



H.F. 2451
(Nelson)

S.F. 2266
(Wergin)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): Minnesota Public Pension Plans
Relevant Provisions of Law: Minnesota Statutes, Section 356.46
General Nature of Proposal: Mandatory joint-and-survivor annuity
Date of Summary: April 30, 2007

Specific Proposed Changes

- For all plans that provide joint-and survivor annuities, requires all married public plan annuitants to select at least a 50 percent joint-and-survivor annuity covering the spouse unless the spouse waives that coverage.

Policy Issues Raised by the Proposed Legislation

General Policy Issues:

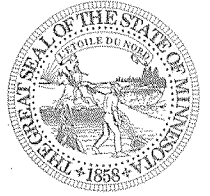
1. Implications of adding joint-and-survivor options to plans with automatic spousal coverage.
2. Public pension plan purpose; recruiting/retention concerns.
3. Enforcement issues.
4. Question of whether current notification procedures are sufficient to address or avoid harm.

Specific Policy Issues:

1. Intent.
2. Sufficient need to abandon current approach.
3. Appropriateness of following model mandated for private sector.
4. Treatment in cases of spousal abuse, separation, or abandonment.
5. Covered plan and covered employee reaction.
6. Scope.
7. Proper level of joint-and-survivor coverage.
8. Consideration of plans with automatic coverage.
9. Withdrawal issues; design issues.
10. Cost.
11. Possibility of study rather than action on the bill.
12. Need for conforming revisions.

Potential Amendments

- H2451-1A is intended as a technical amendment.
- H2451-2A states that the treatment applies to annuities which are elected and which commence after the effective date, rather than just to annuities which commence after the effective date.
- H2451-3A requires any plan providing a single life annuity must also offer a joint-and-survivor annuity.
- H2451-4A permits annuity form information to be sent to the spouse as late as when the election is made, rather than before, and revises the effective date from July 1, 2007, to January, 1 2008 (requested by TRA).
- H2451-5A makes the treatment inoperative in cases where there is a restraining order, if there is a separation without a court-ordered joint-and-survivor annuity selection mandate, if the spouse has not been living with the member for a period of time to be specified, or if the spouse can not be located.
- H2451-6A exempts all volunteer fire plans from this provision.
- H2451-7A eliminates the University of Minnesota faculty supplemental plan.
- H2451-8A, eliminates both the University of Minnesota faculty supplemental plan and the faculty retirement plan.
- H2451-9A eliminates the MSRS-Unclassified Program.
- H2451-10A revises the minimum joint-and survivor option from 50 percent to a percentage to be specified.
- H2451-11A eliminates any language specifying the minimum joint-and-survivor annuity.
- H2451-12A requires any plan offering automatic surviving spouse coverage in addition to joint-and-survivor options must provide a spousal benefit of at least 50 percent or equal to the alternative automatic coverage.
- H2451-13A eliminates from coverage under this provision any plan which offers automatic spousal coverage to the applicable surviving spouse if joint and survivor coverage were not elected.
- H2451-14A specifies that nothing in this section is intended to disallow payment of a higher survivor annuity to the surviving spouse of a deceased disabilitant (requested by TRA).



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: H.F. 2451 (Nelson); S.F. 2266 (Wergin): Minnesota Public Pension Plans;
Mandating Joint-and-Survivor Annuity Unless Waived By Spouse

DATE: April 27, 2007

Summary of H.F. 2451 (Nelson); S.F. 2266 (Wergin)

H.F. 2451 (Nelson); S.F. 2266 (Wergin) amends Section 356.46, a Minnesota public pension plan annuity application and spousal notification provision, by requiring all married public plan annuitants to select a minimum of at least 50 percent joint-and-survivor annuity coverage naming the spouse as beneficiary, unless the spouse waives that coverage. This change applies to nearly all Minnesota public pension plans or funds that offer joint-and-survivor annuity options.

Background Information

- a. Minnesota Statutes, Section 356.46. Currently, Minnesota Statutes, Section 356.46, is a spousal notification provision that requires Minnesota public pension plans, including supplemental plans but excluding volunteer fire plans, to include with any benefit application form a description of all optional annuity forms offered by the plan, and a brief analysis of the implications of selecting an optional annuity rather than a single-life annuity. The description of the optional annuity forms is also sent to the spouse. After the retiring or disabled public employee has made his or her selection, the public pension plan administration must send notification to the disabled or retiring employee's spouse, providing notification of the election made by the disabled or retiring employee. The spouse is required to sign the notification, acknowledging receipt of the information. If the pension fund administration does not receive the signed notification form within 30 days, another form is sent to the spouse by certified mail.
- b. Joint-and-Survivor Annuities. A joint-and-survivor annuity is an annuity form which provides coverage to another individual, in addition to the retired or disabled employee. The other individual is often a spouse, but it could also be another adult or a child, unless specifically restricted under the laws or by-laws governing a particular plan. The intent is to provide continuing income to the other individual for life, following the death of the primary annuitant.

