



**S.F. xxx**  
**S.F. 45 (Betzold)**

**H.F. 814 (Urdahl)**  
**H.F. 474 (Thissen)**

### **Executive Summary of Commission Staff Materials**

<i>Affected Pension Plan(s):</i>	PERA; TRA
<i>Relevant Provisions of Law:</i>	New Coding in Chapter 356.48 and Amending Minnesota Statutes, Section 518.54, Subdivisions 3 and 4
<i>General Nature of Proposal:</i>	Authorizing Bounce-Back Annuity When Marriage Dissolution Decree Revokes Joint-and-Survivor Annuity Form
<i>Date of Summary:</i>	October 9, 2009

### **Specific Proposed Changes**

- S.F. xxx; H.F. 814 (Urdahl) applies to the TRA and to PERA defined benefit plans. The bill requires the monthly benefit received by the plan annuitant to bounce back to a single-life annuity level if a divorce or an annulment decree specifies that the spouse is not to receive the second half of the joint-and-survivor annuity form the retiree had elected. The court may specify this treatment only for PERA and TRA plans, and only if non-pension marital assets are insufficient to avoid a distribution that does not require this annuity form waiver. The revisions in law apply retroactively to include divorce and annulment decrees granted within two years of the enactment date.
- S.F. 45 (Betzold); H. F. 474 (Thissen) revises PERA law by permitting optional annuity elections made by PERA plan members to be waived if required by a court order, and by amending a pension plan provision in the marriage dissolution chapter, Minnesota Statutes, Chapter 518, to permit courts to order the revocation of optional annuity designations, after which the member will receive the actuarial equivalent of a single-life annuity.

### **Policy Issues Raised by the Proposed Legislation**

1. Need for change given existence of self-help remedy—get divorce decree revised.
2. Lack of support for the proposed change by other pension plan administrations.
3. Possible windfall—divorce decree may assume no bounce back would occur.
4. Risk of reversal of court decree.
5. Cost to the included plans.
6. Unusual court authority.
7. Possible requests for further expansion.
8. Special law vs. general law solution.
9. Scope of included plans.
10. Administrative issue, consistent application—inability to identify all eligible individuals.
11. Retroactivity issues.

### **Potential Amendments**

- H0814-4A is a technical amendment which revises wording used to refer to the joint annuitant, at the request of TRA.
- H0814-5A is an amendment requested by TRA that would remove from the bill a statement specifying conditions under which a court could order revocation of a joint-and-survivor annuity.
- H0814-6A revises the retroactivity provided under the bill from two years prior to final enactment to a number of years to be specified by the Commission.
- H0814-7A, an alternative to H0814-6A, makes the bill applicable retroactively to any marriage dissolution decree granting the revocation of an optional retirement annuity payment granted any time prior to the date of enactment.
- H0814-8A can be used to include another retirement plan under this legislation if desired. The Commission would need to fill in the blanks on line 1.4 of the amendment.
- H0814-9A is an alternative to all earlier amendments in the form of a delete-everything amendment. It transforms the bill into a special provision covering just the two marriage dissolution cases for which Commission staff has received identifying information, one from TRA and one from PERA relating to a PERA-P&F annuitant.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: S.F. xxx; H.F. 814 (Urdahl): PERA and TRA; Authorizing Bounce-Back Annuity When Marriage Dissolution Decree Revokes Joint-and-Survivor Annuity Form

S.F. 45 (Betzold); H. F. 474 (Thissen): PERA; Authorizing Bounce-Back Annuity When Marriage Dissolution Decree Revokes Joint-and-Survivor Annuity Form

DATE: October 6, 2009

Summary

S.F. xxx; H.F. 814 (Urdahl) applies to the Teachers Retirement Association (TRA) and to PERA defined benefit plans. The bill requires the monthly benefit received by the plan annuitant to bounce back to a single-life annuity level if a divorce or an annulment decree specifies that the spouse is not to receive the second half of the joint-and-survivor annuity form the retiree had elected. The court may specify this treatment only for PERA and TRA plans, and only if non-pension marital assets are insufficient to avoid a distribution that does not require this annuity form waiver. The revisions in law apply retroactively to include divorce and annulment decrees granted within two years of the enactment date.

S.F. 45 (Betzold); H. F. 474 (Thissen) revises Public Employees Retirement Association (PERA) law by permitting optional annuity elections made by PERA plan members to be waived if required by a court order, and by amending a pension plan provision in the marriage dissolution chapter, Minnesota Statutes, Chapter 518, to permit courts to order the revocation of optional annuity designations, after which the member will receive the actuarial equivalent of a single-life annuity.

