



**H.F. 2451** *in the form of delete-all H2451-DE1*  
(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, 352.12, 352.32, 353.30  
General Nature of Proposal: Makes joint-and-survivor annuity mandatory unless waived by spouse.  
Date of Summary: March 31, 2008

### **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. Sufficient need to abandon current approach.
2. Whether proposed solution will create more problems than the current system.
3. Confusion regarding application to disability annuity elections.
4. Appropriateness of following model mandated for private sector.
5. Intention: whether all plans must provide joint-and-survivor annuities if not currently offered.
6. Problems applying requirements if marriage dissolution, spousal abuse, separation, or abandonment.
7. Possible lack of support by plan members and covered plans.
8. Scope: plans to include/exclude.
9. Proper level of joint-and-survivor coverage.
10. Special considerations: plans with automatic survivor coverage.
11. Withdrawal of asset issues; design issues.
12. Cost to plans: financial cost and administrative burden.
13. Possibility of study rather than action on the bill.
14. Need for conforming revisions.

### **Potential Amendments**

- H2451-32A clarifies that disability elections must comply with the revised requirements.
- H2451-33A requires any plan providing a single life annuity to also offer a joint-and-survivor annuity form.
- H2451-34A makes the treatment inoperative if the employee has a restraining order against the spouse, if there is separation without a court-ordered joint-and-survivor annuity mandate, or if the spouse has not been living with the member for a period of time to be specified, or if the spouse cannot be located.
- H2451-35A exempts all volunteer fire plans from the provision.
- H2451-36A eliminates from inclusion the University of Minnesota faculty supplemental plan.
- H2451-37A, an alternative to the previous amendment; eliminates from inclusion both the University of Minnesota faculty supplemental plan and the faculty retirement plan.
- H2451-38A eliminates from inclusion the MSRS-Unclassified Program.
- H2451-39A revises the minimum joint-and survivor option from 50 percent to a percentage to be specified.
- H2451-40A revises marriage dissolution language to specify that the mandate to pay any level of joint-and-survivor annuity is voided if there is a court order to the contrary.
- H2451-41A requires that, for plans that offer automatic surviving spouse coverage in addition to joint-and-survivor options, the survivor would receive a joint-and-survivor annuity or a benefit equal to that of the alternative automatic coverage, whichever is greater.
- H2451-42A, an alternative to H2451-41A, eliminates from coverage any plan which offers automatic spousal coverage to the applicable surviving spouse if joint-and-survivor coverage were not elected
- H2451-43A removes the requirement that the statement be notarized.
- H2451-44A, an alternative to H2451-43A, removes references to "Medallion Signature Guarantee."



TO: Members of the Legislative Commission on Pensions and Retirement  
FROM: Ed Burek, Deputy Director *EB*  
RE: Delete-All Amendment H2451-DE1 to H.F. 2451 (Nelson); S.F. 2266 (Wergin):  
Minnesota Public Pension Plans; Mandating Joint-and-Survivor Annuity Unless  
Waived By Spouse  
DATE: March 31, 2008

Summary of H.F. 2451 (Nelson); S.F. 2266 (Wergin), in the form of Delete-All Amendment H2451-DE1

H2451-DE1 is a delete-all amendment to H.F. 2451 (Nelson); S.F. 2266 (Wergin) which was developed by administrators from the Minnesota State Retirement System (MSRS), the Public Employees Retirement Association (PERA), and the Teachers Retirement Association (TRA), in consultation with Representative Nelson.

The delete-all amendment, which applies to nearly all Minnesota public pension plans (except lump sum volunteer fire plans) that offer joint-and-survivor annuity options, amends Minnesota Statutes, Section 356.46, a Minnesota public pension plan annuity application and spousal notification provision, by:

1. Requiring all married public plan annuitants to select a percent joint-and-survivor annuity naming the spouse as beneficiary, unless the spouse waives that coverage;
2. Requiring payment of a 50 percent joint-and-survivor annuity if the spouse does not waive joint-and-survivor coverage;
3. Permitting a survivor annuity to be paid if it provides a higher benefit;
4. Waiving specified joint-and-survivor coverage if there is a court order to the contrary; and
5. Holding the pension plan, fund, and its employees and agents harmless if there is an act of fraud committed by the member or spouse, and or the member or spouse withhold information or provide incorrect information.

Additional changes are:

- The MSRS-General (Section 352.12, Subdivision 2) and MSRS-Correctional (Section 352.931, Subdivision 1) death-while-active-or-deferred surviving spouse benefit provisions, which permit the employee to elect to have the surviving spouse annuity paid to an individual other than a spouse, is revised by requiring spousal consent.
- The PERA-General (Section 353.32, Subdivision 1a), PERA P&F (Section 353.657, Subdivision 2a) and PERA Local Government Correctional Plan (Section 353E.07, Subdivision 7) death-while-active-or-deferred surviving spouse benefit provisions, which permit the employee to elect to have the surviving spouse annuity paid to an individual other than a spouse, is revised by requiring spousal consent.
- The PERA optional annuity form provision, Section 353.30, Subdivision 3, is amended to indicate that any annuity form chosen by the member must conform with the new optional annuity requirements in Section 356.46, as revised by this bill.