Except for the exceptions noted later, the total value of a joint-and-survivor annuity (or any other optional annuity form) has the same total expected value as an annuity covering only the life of the retired or disabled employee. For most Minnesota public pension plans, the total value of the retirement benefit is a function of the individual's salary near retirement and total years of service, but not marital status. The retirement and disability benefits offered through the public pension plan are employee benefits, serving to attract, retain, and out-transition the employee at the end of his or her productive working life. Currently, that employee is the decision-maker who decides whether to share some of the pension's value with a spouse, other adult, or child, following the death of the primary annuitant.

In general, when a joint-and survivor annuity is selected, the monthly benefit received by the primary annuitant must be reduced, in order to provide some continuing coverage to the survivor. Otherwise, the total value received would be higher than that received by a comparable single individual, or a comparable married individual who decides not to take a joint-and-survivor annuity. The amount of the reduction is a function of the ages of the annuitant and designated beneficiary. If the retiree is male and the joint-and-survivor annuity provides coverage to a wife who is much younger than the primary annuitant, the amount of the monthly reduction can be quite large, due to the likelihood that the female will outlive the male by many years.

The amount of the reduction also depends upon the extent of the continuing coverage. When plans permit joint-and-survivor annuities, several joint-and-survivor options typically are offered. Under a 100 percent joint-and-survivor option, following the death of the primary annuitant the designated beneficiary receives the same monthly benefit as before the death occurred. Because of the level of this continuing coverage, a 100 percent joint-and-survivor annuity requires a larger monthly reduction than

options offering lesser continuing coverage. With a 50 percent joint-and-survivor option, the designated beneficiary would receive a monthly benefit which is half that previously received. Fifty percent, 75 percent, and 100 percent joint-and-survivor annuities are the most common joint-and-survivor offerings, but others also exist. For instance, in 2000 the Legislature passed a provision (Laws 2000, Chapter 461, Article 9, Section 4) providing a one-time election of actuarial equivalent 15 or 25 percent joint-and-survivor coverage for Public Employees Police and Fire Retirement Plan (PERA-P&F) former consolidation account members who were restricted to local plan benefits, to supplement the automatic survivor coverage provided by those plans.

There is a provision in many of the larger Minnesota state retirement plans (Public Employee Retirement Association (PERA) plans, Teachers Retirement Association (TRA), the first class city teacher plans, and most Minnesota State Retirement System (MSRS plans) which slightly modifies the general actuarial equivalence requirement, due to a bounce-back. In 1989, bounce-back provisions were added to many joint-and-survivor annuity laws. Under this modification, if the individual to receive the second half of the joint-and-survivor annuity predeceases the primary annuitant, the monthly benefit is restored ("bounces back") to the monthly benefit level that would have been received if the individual had selected a single-life annuity. In the state-wide plans, this bounce-back feature is provided without any further reduction in the monthly benefits computed when the retirement or disability benefit commences. Therefore, it is a subsidized feature. It raises the overall cost of the pension system and results in a subsidy paid by the employer and all employees who are single, or who are married but who do not elect a joint-and-survivor annuity. H.F. 2451 (Nelson); S.F.2266 (Wergin), by mandating joint-and-survivor coverage unless waived by the employee's spouse, may result in a larger percentage of joint-and-survivor annuities. It therefore has modest cost implications for any plan with a subsidized bounce-back requirement.

In 1997, laws were enacted which extended joint-and-survivor annuity forms, both those with a bounce-back and those without, to the Minneapolis Police Relief Association plan and to the Minneapolis Fire Relief Association plan. The language in the 1997 laws for these two relief associations, however, required full actuarial equivalence, whether or not the bounce-back is elected.

- c. Joint-and-Survivor Annuities in Plans with Automatic Surviving Spouse Coverage. In recent decades, it has become increasingly common for families to have more than one wage earner. Currently, in a majority of cases both partners in a marriage or other committed relationship are employed. Given this situation, the couple seems more able to save toward retirement by accumulating assets other than the plan retirement annuity, and both individuals may have earned a pension due to their own employment. The couple may not want or need surviving spouse coverage. This possibility is reflected in most of our more modern Minnesota public pension plans. Automatic coverage is not provided and joint-and-survivor surviving spouse coverage, if desired, can be elected. The election is left to the employee. If joint-and-survivor coverage is appropriate for a given retiree, he or she can elect that coverage.

Some of the older plans, however, did have automatic surviving spouse coverage following the death of the primary annuitant. This may reflect a family norm that is less relevant today than it was decades ago. To the best of our knowledge, all Minnesota public plans which provide automatic surviving spouse coverage are closed to new members. This automatic coverage was a common feature in police and paid fire local relief association plans. All those plans were closed to new members in 1980. The old Legislator's Retirement Plan and Elected State Officers Retirement Plan have automatic surviving spouse coverage, equal to 50 percent of the benefit received by the primary annuitant prior to death. Those two plans were closed to new members in 1997.

Discussion and Analysis

A. General Policy Issues.

1. Implications of Adding Joint-and-Survivor Options to Plans with Automatic Spousal Coverage. In 1997, optional joint-and-survivor annuity options were added to the Legislators Retirement Plan and to the Minneapolis Firefighters Relief Association and the Minneapolis Police Relief Association plans which also have automatic spousal coverage that would apply if a joint-and-survivor annuity is not elected. The current proposed legislation would impact these plans because they offer joint-and-survivor annuities. For the Minneapolis Fire and Minneapolis Police plans, the 1997 law specifically authorized offering 50 percent, 75 percent, and 100 percent optional annuities. If an optional annuity was elected, it was in lieu of coverage that would otherwise be provided by the plan's surviving spouse benefit provision. The 50 percent optional annuity

provides less survivor coverage than the approximately 52 percent survivor coverage that would otherwise apply under the automatic surviving spouse coverage provision.