Comment

S.F. xxx; H.F. 814 (Urdahl) and S.F. 45 (Betzold); H. F. 474 (Thissen) are attempts to address the same general issue of whether to permit, for certain specified plans, joint-and-survivor annuities to bounce back to a single-life annuity level if specified in a marriage dissolution decree. The bills do have a few differences. The primary difference is that S.F. 45 (Betzold); H. F. 474 (Thissen) was intended to limit this authority to PERA plans, while H.F. 814 (Urdahl) is intended to provide this treatment in PERA and TRA. H.F. 814 (Urdahl) also includes safeguards for the plans, safeguards which are lacking in S.F. 45 (Betzold); H. F. 474 (Thissen).

Representative Urdahl's bill is the least problematic from a drafting standpoint. Because of a drafting error, the revision to the section in the marriage dissolution chapter, Minnesota Statutes, Chapter 518, found in S.F. 45 (Betzold); H. F. 474 (Thissen) would give the courts authority to require all public and private pension plans to revoke a joint-and-survivor annuity if specified in a divorce decree. This scope is far greater than intended, and the inclusion of private sector pensions plans in the coverage is likely to conflict with federal law prohibiting states from enacting laws applicable to private sector pensions.

Given problems with the drafting of S.F. 45 (Betzold); H. F. 474 (Thissen), it would be easier for the Commission to work from the other bill, S.F. xxx; H.F. 814 (Urdahl). Also, this bill is preferred by the two organizations showing interest in having this authority, PERA and TRA. The remainder of this memo will focus on H.F. 814 (Urdahl).

Background Information

- Background information on joint-and-survivor annuities is found in Attachment A.
- Background information on joint-and-survivor options and marital dissolution decrees is found in Attachment B.

Past Legislative Action

Over the years, Commission staff has been asked to draft several special law and general law requests to permit a benefit bounce back where a divorce settlement has declared that a second-half survivor benefit must not be paid. Some of the drafts were not introduced as bills, suggesting that after reviewing the policy issues raised by the draft, the legislator concluded that the situation was not sufficiently significant to justify a bill introduction or that the retiree successfully resolved the matter by reopening the divorce settlement. Others have been introduced but received no action or were not recommended to pass.

A review of past legislation found only two cases that have passed, both of which dealt with the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) retirees. In the first case, language was added on the House or Senate floor providing treatment that was not approved by the Commission. This occurred in 1987, when language was added permitting a retired PERA member, born in 1921, and who elected a joint-and-survivor annuity and was later divorced, to revert to a single-life annuity. Review of 1987 Commission agendas provides no evidence that the Commission heard this proposal. Perhaps it was discussed in the form of an amendment to another bill, but there is no indication that the Commission recommended the provision to pass. The second bill passed in 1994. This provision was for a retired St. Paul water utility worker whose marriage dissolution decree voided the second-half optional annuity survivor coverage for the ex-spouse. The Commission did consider this at its March 21, 1994, meeting, in the form of S.F. 2250 (Metzen); H.F. 2551 (Pugh). The file suggests that the Commission had little time to review this proposal due to a lengthy agenda and there was minimal staff input. Due to time constraints, staff was unable to provide a staff memo on the bill or to prepare typed amendments. With little debate, the Commission recommended the bill to pass with a handwritten amendment to better identify the eligible individual and to better specify the factual circumstance.

In 2004, H. F. 1770 (Strachan) was introduced, but the Commission did not hear the bill and it did not pass. The bill would have covered most Minnesota public plans and would have permitted the annuity to bounce back to a single-life level if a divorce decree declared that the second half of the joint-and-survivor annuity must not be paid.

#### Discussion and Analysis of H.F. 814

S.F. xxx; H.F. 814 (Urdahl), applicable to PERA and TRA, requires the monthly benefit received by the plan annuitant to bounce back to the single-life annuity level if a divorce or annulment decree prohibits the spouse from receiving the second half of the joint-and-survivor annuity form. The court may specify this treatment if non-pension marital assets are insufficient to avoid a distribution that does not require this annuity form waiver. The revisions in law apply retroactively to include divorce and annulment decrees granted within two years of the enactment date.

The proposed legislation raises several pension and related public policy issues:

