



S.F. 1713
(Pappas)

H.F. 2163
(Nelson)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): Numerous plans
Relevant Provisions of Law: Minnesota Statutes, Sections 11A.17; 352.965; 352.98; 352D.04; 353D.05; New 356.645
General Nature of Proposal: Revise SBI supplemental fund investment authority; expand defined contribution plans available investments
Date of Summary: March 3, 2014

Specific Proposed Changes

- Offerings under the Supplemental Fund (the Income Share Account, Growth Account, Bond Account, International Share Account, Money Market Account, Fixed Income Account, Bond Market Account, and Common Stock Index Account) will no longer be named and specified in statute, and SBI will be able to revise offerings at will.
- Expands the investment exclusion from liability provision in the Minnesota State Deferred Compensation Plan to also shield the SBI executive director and staff, and adds comparable investment exclusion from liability provisions to MSRS-Unclassified, the MSRS Health Care Savings Plan, and the Public Employees Defined Contribution Plan.

Policy Issues Raised by the Proposed Legislation

1. Whether there is sufficient need for the change.
2. Appropriate degree of SBI autonomy.
3. Drafting approach/impact of exclusion from investment liability language.
4. Impact on and support by plan members.
5. Support by plan administrators.

Potential Amendments

S1713-1A is intended as technical cleanup to clarify wording, replacing the term "default options" with "default investment allocations."

S1713-2A adds the exclusion from investment liability language to a single provision in Chapter 356, to cover all plans included in the bill plus the Individual Retirement Account Plan (IRAP) plans. The amendment expands the scope of that exclusion language and improves the bill drafting, and subsequent legislative control, by not adding identical language in several chapters of statute.

S1713-3A, an alternative to S1713-2A, takes a different approach; rather than an exclusion from liability list, a statement is included that the plan participant, rather than any other party, bears the risk for investment results.

S1713-4A reinstates the names of the current investment products in the SBI Supplemental Fund and removes SBI discretion to revise investment offerings without a legislative bill to make those changes, but retains the other revisions and clean-up in the bill.

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TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director **EB**
RE: S.F. 1713 (Pappas); H.F. 2163 (Nelson): Various Defined Contribution Plans/Accounts; Revising SBI Supplemental Fund Investment Authority; Expanding Investments Available under Defined Contribution Plans
DATE: February 25, 2014

General Summary of S.F. 1713 (Pappas); H.F. 2163 (Nelson)

S.F. 1713 (Pappas); H.F. 2163 (Nelson) revises investment authority provisions primarily applicable to the Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified), the Public Employees Defined Contribution Plan (PEDC), the Minnesota State Deferred Compensation Plan, and the MSRS Health Care Savings Plan by:

- Giving the State Board of Investment (SBI) broad authority to offer a wide array of diversified, but unspecified, investment offerings through the SBI Supplemental Fund, and giving the SBI full discretion to further revise those offerings whenever deemed appropriate by the SBI;
- Expanding possible investment offerings under MSRS-Unclassified and the PEDC to include Supplemental Fund investments, insured savings accounts and other bank investment offerings, annuity contracts, and mutual funds, rather than just Supplemental Fund investments; and
- Expanding the investment exclusion from liability provision in the Minnesota State Deferred Compensation Plan to also shield the SBI executive director and SBI staff, and by adding comparable investment exclusion from liability provisions to MSRS-Unclassified, the MSRS Health Care Savings Plan, and the Public Employees Defined Contribution Plan.

A section-by-section summary of S.F. 1713 (Pappas); H.F. 2163 (Nelson) is attached.

Background Information on Relevant Topics

The following attachments provide background information on topics relevant to the proposed legislation:

- **Attachment A:** MSRS Unclassified State Employees Retirement Program
- **Attachment B:** Public Employees Defined Contribution Plan
- **Attachment C:** Minnesota State Deferred Compensation Plan
- **Attachment D:** MSRS Health Care Savings Plan

Discussion and Analysis

S.F. 1713 (Pappas); H.F. 2163 (Nelson) changes the nature of SBI investment authority as it applies to various defined contribution plans or accounts. The offerings under the Supplemental Fund (the Income Share Account, Growth Account, Bond Account, International Share Account, Money Market Account, Fixed Income Account, Bond Market Account, and Common Stock Index Account) will no longer be named and specified in statute, and SBI will be able to revise offerings at will. The SBI Supplemental Fund currently serves as the sole investment vehicle for MSRS-Unclassified and the Public Employees Defined Contribution Plan, and as a primary offering under the Minnesota State Deferred Compensation Plan.

As a justification for this change, SBI and various pension plan administrators contend that the current names of these accounts are in some cases misleading. For instance, the Income Share Account holds a mix of stocks and bonds, with a small allocation to cash investments, and has a target asset mix of 60% domestic stock, 40% bonds, and 5% cash investments, but the name "Income Share" provides little or no indication of what is actually held in the portfolio. On the other hand, a person with some understanding that the Income Share Account holdings might assume that the International Share account also has a portion of its assets in bonds. It does not. The International Share Account, SBI quarterly reports suggest, is invested entirely in foreign stock. The name "Fixed Interest Account" suggests that investors in that account can expect it will provide a constant rate of interest for the participants, and that principal will be fully protected. That is not necessarily true. Interest might change, and principal might be impacted by changes in interest rates in the economy.

One solution to this “name problem” would be to revise the names of these accounts, as they currently appear in statute, to more accurately reflect the nature of the investment. However, in this bill SBI and the plan administrators are proposing a different solution because SBI also wants the ability to make quick changes in its investment offerings, and what name it may give various accounts, without the need to seek legislative approval. Thus, in the bill the names of the accounts offered by the Supplemental Fund are stricken and replaced by language giving SBI general authority to offer “an appropriate array of diversified investment options for participants for the...(various) public retirement plans...”

One offering which SBI may be interested in adding is retirement date-specific or age-specific funds or accounts. In recent years these have been made available by various mutual fund families. Under those mutual fund investments, the asset mix is automatically changed over time to a mix deemed appropriate for the age of the covered group. Stocks would be a high proportion of the pool when the covered individuals are young, transitioning to more and more bond investments as the group ages. These age-related accounts are not currently offered in the Supplemental Fund.