Care is needed when adding or in any way modifying optional annuities to a plan with automatic surviving spouse coverage. Given the existing automatic survivor coverage provisions of these plans, the 1997 law language adding optional annuities to these plans specified that the optional joint-and-survivor annuities must be actuarially equivalent to a primary annuity plus the automatic surviving spouse benefit coverage that would otherwise apply. In order to maintain actuarial equivalence when a 50 percent joint-and-survivor annuity is elected rather than the approximately 52 percent automatic spousal coverage that would otherwise apply, it is necessary to pay the primary annuitant a slightly higher annuity than would otherwise be payable under law. This may provide a retiring member with an incentive to provide the spouse with less coverage (a 50 percent joint-and-survivor annuity) than the automatic coverage that would otherwise apply.

2. Public Pension Plan Purpose; Recruiting/Retention Concerns. In considering the proposed legislation, the Legislature may wish to consider whether the legislation is consistent with the existing purpose for public pension plans. Currently, the pension plan benefits are employee benefits provided to attract the individual into public employment and to retain that employee. How the individual chooses to receive that retirement benefit (through payments under a single-life annuity or through monthly payments (but expected longer duration) under a joint-and-survivor annuity, or in some cases through a distribution of assets) is left for the individual to decide. Hopefully, the family unit is consulted, and decisions mutually agreeable are reached. But whatever occurs, the retiring public employee is the decision-maker. H.F. 2451 (Nelson); S.F. 2266 (Wergin) replaces the public employee as the decision-maker. The spouse, not the employee, is given authority to require that a joint-and-survivor annuity be paid, even if that is against the wishes of the covered employee. The proposed change may impact the way current and prospective employees value public pension benefits, impacting employee recruiting and retention.
3. Enforcement Issues. The bill states that if a public plan or fund provides for a joint-and-survivor annuity, that annuity must be selected unless the spouse signs a waiver. It is unclear whether there is an intention to restrict any complete lump sum withdrawals or partial asset withdrawals to preclude efforts to circumvent this joint-and-survivor annuity requirement. It is also unclear whether there is an intention to mandate that withdrawals be used to purchase joint-and-survivor annuities from insurance companies or other providers. Withdrawals can occur under most of our public plans. A defined benefit plan member has a right to take a refund in lieu of an annuity. Most volunteer fire plans pay lump sum amounts, rather than annuities at termination. Defined contribution plan members can withdraw assets rather than take an annuity. Under current state and federal law, the individual can use money withdrawn or otherwise received or transferred from a pension plan or fund for any purpose (although in some cases with tax penalties), one of which is to purchase an annuity from an insurance company or comparable provider. If the intention of the bill is to require that any withdrawn pension assets be used to purchase joint-and-survivor annuities (unless waived by the spouse), that may not be possible or desirable.

The Commission may wish to consider issues the proposed legislation raises for the Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified), a defined contribution plan which offers coverage to various unclassified executive branch employees, legislative staff, newer legislators, and those legislators with service originally covered by the Legislators Retirement Plan who chose to transfer coverage to MSRS-Unclassified. According to the MSRS-Unclassified handbook and MSRS-Unclassified law, members with at least ten years of MSRS-covered service have a right to transfer coverage to the MSRS General State Employees Retirement Plan (MSRS-General). MSRS-General offers a defined benefit, payable by a single-life annuity or various forms of optional annuities. If the transfer right is not exercised and the member remains in MSRS-Unclassified, the member has several other opportunities. A member has a right to refund of their account value any time after termination of service. The member can select a single-life annuity payable from the Minnesota Post Retirement Investment Fund computed on the account's value, or optional annuities. The member can also select a single-life or optional annuity based on part of the account's value and receive a refund of the remainder. The question is how the bill influences these options. If the intention of the proposed legislation to require joint-and-survivor annuities unless waived by the spouse, this would suggest that the MSRS-Unclassified Program should be revised to prohibit any full or partial refund of the account's value, limiting the former employee to a joint-and-survivor optional annuity under MSRS-Unclassified or MSRS-General. If the Legislature intends that any amounts otherwise withdrawn from MSRS-Unclassified must be used to purchase a joint-and-survivor annuity, the question is whether there is any way to enforce that

intention after the money is withdrawn. If restrictions are not placed on MSRS-Unclassified withdrawal options, the Legislature may wish to consider that some individuals may be more likely to use the withdrawal options to avoid joint-and-survivor usage requirements placed on any assets left in the member's account or transferred to MSRS-General. Such behavior may occur in situations where there is considerable stress within a marriage; the outcome may not be productive for any of the parties.

