

2023 Pension Budget Omnibus Bill: Delete-Everything Amendment H3100.S3162-DE2 to HF 3100 (Her); SF 3162 (Frentz)

Prepared by: Susan Lenczewski, Executive Director

Date: April 5, 2023

Introduction

H3100.S3162-DE2, a delete-everything amendment, replaces everything in HF 3100 (Her); SF 3162 (Frentz) with the 2023 Pension Budget Omnibus Bill. The Commission considered H3100.S3162-DE1, along with a spreadsheet detailing the Chair's and Vice Chair's proposed allocation of the budget target for pensions of \$600 million at its meeting on April 3, 2023. The Commission approved two amendments and a recommendation that the DE1, as amended, be considered for passage by the committees of jurisdiction.

The DE2 incorporates the two amendments approved by the Commission and technical changes, pursuant to the Commission's authorization to staff to make technical changes. The spreadsheet, separately provided, graphically illustrates the amounts allocated to each pension plan and the related benefit improvements.

For more detail regarding Article 7, which establishes the Minnesota Secure Choice Retirement Program, its legislative history, and background information, see the attached separate summary.

Article- by- Article Summary

Article 1: Reduction in the Actuarial Assumption for Investment Rate of Return

Section 1, the only section of Article 1, amends Section 356.415 by replacing the current actuarial assumption for investment return of 7.5% with 7% for each of the pension plans. This change is effective June 30, 2023, so the pension plans will use the new assumption in their actuarial valuations as of July 1, 2023.

Article 2: Postretirement Adjustments (COLAs)

Sections 1 and 2 of Article 2 amend Section 356.415, subdivisions 1 and 1b, to delete a provision that takes effect on January 1, 2024. The provision delays the commencement of annual COLAs until the member reaches normal retirement age, which is age 66 for post-1989 public employees. This would have meant that members who elect early retirement would not receive a COLA until they reach normal retirement age. The change applies to the following plans:

- Minnesota State Retirement System (MSRS) General Plan
- Legislators Retirement Plan
- MSRS Unclassified Plan
- Public Employees Retirement Association (PERA) General Plan

Section 3 amends Section 356.415, subdivision 1g, which governs COLAs for members of the PERA Local Government Correctional Plan. Under current law, the COLA is 1% unless the Social Security COLA is greater than 1%, in which case the COLA is the same as the Social Security COLA, but not to exceed the “applicable maximum percentage.” The applicable maximum percentage is 2.5% until either of the following occurs:

- (1) the funded ratio, using market value of assets, is equal to or less than 85% for the previous two consecutive years; OR
- (2) the funded ratio is equal to or less than 80% for the previous one year.

If either occurs, the applicable maximum percentage drops to 1.5% and remains there indefinitely. The amendment permits the applicable maximum percentage to go back up to 2.5% if neither (1) or (2) is true.

Sections 4 and 5 are session laws that pay a one-time COLA to all members of the statewide pension plans and St. Paul Teachers Retirement Fund Association in a lump sum no later than March 31, 2024. To be eligible for the one-time payment, a member must have received at least 12 months of pension payments as of June 30, 2023, and for the PERA Police and Fire Plan, at least 12 months of a COLA.

The COLA is equal to the difference between the rate in effect in current law on January 1, 2024, and (1) 2.5% for coordinated members and members of the Legislators Plan or (2) 4% for basic members. All members of the MSRS State Patrol Plan and PERA Police and Fire Plan are basic members, and a subset of the members of the PERA General Plan, Teachers Retirement Association (TRA), and St. Paul Teachers are basic members.

The COLA in effect on January 1, 2024, for all members is 1% except for the following:

- MSRS General, Unclassified, Legislators, Correctional, and Judges plans will be at 1.5%;
- PERA General Plan will be at 1.5%;
- PERA Local Government Correctional Plan will be at 2.5%; and
- Teachers Retirement Association will be at 1.1%.

Article 3: MSRS Changes

Section 1 of Article 3 reduces the employee contributions to the MSRS General Plan and Unclassified Plan from 6% of pay to 5.5% of pay for two years, from July 1, 2023, to June 30, 2025.

Section 2 reduces the number of years of service required for full vesting from 5 years to 3 years for members of the MSRS General Plan employed on or after July 1, 2023.

