**S.F. 2047**

(Michel)

**H.F. 2230**

(Peterson, N.)

**Executive Summary of Commission Staff Materials**

|                                    |  |
|------------------------------------|--|
| <i>Affected Pension Plan(s):</i>   | Various Retirement Plans   |
| <i>Relevant Provisions of Law:</i> | Minnesota Statutes, Chapter 356  |
| <i>General Nature of Proposal:</i> | Implements Wisconsin Retirement System procedure for marriage dissolution division of pension benefits |
| <i>Date of Summary:</i>            | February 10, 2006  |

**Specific Proposed Changes**

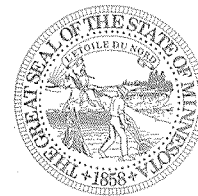
- The proposed legislation would adopt the current system used by the Wisconsin Retirement System for the handling of pension benefits divided during a marriage dissolution for Minnesota, primarily to allow the non-member ex-spouse to begin receipt of the spouse's portion at a time different from the retiring member.

**Policy Issues Raised by the Proposed Legislation**

1. Unclear necessity for the proposed change.
2. Additional actuarial gain and loss exposure; liability issues.
3. Administrative difficulties.
4. Appropriateness of attempting to replicate the Wisconsin retirement system procedure.
5. Appropriateness of the role of the MSRS staff in endorsing the proposed change.
6. Retroactivity; application to Ms. Jeanne K. Hanson.

**Potential Amendments**

- S2047-A1 updates effective date (technical).
- S2047-A2 implements suggestions or corrections offered by the constituent requesting the proposed legislation (substantive).



TO: Legislative Commission on Pensions and Retirement  
FROM: Lawrence A. Martin, Executive Director *LAM*  
RE: S.F. 2047 (Michel); H.F. 2230 (Peterson, N.): Various Retirement Plans; Allowing An Alternate Payee for a Public Retirement Benefit Following a Marriage Dissolution  
DATE: February 10, 2006

#### Summary of S.F. 2047 (Michel); H.F. 2230 (Peterson, N.)

S.F. 2047 (Michel); H.F. 2230 (Peterson, N.) amends Minnesota Statutes, Chapter 356, the general retirement law chapter, and Minnesota Statutes, Section 518.58, the marital property division marriage dissolution provision, by creating authority for an alternate payee to receive a retirement annuity separate from a public pension plan member based on a qualified domestic relations order from a marriage dissolution court dividing a retirement annuity as marital property between a public pension plan member and the member's spouse in the event of a marriage dissolution. The alternate payee is permitted to begin receiving the divided portion of the public pension at any time after the member attains the minimum retirement age, based on the present value of the allocated portion of the retirement benefit. The provision would apply to virtually every public retirement plan other than a volunteer firefighter relief association.

#### Public Pension Problem of Jeanne K. Hanson

Jeanne K. Hanson, a literary agent located in Edina, Minnesota, is an ex-spouse of a former Minnesota public pension plan member and complains that under the current Minnesota marriage dissolution marital property division law the ex-spouse must wait to receive the awarded portion of the public pension plan member's retirement benefit until the member actually retires and applies for the annuity.

Ms. Hanson indicates that, in Wisconsin and other states, the ex-spouse of a public pension plan member may claim the person's portion of the member's retirement benefit at any time after the member terminates active employment. She further indicates that Ron Schweitzer, the former Assistant Executive Director of the Minnesota State Retirement System (MSRS), agrees that the Minnesota public pension plan marriage dissolution marital property pension division law needs to be modified and that if Minnesota replicates the Wisconsin law in this respect, the change would not hurt anyone numerically.

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

Background information on the division of pension benefits as marital property in a marriage dissolution action under Minnesota law is set forth in Attachment A.

#### Background Information on the Wisconsin Retirement System Divorce Pension Benefit Division Practices

Background information on the practices governing the division of pension benefits as marital property in a marriage dissolution under the Wisconsin Retirement System is set forth in Attachment B.

#### Discussion and Analysis

S.F. 2047 (Michel); H.F. 2230 (Peterson, N.) would permit the ex-spouses of Minnesota public pension plan members, in 20 Minnesota public pension plans, who were awarded a portion of the public pension plan members' pensions to exercise greater flexibility in the receipt of those pensions and to potentially begin the receipt of those pensions earlier than currently permitted by creating a pension plan membership category of "alternate payee" and by allocating the court-ordered portion of accrued pension value to a separate account for the alternate payee.