4. Question of Whether Current Notification Procedures are Sufficient to Address or Avoid Harm. Proposals to require joint-and-survivor annuities generally stem from incidents where a retiree's spouse was not aware that the retiree had elected a single-life annuity, and was unprepared when the retiree died and benefits ceased. The Commission may wish to consider whether the information requirements in current law are sufficient to address the issue. Under existing law, the disabiltant or retiree and the spouse are given an explanation of the various options available before the election is made. Following the election, the benefit recipient's spouse is required to sign a notice, indicating that he or she is aware of the benefit option the retiree selected. The disabiltant or retiring member and the spouse have a responsibility to understand the implications of the election. If this process is followed, any later claim to harm is likely to be largely self-inflicted. Other than the minor impact of bounce-back provisions, for most of Minnesota's pension plans single-life annuities and joint-and-survivor annuities are actuarially equivalent (i.e., have the same lifetime expected value). A single-life annuity pays a larger monthly benefit than a comparable joint-and-survivor annuity. By saving and investing part of the single-life annuity payments, the couple can generate assets to cover the expected life of the survivor following the death of the primary annuitant, assuming the primary annuitant does not suffer an untimely early death.

- B. Discussion. H.F. 2451 (Nelson); S.F. 2255 (Wergin) amend Section 356.46, a Minnesota public pension plan spousal notification provision, by requiring all married public plan annuitants to select joint-and-survivor annuities covering the spouse unless the spouse waives that coverage in writing. The bill would require that Minnesota public pension plans which offer joint-and-survivor annuities follow requirements similar to those the federal government imposes on private sector pensions. The Employee Retirement Income Security Act (ERISA) and the 1984 Retirement Equity Act required that annuities must be joint-and-survivor annuities unless the employer obtains written consent from a spouse to waive that annuity, and staff's understanding is that the federal legislation requires the joint-and-survivor annuity to be at least a 50 percent joint-and-survivor annuity.

The bill may stem from a recent bill on behalf of a surviving spouse whose now deceased husband selected a single life annuity, possibly without her knowledge. The bill may also reflect a desire to address the needs of women and men who do not work outside the home or who have breaks in service from outside employment due to family-related matters. That employment pattern may cause these individuals to have no pension or a lesser pension, increasing their dependence upon the pension earned by the partner. Information available on the internet suggests that Congress was motivated by a desire to protect homemakers and those with little employment history when it passed the 1984 Retirement Equity Act.

However, the widows who may have influenced the 1984 Congress were the widows of the 1970s and early 1980s. These individuals were largely the homemakers of the 1930s, 1940s, and 1950s. Also, an additional 23 years has passed since the passage of the 1984 Retirement Equity Act. We are now dealing with newer generations and changed labor force norms. The dependent spouse problem now may be less serious than with earlier generations. Also, the Commission may wish to consider that by addressing a perceived problem by mandating joint-and-survivor annuities unless waived, the Commission may be creating another problem. If husband and wife are both public employees and are not sufficiently attentive when they complete annuity applications, they both may wind up getting joint-and-survivor annuities. In retrospect they may decide that coverage is not desirable, but due to prohibitions against changing an annuity form once benefit receipt has commenced they will not be able to revise the annuities. This seems likely to lead to special law requests to revise joint-and-survivor annuities to single-life annuities.

H.F. 2451 (Nelson); S.F. 2266 (Wergin) is similar to 2001 Session H.F. 597 (Evans); S.F. 695 (Vickerman), except that the current bill specifies that a joint-and-survivor annuity must be at least a 50 percent joint-and-survivor annuity, while the 2001 bill specified no specific minimum spousal coverage. The 2001 bill was scheduled to be heard by the Legislative Commission on Pensions and Retirement but was withdrawn by the authors.

C. Specific Public Policy Issues. The bill raises several pension and related public policy issues for Commission consideration, as follows:

1. Intention. *If the plan offers any form of joint-and-survivor annuity, the bill as drafted would require payment of at least a 50 percent joint-and-survivor annuity to the retiring member. If the intention is to also require that any plan which provides single-life annuities must provide joint-and-survivor options, an amendment will be needed.*
2. Sufficient Need to Abandon Current Approach. The issue is whether there is sufficient need to abandon the existing law version of Section 356.46, regarding spousal notification about the retirement annuity option chosen by the member, recasting it as a provision requiring payment of a joint and survivor annuity form unless the spouse waives that coverage. As noted above, in most plans the expected value of the payout stream under a single-life annuity and joint-and-survivor annuity are the same (ignoring a bounce-back effect). What differs is the length of the expected payout period (a single-life annuity covers one life, while a joint-and-survivor annuity naming the spouse to the second half covers both lives). With the joint-and-survivor annuity the monthly payment is reduced to offset the extended covered life period. Excluding taxation effects, a couple can save a portion of the monthly amounts received under a single-life annuity to create assets to provide an income stream to the survivor.
3. Appropriateness of Following Model Mandated for Private Sector. The issue is whether the ERISA/federal law model proposed in the bill is appropriate for Minnesota public pensions. There are differences between the objectives of the federal government when setting standards for private sector pensions, and the objectives of state and local governments when setting policy for the pension plans that apply to their own workforce. When the federal government imposed changes on private sector pensions in 1984, the federal government was addressing issues of public welfare and general social policy. In contrast, Minnesota public employers have a direct interest as employers. They seek to have public employee pension programs that address the employer's need to attract and retain capable employees, and to out-transition those employees at the end of their working lifetimes.