Sections 3 through 5 amends the expiration date for supplemental employer contributions to the MSRS Correctional Plan and the State Patrol Plan and for annual state aids to the Judges Plan. The expiration date in each case was defined with reference to the funded status of the plan for the most recent year. The one year look back is replaced with a three year look back, so the contributions or state aid will not end until the plan has met the 100% funded threshold for the prior three years.

Article 4: PERA Changes

Section 1, the only section of Article 4, reduces the number of years of service required for full vesting from 5 years to 3 years for all members of the PERA General Plan.

Article 5: St. Paul Teachers Retirement Fund Association Changes

Section 1 of Article 5 increases the employee contribution rate, beginning on July 1, 2025, by 1% of pay. This means that coordinated members will contribute 8.75% of pay, an increase from 7.75% of pay, beginning July 1, 2025.

Section 2 adds a new benefit effective for all members retiring on or after July 1, 2023. A member who retires when the member is at least age 62 and has at least 30 years of service will receive an unreduced retirement annuity. This is similar to the Rule of 90 but requires a member to meet both an age threshold and a service threshold.

Section 3 makes changes to the early retirement statute, Section 354A.31, to conform the statute as necessary to take into account the new early retirement benefit added by Section 2.

Article 6: Appropriations

Section 1 appropriates a total of \$485,900,000 as one-time state aids, allocated among each of the pension plans in fiscal year 2024. See lines 15.8 through 15.24.

Section 2, subdivision 4, appropriates \$5 million to a new Statewide Volunteer Firefighter Incentive Account to be used to incentivize volunteer firefighter relief associations to join the Statewide Plan. The appropriation is a one-time appropriation and is available until expended.

Subdivision 1 provides definitions for the section, including for the “incentive program,” which is defined as the program established by this section that will deposit a monetary incentive amount into the account of each fire department that joins the Statewide Plan, to fund retirement benefits for the department’s volunteer firefighters.

Subdivision 2 requires the executive director of PERA to provide to the Commission by January 5, 2024, an outline of the program and proposed legislation that adds a defined contribution component to the Statewide Plan and makes other changes as appropriate to encourage fire departments and their affiliated relief associations to join the Statewide Plan. The incentive program must benefit fire departments that join the Statewide Plan on or after July 1, 2023, and the first payments must be made by December 31, 2024. The executive director of PERA is also required to file annual reports on the program with the Commission.

Subdivision 3 creates the incentive account within the special revenue fund and requires the commissioner of management and budget to make deposits from that account into fire department accounts in the Statewide Plan at the direction of the executive director of PERA.

Section 3 appropriates \$100,000 to be used by the Commission for actuarial cost assessments to assist the Commission with decision-making on pension policy and legislation. The appropriation is a one-time appropriation and is available until expended. During the 2023 session, bills that would have enacted pension benefit improvements and alternatives proposed by the Chair and members of the Commission for expending the \$600 million target could not be given serious consideration because of the need to know the actuarial cost of proposed changes. The Commission's limited budget for actuarial fees would not have covered this need. The pension fund directors have been willing to provide cost assessments, but only to the extent they, as fiduciaries of their pension plans, believe the expense is reasonably paid using pension plan assets.

Article 7: Minnesota Secure Choice Retirement Program

This article consists of the language of delete-everything amendment H0782.S0413-DE2, approved by the Commission at its last meeting, on March 27, 2023. The DE2 replaced the language of HF 782, 1st Engrossment (Becker-Finn); SF 413, 2nd Engrossment (Pappas). See the attached summary of the Secure Choice program.

Effective Dates

Because this DE2 includes appropriations, the default effective date for all sections is July 1, 2023, unless otherwise noted. As stated in Minnesota Statutes, section 645.02:

An appropriation act or an act having appropriation items enacted finally at any session of the legislature takes effect at the beginning of the first day of July next following its final enactment, unless a different date is specified in the act.

Accordingly, every section takes effect July 1, 2023, except:

- Article 1, which changes the actuarial assumption for investment rate of return, and is effective June 30, 2023; and
- Article 7, which establishes the Minnesota Secure Choice Retirement Program and is effective the day after final enactment, except that the section imposing responsibilities on covered employers is effective when the board of directors opens the program.