1. Need for Change Given Existence of Self-Help Remedy. The question is whether there is sufficient need to consider legislation on this matter given that in all, or nearly all, cases the situations can be resolved by reopening the divorce settlement agreement or by seeking restitution from the lawyer or lawyers. The bill shifts responsibility, creating a legislative remedy which will involve two public pension plan systems, to correct what is most likely the consequence of poor work by divorcing couples, applicable lawyers, and the courts. The Legislature may choose to conclude that the individuals or the court that created the problem should be responsible for resolving the consequences.
2. Lack for Support for the Proposed Change by Other Pension Plan Administrations. The issue is the lack of general consensus among pension fund directors that legislation is needed to address this general issue. H.F. 814 (Urdahl) is drafted to cover PERA and TRA retirees because PERA and TRA have sought this legislation. The Minnesota State Retirement System (MSRS), first class city teacher plans, the Minneapolis Employees Retirement Fund (MERF), and other plans have not expressed interest in being included under this proposed authority. When MSRS receives a divorce decree specifying that a joint-and-survivor annuity must be revoked, MSRS informs the applicable individuals that the decree is contrary to law and the individuals should instead revise the divorce decree. That may be the best approach for all plans, rather than pursuing this proposed legislation.
3. Possible Windfall. The Commission may wish to consider that permitting a bounce back may be inconsistent the intention of the divorce decree. The individuals who developed the divorce decree may have presumed that there would be no revision in the benefit to the primary annuitant (after all, none is permitted under existing law) but that waiving the right of the other spouse to receive benefits under the joint-and-survivor annuity coverage was needed to achieve the desired distribution of marital property. If that is the case, then permitting a bounce back will create a windfall for the PERA or TRA retiree and create an outcome inconsistent with the marital distribution of property specified in the divorce decree.
4. Risk of Reversal of Court Decree. Although the documentation requirements in the bill provide some protection, an issue is whether the bill may expose the applicable pension plans to a risk that after the annuity payments have bounced back (been increased from the monthly amount payable under a joint-and-survivor annuity to the higher monthly benefit payable under a single-life annuity)

the divorce decree may later be revised to reestablish a right by the spouse to a joint-and-survivor annuity. If that were to occur, the plan may have to provide that joint-and-survivor coverage while providing monthly payments to the primary annuitant as though the applicable annuity is a single-life annuity. The Commission may wish to hear testimony from the plan administrators on this matter, including what actions they would take if the divorce decree were revised to reestablish the joint-and-survivor annuity.

5. Cost. The issue is the cost to the included plans. Pension Commission staff contends there is some cost, while PERA has contended that the provision has little cost and may even provide a gain to the fund. The different views depend upon the baseline from which one starts.

PERA has compared the difference between the value of a single-life annuity paid to the retiree from the date of retirement versus the amounts that will be paid under the proposed arrangement. Under the legislation, the single-life annuity level will be paid from the date the marriage dissolution decree is received by plan administration, which presumably is after retirement commenced. This leaves a gain approximately equal to the present value of the differences, from the retirement date to the bounce back date, between the monthly benefits paid and the monthly benefits that would have been paid under a single-life annuity.

However, there seems to be a loss when compared to continuing the existing situation under current law. The individual selected a joint-and-survivor annuity, not a single-life annuity, and a court decree says the individual named to the second half of a joint-and-survivor annuity must not receive that benefit. Current law requires the primary annuitant to remain at the reduced monthly joint-and-survivor benefit level. Given that reality, the treatment proposed in the bill creates a loss to the fund approximately equal to the present value of the difference between remaining benefits to be paid to the primary annuitant over that individual's lifetime if there is a bounce back to a single-life benefit level, compared to continuing at the reduced joint-and-survivor monthly benefit level. Comparing the current situation to the situation under the proposed solution suggests that there is some cost to the plans or, at a minimum, the plan will give up gains that would otherwise occur. That cost will be small if there are few cases where a divorce decree voids the second half of a joint-and-survivor annuity. There may be an increase in these situations in the future, however, if passage of the bill leads to more divorce decrees which void previously provided pension rights.

6. Unusual Court Authority. The authority the bill provides to the courts is unusual. The courts interpret laws, determine when laws have been violated, and impose penalties on those who violate law. This bill, however, seems unusual in empowering courts to require a plan to act contrary to general prohibitions in its laws if directed by a court order.
7. Possible Requests for Further Expansion. The bill could lead to additional requests to legislators to revise annuity forms in ways that could harm the fund. For example, if revising a joint-and-survivor annuity to a single-life annuity is permitted if required by a court order, the Legislature may begin receiving requests to allow this change without a court order if the spouse named to the second half of the joint-and-survivor annuity consents to the change. If permitted, this will lead to additional harm to the fund by causing the fund to forego more gains needed to offset losses. Consider a spouse named to the second half of a joint-and-survivor annuity who is diagnosed with a terminal illness. Since this individual is highly unlikely to outlive the primary annuitant, that spouse consents to waiving the joint-and-survivor coverage. If a bounce back is permitted, the benefit to the primary annuitant bounces back months or years earlier than it otherwise would, creating higher payouts from the fund.
8. Special Law versus General Law Solution. If a legislative remedy is worth considering, the question is whether to consider general legislation covering one or many pension plans, or special legislation covering a specific individual or small group of individuals. If the situation has merit and the proposed solution reflects good policy, then there is a preference for a general law solution rather than special legislation. Consistency would suggest that what is fair and equitable for one should be followed for all similarly situated individuals. On the other hand, the Legislature or Commission might conclude that the situation is sufficiently rare that a general law solution is not advisable. Commission staff understands that TRA has one or two of these cases that have occurred in the last several years, and PERA has two. These could be addressed on a special law basis, whether the Commission hears each of these requests individually and decides on the merits of the particular situation. Alternatively, the Commission could take no action.
9. Scope of Included Plans. The issue is the scope of included plans. The bill is currently limited to TRA and PERA plans. The MSRS and first class city teacher plans have a bounce back procedure in

their laws, but those plans are not included here and as of this writing have not requested that they be included.