The current laws for the Minnesota State Deferred Compensation Plan currently permits access to mutual funds, in addition to the Supplemental Fund, so that plan, and perhaps a few others, may currently have access to age-related mutual fund accounts. But under this bill, which in part broadens the investment authority for MSRS-Unclassified and the PEDC, access could be expanded to more of our defined contribution plans, and access could be created within the Supplemental Fund itself. SBI may be able to offer a product or products similar to current offered by outside providers, but at a lower cost to participants.

Another feature of the bill is that, in Section 10 on page 6, an investment authority provision is being created for coding in Chapter 356. That chapter is titled “Retirement Systems, Generally,” because it contains provisions applicable to many or all Minnesota public plans. The investment authority language in Section 10 is very similar to that which currently appears in Minnesota State Deferred Compensation Plan law. The list in Section 10 includes the Supplemental Fund, insured savings accounts, and broad access to mutual funds. In the bill, the new revised investment authority for the various plans is created by cross-reference to this provision, and by repeal of the often very similar investment authority provisions for these plans as found in current law. The result for all these plans (MSRS-Unclassified, PEDC, the Minnesota State Deferred Compensation Plan, and the MSRS Health Care Savings Plan) is somewhat expanded authority because in earlier sections of the bill the Supplemental Fund authority is expanded and generalized. The impact may be greatest for MSRS Unclassified and the PEDC, because currently those plans are limited to Supplemental Fund offerings. There will also be minor impact on the various Individual Retirement Account Plans (IRAP), because those plans include the Supplemental Fund in their investment offerings.

In current law, only the Minnesota State Deferred Compensation Plan provision includes an exclusion from investment liability statement. This is a statement specifying that SBI, the applicable pension fund administration, and public employers are not liable for any investment losses which occur. In this bill that statement is expanded by adding SBI’s Executive Director and SBI staff, and comparable statements are added to MSRS-Unclassified, the MSRS Health Care Savings Plan, and the PEDC.

The proposed legislation raises a number of pension and related public policy issues for consideration and possible discussion by the Commission, as follows:

1. Need for Change. The policy issue is whether there is sufficient need for change. The Commission may decide that the current system is working well enough and that no change is needed. Under current law the names of the Supplemental Fund accounts are listed in statute (see the stricken language on lines 1.19 to 1.22). Due to the approach taken in current law, if SBI wished to revise the names of these accounts or offer more or fewer accounts, it would need a legislative bill to make that change. In contrast, under this bill no Supplemental Fund account names will appear in statute and SBI is given full discretion to revise investment offerings at will.

A related question is whether there is sufficient need for change, given that, at least for some of the defined contribution plans, access is already provided to outside mutual funds and similar investment product providers. To the extent that certain types of investment products (such as age-specific funds mentioned above) are not available in the Supplemental Fund, they may still be accessible through the other investment offerings available for a given plan. Currently, though two primary plans, MSRS-Unclassified and the PEDC, have investment offerings which are restricted to the Supplemental Fund.

2. Appropriate Degree of SBI Autonomy. In considering this bill, the Commission is, in part, deciding on the appropriate degree of SBI autonomy in revising defined contribution plan investment offerings. The Commission may decide to recommend the bill to pass if the Commission concludes that SBI should have a free hand in revising investment offerings, without legislative review and approval of each change. On the other hand, if the Commission concludes that there is merit in legislative review, then the Commission may wish to recommend that the bill not pass, or pass in amended form if the

Commission concludes that other portions of the bill have merit. In considering this matter, the Commission may wish to consider that the need for legislative involvement would not be significant or frequent. This listing of investment types or accounts to be offered under the Supplemental Fund (Section 1) has rarely been substantively revised.

3. Design/Impact of Exclusion from Investment Liability Language. As mentioned above, the Minnesota State Deferred Compensation Plan exclusion from investment liability language is being expanded to include the SBI executive director and SBI staff, and identical language is being added to MSRS-Unclassified, the MSRS Health Care Savings Plan, and the PEDC. The Commission may seek to determine through testimony whether these provision are truly needed. If they are, then an issue is the proper scope. Under the proposed legislation, such language will appear in law for several of the defined contribution plans, but not for the Higher Education Individual Retirement Account Plans (IRAP). If it appropriate for some, it would appear to be appropriate for all.

A related issue is the general drafting approach taken in these provisions. They are a listing of who is not to be held responsible for investment losses (see, for example, lines 3.3 to 3.6, or 3.20 to 3.24). A concern about the structure of these provisions is that the longer the list gets, the more these provisions can be characterized as an attempt to create an exhaustive list of who is excluded from liability. Thus, it might be argued, anyone not on the list becomes fair game. Even with the additions included in this bill, the language still does not include the SBI Investment Advisory Council or consultants providing advice and products to SBI and pension plan administrators. If the Commission feels some form of liability exclusion statement has merit, an alternative to trying to create an exhaustive list of *who is not* liable for investment outcomes would be to remove those provisions and replace them with a statement of *who is* responsible: the plan participant.

4. Impact on Plan Members, and Support by Plan Members. The policy issue is whether the expansion of investment options that is likely to occur if this bill passes is in the best interest of plan members. Useful new options have merit; but at some point the number of different investment alternatives available to members can become excessive, adding nothing but confusion. The Commission may wish to determine through testimony whether individuals covered by these plans feel there is a need for change, and whether they support this bill.
5. Support by Plan Administrators. The bill is largely a State Board of Investment initiative, so the Commission can assume that the bill has SBI support. An issue is whether the administrators of the various primary and supplemental defined contribution plans impacted by these changes support the bill.

Potential Amendments for Commission Consideration

S1713-1A is intended as technical cleanup to clarify wording. The most significant change is removing the term “default options” where it appears in the exclusion-from-liability statements and replaces it with “default investment allocations.” This may be viewed as an effort to provide clarity. “Default options” may be confusing because it sounds like some form of investment derivative product. Actually, this language is intended to mean the default investment allocation used if the participant fails to choose an investment allocation for investing the participant’s plan assets. This amendment should not be used if Amendment S1713-2A or -3A is used.

