



H.F. xxxx

S.F. 1762
(Betzold)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): Legislators Retirement Plan
Relevant Provisions of Law: Minnesota Statutes, Chapter 3A
General Nature of Proposal: Partial benefit early payment option for alternative payee under marriage dissolution order
Date of Summary: March 27, 2007

Specific Proposed Changes

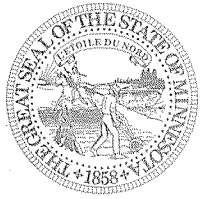
- Permits former legislator to commence early payment of portion of benefit to ex-spouse under marriage dissolution order.

Policy Issues Raised by the Proposed Legislation

1. Appropriateness of general law provision or special law provision.
2. Appropriateness of involuntary commencement of a retirement allowance.
3. Actuarial impact of proposed legislation.
4. Administrative burden of special early commencement authority.
5. Appropriate categorization of alternative payee for future actuarial and accounting reporting.
6. Extension of authority beyond Legislators Retirement Plan.

Potential Amendments

S1762-1A Requires specific inclusion of alternative payees in actuarial and accounting reporting (substantive).
S1762-2A Extends the provision to all statewide and major local defined benefit plans (substantive).



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director *JAM*

RE: H.F. xxxx; S.F. 1762 (Betzold); Legislators Plan; Partial Benefit Option to Alternative Payees Under Marriage Dissolution

DATE: March 26, 2007

Summary of H.F. xxxx; S.F. 1762 (Betzold)

H.F. xxxx; S.F. 1762 (Betzold) amends Minnesota Statutes, Chapter 3A, the Legislators Retirement Plan benefit provisions, by adding a section that permits the ex-spouse of a former legislator to commence the receipt of a court-ordered portion of the former legislator's Legislators Retirement Plan retirement allowance when the former legislator attains the normal retirement age of the plan, age 62, whether or not the former legislator commences receipt of the retirement allowance on that date, with the former legislator's eventual retirement allowance adjusted actuarially for the ex-spouse's early commencement of benefits and benefit payments. In the event that the ex-spouse predeceases the former legislator, the Legislators Retirement Plan retirement allowance of the former legislator would be recomputed to the full amount. The ex-spouse would not be permitted to take the portion of the Legislators Retirement Plan benefit as an optional annuity.

Public Pension Problem of Steve Novak

Steve Novak is a former State Representative and a former State Senator who served in the Legislature for 26 years, from 1975 to 2000 and, as such, was a member of the Legislators Retirement Plan. Mr. Novak is now an employee of Anoka County and is covered by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and is unlikely to begin receiving his Legislators Retirement Plan retirement allowance in 2011, when he turns age 62, the plan's normal retirement age, because of the advantages of a delayed retirement plan under the generally applicable portability mechanism, the Combined Service Annuity provision, Minnesota Statutes, Section 356.30. Mr. Novak indicates that the marriage dissolution order awards a portion of his Legislators Retirement Plan retirement allowance to his ex-wife and that it would be advantageous to him if his ex-spouse's portion of his eventual benefit could begin when he reaches age 62, even though he is likely to continue in governmental employment after reaching age 62 and to delay the receipt of his Legislators Retirement Plan retirement annuity.

Background Information on Division of Pension Benefits in Marriage Dissolution

Background information on the division of pension benefits as marital property in a marriage dissolution action is contained in Attachment A.

Discussion and Analysis

H.F. xxxx; S.F. 1762 (Betzold) permits the payment of an ex-spouse's portion of a Legislators Retirement Plan retirement allowance under a marriage dissolution order at the former legislator's normal retirement age even if the former legislator delays receipt of the Legislators Retirement Plan retirement allowance upon the application of the former legislator or of the ex-spouse.