Background Information

- A. Information on the current law spousal notification requirement is contained in **Attachment A**.
- B. Information on joint and survivor annuities is contained in **Attachment B**.

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.

#### 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. The proposed legislation 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.

#### 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 MSRS-Unclassified 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.

#### 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 disabliant 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 disabliant 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.

#### Discussion and Analysis

Delete-all amendment H2451-DE1 (and H.F. 2451 (Nelson); S.F. 2266 (Wergin), as introduced) is similar to 2001 Session H.F. 597 (Evans); S.F. 695 (Vickerman). The 2001 bill was scheduled to be heard by the Legislative Commission on Pensions and Retirement but was withdrawn by the authors.

The bill in the form of the delete-all amendment raises several pension and related public policy issues for Commission consideration, as follows:

1. 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.
2. Problems Caused by Proposed Solution. The issue is whether the proposed solution will create problems which exceed those of the present approach. Under the existing law approach, in which the spouse must be informed of the annuity choice selected by the retiring member but can not override that election, the Commission has occasionally been presented with requests to provide continuing coverage to a surviving spouse, following the death of the primary annuitant who had elected a straight life annuity. There have been very few of these legislative requests. The proposed solution as reflected in this bill, however, will place a burden on thousands of retiring public plan members who want a straight life annuity, requiring them to provide a notarized statement, or some other form of sworn statement, to the plan administration to waive joint-and-survivor coverage. Complaints to the Legislature seeking relief through special laws may increase considerably. The Legislature may be requested to hear special law requests by spouses who waived joint-and-survivor annuities but now regret that choice or who claim they were pressured or threatened by the retiring public employee to sign the waiver; by retirees who receive a joint-and-survivor annuity against their wishes because of a

failure to submit a notarized form; and from working couples who both have joint-and-survivor annuities covering the other person, and who later decide that coverage is unnecessary and undesirable. The retirement plans will also be burdened by additional counseling, and by the need to follow up on cases where no waiver is submitted but the person wants a straight life annuity. Pension plan administrations may also need additional information before any initial benefit estimate information is provided to a member: information to document the existence of a spouse and the age of that individual. If a member is given an estimate based on a straight life annuity, and is later forced to receive a joint-and-survivor annuity with the resulting reduced monthly benefit amount, the individual may claim he was harmed by the plan and seek legislative relief to force the plan to provide a monthly benefit amount equivalent to a straight life annuity.

3. Confusion Regarding Application to Disability Annuity Elections. The delete-all amendment is confusing regarding application to disability annuity elections. Page 2, lines 10 to 13, which is existing law language, seems to state that the requirements of this section apply to all annuities that “can be elected by an active, disabled, or retiring member.” Existing and new language on page one also indicates that the requirements are to apply to disabled persons. However, there is new language on page 2 and 3 which refers to “retirement applications” or “form or retirement benefit,” rather than to the form of disability or retirement benefit. Some clarification by amendment seems necessary to avoid confusion regarding application to disabled persons.
4. Marriage Dissolution Treatment. The language on page 3, lines 32 and 33, specify that the requirement to pay a 50 percent joint and survivor option is void if there is a court order to the contrary; which may not be fully compatible with the remainder of the section. The Commission may wish to consider an amendment which waives a requirement to pay any form of joint-and-survivor annuity if there is a court order to the contrary, not just a 50 percent joint-and survivor annuity.
5. Intention. If the plan offers any form of joint-and-survivor annuity, the bill as drafted would require payment of a 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.
6. 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 broad social policy. In contrast, when it comes to its public work force, Minnesota public employers have a more narrow interest: they seek to create 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 which 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.

7. 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 cannot 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 cannot be located.
8. 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.

9. 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.
10. Proper Level of Joint-and-Survivor Coverage. The issue is the proper minimum level of joint-and-survivor coverage. The delete-all amendment does not establish a minimum joint-and-survivor option. Rather, it states that if the spouse does not provide a signed waiver permitting some other annuity, the plan administration must provide 50 percent joint-and-survivor coverage. Presumably, a spouse can agree to a joint-and-survivor annuity providing lesser coverage. Under general law, it is typical to permit pension plan boards 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.
11. 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, such as the Minneapolis Police Relief Association and the Minneapolis Fire Relief Association. The Commission might want to consider requiring 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.
12. 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.
13. 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.
14. 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.
15. Need for Conforming Revisions. If the bill is enacted, there will be a need for additional conforming changes in other statutes 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 can be done next year.