S1713-2A can be used if the Commission concludes that all self-directed defined contribution plans ought to have exclusion from investment liability language. The amendment adds this exclusion from investment liability language to a single provision in Chapter 356, to cover all plans included in this bill plus the IRAP plans. The amendment expands the scope of that exclusion language and improves the bill drafting, and subsequent legislative control, by not adding identical language in several chapters of statute. If the Commission does not wish to include the IRAP plans in this amendment, Commission staff can suggest a simple verbal revision to remove application to the IRAP plans.

S1713-3A is an alternative to Amendment S1713-2A that takes a different approach; rather than an exclusion from liability list, it attempts to accomplish the same end by using a statement that the plan participant, rather than any other party, bears the risk for investment results. Again, if the Commission does not wish to include the IRAP plans, Commission staff can suggest a simple verbal revision to remove application to the IRAP plans.

S1713-4A, which can be used with any of the prior amendments, reinstates the names of the current investment products in the SBI Supplemental Fund and removes SBI discretion to revise investment offerings without a legislative bill to make those changes. The Commission may wish to use this amendment if it wants to retain that authority but supports the other revisions and cleanup contained elsewhere in the bill. If SBI has specific investment or account name changes it wishes to make, it could specify those precisely and seek approval of those changes later this session, if practical, or next year.

Section-by-Section Summary of S.F. 1713 (Pappas); H.F. 2163 (Nelson)

Sec.	Pg.Ln	Stat. Provision	Plan	Summary
1	1.15	11A.17, Subd. 1	State Board of Investment	The Supplemental Fund provision is revised to give SBI full discretion to revise and name investment offerings without need for legislative action, and it is clarified that those investments must be consistent with SBI's investment authority provision.
2	2.4	11A.17, Subd. 9	State Board of Investment	Conforming changes are made in the Supplemental Fund account valuation provision.
3	2.15	352.965, Subd. 4	All	The Minnesota State Deferred Compensation Plan investment authority provision is revised by specifying the investment authority by cross-reference to new section 356.645 rather than listing permissible investments in this subdivision; by moving an exclusion-from-investment-loss statement from another provision and expanding that exclusion to include the SBI executive director and SBI staff; and by striking language to be moved to new subdivisions..
4	3.16	352.965, New Subd. 4a	Minnesota deferred compensation plan	Contains deferred compensation plan exclusive benefit language being moved from another subdivision.
5	3.24	352.965, New Subd. 4b	Minnesota deferred compensation plan	Contains deferred compensation plan employer contribution prohibition language being moved from another subdivision.
6	3.29	352.98, New Subd. 1a	All	The Health Care Savings Plan is revised by adding a member investment responsibility statement.
7	4.5	352.98, Subd. 2	All	The Health Care Savings Plan contracting provision is revised by specifying permissible investments by a cross-reference to new section 356.645, and by expanding permissible investment options.
8	4.15	352D.04, New Subd. 1a	MSRS-Unclassified	The investment options section is revised by creating a new subdivision specifying that SBI will select suitable investment offerings from the authorized investments under new section 356.645.
9	4.21	352D.04, New Subd. 1b	MSRS-Unclassified	Participant selection of investments is created, largely by moving language from a provision being repealed, except that an exclusion from investment liability statement is added, and the default investment allocation, rather than being the Income Share Account, will be an allocation specified by the MSRS Board.
10	5.15	353D.05, Subd. 1	Public Employees Defined Cont. Plan	The Public Employees Defined Contribution Plan investment authority subdivision is revised by expanding the authority by specifying permissible investments by a cross-reference to new section 356.645, rather than the Supplemental Fund.
11	5.23	353D.05, New Subd. 1a	Public Employees Defined Cont. Plan	Participant selection of investments is created, largely by moving language from a provision being repealed, except that an exclusion from investment liability statement is added, and the default investment allocation will be an allocation specified by the PERA Board rather than being the Income Share Account.
12	6.14	New 356.645	State Board of Investment	SBI shall determine investments to be made available under the Minnesota State Deferred Compensation Plan, the Health Care Savings Plan, MSRS-Unclassified, and the PERA Defined Contribution Plan. Available investment will include some or all of the following: the Supplemental Fund; insured savings accounts; life insurance contracts and annuities from regulated companies; and various forms of mutual funds and similar investments.
13	7.2	Repealer	--	Minn. Stat. Sec. 11A.17, Subd. 4, a Supplemental Fund Investment provision; 352.965, Subd. 5, a Deferred Compensation Plan SBI determination of investment provision; 352D, Subd. 1, the MSRS-Unclassified investment options provision; and 353D.05, Subd. 2, the Public Employees Defined Contribution Plan investment options provision; are repealed.

**Background Information on the
Unclassified State Employees Retirement Plan of the
Minnesota State Retirement System (MSRS-Unclassified)**

1. In General. The Unclassified State Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) was established in 1971 (Laws 1971, Ch. 604), and is governed by Minnesota Statutes, Chapter 352D.
2. Establishment. MSRS-Unclassified is a defined contribution plan established by Minnesota Statutes, Chapter 352D. The retirement program was developed on behalf of the commissioners of the various departments in the Executive Branch in state government. It was premised on the unattractiveness of the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) for upper echelon officials in state government who were unlikely to spend enough time in state employment to meet the MSRS-General vesting provision of ten years of service in 1971. It was intended to be an attractive fringe benefit to aid in the recruitment of department heads in state government. In 1974, the MSRS executive director suggested additional inclusions in the special department head retirement program, namely the Revisor of Statutes (an employee of the Minnesota Supreme Court in 1974), the Supreme Court administrator, the director of Mediation Services, the executive director of the Minnesota County Attorneys' Council, the ombudsman of the Department of Corrections, the commissioner of the Iron Range Resources Commission, the chief of the Highway Patrol, the superintendent of the Bureau of Criminal Apprehension, the director of Equal Opportunity in the Office of the Governor, the executive secretary to the Governor, and the head of any department, commission, agency, or division who is an appointee of the Governor. The commissioners of the Workers' Compensation Commission also petitioned for inclusion in the program.
3. Program Coverage. The program covers a number of state employees or officers in the unclassified service of the State of Minnesota on either a mandatory or on an optional basis. The individuals specified in (a) and (e), if first elected after June 30, 1997, below are members of the program on a mandatory basis and the remaining individuals have the option to elect to be members of the program rather than being a member of MSRS-General. The program membership includes:
 - a. the Governor, Lieutenant Governor, Secretary of State, State Auditor, and Attorney General;
 - b. an employee in the office of the Governor, Lt. Governor, Secretary of State, State Auditor, or Attorney General;
 - c. an employee of the State Board of Investment;
 - d. the head of a department, a division, or an agency created by statute in the unclassified service;
 - e. a member of the legislature;
 - f. a permanent, full-time unclassified employee of the legislature or a commission or an agency of the legislature;
 - g. the regional administrator or executive director of the Metropolitan Council, its general counsel, division directors, operations managers, and other positions as designated by the council;
 - h. the executive director, associate executive director of the Higher Education Services Office in the unclassified service;
 - i. the clerk of the appellate court;
 - j. the chief executive officers of correctional facilities, hospitals, and nursing homes;
 - k. an employee of the state ceremonial house;
 - l. an employee of the Minnesota Educational Computing Corporation;
 - m. an employee of the World Trade Center board;
 - n. an employee of the State Lottery board; and
 - o. a judge whose service has exceeded the 24-year service credit limit of MS, Sec. 490.121, Subd. 22.