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

1. General Provision or Special Law Provision. The policy issue is whether the requested retirement change is better cast as a general law provision or as a special law provision. If the situation is unique or relatively unique, a special law provision may be more appropriate and may avoid some unseen complications. If the problem to be resolved is more generally occurring, a general solution through general legislation would be more appropriate, although the provision needs to be more carefully crafted to ensure that possible complications are minimized. Apparently, the situation of a public pension plan member who refuses to commence a retirement annuity solely to avoid having a portion of the retirement benefit for an ex-spouse be paid does occur, although the evidence is anecdotal (see Laws 2006, Chapter 271, Article 14, Section 13). It is also probably the case that a former legislator would find it advantageous to have the ex-spouse begin the designated portion of a Legislators Retirement Plan retirement allowance as early as possible when the former legislator does not plan to

retire early. The Commission may wish to take testimony from the retirement plan administrators about their sense of the number of occurrences of these instances.

2. Appropriateness of an Involuntary Commencement of a Retirement Allowance. The policy issue is the appropriateness of the proposed legislation in permitting an early commencement of a portion of a retirement allowance from the Legislators Retirement Plan under a divorce decree without the agreement of one of the ex-spouses. Under the proposed legislation, the former legislator can cause the payment of the ex-spouse's portion of a Legislators Retirement Plan retirement allowance to commence when the former legislator reaches age 62 even if the ex-spouse does not wish to receive the benefit or the former spouse can initiate payment even if the former legislator was not planning to retire that early. The start of the payment of partial retirement allowance amounts can have financial, economic, or tax impacts on both parties and, because the impact can be detrimental, an early commencement can be unwanted. A forced payment of a retirement benefit is unusual in Minnesota public pension law, although potentially not unprecedented, and may violate a sense of fundamental fairness. The potential precedents identified by the Commission staff occur in disability benefit situations, where another person acting on behalf of the plan member can file a disability benefit application in the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) (see Minnesota Statutes, Section 352.113, Subdivision 2) or where the employing department head of an active member can apply for a disability benefit for a member of the Minneapolis Employees Retirement Fund (MERF) (see Minnesota Statutes, Section 422A.18, Subdivision 1).
3. Actuarial Impact of the Proposed Legislation. The policy issue is the actuarial impact of the proposed legislation on the Legislators Retirement Plan. The Commission policy in first permitting the direct payment of a portion of a public pension benefit as part of a marital property division in a dissolution in 1987 (see Laws 1987, Chapter 157) was to facilitate a marital property division without increasing the actuarial liability of the affected retirement plan. The proposed legislation was prepared intending that the actuarial value of the permitted early commencement of a portion of a retirement annuity to an ex-spouse be deducted in calculating the benefit of the retiring former legislator so that the total arrangement is actuarially neutral. The Commission should request the assistance of the Executive Director of the Minnesota State Retirement System (MSRS), David Bergstrom, to ascertain whether or not the provision adequately protects the interests of the retirement plan and of the State.
4. Administrative Burden of the Special Early Benefit Commencement. The policy issue is the extent of the administrative duties arising out of the proposed legislation and the appropriateness of adding to the administrative burden of operating the Legislators Retirement Plan. If the provision applies to a narrow segment of plan members, the administrative burden is not likely to be too great. The Minnesota State Retirement System (MSRS) can provide some sense of the likely increase in administrative duties required to implement the proposed legislation and how burdensome those additional duties may be.
5. Appropriate Categorization of Ex-Spouse Early Partial Benefit Commencement Recipients. The policy issue is the appropriate manner in which to categorize ex-spouses who begin to receive a portion of a retirement allowance at an early date and in which to account for these recipients in subsequent actuarial work. Under current law, where a retirement annuity is only allocated when it becomes payable to a retiree and ends when the retiree dies, there is no need to specify the status of the recipient of a portion of that benefit. When the ex-spouse recipient can receive the benefit earlier than the retired member, as proposed, the question of the status of the person is unclear, although subsequent actuarial work should account for the recipient. The proposed legislation does not specify the status of the ex-spouse for subsequent actuarial work or accounting reports. **Amendment S1762-1A** specifies that subsequent actuarial work must include counts of and liabilities for ex-spouse recipients under the proposed legislation.
6. Extension Beyond the Legislators Retirement Plan. The policy issue is whether or not the special authority proposed for the Legislators Retirement Plan should be extended to some other public pension plans or all other public pension plans. The phenomenon of marriage dissolutions and marital property divisions is not limited to the Legislators Retirement Plan, arguing that, if the solution to the presented problem is appropriate, the solution should also be widespread. If the Legislators Retirement Plan is intended to function as a demonstration project in this regard, with an expectation that the developed and adopted solution will subsequently be broadened, the proposed legislation is appropriate as drafted. If the provision is intended to be restricted to the Legislators Retirement Plan as a matter of choice or policy, some additional explanation of the rationale for the differential treatment between Minnesota public pension plans will be necessary. **Amendment S1762-2A** extends the provision to all statewide and major local defined benefit retirement plans.