The proposed legislation raises several pension issues and related public policy issues that may merit Commission consideration and discussion, as follows:

1. Unclear Necessity for the Proposed Change. The policy issue is the lack of any clear necessity for the proposed change. The necessity for a Minnesota law change to replicate the Wisconsin law is unclear because the current law makes the division of pension benefits intentionally the last resort in a

marriage dissolution marital property division, and because of the lack of recent complaints about the current law other than the complaint of Jeanne K. Hanson. Minnesota Statutes, Section 518.58, Subdivision 3, mandates that the marriage dissolution court, “[i]f liquid or readily liquidated marital property other than property representing vested pension benefits or rights is available, . . . shall divide the property representing vested pension benefits or rights by the disposition of an equivalent amount of the liquid or readily liquidated property.” For the sake of the individuals involved and for the sake of the sound administration of Minnesota public pension plans, because pensions are difficult to value and to divide, the 1987 Commission recommended and the 1987 Legislature made the actual division of public pension benefits, rather than their value, the last resort mechanism for a division in a marriage dissolution. If followed by the Minnesota courts, the value of pension coverage should be divided, but the actual division of public pensions should be relatively rare, probably mostly reserved to relatively young public employees who have not had a significant opportunity amass other assets for an actual division in a marriage dissolution. The complaint of Ms. Jeanne K. Hanson is the first complaint about the 1987 legislation that the Commission staff has received, which is a rebuttable indication of the general appropriateness of the current law as a solution to the marriage dissolution marital property division problem.

2. Additional Actuarial Gain and Loss Exposure; Liability Issues. The policy issue is the actuarial liability impacts of the proposed change generally and the additional actuarial gain and loss exposure from the proposed change specifically. The creation of an “alternate payee,” the dividing of a public employee’s account into two accounts, and the permitting of the ex-spouse to begin the receipt of a retirement benefit at a different time from the public employee may have an effect on the actuarial liability of the affected retirement plan. Although the proposed legislation attempts to insure that the two accounts divided from a single public employee’s retirement account do not involve more than the present value of the initial account, the creation of more than one account and the shift in potential timing of the receipt of benefits by an ex-spouse could create an actual, unpredicted, additional liability for the retirement plan. At a minimum, the proposed change increases the exposure of the retirement plan to additional experience gains and losses by taking on a mortality risk for two lives where it previously had a mortality risk for only one life. Currently Minnesota Statutes, Section 518.58, limits the ex-spouse to the direct receipt of a portion of each pension payment to a retired public pension plan member once the retired member begins receipt of the benefit and only for as long as the retired member is entitled to receive the benefit. Ms. Hanson is concerned that, under current law, an ex-spouse could lose the entirety of an awarded pension benefit if the former public employee delayed retirement out of spite or otherwise and then died before beginning receipt of the retirement annuity. However, to change that situation will make the “alternate payee” a separate liability producer for the affected retirement plan, creating gains and losses independent of the plan member, and placing additional pressure for accurate mortality assumptions among the various Minnesota public retirement plans.
3. Administrative Difficulties. The policy issue is the administrative difficulties that may be created for Minnesota public retirement plans. The proposed legislation would involve the creation of a full account for the ex-spouse of every public pension plan member covered by a domestic relations order and would require some or several additional actuarial present value determinations. With the frequency that marriage dissolutions occur in our society, a significant amount of public pension plan administrative time may be expended in reviewing domestic relations orders, establishing alternate payee accounts, transferring service credit and present values to alternate payee accounts, and counseling additional potential benefit recipients.
4. Appropriateness of Attempting to Replicate the Wisconsin Retirement System Procedure. The issue is the appropriateness of the Minnesota Legislature attempting to replicate this one feature of Wisconsin public pension law. The primary argument offered by Ms. Jeanne K. Hanson for the proposed change is that a different marital property division marriage dissolution procedure is used in Wisconsin and in other states than is used in Minnesota. The 50 states differ considerably in various features related to their public employee pension plans, for various reasons, and the simple fact that another state approaches a problem differently than Minnesota is not generally a sufficient reason for Minnesota to attempt to implement the same change. The Commission staff does not have a complete understanding of the Wisconsin Retirement System and any internal tradeoffs that may exist that makes this marriage dissolution marital property division procedure appropriate and affordable. One difference between Wisconsin and Minnesota is that Wisconsin is a community property state, by statute law, and that Minnesota is not. In community property states, all marital property is required by law to be divided equally. The Commission staff requested information from the Wisconsin Joint Legislative Council about the policy issues addressed by the Wisconsin General Assembly when it enacted Wisconsin Statutes, Section 40.08(lm), but the response received from Wisconsin was not

enlightening on the nature or content of the policy deliberations of the Wisconsin General Assembly when it enacted its current marital property division procedure.

5. Appropriateness of the Role of the MSRS Staff in Endorsing the Proposed Change. The policy issue is the appropriateness of the administrative staff of the Minnesota State Retirement System (MSRS) in endorsing the proposed change. Support for the proposed change by a former MSRS staff member is one of the arguments offered by Ms. Jeanne K. Hanson for the proposed change. The amount of advocacy for potential pension changes by the Minnesota public pension plans that is permitted or desired by the Commission or the Legislature has never been clearly enunciated or communicated to the various retirement plans. In advocating proposed changes for one person or for a segment of plan members while attempting to administer current Minnesota retirement law fairly and impartially, a public pension plan runs the risk of not fulfilling its fiduciary duty to the State, the taxpayers, and the public pension plan members. Advocacy within a public pension plan also is usually processed through the governing board of the pension plan, which apparently did not occur in this instance, when the former assistant director endorsed a legislative change on behalf of the retirement plan.
6. Retroactivity; Application to Ms. Jeanne K. Hanson. The policy issue is the appropriateness of making the proposed change applicable retroactively, either in general or to Ms. Jeanne K. Hanson as a reward for pursuing the remedy to the issue. Under Minnesota Statutes, Section 645.21, legislative changes are not to be interpreted to be effective retroactively unless an intended retroactive application is clearly expressed by the Legislature. Making the change applicable to Ms. Hanson would potentially reward her for pursuing the issue, but doing so specifically may set a poor precedent for other retirement changes and doing so generally will likely increase the administrative burden related to the proposed change.