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Background Information on the Public Employees Defined Contribution Retirement Plan

The Public Employees Defined Contribution Retirement Plan was established in 1987 (Laws 1987, Chapter 372, Article 5), revised in 1988 (Laws 1988, Chapter 709, Article 5), and broadened its coverage in 1990 (Laws 1990, Chapter 570, Article 8), in 1996 (Laws 1996, Chapter 438, Article 6), and in 1999 (Laws 1999, Chapter 222, Article 21).

Initially, the Legislature created the predecessor to the current Public Employees Defined Contribution Plan in 1987 in the form of the Ambulance Service Retirement Plan. The 1987 legislation set the broad outline of the current plan as a defined contribution plan, meaning that no set level of benefits are promised, but benefits are derived from the accumulated contributions made to the plan and any investment income attributable to those contributions. The benefit is payable as a lump sum payment to the participant or as a single premium to an insurance company to purchase an annuity contract. The plan was initially open to ambulance service personnel who are basic or advanced life support emergency medical service personnel of a public ambulance service or of a private ambulance service that receives an operating subsidy from a governmental entity. The ambulance service must elect to participate in the plan. The plan was initially funded by ambulance service employer contributions and, if the personnel are compensated, by member contributions.

In 1990, the Ambulance Service Retirement Plan was renamed the Public Employees Defined Contribution Plan and was enlarged to establish a new plan for elected and appointed local government officials other than county sheriffs. Eligible officials may elect the Public Employees Defined Contribution Plan through an irrevocable election. Member contributions were set at five percent of salary and matched by the employer. Benefits were authorized to be paid from the Public Employees Defined Contribution Plan due to disability, but the monthly withdrawals cannot exceed full salary in the month prior to the disability. Local government officials in the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) were authorized to elect, prior to July 1, 1990, to terminate coverage in PERA-General and become members of the Public Employees Defined Contribution Plan. These individuals became eligible for a refund of employee contributions from PERA-General or a PERA-General deferred annuity. Participating elected government officials with prior service also were authorized to make prior service contributions to the plan, providing the service is not covered elsewhere. The amount could not exceed the sum of employee and employer contributions that would have been made to PERA-General for that service, plus six percent interest, or the contribution limitations on defined contribution plans. Contributions could be made from rollovers, including transfers from the state deferred compensation plan although the individual has not left public employment, to the extent permitted by federal law.

The Public Employees Defined Contribution Retirement Plan received its federal Internal Revenue Service tax qualified status determination before the 1990 coverage expansion. As of early 1990, there were less than one dozen ambulance services that had elected to participate in the plan. The lack of available funding was likely to have been the reason for the relatively poor level of ambulance service participation.

In 1996, arising out of a controversy over retirement coverage for the Springfield Community Hospital and Medical Clinic, physicians covered by PERA-General were authorized to switch prospective coverage to the Public Employees Defined Contribution Plan. The election had to be made within six months. If the election was made, the physician was deemed to have terminated service for purposes of PERA-General, and, as a result, would be eligible for a deferred annuity (if vested) or a refund with interest.

In 1999, in lieu of authorizing the creation of local volunteer rescue squad retirement plans, the Kandiyohi County Rescue Squad and the Litchfield Municipal Rescue Squad were authorized to participate in the Public Employees Defined Contribution Retirement Plan.

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Background Information on the Minnesota State Deferred Compensation Plan

The Minnesota State Deferred Compensation Plan is governed by Minnesota Statutes, Section 352.965, and is an Internal Revenue Code Section 457 deferred compensation plan. The Deferred Compensation Plan is the most likely government sponsored retirement thrift or savings program for most public employees due to restrictions, found in Minnesota Statutes, Section 356.24, on supplemental retirement plans and employer-funded deferred compensation programs. However, in recent years restrictions on employer contributions to supplemental plans other than the Deferred Compensation Plan have been considerably lessened.

Although the Deferred Compensation Plan is administered by the Minnesota State Retirement System (MSRS), public employees throughout the state are authorized to participate, including volunteer firefighters. The Deferred Compensation Plan, akin to the somewhat similar Internal Revenue Code Section 403(b) plans, functions to encourage additional saving for retirement, supplementing income during retirement from the primary public pension plan, Social Security, or other income sources.

The legislation which created the Deferred Compensation Plan and the restrictions on other government sponsored savings plans both were enacted in 1971. The legislation restricting other government sponsored savings plans passed as Laws 1971, Chapter 222, Section 1, and was coded as Minnesota Statutes, Section 356.24. When enacted, it was intended to end a growing practice in local government (primarily by school districts) of creating supplemental employer-funded pension plans beyond the regularly applicable statewide primary pension plan for that type of public employee. At that time, public pension benefits were considerably more modest than they are currently and some of the more affluent jurisdictions were attempting to readjust their employees' pension coverage by local action, without the approval of or notice to the Legislature. The Legislature decided that this practice was inappropriate and that the creation of additional pension plans was an unwise policy. The Legislature also apparently felt that pension benefits should be as uniform as possible for similar public employees throughout the state.