Attachment A

Background Information on the Division of Pension Benefits as Marital Property in a Marriage Dissolution Action

Pension benefits or pension rights acquired during the course of a marriage have been recognized as marital property available for division for decades by the Minnesota courts and specifically by state statute since 1978 (see Laws 1978, Chapter 772, Section 48).

For private section plans, federal law (Section 206(d)(3) of the Employee Retirement Income Security Act of 1974 (ERISA)) recognized pension interests as marital property subject to division by the court upon a marriage dissolution in an exception to the general prohibition on the assignment or alienation of pension benefits if a “qualified domestic relations order (QDRO)” procedure is utilized. Public pension plans are not included in much ERISA regulation and the QDRO provisions of ERISA do not apply to Minnesota public pension plans.

Before 1987, Minnesota public pension benefits divided in a marriage dissolution award were not enforceable in favor of the second payee against the pension plan because of statutory non-assignment/non-garnishment/non-alienation provisions (see Minnesota Statutes 1986, sections 3A.13; 352.15; 352B.071; 353.15; 354.10; 422A.24; 424A.02, Subdivision 6; and 490.126), so the division was enforceable by garnishment or attachment by the ex-spouse only upon the receipt of the pension benefit by the public pension plan member or upon the deposit of the benefit in the plan member’s bank account.

In 1987 (Laws 1987, Chapter 157), the Minnesota public pension non-assignment/non-garnishment/non-alienation provisions were amended to permit the enforcement of a marriage dissolution judgment dividing public pension interests against the public pension plan if the court judgment met various conditions designed to avoid the imposition of any additional unfunded liability on the pension plan and of any extended administrative burden on the pension plan administrators. The 1987 public pension plan marital property marriage dissolution division conditions were:

- (1) Payment Only If No Liquid Marital Property Exists. The division of marital property is, if possible, to be effected by the sale or disposition of liquid assets (e.g. cash and securities) or of readily liquidated assets (marketable personal or real property) before pension benefits are divided.
- (2) Payment Only Upon Plan Member Retirement. The division may not occur until the plan member applies for a benefit and the benefit becomes payable.
- (3) Limited To Benefit Plan Terms. The division is payable only to the extent that the benefit plan terms permit.
- (4) Limited To Benefit Duration. The division may not be a benefit payable longer than the recipient’s duration of receipt.
- (5) No Lump Sum Payment. The division of a retirement annuity may not be in the form of a lump sum payment.
- (6) Designated Trustee For Payment of Any Residual Amount. Any divided benefit payable to an ex-spouse who predeceases the plan member is payable only to a trustee designated for that purpose.

The 1987 amendments, which were drafted in large part by the staff of the Legislative Commission on Pensions and Retirement and which were reviewed and recommended by the Legislative Commission on Pensions and Retirement, also included an authorization of the division of pension rights as a survivor benefit if the pension plan by law allows the payment of a survivor benefit, included a procedure for the valuation of pension benefits or rights by an actuary, and included the directive for the provision of pension information by public pension plans to the parties of an actual or potential dissolution proceeding.