10. Administrative Issue, Consistent Application. One issue is whether the proposed provision can be consistently applied. To be consistently applied, all those who are eligible need to be identified. If the provision were to pass, the pension fund administrations may need to notify all retirees and disabilitants on a periodic basis. Those who are divorced and have a settlement document which prohibits payments under the second half of a joint-and-survivor annuity will need to contact the pension fund and provide documentation leading to a benefit adjustment. Some who are eligible may not be identified or may not respond.
11. Retroactivity. The bill has retroactive application to include divorce and annulment decrees filed within two years of the effective date of this provision, which is the day following final enactment. This is intended to ensure that those who brought this matter to the attention of the Legislature will be covered by the legislation. However, that retroactivity does increase the foregone loss.

#### Potential Amendments for Commission Consideration

- **Amendment H0814-4A** is a technical amendment, drafted at TRA's request, which revises wording used to refer to the joint annuitant. The amendment also moves a statement, that benefit adjustments are to be prospective only, from the effective date provision found on page 2 to Section 1.
- **Amendment H0814-5A** is an amendment requested by TRA that would remove from the bill a statement specifying conditions under which a court could order revocation of a joint-and-survivor annuity (paragraph (d), starting on page 3, line 32). The revocation can be made only if it is not practical to create an equitable distribution of marital property without taking that action, and only for PERA, TRA, or other pension plans where plan governing law permits that treatment.

The Commission may wish to consider the implications of this amendment. The bill is operational if paragraph (d) on pages 3 and 4 is removed. However, leaving that paragraph in the bill provides clarity to lawyers reading the general marriage dissolution provisions in Minnesota Statutes, many of whom will not have firsthand knowledge of public pension plan law, regarding conditions under which this joint-and-survivor revocation treatment is permitted and for which plans.

The following two amendments are alternative retroactivity treatments which the Commission may wish to consider if the Commission concludes that some action on these bills is appropriate and that a general law solution should be used.

- **Amendment H0814-6A** revises the retroactivity provided under the bill from two years prior to final enactment to a number of years to be specified by the Commission. This could be used if the Commission wished to cover prior cases and if two years' retroactivity is insufficient to cover cases TRA and PERA have identified.
- **Amendment H0814-7A**, an alternative to H0814-6A, would make the bill applicable retroactively to any marriage dissolution decree granting the revocation of an optional retirement annuity payment granted any time prior to the date of enactment. PERA requested this amendment.
- **Amendment H0814-8A** can be used to include another retirement plan under this legislation if desired. The Commission would need to fill in the blanks on line 1.4 of the amendment.
- **Amendment H0814-9A** is an alternative to all earlier amendments. It transforms the bill into a special provision covering just the two marriage dissolution cases for which Commission staff has received identifying information, one from TRA and one from PERA relating to a Public Employees Police and Fire Plan (PERA-P&F) annuitant. The Commission may wish to consider a special law approach if it concludes that a legislative approach is desirable to address these cases, but the Commission also may wish to deal with these on a case-by-case basis rather than through general law. If the Commission favors a special law approach, it may wish to delay any action to a later meeting at which the individuals to be covered can provide testimony to the Commission permitting the Commission to better assess the equities of their situation. Also, while TRA and PERA each indicate that they have been contacted by two or more retirees with a divorce decree problem in recent years, they are currently able to specifically identify only one individual in each of these systems. More may be identified.

## **Background Information on Joint-and-Survivor Annuities**

1. Joint-and-Survivor Annuities, In General. For most Minnesota public employee retirement plans, the total value of the retirement benefit is a function of the individual's salary near retirement and total years of service. An individual may choose to take that benefit in a variety of forms. A single (or straight) life annuity covers only the retiree's life. A joint-and-survivor annuity is an annuity form that 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. With a joint-and-survivor annuity, the intent is to provide continuing income to the other individual for life, following the death of the primary annuitant. With a few exceptions, any of these annuities must have the same value whether it covers only the retired member, or the retired member and spouse, or some other individual or individuals. One of these exceptions is a subsidized bounce back feature on joint-and-survivor annuities, which is discussed later.