In 1973, the Legislature considerably improved pension benefits payable under the public employees' primary pension coverage by moving from career average salary plans to pensions based on the average salary of the individual close to retirement. This considerably improved benefits from the primary plans and, coupled with the 1971 legislation, was intended to eliminate both the need for and ability to create employer-funded supplemental plans. Those supplemental plans in effect prior to 1971 were grandfathered. In addition to the major improvement which occurred in 1973 by moving from using career average salary to high-five average salary, further benefit increases in primary pension plans occurred in 1980, 1989, 1992, and 1997.

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Background Information on MSRS Health Care Savings Plan

The Minnesota State Retirement System (MSRS) Health Care Savings Plan, coded as Minnesota Statutes, Section 352.98, was enacted in 2001 (1st Spec. Sess. Laws 2001, Ch. 10, Art. 7, Sec. 1). As initially enacted, the plan was titled the Postretirement Health Care Savings Plan to be used solely during retirement. The plan was not limited to members of MSRS plans; all Minnesota public employees were authorized to participate. Participation in the plan and contributions to the plan are determined through a personnel policy or collective bargaining agreement of a public employer. MSRS established one or more trusts, to be used to invest the account assets and to maintain the accounts, as authorized under the Internal Revenue Code for purposes of providing tax-free treatment of both contributions and withdrawals, enabling covered employees to save for health care costs. MSRS was authorized to charge uniform fees to cover operating costs and to contract with other public or private entities to provide investment services, recordkeeping, and other administrative services.

In 2004 (Laws 2004, Ch. 267, Art. 11, Sec. 1) the plan name was changed to the Health Care Savings Plan, rather than the Post-Retirement Health Care Savings Plan, and authority was expanded by allowing assets to be used to pay active employee healthcare costs, presumably under conditions specified in collective bargaining agreements and plan documents.

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- 1.1 moves to amend S.F. No. 1713; H.F. No. 2163, as follows:
- 1.2 Page 1, line 28, after "in" insert "types of "
- 1.3 Page 3, line 6, delete "options" and insert "investment allocations"
- 1.4 Page 4, line 3, delete "options" and insert "investment allocations"
- 1.5 Page 5, line 13, delete "options" and insert "investment allocations"
- 1.6 Page 6, line 12, delete "options" and insert "investment allocations"

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1.1 moves to amend S.F. No. 1713; H.F. No. 2163, as follows:

1.2 Page 2, line 16, strike "(a)"

1.3 Page 3, delete lines 3 to 6

1.4 Page 3, delete section 6

1.5 Page 5, delete lines 10 to 13

1.6 Page 6, delete lines 9 to 12

1.7 Page 7, after line 1, insert:

1.8 "Sec. 13. **[356.646] PLAN PARTICIPANT INVESTMENT RESPONSIBILITY.**

1.9 Subdivision 1. **Member investment responsibility.** The state, the State Board of
1.10 Investment and its executive director and staff, the plan administrators and their staff, and
1.11 participating public employers are not liable and are not responsible for any investment
1.12 losses due to choices made by participants or due to default investment allocations.

1.13 Subd. 2. **Application.** This section applies to the

1.14 (1) Minnesota state deferred compensation plan, established under section 352.965;

1.15 (2) health care savings plan, established under section 352.98;

1.16 (3) unclassified employees retirement program, established under chapter 352D;

1.17 (4) public employees defined contribution plan, established under chapter 353D;

1.18 (5) individual retirement account plan, established under chapter 354B;

1.19 (6) higher education supplemental retirement plan, established under chapter 354C;

1.20 and

1.21 (7) Arts Board and Humanities Commission individual retirement account plan,

1.22 established under chapter 354D.

1.23 **EFFECTIVE DATE.** This section is effective July 1, 2014."

1.24 Renumber the sections in sequence

1.25 Amend the title accordingly

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1.1 moves to amend S.F. No. 1713; H.F. No. 2163, as follows:

1.2 Page 2, line 16, strike "(a)"

1.3 Page 3, delete lines 3 to 6

1.4 Page 3, delete section 6

1.5 Page 5, delete lines 10 to 13

1.6 Page 6, delete lines 9 to 12

1.7 Page 7, after line 1, insert:

1.8 "Sec. 13. **[356.646] PLAN PARTICIPANT INVESTMENT RESPONSIBILITY.**

1.9 **Subdivision 1. Member investment responsibility.** Given the inherent
1.10 unpredictable nature of investment markets, except in situations involving nonfeasance,
1.11 malfeasance, or fiduciary breach, no party other than the plan participant shall hold
1.12 responsibility for the impact of investment activity on the participant's account or
1.13 accounts, including those due to default investment allocations.

1.14 **Subd. 2. Application.** This section applies to the

1.15 (1) Minnesota state deferred compensation plan, established under section 352.965;

1.16 (2) health care savings plan, established under section 352.98;

1.17 (3) unclassified employees retirement program, established under chapter 352D;

1.18 (4) public employees defined contribution plan, established under chapter 353D;

1.19 (5) individual retirement account plan, established under chapter 354B;

1.20 (6) higher education supplemental retirement plan, established under chapter 354C;

1.21 and

1.22 (7) Arts Board and Humanities Commission individual retirement account plan,
1.23 established under chapter 354D.

1.24 **EFFECTIVE DATE.** This section is effective July 1, 2014."