In 1988 (Laws 1988, Chapter 668, Sections 15, 16, and 20), the 1987 public pension plan marital property division provisions were broadened to include private sector pension plans.

1.1 moves to amend H.F. No.; S.F. No. 1762, as follows:

1.2 Page 2, after line 7, insert:

1.3 Subd. 5. Status in subsequent actuarial reporting. If there is a former spouse
1.4 recipient under this section, the membership tabulation and membership reconciliation
1.5 of the succeeding actuarial valuations must include the former spouse recipient. The
1.6 required reserves for the former spouse recipient also must be indicated and included in
1.7 the succeeding actuarial valuations.

- 1.1 moves to amend H.F. No.; S.F. No. 1762, as follows:
- 1.2 Page 1, line 7, delete "[3A.021]" and insert "[356.495]"
- 1.3 Page 1, line 9, delete the first "legislator" and insert "member of a retirement plan
- 1.4 listed in section 356.30, subdivision 3," and delete the second "legislator" and insert "
- 1.5 member"
- 1.6 Page 1, lines 10 and 12, delete "legislator's" and insert "member's"
- 1.7 Page 1, line 14, delete "legislator" and insert "member" and delete "age of 62"
- 1.8 and insert "normal retirement age"
- 1.9 Page 1, lines 15, 20, and 22, delete "legislator" and insert "member"
- 1.10 Page 2, lines 3 and 4, delete "legislator" and insert "member"

Senator Betzold introduced-

S.F. No. 1762: Referred to the Committee on State and Local Government Operations and Oversight.

A bill for an act

relating to retirement; legislators retirement plan; providing an option for the payment of a partial benefit amount to alternative payees under a marriage dissolution decree; proposing coding for new law in Minnesota Statutes, chapter 3A.

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

Section 1. [3A.021] OPTIONAL DIVISION OF RETIREMENT ALLOWANCE.

Subdivision 1. Election of division. Notwithstanding section 518.58, subdivision 4, paragraph (a), clause (5), a former legislator or the former spouse of a former legislator, if a portion of the former legislator's retirement allowance is awarded to the former spouse under a marriage dissolution property division decree by a court of competent jurisdiction, may elect to have payment of the portion of the legislator's retirement allowance designated in the decree as payable to the former spouse beginning as of the first day of the month next following the date on which the former legislator attains the age of 62, even if the former legislator has not applied for the receipt of retirement allowance as of that date. In all other respects, the optional retirement allowance division is governed by section 518.58, subdivision 4.

Subd. 2. Calculation of subsequent portion of the retirement allowance.

Upon the eventual application for a retirement allowance under this chapter by a former legislator who elected or was affected by the election of a benefit under subdivision 1, the subsequent retirement allowance must be adjusted to be the actuarial equivalent of the balance of the present value of the retirement allowance of the former legislator upon the effective date of the application remaining after a reduction equal to the present value of the partial benefit previously paid and subsequently payable to the former spouse, as calculated by the actuary retained under section 356.214 or as calculated under a

2.1 procedure specified by the actuary. The retirement allowance present value calculations
2.2 must include the effect of section 356.30.

2.3 Subd. 3. **Bounce back.** If the former spouse predeceases the former legislator, the
2.4 retirement allowance of the former legislator must be recomputed as the full retirement
2.5 allowance, effective on the first of the month next following the death of the former spouse.

2.6 Subd. 4. **No optional annuity form.** Section 3A.02, subdivision 5, does not apply
2.7 to a partial retirement allowance payable under subdivision 1.

2.8 **EFFECTIVE DATE.** This section is effective the day following final enactment
2.9 and applies to any retirement allowance affected by a marriage dissolution decree rendered
2.10 after September 2003.