Also, Minnesota does not have laws restricting other actions an employee might take that can have a profound impact on income available in retirement, so it is not clear why we should impose a law mandating spousal approval of the annuity form. We do not require spousal approval prior to an employee terminating service and taking a refund in lieu of a deferred annuity, or spousal approval of a decision of when to retire (early retirement with or without a subsidy versus retirement at normal retirement age), although that decision can greatly impact the amount of retirement income. Therefore, there may be no compelling reason to mandate joint-and-survivor annuities rather than some other annuity form. The Commission may also wish to consider that under this proposal, individuals who are not sufficiently attentive will receive joint-and-survivor annuities by default, leading to legislative requests to revise annuity forms.

4. Treatment in Cases of Spousal Abuse, Separation, or Abandonment. The issue is whether the proposed treatment, shifting control of the annuity form decision from the member to the spouse, is appropriate or workable in cases where the member may have sought a restraining order against that spouse due to abuse, or where the couple is separated either informally or by a legal separation, or in cases where the spouse can not be located or has abandoned the member. In some of these situations, the Commission might conclude that it would not be proper to provide the spouse with the authority provided by this bill, while in other cases that spouse will not be making any decision whether to waive a joint-and-survivor annuity because that spouse can not be located.
5. Covered Plan and Covered Employee Reaction. The issue is whether plan administrators, speaking on behalf of their boards, will be supportive of the changes which shift authority from the member to the spouse, and whether covered employees will support those changes. Many may feel the change is unnecessary, while others may view it as harmful.
6. Scope. The issue is scope, the types of plans to be included under this mandate. As drafted, the proposed changes would apply to nearly all Minnesota public plans, including the MSRS-Unclassified defined contribution program, but not to volunteer fire lump sum pension plans and a few non-volunteer-fire defined contribution plans (notably, the Individual Retirement Account Plans (IRAP)). The mandate may be difficult to enforce, particularly in MSRS-Unclassified. Some individuals may engage in economically unproductive behavior attempting to avoid the new requirements. Some plans, including the defined contribution volunteer fire plans included under

this bill, provide benefits intended more as an inducement or reward for providing volunteer service than to provide income in retirement. Those plans may not warrant any action to mandate joint-and-survivor treatment. A consideration in including any volunteer fire plans under this bill is that it may impact the willingness to provide volunteer service. Another is whether this bill may lead some volunteer fire plans to alter the form of benefits that they offer to their members, causing some volunteer fire defined contribution plans to shift to a lump sum defined benefit approach, or from monthly benefits to lump sum. The bill as drafted would also apply to the University of Minnesota faculty supplemental retirement plan and faculty retirement plan. A question for the Commission is whether it is appropriate to include University of Minnesota faculty retirement plans.

7. Proper Level of Joint-and-Survivor Coverage. The issue is whether some level of joint-and-survivor coverage (higher or lower) other than the proposed 50 percent minimum coverage would be more appropriate. Some plans may currently offer joint-and-survivor options which provide less than 50 percent continuing coverage. Under general law, it is typical to permit pension plan board's to create any joint-and-survivor option deemed desirable for the plan membership, provided that the annuity form has the same value as a single-life annuity. Commission staff is aware that PERA offers, at least in some special circumstances dealing with members of the prior PERA-P&F consolidation accounts, 15 and 25 percent joint-and-survivor options. There may be other pension plans that currently offer less than 50 percent options. The bill as drafted would have the effect of prohibiting any joint-and-survivor annuities that are less than 50 percent after the July 1, 2007, effective date.
8. Consideration of Plans with Automatic Coverage. The issue is how to treat plans that have automatic spousal coverage in addition to offering joint-and-survivor coverage. Leaving them in the bill as drafted should have no impact on these plans (other than shifting the annuity form decision from the employee to the spouse) because the minimum joint-and survivor annuity offered by these plans is believed to be 50 percent. If the Commission were to change the minimum joint-and-survivor annuity form to an amount above 50 percent it would impact these plans, and any other plan that is offering a joint-and-survivor annuity less than the newly specified minimum, by prohibiting any new joint-and-survivor annuities that were less than the minimum. Another alternative for the plans that offer automatic surviving spouse coverage in addition to joint-and-survivor coverage would be to require that the minimal joint-and-survivor coverage in these plans must be equal to the automatic coverage that would otherwise apply, so that the joint-and-survivor annuity option could not be used as a way of actually lowering the coverage the spouse will have.
9. Withdrawal Issues; Design Issues. The issue is whether current law provisions that allow terminated members to withdraw all or part of their assets rather than take an annuity under the plan should be revised to force or at least in some way further encourage taking annuities from the plan rather than withdrawals.
10. Cost. Joint-and-survivor annuities involve a minor subsidy in many cases due to a subsidized bounce-back provision. If the percentage of joint-and-survivor annuities increases due to the proposed legislation, costs will increase in the plans, leading to some upward pressure on contribution requirements, although the impact will be minor. To the extent that there is an increase in plan cost, the increase would be due to joint-and-survivor annuities required against the wishes of the retiring employee.
11. Possibility of Study Rather than Action on the Current Bill. The issue is whether to study the issues raised by the bill over the interim rather than taking action on the bill at this time. The Commission might wish to consider studying this matter further due to the nature of the proposed change, the broad number of plans that would be impacted, and the divergent ways given plans might be impacted because of the existing nature of the plan's surviving spouse coverage.
12. Need for Conforming Revisions. The Commission should be aware that various conforming revisions would be appropriate for clarity in the chapters of statute covering the various plans. It is difficult to do a conforming amendment at this time given the questions about what plans to include in this mandate and the divergent directions taken in substantive amendments. Conforming revisions could be done next year.