1.25 Renumber the sections in sequence

1.26 Amend the title accordingly

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1.1 moves to amend S.F. No. 1713; H.F. No. 2163, as follows:

1.2 Page 1, lines 19 to 25, reinstate the stricken language and delete the new language

1.3 Page 2, delete lines 1 to 2

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SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 1713

(SENATE AUTHORS: PAPPAS and Johnson)

DATE	D-PG	OFFICIAL STATUS
02/25/2014	5814	Introduction and first reading Referred to State and Local Government

A bill for an act

1.1 relating to retirement; revising investment authority for various defined
 1.2 contribution plans or programs; authorizing the State Board of Investment to
 1.3 revise, remove, or create investment options for the Minnesota supplemental
 1.4 investment fund; expanding permissible investments under the unclassified
 1.5 state employees retirement program, the public employees defined contribution
 1.6 plan, the deferred compensation program, and the health care savings plan;
 1.7 amending Minnesota Statutes 2012, sections 11A.17, subdivisions 1, 9; 352.965,
 1.8 subdivision 4, by adding subdivisions; 352.98, subdivision 2, by adding a
 1.9 subdivision; 352D.04, by adding subdivisions; 353D.05, subdivision 1, by
 1.10 adding a subdivision; proposing coding for new law in Minnesota Statutes,
 1.11 chapter 356; repealing Minnesota Statutes 2012, sections 11A.17, subdivision 4;
 1.12 352.965, subdivision 5; 352D.04, subdivision 1; 353D.05, subdivision 2.
 1.13

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

1.15 Section 1. Minnesota Statutes 2012, section 11A.17, subdivision 1, is amended to read:

1.16 Subdivision 1. **Purpose; accounts; continuation.** (a) The purpose of the
 1.17 supplemental investment fund is to provide an investment vehicle for the assets of various
 1.18 public retirement plans and funds.

1.19 (b) ~~The fund consists of eight investment accounts: an income share account, a~~
 1.20 ~~growth share account, an international share account, a money market account, a fixed~~
 1.21 ~~interest account, a bond market account, a common stock index account, and a volunteer~~
 1.22 ~~firefighter account.~~ The state board shall determine and make available investment
 1.23 accounts within the supplemental investment fund. These accounts shall include an
 1.24 appropriate array of diversified investment options for participants of the public retirement
 1.25 plans under subdivision 5.

1.26 (c) The assets of the supplemental investment fund is a continuation of the
 1.27 supplemental retirement fund in existence on January 1, 1980 must be invested by the
 1.28 state board in investments permitted under section 11A.24.

2.1 (d) The state board shall make available a volunteer firefighter account for the
 2.2 voluntary statewide lump-sum volunteer firefighter retirement plan under section 353G.02.

2.3 **EFFECTIVE DATE.** This section is effective July 1, 2014.

2.4 Sec. 2. Minnesota Statutes 2012, section 11A.17, subdivision 9, is amended to read:

2.5 Subd. 9. **Valuation of investment shares.** (a) The value of investment shares in
 2.6 the income share account, the growth share account, the international share account,
 2.7 the bond market account, and the common stock index for each investment account,
 2.8 excluding a money market account, must be determined by dividing the total market
 2.9 value of the securities constituting the respective account by the total number of shares
 2.10 then outstanding in the investment account.

2.11 (b) The value of investment shares in the a money market account and the fixed
 2.12 interest account is must be valued at \$1 a share. Terms as to withdrawal schedules will be
 2.13 agreed upon by the public retirement fund and the state board.

2.14 **EFFECTIVE DATE.** This section is effective July 1, 2014.

2.15 Sec. 3. Minnesota Statutes 2012, section 352.965, subdivision 4, is amended to read:

2.16 Subd. 4. **Plan investments.** (a) Available investments under the plan may include:
 2.17 are those investments chosen by the State Board of Investment under section 356.645 for
 2.18 the plan.

2.19 (1) shares in the Minnesota supplemental investment fund established in section
 2.20 11A.17 that are selected to be offered under the plan by the State Board of Investment;

2.21 (2) saving accounts in federally insured financial institutions;

2.22 (3) life insurance contracts, fixed annuity, and variable annuity contracts from
 2.23 companies that are subject to regulation by the commissioner of commerce;

2.24 (4) investment options from open-end investment companies registered under the
 2.25 federal Investment Company Act of 1940, United States Code, title 15, sections 80a-1
 2.26 to 80a-64;

2.27 (5) investment options from a firm that is a registered investment advisor under the
 2.28 Investment Advisers Act of 1940, United States Code, title 15, sections 80b-1 to 80b-21;

2.29 (6) investment options of a bank as defined in United States Code, title 15, section
 2.30 80b-2, subsection (a), paragraph (2), or a bank holding company as defined in the Bank
 2.31 Holding Company Act of 1956, United States Code, title 12, section 1841, subsection
 2.32 (a), paragraph (1); or

3.1 ~~(7) a combination of clause (1), (2), (3), (4), (5), or (6), as provided by the plan as~~
 3.2 ~~specified by the participant.~~

3.3 (b) The state, the State Board of Investment and its executive director and staff,
 3.4 the Minnesota State Retirement System Board and its executive director and staff, and
 3.5 participating public employers are not liable and are not responsible for any investment
 3.6 losses due to choices made by participants or due to default options.

3.7 ~~(b) All amounts contributed to the deferred compensation plan and all earnings~~
 3.8 ~~on those amounts must be held for the exclusive benefit of the plan participants and~~
 3.9 ~~beneficiaries. These amounts must be held in trust, in custodial accounts, or in qualifying~~
 3.10 ~~annuity contracts as required by federal law in accordance with section 356A.06,~~
 3.11 ~~subdivision 1. This subdivision does not authorize an employer contribution, except as~~
 3.12 ~~authorized in section 356.24, subdivision 1, paragraph (a), clause (5). The state, political~~
 3.13 ~~subdivision, or other employing unit is not responsible for any loss that may result from~~
 3.14 ~~investment of the deferred compensation.~~

3.15 **EFFECTIVE DATE.** This section is effective July 1, 2014.

3.16 Sec. 4. Minnesota Statutes 2012, section 352.965, is amended by adding a subdivision
 3.17 to read:

3.18 Subd. 4a. **Exclusive benefit.** All amounts contributed to the deferred compensation
 3.19 plan and all earnings on those amounts must be held for the exclusive benefit of the plan
 3.20 participants and beneficiaries. These amounts must be held in trust, in custodial accounts,
 3.21 or in qualifying annuity contracts as required by federal law in accordance with section
 3.22 356A.06, subdivision 1.

3.23 **EFFECTIVE DATE.** This section is effective July 1, 2014.

3.24 Sec. 5. Minnesota Statutes 2012, section 352.965, is amended by adding a subdivision
 3.25 to read:

3.26 Subd. 4b. **Employer contribution prohibition.** Except as authorized in section
 3.27 356.24, subdivision 1, clause (5), employer contributions are prohibited.

3.28 **EFFECTIVE DATE.** This section is effective July 1, 2014.