Minnesota Secure Choice Retirement Program

Article 7 of the 2023 Pension Budget Omnibus Bill (Delete-Everything Amendment H3100.S3162-DE2)

Prepared by: Susan Lenczewski, Executive Director

Date: April 5, 2023

Introduction

- Affected Plan:** Minnesota Secure Choice Retirement Program
- New Law:** Minnesota Statutes, Chapter 187
- Brief Description:** Article 7 of the 2023 Pension Budget Omnibus Bill (*in the form of Delete-Everything Amendment H3100.S3162-DE2*) establishes the Minnesota Secure Choice Retirement Program, a state-sponsored program allowing private sector employees to save for retirement and provides a one-time appropriation of \$5 million to establish and administer the program.

Legislative History

HF 782/SF 413, as amended by amendment H782.S413-DE1, was adopted by the Commission at its meeting on February 20, 2023. The Commission approved forwarding the bill as amended to the House and Senate committees with jurisdiction and recommended its passage. During the meeting, Commission members asked the Chair to bring the bill back to the Commission for a final review, after it had moved through the committee stops.

After approval by the Commission on February 20, the House bill was amended by the DE1 in the House State and Local Government Finance and Policy Committee. The Senate bill was amended by the DE1 (in the form of scs04131-3) in the Senate State and Local Government and Veterans Committee and by scs0413a-4 (a delete-everything amendment) and scs0413a-5 in the Senate Labor Committee.

Because there are differences between HF 782, first engrossment, and SF 413, second engrossment, when the Commission considered the bill again on March 27, 2023, it considered Delete-Everything Amendment H782.S413-DE2, which was intended to replace the language of both engrossments and put the bill in the form desired by the authors. Accordingly, the DE2 was considered and approved by the Commission at its meeting on March 27, 2023. The dollar amounts in the appropriation section were left blank.

The Delete-Everything Amendment H782.S413-DE2, was added to the 2023 Pension Budget Omnibus Bill, H3100.S3162-DE1, as Article 7 with new language providing a one-time transfer of \$5 million from the general fund to the Secure Choice administrative fund. On April 3, 2023, the Commission approved

the 2023 Pension Budget Omnibus Bill, as amended, with the recommendation that it be forwarded to the House and Senate committees of jurisdiction.

Background

The bill adds a new chapter to the Minnesota Statutes that establishes and governs a new savings program called the Minnesota Secure Choice Retirement Program. The Secure Choice program is intended to benefit employees in the private sector who have no opportunity to save for retirement through an employer-sponsored retirement plan such as a 401(k) plan. Employers that do not sponsor a retirement plan for their employees are required to transmit a percentage of each employee's pay to a state-sponsored individual retirement account (IRA). Employees have the option to change the contribution percentage or opt out of participation altogether. Employees direct the investment of their accounts into a diversified array of investment funds offered through the State Board of Investment (SBI).

There is no cost to employers, except for any incidental costs incurred to modify their payroll systems to deduct contributions on either a pre-tax or after-tax basis and send them to the SBI for deposit into employee accounts.

The program's governing structure consists of a board of directors, an executive director, and staff. Recordkeeping and administration are handled by an outside administrator. Accounts are held in trust by the SBI's corporate trustee.

The board must hold its first meeting by March 1, 2024, and the program is required to be up and running no earlier than January 1, 2025. The board must open the program in phases over a two-year period.

Program features:

- Participation in the program is mandatory for employers that do not sponsor their own workforce retirement savings plan, such as a 401(k) plan.
- The board will set the initial contribution rate and an auto-escalation schedule.
- Employees can elect whether their contributions will be pre-tax or after-tax (Roth), can opt out of participation, or change the contribution rate.
- The annual limits on contributions to an account under the program are the federal IRA limits, which are \$6,500 for individuals younger than age 50 and \$7,500 for individuals age 50 or older. (These amounts are for 2023 and are annually adjusted by the U.S. Treasury Department.)
- Employees direct the investment of their accounts into an array of investment funds offered through the State Board of Investment (similar to employee investment of accounts in the Minnesota Deferred Compensation Plan).
- Upon leaving employment, an employee will be able to leave the employee's account with the State for distribution at a later date or elect a distribution in the form of a lump sum or other options to be determined by the board, including lifetime income options.

According to the Georgetown Center for Retirement Initiatives, there are currently 16 retirement savings programs in operation, established by other states for private sector employees. The leaders are Oregon, Illinois, California, and Connecticut, each of which established an auto-IRA account program similar to Secure Choice. Total assets in these four programs exceed \$735 million, as of January 2023.