Potential Amendments for Commission Consideration

H2451-1A is intended as a technical amendment, revising the bill to require that information be sent to the member and spouse about all annuity forms, not just optional annuity forms, and by inserting the words, "Notwithstanding other law to the contrary," to clarify that the treatment required by this bill would apply, notwithstanding existing law statements to the contrary that may appear in a given plan's pension laws.

H2451-2A revises the effective date provision to state that the treatment required by the bill applies to annuities which are elected and which commence after the effective date, rather than just to annuities which commence after the effective date. As currently drafted, the effective date provision could be interpreted as requiring that some single-life annuity elections that were made before the effective date, but which were not first payable until after the effective date, must be revoked.

H2451-3A revises the bill to require that any plan that provides a single life annuity to its members must also offer a joint-and-survivor annuity form.

H2451-4A, requested by TRA, would permit annuity form information to be sent to the spouse as late as the time that the member makes an annuity election, rather than before that election is made. TRA requests this change to be consistent with its computerized system, which permits individuals to apply for annuities through the TRA web site. The amendment also makes a second TRA-requested change: revising the effective date from July 1, 2007, to January, 1 2008, to give TRA and other pension plans sufficient time to revise procedures and forms.

H2451-5A makes the bill treatment inoperative in cases where the employee has obtained a restraining order against the spouse, or if there is a separation without a court-ordered mandate that a joint-and-survivor annuity be selected, or if the spouse has not been living with the member for a period of time to be specified by the Commission, or if the spouse can not be located.

H2451-6A exempts all volunteer fire plans from this provision.

H2451-7A eliminates the University of Minnesota faculty supplemental plan.

H2451-8A, an alternative to H2451-7A, eliminates from inclusion the University of Minnesota faculty supplemental plan and the faculty retirement plan.

H2451-9A eliminates from inclusion the MSRS-Unclassified Program.

H2451-10A revises the minimum percentage joint-and survivor option from 50 percent to a percentage to be specified by the Commission.

H2451-11A, an alternative to H2451-10A, eliminates any language specifying the minimum joint-and-survivor annuity.

H2451-12A requires that, for any plan which offers automatic surviving spouse coverage in addition to joint-and-survivor options, the minimum joint-and-survivor annuity that a plan can offer must provide a spousal benefit of at least 50 percent, or equal to that of the alternative automatic coverage, whichever is greater. This amendment may be opposed by the Minneapolis Fire Relief Association and Minneapolis Police Relief Association, and any other plan that may offer a joint-and-survivor annuity option which under existing law is less than the automatic coverage that would otherwise apply.

H2451-13A, an alternative to H2451-12A, eliminates from coverage under this provision any plan which offers automatic spousal coverage to the applicable surviving spouse if joint and survivor coverage were not elected.

H2451-14A, also requested by TRA, specifies that nothing in this section is intended to disallow payment of a higher survivor annuity to the surviving spouse of a deceased disabilitant. TRA and possibly other plans have provisions in law that would provide a surviving spouse benefit in excess of that of a 50 percent joint-and-survivor annuity following the death of a disabled employee. The Commission may wish to request testimony from TRA regarding the need for this amendment.

- 1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:
- 1.2 Page 1, line 13, strike "fund" and insert "plan"
- 1.3 Page 1, line 21, before "The" insert "Notwithstanding any law to the contrary, "
- 1.4 Page 2, line 3, after "(d)" insert "Except as provided in subdivision 4, "
- 1.5 Page 2, line 21, strike "optional"
- 1.6 Page 2, line 24, strike "fund" and insert "plan administration"
- 1.7 Page 2, line 29, delete "fund" and insert "plan administration"

1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:

1.2 Page 3, line 27, after "that" insert "are elected and"

1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:

1.2 Page 2, after line 16, insert:

1.3 Subd. 1a. **Annuity form requirement.** A public pension plan that provides a
1.4 retirement annuity covering the life of the retired member must also offer one or more
1.5 joint and survivor annuity forms. Unless otherwise specified in law applicable to a specific
1.6 plan, the optional annuity form must be actuarially equivalent to the single life annuity.