3.29 Sec. 6. Minnesota Statutes 2012, section 352.98, is amended by adding a subdivision
 3.30 to read:

3.31 Subd. 1a. **Member investment responsibility.** The state, the State Board of
 3.32 Investment and its executive director and staff, the Minnesota State Retirement System

4.1 Board and its executive director and staff, and participating public employers are not liable
 4.2 and are not responsible for any investment losses due to choices made by participants
 4.3 or due to default options.

4.4 **EFFECTIVE DATE.** This section is effective July 1, 2014.

4.5 Sec. 7. Minnesota Statutes 2012, section 352.98, subdivision 2, is amended to read:

4.6 Subd. 2. **Contracting authorized.** (a) The executive director shall administer
 4.7 the plan and contract with public and private entities to provide investment services,
 4.8 record keeping, benefit payments, and other functions necessary for the administration of
 4.9 the plan. ~~If allowed by~~

4.10 (b) As specified in section 356.645, the Minnesota State Board of Investment, the
 4.11 Minnesota State Board of Investment supplemental investment funds may be offered as
 4.12 shall determine an appropriate selection of investment options under that shall be offered
 4.13 by the health care savings plan or plans.

4.14 **EFFECTIVE DATE.** This section is effective July 1, 2014.

4.15 Sec. 8. Minnesota Statutes 2012, section 352D.04, is amended by adding a subdivision
 4.16 to read:

4.17 Subd. 1a. **State Board of Investment selection of investment products.** As
 4.18 specified in section 356.645, the State Board of Investment shall select investment
 4.19 products to be available to participants in the retirement program provided by this chapter.

4.20 **EFFECTIVE DATE.** This section is effective July 1, 2014.

4.21 Sec. 9. Minnesota Statutes 2012, section 352D.04, is amended by adding a subdivision
 4.22 to read:

4.23 Subd. 1b. **Participant selection of investments.** (a) A program participant may
 4.24 elect to participate in one or more of the investment products made available under the
 4.25 program by specifying the percentage of the participant's contributions under subdivision
 4.26 2 to be used to purchase shares in the applicable products.

4.27 (b) Before making an allocation election, or if the participant fails to specify an
 4.28 allocation, the executive director shall, on behalf of that participant, purchase shares
 4.29 in a default investment alternative. The investment alternative must be specified by
 4.30 the Minnesota State Retirement System Board from the available investment options
 4.31 authorized under subdivision 1a.

5.1 (c) A participant may revise the investment allocation for subsequent purchase of
 5.2 shares, and a participant or former participant may also change the investment options
 5.3 selected for all or a portion of shares previously purchased.

5.4 (d) Any investment allocation selection authorized under this subdivision, whether
 5.5 relating to subsequent purchases of new shares or reallocating the existing portfolio,
 5.6 must be conducted at times and under procedures prescribed by the executive director.
 5.7 Any allocation or allocation revisions are effective at the end of the most recent United
 5.8 States investment market day, unless subject to trading restrictions imposed on certain
 5.9 investment options.

5.10 (e) The state, the State Board of Investment and its executive director and staff,
 5.11 the Minnesota State Retirement System Board and its executive director and staff, and
 5.12 participating public employers are not liable and are not responsible for any investment
 5.13 losses due to choices made by participants or due to default options.

5.14 **EFFECTIVE DATE.** This section is effective July 1, 2014.

5.15 Sec. 10. Minnesota Statutes 2012, section 353D.05, subdivision 1, is amended to read:

5.16 Subdivision 1. **Investment.** As further specified under this section, employing unit
 5.17 contributions, after the deduction of an amount for administrative expenses, and individual
 5.18 participant contributions must be ~~remitted to~~ invested in the participant's account or
 5.19 accounts in investment products authorized by the association that are made available
 5.20 for this purpose by the State Board of Investment ~~for investment in the Minnesota~~
 5.21 supplemental investment fund established by ~~under~~ section ~~11A.17~~ 356.645.

5.22 **EFFECTIVE DATE.** This section is effective July 1, 2014.

5.23 Sec. 11. Minnesota Statutes 2012, section 353D.05, is amended by adding a
 5.24 subdivision to read:

5.25 Subd. 1a. **Participant selection of investments.** (a) A plan participant may elect
 5.26 to allocate contributions, made by and on behalf of the participant, in one or more of the
 5.27 investment products authorized by the association to be made available under the plan,
 5.28 by specifying the percentage of the participant's contributions to be used to purchase
 5.29 shares in the authorized products.

5.30 (b) If contributions are received before the participant has made an allocation
 5.31 election, or if the participant fails to specify an allocation, the executive director shall,
 5.32 on behalf of that participant, purchase shares in a default investment alternative. The

6.1 investment option must be specified by the Public Employees Retirement Association board
 6.2 of trustees from the designated available investment options authorized under this section.

6.3 (c) A participant may revise the investment allocation for subsequent purchase of
 6.4 shares, and a participant or former participant may also change the investment options
 6.5 selected for all or a portion of shares previously purchased.

6.6 (d) Any investment allocation selection authorized under this subdivision, whether
 6.7 relating to subsequent purchases of new shares or reallocating the existing portfolio, must
 6.8 be conducted at times and under procedures prescribed by the executive director.

6.9 (e) The state, the State Board of Investment and its executive director and staff, the
 6.10 Public Employees Retirement Association board of trustees and its executive director and
 6.11 staff, and participating public employers are not liable and are not responsible for any
 6.12 investment losses due to choices made by participants or due to default options.

6.13 **EFFECTIVE DATE.** This section is effective July 1, 2014.