Section- by- Section Summary of Article 7 of the Pension Budget Omnibus Bill

Section 1: Minnesota Secure Choice Retirement Program; Citation

Section 1 states that new Chapter 187 shall be known as the "Minnesota Secure Choice Retirement Program Act."

Section 2: Definitions

This section provides definitions for terms unique to this chapter. Notable definitions include the following:

- "Covered employee" means any employee of a covered employer who is at least 18 years old and satisfies any other criteria established by the board of directors.
- "Covered employer" means any employer, including non-profits, of 5 or more employees, that has been engaged in business in the State for at least one year, and does not sponsor a retirement plan for employees. Governmental employers are not "covered employers."

Section 3: Secure Choice Retirement Program

Subdivision 1 requires the board of directors to establish the program, including procedures for opening Roth IRA and traditional IRA accounts for covered employees who do not opt out of the program. The default account is a Roth IRA account, but the employee may elect to make contributions on a pre-tax basis, for deposit in a traditional IRA account.

Subdivision 2 requires that the IRA accounts comply with federal law governing Roth IRAs (Internal Revenue Code section 408A) and traditional IRAs (Code section 408).

Subdivision 3 requires that contributions be transmitted to an account in the name of the employee making the contribution and that the contributions be held in trust.

Subdivision 4 directs the board to establish the employee contribution rate and an auto-escalation schedule, whereby the contribution rate will automatically increase from year to year until a board-established maximum contribution rate is reached. Employees must be permitted, at least annually or more frequently as determined by the board, to change the contribution rate or cease contributions altogether.

Subdivision 5 requires that all employees be 100 percent vested in their accounts at all times.

Subdivision 6 requires the board to offer withdrawals while employed, distributions following termination of employment, and distribution alternatives that must include lifetime income options.

Subdivision 7 permits the board to offer participation in the program to individuals who are not employed by a covered employer. This would include sole proprietors and self-employed persons.

Subdivision 8 addresses employee leasing companies and states that the workers provided by an employee leasing company to a Minnesota taxpaying employer are to be treated as employed by the Minnesota employer, not by the employee leasing company. An exception applies if the leasing company provides the workers with a retirement plan, in which case the Minnesota employer is not a covered employer for purposes of the program. Paragraph (b) explicitly states that a Minnesota employer can retain an employee leasing company to assist the employer with the employer's responsibilities under the program.

Section 4: Secure Choice Trust and Administrative Fund; Employee Accounts; Investments

Subdivision 1 establishes the Secure Choice trust, requires the board to appoint a financial institution to act as trustee, and states that trust assets must be managed for the exclusive purpose of providing benefits and defraying reasonable administrative expenses.

Subdivision 2 establishes the Secure Choice administrative fund in the state treasury to hold appropriations, loans, gifts, and other monies that are to be used to pay administrative expenses of the Secure Choice program, including start-up costs. The appropriation to fund the start-up costs of the program would be deposited in the administrative fund.

Subdivision 3 requires an account to be maintained for each employee, to which will be allocated contributions, earnings and losses.

Subdivision 4 gives employees the authority to direct the investment of their accounts into a diversified array of investment funds selected by the State Board of Investment. Fiduciaries, including the SBI, are relieved of fiduciary duty for investment losses resulting from an employee's investment directions.

Subdivision 5 directs the board to designate a default investment fund in which accounts will be invested if the covered employee gives no investment direction. The default fund must be diversified and consist of target date funds, a balanced fund, a capital preservation fund, or a combination of the foregoing. Fiduciaries, including the SBI, are relieved of fiduciary duty for investment losses due to investment in the default fund.

Subdivision 6 protects accounts from the claims of creditors and prohibits assignment of accounts, except in the case of a division of marital assets due to divorce.

Subdivision 7 states that the assets of the Secure Choice trust may not be commingled with other state funds nor used by the State or any employer for any purpose other than the purposes of the Secure Choice trust.

Section 5: Responsibilities of Covered Employers

Subdivision 1 requires covered employers to enroll their employees in the program, unless an employee has elected not to contribute.

Subdivision 2 requires covered employers to transmit contributions on a timely basis.

Subdivision 3 requires covered employers to provide information prepared by the board to covered employees at least 30 days prior to the first paycheck from which contributions will be deducted.

Subdivisions 4 and 5 state that, but for the responsibilities set forth in subdivisions 1 to 3, covered employers have no obligation or fiduciary duty to covered employees relating to the program and are not liable to covered employees for damages alleged to have resulted from the program.