1.7 Page 2, line 17, before "Every" insert "The administrators of "

1.8 Page 2, strike line 18

1.9 Page 2, line 19, strike everything before "shall"

1.10 Page 2, line 25, delete "If the public pension plan"

1.11 Page 2, line 26, delete everything before the first "the"

1.12 Page 2, line 33, delete "that" and strike "provides"

1.13 Page 2, strike lines 34 and 35

1.14 Page 3, line 2, delete "If the public pension plan"

1.15 Page 3, line 3, delete everything before "the"

1.16 Page 3, line 4, delete "that" and insert "an optional"

- 1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:
- 1.2 Page 3, line 1, after "before" insert "or upon"
- 1.3 Page 3, line 26, delete "July 1, 2007" and insert "January 1, 2008"

..... moves to amend H.F. No. 2451; S.F. No. 2266, as follows:

Page 3, after line 25, insert:

"Subd. 5. Exceptions to requirements. (a) This section does not apply if:

(1) a restraining order has been issued restraining the spouse of the member from harassing, vilifying, mistreating, molesting, disturbing the peace, or limiting the liberty of the other party or the children of the parties;

(2) there is a legal separation without a court ordered mandate to select a joint and survivor annuity;

(3) the spouse has not been living with the member for a period of ... months before the date the member requests an annuity application and a notarized statement to that fact is included with the annuity application; or

(4) the spouse can not be located and the member provides the applicable pension plan administration with a notarized statement that a good faith effort has been made to locate the spouse.

(b) The notarized statement required under paragraph (a), clause (4), must document all actions taken to locate the spouse. A pension plan administration is authorized to develop forms and additional minimum requirements for this notarized statement."

- 1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:
- 1.2 Page 3, line 23, delete "Application to" and insert "Exclusion of"
- 1.3 Page 3, delete lines 24 and 25 and insert "any volunteer fire relief association to
- 1.4 which sections 69.771 to 69.776 apply."

- 1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:
- 1.2 Page 3, line 23, delete "Application to volunteer fire plans" and insert "Plan
- 1.3 Exclusions" and after "to" insert ":
- 1.4 Page 3, line 24, before "lump-sum" insert "(1)"
- 1.5 Page 3, line 25, delete " ." insert: "; and"
- 1.6 Page 3, after line 25, insert:
- 1.7 "(2) the University of Minnesota faculty supplemental retirement plan."

- 1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:
- 1.2 Page 3, line 23, delete "Application to volunteer fire plans" and insert "Plan
- 1.3 Exclusions" and after "to" insert ":
- 1.4 Page 3, line 24, before "lump-sum" insert "(1)"
- 1.5 Page 3, line 25, delete ":" insert: ":"
- 1.6 Page 3, after line 25, insert:
- 1.7 "(2) the University of Minnesota faculty supplemental retirement plan; and
- 1.8 (3) the University of Minnesota faculty retirement plan."

- 1.1 / moves to amend H.F. No. 2451; S.F. No. 2266, as follows:
- 1.2 Page 3, line 23, delete "Application to volunteer fire plans" and insert "Plan
- 1.3 Exclusions" and after "to" insert ":",
- 1.4 Page 3, line 24, before "lump-sum" insert "(1)"
- 1.5 Page 3, line 25, delete ":", insert: ":", and"
- 1.6 Page 3, after line 25, insert:
- 1.7 "(2) the unclassified employees retirement program established under chapter 352D."

1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:

1.2 Page 1, line 22, delete "50" and insert "..."

1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:

1.2 Page 1, lines 21 to 23, delete the new language

- 1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:
- 1.2 Page 1, line 21, before "The" insert "Notwithstanding any law to the contrary,"
- 1.3 Page 1, line 23, after "annuitant" insert ", or an amount equal to that which would
- 1.4 be provided under the automatic survivor benefit coverage provision of the plan, if
- 1.5 applicable, whichever is greater"

- 1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:
- 1.2 Page 3, line 23, delete "Application to volunteer fire plans" and insert "Plan
- 1.3 Exclusions" and after "to" insert ":
- 1.4 Page 3, line 24, before "lump-sum" insert "(1)"
- 1.5 Page 3, line 25, delete ":" insert: "; and"
- 1.6 Page 3, after line 25, insert:
- 1.7 "(2) any plan under which the applicable surviving spouse would receive automatic
- 1.8 surviving spouse coverage if a joint and survivor annuity were not elected."

1.1 moves to amend H.F. No. 2451; S.F. No. 2266, as follows:

1.2 Page 3, after line 25, insert:

1.3 "Subd. 5. **Disabilitant survivor treatment.** This section should not be interpreted
1.4 as prohibiting payment of a survivor annuity to the spouse of a deceased disabilitant, in lieu
1.5 of any other annuity, if laws specific to the plan provide a higher surviving spouse annuity."

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **2451**

April 23, 2007

Authored by Nelson

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; Minnesota public pension plan benefits; requiring the
1.3 selection of a joint and survivor annuity benefit if provided for under the plan;
1.4 amending Minnesota Statutes 2006, section 356.46.

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

1.6 Section 1. Minnesota Statutes 2006, section 356.46, is amended to read:

1.7 **356.46 APPLICATION FOR RETIREMENT ANNUITY; PROCEDURE**
1.8 **FOR ELECTING ANNUITY FORM; MANDATORY JOINT AND SURVIVOR**
1.9 **OPTIONAL ANNUITY FORM.**

1.10 Subdivision 1. **Definitions.** As used in this section, each of the following terms shall
1.11 have the meaning given.

1.12 (a) "Annuity form" means the payment procedure and duration of a retirement
1.13 annuity or disability benefit available to a member of a public pension fund, based on the
1.14 period over which a retirement annuity or disability benefit is payable, determined by the
1.15 number of persons to whom the retirement annuity or disability benefit is payable, and the
1.16 amount of the retirement annuity or disability benefit which is payable to each person.