6.14 Sec. 12. **[356.645] INVESTMENT OF VARIOUS DEFINED CONTRIBUTION**
 6.15 **PLAN ASSETS.**

6.16 The State Board of Investment shall determine the investments to be made available
 6.17 to plan participants in plans defined in sections 352.965, 352.98, and chapters 352D
 6.18 and 353D. Investments made available to plan participants must include at least one or
 6.19 all of the following:

6.20 (1) shares in the Minnesota supplemental investment fund established in section
 6.21 11A.17;

6.22 (2) saving accounts in federally insured financial institutions;

6.23 (3) life insurance contracts, fixed annuity contracts, and variable annuity contracts
 6.24 from companies that are subject to regulation by the commissioner of commerce;

6.25 (4) investment options from open-end investment companies registered under the
 6.26 federal Investment Company Act of 1940, United States Code, title 15, sections 80a-1
 6.27 to 80a-64;

6.28 (5) investment options from a firm that is a registered investment adviser under
 6.29 the Investment Advisers Act of 1940, United States Code, title 15, sections 80b-1 to
 6.30 80b-21; and

6.31 (6) investment options of a bank as defined in United States Code, title 15, section
 6.32 80b-2, subsection (a), paragraph (2), or a bank holding company as defined in the Bank
 6.33 Holding Company Act of 1956, United States Code, title 12, section 1841, subsection
 6.34 (a), paragraph (1).

7.1 **EFFECTIVE DATE.** This section is effective July 1, 2014.

7.2 Sec. 13. **REPEALER.**

7.3 Minnesota Statutes 2012, sections 11A.17, subdivision 4; 352.965, subdivision 5;
7.4 352D.04, subdivision 1; and 353D.05, subdivision 2, are repealed.

7.5 **EFFECTIVE DATE.** This section is effective July 1, 2014.

11A.17 MINNESOTA SUPPLEMENTAL INVESTMENT FUND.

Subd. 4. **Investment.** The assets of the supplemental investment fund must be invested by the state board subject to section 11A.24; provided, however, that:

- (1) the bond market account and the money market account must be invested entirely in debt obligations;
- (2) the growth share account and the common stock index account may be invested entirely in corporate stocks;
- (3) the international share account may be invested entirely in international stocks; and
- (4) the fixed interest account may be invested in guaranteed investment contracts and debt obligations.

352.965 MINNESOTA STATE DEFERRED COMPENSATION PLAN.

Subd. 5. **State Board of Investment to determine investments.** (a) The State Board of Investment shall determine the investment products to be made available under the plan and may retain appropriate consulting services to assist in making the selections. At a minimum, the State Board of Investment shall consider the following:

- (1) the experience and ability of the financial institution to provide benefits and products that are suited to meet the needs of plan participants;
- (2) the relationship of those benefits and products provided by the financial institution to their cost;
- (3) the financial strength and stability of the financial institution; and
- (4) the fees and expenses associated with the investment products in comparison to other products of similar risk and rates of return.

(b) If the State Board of Investment so elects, it may solicit bids for options under subdivision 4, clauses (2), (3), (4), (5), and (6). The State Board of Investment may retain consulting services to assist in soliciting and evaluating bids and in the periodic review of companies offering options under subdivision 4, clauses (3), (4), (5), and (6). The periodic review must occur at least every two years. The State Board of Investment may annually establish a budget for its costs in soliciting, evaluation, and periodic review processes. All options in subdivision 4 must be presented in an unbiased manner and in a manner that conforms to rules adopted by the executive director, be reported on a periodic basis to all participants in the deferred compensation plan, and not be the subject of unreasonable solicitation of participants in the plan. The State Board of Investment may charge a proportional share of all costs related to the periodic review to each company currently under contract and may charge a proportional share of all costs related to soliciting and evaluating bids to each company selected by the State Board of Investment.

(c) Under the procedures set forth in the plan document, participants may select the funds or combination of funds within which to invest and may reallocate those investments as provided in the plan document and procedures established by the executive director.

(d) This section does not authorize an employer contribution, except as authorized in section 356.24, subdivision 1, paragraph (a), clause (5).

(e) The state, the Minnesota State Retirement System, the executive director and board of directors of the system, the State Board of Investment, and participating public employers are not liable and not responsible for any loss that may result from investment of the deferred compensation or the investment choices made by the participants.

352D.04 INVESTMENT OPTIONS.

Subdivision 1. **Investment options.** (a) A person exercising an option to participate in the retirement program provided by this chapter may elect to purchase shares in one or a combination of the income share account, the growth share account, the international share account, the money market account, the bond market account, the fixed interest account, or the common stock index account established in section 11A.17. The person may elect to participate in one or more of the investment accounts in the fund by specifying, in a manner prescribed by the executive director, the percentage of the person's contributions provided in subdivision 2 to be used to purchase shares in each of the accounts.

(b) A participant may, in a manner prescribed by the executive director, choose their investment allocation for subsequent purchases of shares. Until a different written indication is made by the participant, the executive director shall purchase shares in the supplemental fund as selected by the participant. If no initial option is chosen, 100 percent income shares must be

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purchased for a participant. A change in choice of investment option is effective at the end of the most recent United States investment market day.

(c) A participant or former participant may also change the investment options selected for all or a portion of the participant's shares previously purchased in accounts, subject to the trading restrictions imposed on the investment option.

353D.05 INVESTMENT OF FUNDS.

Subd. 2. **Investment options.** (a) A participant may elect to purchase shares in the income share account, the growth share account, the international share account, the money market account, the bond market account, the fixed interest account, or the common stock index account established by section 11A.17, or a combination of those accounts. The participant may elect to purchase shares in a combination of those accounts by specifying the percentage of the total contributions to be used to purchase shares in each of the accounts.

(b) A participant or a former participant may indicate in writing a choice of options for subsequent purchases of shares. After a choice is made, until the participant or former participant makes a different written indication, the executive director of the association shall purchase shares in the supplemental investment account or accounts specified by the participant. If no initial option is indicated by a participant or the specifications made by the participant exceeds 100 percent to be invested in more than one account, the executive director shall invest all contributions made by or on behalf of a participant in the income share account. If the specifications are less than 100 percent, the executive director shall invest the remaining percentage in the income share account.

(c) Shares in the fixed interest account attributable to any guaranteed investment contract as of July 1, 1994, may not be withdrawn from the fund or transferred to another account until the guaranteed investment contract has expired, unless the participant qualifies for a benefit payment under section 353D.07.

(d) A participant or former participant may also change the investment options selected for all or a portion of the individual's previously purchased shares in accounts, subject to the provisions of paragraph (c) concerning the fixed interest account.

(e) The change or selection of an investment option or the transfer of all or a portion of the deceased or former participant's shares in the income share, growth share, common stock index, bond market, international share, money market, or fixed interest accounts must not be made following death of the participant or former participant.