To achieve this benefit equivalence requirement, when a joint-and-survivor annuity is selected, the monthly benefit received by the primary annuitant must be reduced in order to finance the 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. Plans typically permit several different joint-and-survivor annuities. Under a 100 percent joint-and-survivor option, the designated beneficiary receives the same monthly benefit as before the death of the primary annuitant 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 that 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.

2. Plans with Subsidized Bounce Back Feature on Joint-and-Survivor Annuities. There is a provision in many Minnesota public plans, including most Minnesota State Retirement System (MSRS), PERA, TRA, and the first class city teacher plans, which slightly modifies the general actuarial equivalence requirement. In 1989, bounce back provisions were added to the joint-and-survivor annuity laws in these plans. 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 plans with a subsidized feature, this bounce back is provided without any further reduction in the monthly benefits to cover the cost of the bounce back. The bounce back cost is shifted to all employers and employees who fund the plan through their contributions.
3. Plans with Unsubsidized Bounce Back. In 1991, a bounce back feature on joint-and-survivor annuities was added to the Minneapolis Employees Retirement Fund (MERF) plan, but the bounce back was not to be subsidized. An additional reduction is taken in the monthly annuity when the annuity commences to cover the cost of the bounce back. 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 Firefighters Relief Association plan. If the retiring or disabled member selects a bounce-back annuity, it is not to be subsidized.

## **Background Information on Joint-and-Survivor Options and Marital Dissolution Decrees**

When a divorce occurs, the legal system must address the division of marital property. The statute dealing with division of marital property is Minnesota Statutes, Section 518.58. Section 518.581 deals with certain surviving spouse benefits, including those provided by local police or paid fire benefit plans. Language added in 1987 to Section 518.58, Subdivision 3, instructs the courts to avoid dividing pension benefits directly, if possible. Instead, the provision recommends adjusting the division of other assets, as necessary, to compensate. Subdivision 4 further specifies treatment of pension benefits. These provisions provide authority to *allocate* a pension benefit or benefits between the divorcing couple, providing all pension plan laws regarding the timing, periodic distribution requirements, and total amounts of the benefit are followed, but there is no language anywhere suggesting that the courts can *void* a pension benefit or portion of a pension benefit. In the situation dealt with in this memo, when a retired public employee selects a joint-and-survivor annuity a pension right is created for that annuitant and for the person or persons named to the second half of the joint-and-survivor annuity. In the event of the primary annuitant's death, the individual or individuals named in the annuity have a right to continued monthly benefits for their remaining lifetimes. That right is intended to continue even if divorce occurs.

On occasion, there are divorce settlements that specify that the second half of a joint-and-survivor annuity is not to be paid. These cases suggest poor work on the part of the lawyers involved in the divorce settlement. Benefit waivers in divorce decrees conflict with public pension law and with the division of marital property statute, and may raise concerns about protections provided by the Fifth Amendment to the Constitution.

Over the years we have received several drafting requests from legislators who have a retired constituent seeking legislative relief when a divorce decree specifies that the second half of joint-and-survivor annuity must not be paid. The constituent took a monthly benefit reduction to pay for joint-and-survivor coverage for a spouse in the event of the death of the retired public employee, but due to a subsequent divorce and a decree that prohibits payment of the survivor portion of the joint-and-survivor annuity, the retired employee is paying for coverage no one will ever receive. The retiree requests that he or she be permitted to stop paying for that coverage, by allowing the monthly annuity amount to revert to the level he or she would receive if the joint-and-survivor coverage had not been elected. This requested treatment is comparable to the bounce back that occurs under a joint-and-survivor annuity if the individual selected to receive the second half of the annuity dies before the primary annuitant. In the current case, the triggering event is not the death of the second-half annuitant; rather it is a divorce decree stating that the second half of the annuity is not payable.

There are two general courses of action to address the situation of divorced retirees who are paying for survivor coverage which a court divorce decree states must never be received:

1. Act through the courts. Reopen the divorce settlement to permit the second half of the joint-and-survivor annuity to be paid in the event that the second-half beneficiary outlives the primary annuitant, with a corresponding redistribution of other assets to reestablish balance, or seek monetary damages from the attorneys who crafted the settlement.
2. Revise the law. If the retiree's annuity is adjusted sufficiently upward, he or she is no longer paying prospectively for survivor coverage that the court has indicated should never be paid.

