lines 1-20	Uniform Judges Plan	490.124, Subdivision 2	Clarifies the language and style of the vesting and term extension provision.
33	Page 10, Lines 21-27	Uniform Judges Plan	490.124, Subdivision 3	Clarifies the language and style of the early reduced retirement provision.
34	Page 10, Lines 28-36; Page 11, Lines 1-12	Uniform Judges Plan	490.124, Subdivision 4	Clarifies the disability provision by providing the disability benefit at the conclusion of the one year of salary continuation or upon mandatory retirement, whichever is earlier.
35	Page 11, Lines 13-29	Uniform Judges Plan	490.124, Subdivision 5	Clarifies the deferred retirement annuity provision by indicating that entitlement for a deferred annuity continues after the normal retirement date.
36	Page 11, Lines 30-36; Page 12, Lines 1-18	Uniform Judges Plan	490.124, Subdivision 6	Clarifies the calculation of interest on full credit of part-time judicial service in the part-time judges provision.
37	Page 12, Lines 19-36; Page 13, Line 1	Uniform Judges Plan	490.124, Subdivision 8	Separates the normal retirement benefit savings clause into specific paragraphs.
38	Page 13, Lines 2-25	Uniform Judges Plan	490.124, Subdivision 9	Clarifies the language and style of the survivor benefit provision, divides the provision into paragraphs, and eliminates an obsolete pre-1974 provision.
39	Page 13, Lines 26-36; Page 14, Lines 1-10	Uniform Judges Plan	490.124, Subdivision 10	Clarifies statute cross-references and divides the prior survivor benefit provision into paragraphs.
40	Page 14, Lines 11-35	Uniform Judges Plan	490.124, Subdivision 11	Clarifies the language and style of the optional survivors benefit provision.
41	Page 14, Line 36 Page 15, Lines 1-18	Uniform Judges Plan	490.124, Subdivision 12	Extends the eligibility for a member contribution refund, plus interest, to judges who are entitled to an annuity.
42	Page 15, Lines 19-27	Uniform Judges Plan	490.124, Subdivision 13	Clarifies the death refund provision by requiring the filing of a benefit application.
43	Page 15, Lines 28-33	Uniform Judges Plan	490.125, Subdivision 1	Clarifies the language and style of the judges' mandatory retirement age provision.
44	Page 15, Lines 34-36; Page 16, Lines 1-33	Uniform Judges Plan	490.126	Clarifies the language and style of the mandatory judicial retirement age provision.
45	Page 16, Lines 34-36; Page 17, Lines 1-9	Uniform Judges Plan	490.132	Clarifies the language and style of the Supreme Court justices coverage provision.
46	Page 17, Lines 10-30	Uniform Judges Plan	490.133	Clarifies the style and language of the Court of Appeals transition provision.

Sec.	Page & Line	Plan	Provision	Summary
47	Page 17, Lines 31-36; Page 18, Lines 1-20	Board of Judicial Standards	New 490A.01	Moves the Board of Judicial Standards establishment provision to new Minnesota Statutes, Chapter 490A.
48	Page 18, Lines 21-36; Page 19, Lines 1-33	Board of Judicial Standards	New 490A.02	Moves the Board of Judicial Standards powers provision to Minnesota Statutes, Chapter 490A.
49	Page 19, Lines 34-36; Page 20, Lines 1-23	--	Repealer	Repeals various provisions of the old judges' retirement plans and the uniform retirement and survivors annuities for judges plan as obsolete or for recodification. Repeals the Board of Judicial Standards provisions for reenactment in new Minnesota Statutes, Chapter 490A.
50	Page 20, Lines 24-25	--	Effective Date	The proposed legislation is effective on July 1, 2005.