Subdivision 6 gives the board the authority to impose civil penalties established by statute against any employer that fails to comply with subdivision 1 through 3. At the request of the board, the Attorney General must enforce the penalties imposed by the board. Any penalties collected must be deposited in the administrative fund, after deducting enforcement costs. The board must provide only written warnings to employers for the first year of noncompliance before assessing penalties.

Section 6: Secure Choice Retirement Program Board of Directors

Subdivision 1 establishes a seven-member board of directors consisting of the following:

- the executive director of the Minnesota State Retirement System (MSRS) or designee;
- the executive director of the State Board of Investment (SBI) or designee;
- three members appointed by the Legislative Commission on Pensions and Retirement (Commission):
 - an executive with 401(k) recordkeeping experience;
 - an executive with experience with IRAs;
 - an executive with experience in retirement plan investments;
- two members appointed by the Governor:
 - a human resources executive from a private corporation with experience in administering the corporation's 401(k) plan;
 - a small business owner or executive.

Subdivisions 2, 3, 4, 5, and 6 specify members' terms, removal, and compensation, method for making the Governor's appointments, and selection of the chair. Subdivision 7 requires the board to appoint an executive director and determine the director's duties and compensation.

Subdivision 8 lists the duties of the board, which include:

- establishing secure enrollment and contribution transmittal procedures;
- preparing a budget;
- leasing or purchasing equipment;
- procuring insurance;
- determining contribution rates and an auto-escalation schedule, withdrawal and distribution options, and the default investment fund;

- limiting annual expenses to no more than a reasonable amount relative to fees charged by similar programs in the State or other states, which may be asset-based, fixed fee, or a combination thereof;
- determining eligibility and claims for benefits;
- publishing annual financial and statistical reports and delivering them to specified legislators, directors of the Commission and SBI, and the Legislative Reference Library;
- filing all required reports with the federal government;
- entering into partnerships with other state programs to administer or operate the program;
- retaining service providers and advisors;
- adopting rules and interpreting the governing documents and statutes;
- conducting outreach to educate employers and workers regarding the program; and
- preparing notices to employees informing them of the automatic increase in the contribution rate before the rate increase takes effect.

The board also has the duty to prepare employee information that explains the program, risks and benefits, how to enroll and opt out, and the federal and state income tax consequences of participation in the program. The employee information must include disclaimers, such as that the State does not guarantee investment performance. Finally, the board must conduct outreach that reflects the cultures and languages of the state's diverse population, which may include collaborating with non-profits and other entities.

Subdivision 10 governs conflicts of interest and requires board members to file an economic interest statement.

Section 7: Fiduciary Duty; Standard of Care

Section 7 imposes fiduciary requirements and standards on board members, the executive director, and the executive director and members of the SBI. The section states that these fiduciaries are indemnified and held harmless by the State for costs or liability incurred as a result of litigation or threatened litigation.

Section 8: No State Liability

Section 8 states that the State has no liability to any participant for the payment or amount of any benefit under the program.

Section 9: Other State Agencies to Provide Assistance

Section 9 authorizes the board to enter into agreements with other state agencies to provide outreach, technical assistance, or compliance services. The commissioner of administration is required to provide office space in the Capitol complex for the executive director and staff of the program.

Section 10: Deadlines and Phase- in

Section 10 is a session law that requires the board to begin operations of the program no earlier than January 1, 2025, open the program in phases not to extend beyond two years, and have its first meeting by March 1, 2024.

Section 11: LCPR Support to the Board until Appointment of Executive Director

Section 11 is a session law that requires the executive director of the Commission, with the assistance of the Legislative Coordinating Commission, to provide notice and work with the board to determine an agenda and provide support for the first meeting. The executive director of the Commission is also required to assist the board until the board appoints the program's executive director.

Section 12: Penalties

Section 12 requires the board to recommend penalties to the Commission by December 31, 2024. The Commission must approve or modify the recommendation and recommend legislation for passage during the 2025 legislative session.

Section 13: One- Time \$5 Million Appropriation

Section 13 is a session law that transfers \$5 million in fiscal year 2024 from the general fund to the administrative fund to establish and administer the program. This is a one-time appropriation, and the funds are available until expended.

Section 14: Effective Dates

Sections 1 to 4 and 6 to 13 are effective the day following final enactment. Section 5, relating to covered employers, is effective the day after the board of directors opens the program for enrollment of covered employees.