- 1.1 ..... moves to amend S.F. No. ....; H.F. No. 814, as follows:
- 1.2 Page 1, line 24, delete "to the second half of a joint and survivor"
- 1.3 Page 1, line 25, delete "annuity" and insert "as the optional joint annuitant"
- 1.4 Page 2, line 1, delete "to receive the second half of the joint and survivor annuity"
- 1.5 and insert "as the optional joint annuitant"
- 1.6 Page 2, line 3, after the period insert "Payment of any benefit adjustment is
- 1.7 prospective only."
- 1.8 Page 2, line 8, delete "to"
- 1.9 Page 2, line 9, delete everything before the period and insert "as an optional joint
- 1.10 annuitant"
- 1.11 Page 2, line 21, delete everything after the first period
- 1.12 Page 2, delete lines 22 and 23



- 1.1 ..... moves to amend S.F. No. ....; H.F. No. 814, as follows:
- 1.2 Page 3, delete lines 32 to 35
- 1.3 Page 4, delete lines 1 and 2

- 1.1 ..... moves to amend S.F. No. ....; H.F. No. 814, as follows:
- 1.2 Page 2, line 20, delete "two" and insert "..."
- 1.3 Page 4, line 6, delete "two" and insert "..."

- 1.1 ..... moves to amend S.F. No. ....; H.F. No. 814, as follows:
- 1.2 Page 2, line 20, delete "within two years" and insert "at any time"
- 1.3 Page 4, line 6, delete "within two years" and insert "at any time"

- 1.1 ..... moves to amend S.F. No. ....; H.F. No. 814, as follows:
- 1.2 Page 1, line 16, delete "and"
- 1.3 Page 1, after line 16, insert:
- 1.4 "(4) the ..... established under chapter ....; and"
- 1.5 Page 1, line 17, delete "(4)" and insert "(5)"
- 1.6 Amend the title accordingly

1.1 ..... moves to amend S.F. No. xxx; H.F. No. 814, as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. PERA: TRA ANNUITANTS; REVOCATION OF OPTIONAL  
1.4 ANNUITY DUE TO MARRIAGE DISSOLUTION.

1.5 (a) Notwithstanding any law to the contrary, the executive director of the Public  
1.6 Employees Retirement Association or the Teachers Retirement Association, as applicable,  
1.7 must recompute the monthly benefit amount of an eligible person described in paragraph  
1.8 (b) or (c), as applicable, as though the person who had been named to receive the  
1.9 second half of the joint and survivor annuity died on the date a certified copy of the  
1.10 marriage dissolution decree is received by the executive director, or the day following  
1.11 final enactment, whichever is later.

1.12 (b) An eligible person is a person who:

1.13 (1) was born on September 7, 1951;

1.14 (2) was married to a spouse born on January 1, 1952;

1.15 (3) commenced receipt of a joint and survivor retirement annuity from the Teachers  
1.16 Retirement Association; and

1.17 (4) divorced following retirement and has a marriage dissolution decree specifying  
1.18 that the designation of an optional annuity must be revoked.

1.19 (c) An eligible person is a person who:

1.20 (1) was born on May 11, 1940;

1.21 (2) retired effective June 1, 1995, from the public employees police and fire plan;

1.22 (3) divorced following retirement and has a marriage dissolution decree specifying  
1.23 that the designation of an optional annuity must be revoked.

1.24 (d) This section does not apply if the marriage dissolution decree or annulment  
1.25 decree is not consistent with the requirements of Minnesota Statutes, section 518.58.

1.26 (e) The pension plan benefit recipient must not designate, and the court may not  
1.27 require that the member designate, a subsequent optional annuity beneficiary.

1.28 (f) This section does not apply if more than one surviving person was named to  
1.29 share in the second half of the joint and survivor annuity.

1.30 (g) To receive the treatment provided in this section, an eligible person described  
1.31 in paragraph (b) or (c) must provide to the executive director of the Public Employees  
1.32 Retirement Association or the Teachers Retirement Association, whichever is applicable,  
1.33 a certified copy of the marriage dissolution or annulment decree. The eligible person and  
1.34 the joint annuitant must also submit a form, prescribed by the executive director and  
1.35 signed by both the eligible person and the joint annuitant, requesting the annuity bounce

2.1 back as provided in paragraph (a). The eligible person and the joint annuitant must also  
2.2 provide any other documentation the executive director may request.

2.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.  
2.4 Payment of any revised benefit amount relating to any period prior to the day following  
2.5 final enactment is prohibited."

2.6 Amend the title accordingly

Senator Betzold introduced--

S.F. No. 45: Referred to the Committee on State and Local Government Operations and Oversight.

1.1 A bill for an act  
 1.2 relating to retirement; allowing a bounce-back annuity when provided for by  
 1.3 a marriage dissolution decree; amending Minnesota Statutes 2008, sections  
 1.4 353.30, by adding a subdivision; 518.58, subdivision 4.

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

1.6 Section 1. Minnesota Statutes 2008, section 353.30, is amended by adding a  
 1.7 subdivision to read:

1.8 Subd. 3d. Bounce-back annuity; marriage dissolution. The right to a future  
 1.9 optional annuity selected by a former member or disability benefit recipient may be  
 1.10 waived under section 518.58, subdivision 4, paragraph (c). This waiver will be effective  
 1.11 the first day of the month following the date the executive director receives the order  
 1.12 directing the revocation.