1.17 (b) "Joint and survivor optional annuity" means an optional annuity form which
1.18 provides a retirement annuity or disability benefit to a retired member and the spouse of
1.19 the member on a joint basis during the lifetime of the retired member and all or a portion
1.20 of the original retirement annuity or disability benefit amount to the surviving spouse
1.21 in the event of the death of the retired member. The minimum continuing benefit to a
1.22 surviving spouse under a joint and survivor optional annuity must be at least 50 percent of
1.23 the monthly amount paid just before the death of the primary annuitant.

2.1 (c) "Optional annuity form" means an annuity form which is elected by a member
 2.2 and is not provided automatically as the standard annuity form of the public pension plan.

2.3 (d) "Public pension plan" means a public pension plan ~~as defined under section~~
 2.4 ~~356.63, paragraph (b) that provides pension or retirement coverage for public employees,~~
 2.5 including those plans and funds specified in sections 356.20, subdivision 2, and 356.30,
 2.6 subdivision 3, and any retirement or pension fund, including a supplemental retirement
 2.7 plan or fund, established, maintained, or supported by a governmental subdivision or
 2.8 public body whose revenues are derived from taxation, fees, assessments, or other public
 2.9 sources.

2.10 (e) "Retirement annuity" means a series of monthly payments to which a former or
 2.11 retired member of a public pension fund is entitled due to attaining a specified age and
 2.12 acquiring credit for a specified period of service, which includes a retirement annuity,
 2.13 retirement allowance, or service pension.

2.14 (f) "Disability benefit" means a series of monthly payments to which a former or
 2.15 disabled member of a public pension fund is entitled due to a physical or mental inability
 2.16 to engage in specified employment.

2.17 Subd. 2. **Provision of information on annuity forms.** Every public pension plan
 2.18 which provides for an annuity form other than a single life retirement annuity as an option
 2.19 which can be elected by an active, disabled, or retiring member shall provide as a part
 2.20 of, or accompanying the annuity application form, a written statement summarizing the
 2.21 optional annuity forms which are available, a general indication of the consequences of
 2.22 selecting one annuity form over another, a calculation of the actuarial reduction in the
 2.23 amount of the retirement annuity which would be required for each optional annuity form,
 2.24 and the procedure to be followed to obtain more information from the public pension fund
 2.25 concerning ~~the optional~~ all annuity forms provided by the plan. If the public pension plan
 2.26 offers a joint and survivor optional annuity, the statement must also inform the member
 2.27 and the member's spouse that, notwithstanding any law to the contrary, the member must
 2.28 select the joint and survivor optional annuity, naming the spouse as survivor, unless the
 2.29 member's spouse signs and returns to the public pension fund a notarized statement in
 2.30 which the spouse consents to the selection of a different form of benefit and waives any
 2.31 rights to share in a joint and survivor optional annuity.

2.32 Subd. 3. **Requirement of joint and survivor annuity benefit and notice to**
 2.33 **member's spouse.** (a) ~~If a~~ Every public pension plan administration that provides optional
 2.34 ~~retirement annuity forms which include for~~ a joint and survivor optional retirement
 2.35 annuity form potentially applicable to the surviving spouse of a member, ~~the executive~~
 2.36 ~~director of the public pension plan~~ shall send a copy of the written statement required by

3.1 subdivision 2 to the spouse of the member before the member's ~~election~~ selection of
3.2 ~~an optional retirement annuity~~ the form of retirement benefit. If the public pension plan
3.3 provides for a joint and survivor optional annuity form, the member is required to select
3.4 that annuity form, naming the member's spouse as survivor, unless the public pension plan
3.5 administration receives a signed and notarized statement from the member's spouse in
3.6 which the spouse consents to the selection of a different benefit form and waives any right
3.7 to an interest in a joint and survivor optional annuity.

3.8 (b) Following the ~~election~~ selection of a retirement annuity by the member, a copy
3.9 of the completed retirement annuity application and retirement annuity beneficiary form,
3.10 if applicable, must be sent by the public pension plan administration to the spouse of the
3.11 retiring member. A signed acknowledgment must be required from the spouse confirming
3.12 receipt of a copy of the completed retirement annuity application and retirement annuity
3.13 beneficiary form, unless the spouse's signature confirming the receipt is on the annuity
3.14 application form. If the required signed acknowledgment is not received from the
3.15 spouse within 30 days, the public pension plan must send another copy of the completed
3.16 retirement annuity application and retirement annuity beneficiary form, if applicable, to
3.17 the spouse by certified mail with restricted delivery. If a public pension plan receives
3.18 notice that the provisions of this section have not been complied with, or if a member
3.19 selects a benefit form without the valid consent of the member's spouse, the public pension
3.20 plan shall suspend the payment of monthly benefits and shall take all actions necessary
3.21 to comply with this section, including converting the form of benefit selected into one
3.22 providing for a joint and survivor annuity.

3.23 Subd. 4. **Application to volunteer fire plans.** This section does not apply to
3.24 lump-sum service pensions provided under section 424A.02, subdivision 3, paragraph
3.25 (d), by a volunteer fire relief association.

3.26 **EFFECTIVE DATE.** This section is effective July 1, 2007, and applies to annuities
3.27 that commence on or after that date.