1.13 Sec. 2. Minnesota Statutes 2008, section 518.58, subdivision 4, is amended to read:

1.14 Subd. 4. **Pension plans.** (a) The division of marital property that represents pension  
 1.15 plan benefits or rights in the form of future pension plan payments:

1.16 (1) is payable only to the extent of the amount of the pension plan benefit payable  
 1.17 under the terms of the plan;

1.18 (2) is not payable for a period that exceeds the time that pension plan benefits are  
 1.19 payable to the pension plan benefit recipient;

1.20 (3) is not payable in a lump-sum amount from defined benefit pension plan assets  
 1.21 attributable in any fashion to a spouse with the status of an active member, deferred  
 1.22 retiree, or benefit recipient of a pension plan;

2.1 (4) if the former spouse to whom the payments are to be made dies prior to the end  
2.2 of the specified payment period with the right to any remaining payments accruing to an  
2.3 estate or to more than one survivor, is payable only to a trustee on behalf of the estate or  
2.4 the group of survivors for subsequent apportionment by the trustee; and

2.5 (5) in the case of defined benefit public pension plan benefits or rights, may not  
2.6 commence until the public plan member submits a valid application for a public pension  
2.7 plan benefit and the benefit becomes payable.

2.8 (b) The individual retirement account plans established under chapter 354B may  
2.9 provide in its plan document, if published and made generally available, for an alternative  
2.10 marital property division or distribution of individual retirement account plan assets. If an  
2.11 alternative division or distribution procedure is provided, it applies in place of paragraph  
2.12 (a), clause (5).

2.13 (c) The court may order the revocation of the designation of an optional annuity  
2.14 beneficiary after which the pension plan member will receive the actuarial equivalent of a  
2.15 single life annuity. The pension plan member may not designate, and the court may not  
2.16 require that the member designate, a subsequent optional annuity beneficiary.

2.17 Sec. 3. **EFFECTIVE DATE.**

2.18 Sections 1 and 2 are effective the day following final enactment and apply  
2.19 retroactively to any marriage dissolution decree granting the revocation of an optional  
2.20 retirement annuity payment granted at any time prior to the date of enactment.



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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH  
SESSION

HOUSE FILE No. 814

February 16, 2009

Authored by Urdahl and Smith

The bill was read for the first time and referred to the Committee on State and Local Government Operations Reform, Technology and Elections

1.1 A bill for an act  
1.2 relating to retirement; authorizing a bounce-back annuity when marriage  
1.3 dissolution decree revokes joint and survivor annuity form; amending Minnesota  
1.4 Statutes 2008, section 518.58, subdivisions 3, 4; proposing coding for new law in  
1.5 Minnesota Statutes, chapter 356.

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

1.7 Section 1. [356.48] REVOCATION OF OPTIONAL ANNUITY DUE TO  
1.8 MARRIAGE DISSOLUTION OR ANNULMENT.

1.9 Subdivision 1. Covered plans. This section applies to the following retirement  
1.10 plans:

1.11 (1) the general employee retirement plan of the Public Employees Retirement  
1.12 Association established under chapter 353;

1.13 (2) the public employees police and fire retirement plan established under chapter  
1.14 353;

1.15 (3) the local government correctional employees retirement plan of the Public  
1.16 Employees Retirement Association established under chapter 353E; and

1.17 (4) the Teachers Retirement Association established under chapter 354.

1.18 Subd. 2. Treatment. (a) The treatment specified in this section applies if, after  
1.19 the accrual date of an annuity or benefit from an applicable plan or plans, a marriage  
1.20 dissolution decree or annulment decree specifies that the designation of an optional annuity  
1.21 must be revoked and if the other requirements specified in this section are satisfied.

1.22 (b) Notwithstanding any law to the contrary, if the applicable pension plan or plans  
1.23 have provisions of law that revise the monthly benefit amount payable to the primary  
1.24 annuitant upon the death of the individual named to the second half of a joint and survivor  
1.25 annuity, the monthly benefit amount must be recomputed as though the individual that

2.1 had been named to receive the second half of the joint and survivor annuity died on the  
 2.2 date a certified copy of the marriage dissolution or annulment decree is received by the  
 2.3 chief administrative officer.

2.4 Subd. 3. **Restrictions.** (a) This section does not apply if the marriage dissolution  
 2.5 decree or annulment decree is not consistent with the requirements under section 518.58.

2.6 (b) The pension plan benefit recipient must not designate, and the court may not  
 2.7 require that the member designate, a subsequent optional annuity beneficiary.

2.8 (c) This section does not apply if more than one surviving individual was named to  
 2.9 share in the second half of the joint and survivor annuity.

2.10 Subd. 4. **Submission of documentation.** To receive the treatment provided in  
 2.11 this section, an eligible retiree or disabilitant must provide, to the chief administrative  
 2.12 officer of the applicable pension plan, a certified copy of the marriage dissolution or  
 2.13 annulment decree. The retiree or disabilitant and the joint annuitant must also submit a  
 2.14 form, prescribed by the chief administrative officer of the applicable pension plan and  
 2.15 signed by both individuals, requesting the annuity bounce back as provided in subdivision  
 2.16 2. The individuals must also provide any other documentation the chief administrative  
 2.17 officer may request.

2.18 **EFFECTIVE DATE.** This section is effective the day following final enactment  
 2.19 and applies retroactively to any marriage dissolution decree or annulment decree requiring  
 2.20 the revocation of an optional annuity form granted within two years prior to the date of  
 2.21 enactment. Payment of any benefit adjustment, if applicable, is prospective only. Payment  
 2.22 of any revised benefit amount relating to any period prior to the day following final  
 2.23 enactment is prohibited.

2.24 Sec. 2. Minnesota Statutes 2008, section 518.58, subdivision 3, is amended to read:

2.25 Subd. 3. **Sale or distribution while proceeding pending.** (a) If the court finds  
 2.26 that it is necessary to preserve the marital assets of the parties, the court may order the  
 2.27 sale of the homestead of the parties or the sale of other marital assets, as the individual  
 2.28 circumstances may require, during the pendency of a proceeding for a dissolution of  
 2.29 marriage or an annulment. If the court orders a sale, it may further provide for the  
 2.30 disposition of the funds received from the sale during the pendency of the proceeding.  
 2.31 ~~If liquid or readily liquidated marital property other than property representing vested~~  
 2.32 ~~pension benefits or rights is available, the court, so far as possible, shall divide the property~~  
 2.33 ~~representing vested pension benefits or rights by the disposition of an equivalent amount~~  
 2.34 ~~of the liquid or readily liquidated property.~~

3.1 (b) The court may order a partial distribution of marital assets during the pendency  
3.2 of a proceeding for a dissolution of marriage or an annulment for good cause shown or  
3.3 upon the request of both parties, provided that the court shall fully protect the interests  
3.4 of the other party.

3.5 EFFECTIVE DATE. This section is effective the day following final enactment.

3.6 Sec. 3. Minnesota Statutes 2008, section 518.58, subdivision 4, is amended to read:

3.7 Subd. 4. **Pension plans.** (a) The division of marital property that represents pension  
3.8 plan benefits or rights in the form of future pension plan payments:

3.9 (1) is payable only to the extent of the amount of the pension plan benefit payable  
3.10 under the terms of the plan;

3.11 (2) is not payable for a period that exceeds the time that pension plan benefits are  
3.12 payable to the pension plan benefit recipient;

3.13 (3) is not payable in a lump-sum amount from defined benefit pension plan assets  
3.14 attributable in any fashion to a spouse with the status of an active member, deferred  
3.15 retiree, or benefit recipient of a pension plan;

3.16 (4) if the former spouse to whom the payments are to be made dies prior to the end  
3.17 of the specified payment period with the right to any remaining payments accruing to an  
3.18 estate or to more than one survivor, is payable only to a trustee on behalf of the estate or  
3.19 the group of survivors for subsequent apportionment by the trustee; and

3.20 (5) in the case of defined benefit public pension plan benefits or rights, may not  
3.21 commence until the public plan member submits a valid application for a public pension  
3.22 plan benefit and the benefit becomes payable.

3.23 (b) The individual retirement account plans established under chapter 354B may  
3.24 provide in its plan document, if published and made generally available, for an alternative  
3.25 marital property division or distribution of individual retirement account plan assets. If an  
3.26 alternative division or distribution procedure is provided, it applies in place of paragraph  
3.27 (a), clause (5).

3.28 (c) If liquid or readily liquidated marital property other than property representing  
3.29 vested pension benefits or rights is available, the court, so far as possible, shall divide the  
3.30 property representing vested pension benefits or rights by the disposition of an equivalent  
3.31 amount of the liquid or readily liquidated property.

3.32 (d) If sufficient liquid or readily liquidated marital property other than property  
3.33 representing vested pension benefits or rights is not available, the court may order the  
3.34 revocation of the designation of an optional annuity beneficiary in pension plans specified  
3.35 in section 356.48 or in any other pension plan in which plan-governing law or governing

4.1 documents allow revocation of an optional annuity in marital dissolution or annulment  
4.2 situations.

4.3 **EFFECTIVE DATE.** (a) This section is effective the day following final enactment.

4.4 (b) This section applies retroactively, for plans specified in section 1, to any marriage  
4.5 dissolution decree or annulment decree requiring the revocation of an optional annuity  
4.6 form granted within two years prior to the date of enactment.