#### Potential Amendments

Amendment S2047-A1 (technical) updates the effective date for the proposed legislation (technical).

Amendment S2047-A2 (substantive) contains suggestions or corrections that have been forwarded by Ms. Jeanne K. Hanson related to the proposed legislation. The suggestions or corrections are:

1. Time Limit on QDRO Determination Review. A 90-day time limit would be set on the determination by a Minnesota public pension plan as to whether a “qualified domestic relations order” meets the requirements of Minnesota law;
2. MSRS-Unclassified Division in Lump Sum. For the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified), a defined contribution plan with a reservation of potential defined benefit plan rights, the alternate payee would have the same rights as the pension program member to take the divided benefit portion as a lump sum instead of an annuity; and
3. MSRS-Unclassified Reference Added to Retroactivity Provision. Ms. Hanson’s divided pension benefit may relate to the Unclassified Employees Retirement Program of the Minnesota State Retirement System (MSRS-Unclassified) instead of the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), so the addition of the reference would qualify her for retroactivity in either case.

**Jeanne K. Hanson  
Literary Agent  
6708 Cornelia Dr.  
Edina, Minnesota 55435  
Phone and Fax: (952) 920-8819  
e-mail: jkhlit@aol.com**

Larry Martin  
Legislative Commission on Pensions and Retirement  
55 State Office Building  
100 Constitution Avenue  
St. Paul, Minnesota 55155

August 2, 2004

Dear Mr. Martin,

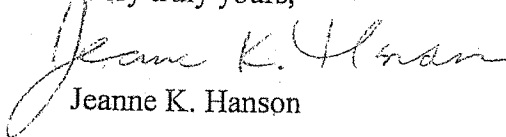
The "Quadro" system in Minnesota for dividing pensions after a divorce needs improvement. Right now, the ex-spouse who is not the retired state employee must wait until the retired spouse claims his or her pension. In Wisconsin and elsewhere, the non-employee spouse may claim at any time after her or his spouse retires.

Ron Schweitzer, who administers the system for the state, agrees that the Minnesota process needs changing and would be willing to testify accordingly. He would say that "no one would be hurt numerically" if the pension can be divided at any time after the employee-spouse retires and that, "if the employee died before claiming his pension at all, his ex-spouse could lose the entitled share completely."

Mr. Schweitzer's phone number is (651) 284-7889. He suggests that the Wisconsin legislation might be easily adopted and would fix this problem.

I hope that you will pursue this and will call in mid-August to see if I can provide you with any more information.

Very truly yours,

  
Jeanne K. Hanson

## Attachment A

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

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

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

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

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

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

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

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

## **Attachment B**

### Background Information on the Wisconsin Retirement System Divorce Pension Benefit Division Practices

If a marriage involving a Wisconsin Retirement System (WRS) member is legally terminated, the court can award up to 50 percent of a participant's WRS account to an "alternate payee" (the former spouse). The court order that awards a portion of the account to the alternate payee is called a "Qualified Domestic Relations Order" (QDRO). A WRS account can be divided if the marriage legally terminated after January 1, 1982.

A QDRO must award a percentage of a participant's annuity or account to an alternate payee; it cannot award a specific dollar amount. The percentage applies to all parts of the participant's annuity or account, including employee and employer contributions, additional contributions, and creditable service (including military service). Once the annuity or account is divided the participant has no further rights to the portion awarded to the alternate payee's, and the participant's future benefits are reduced by the value of the annuity or account awarded to the alternate payee.

If the participant is already receiving an annuity when the marriage is terminated, the annuity is divided and a separate annuity is then paid to the alternate payee. If the participant is not an annuitant, the account is divided and a separate account is created for the alternate payee, who can then apply for a benefit at any time. However, until the participant reaches minimum retirement age and/or is vested, the alternate payee is only eligible for a separation benefit. Once the participant reaches minimum retirement age and is vested, the alternate payee is eligible to apply for a retirement benefit based on both employee and employer contributions.

The applicable Wisconsin Retirement System (WRS) statute (copy attached) is Wisconsin Statutes, Section 40.08(lm). A more detailed summary of the WRS marital property division procedure, Publication ET-4925, is also attached.

Wisconsin Retirement System: Marriage Dissolution Retirement Annuity Division

40.08(1m)

(1m) Division of benefits.

40.08(1m)(a)

(a) Notwithstanding sub. (1), a participant's accumulated rights and benefits under the Wisconsin retirement system shall be divided pursuant to a qualified domestic relations order only if the order provides for a division as specified in this subsection.

40.08(1m)(b)

(b) The creditable service and the value of the participant's account that are subject to division on the decree date shall be equal to one of the following:

40.08(1m)(b)1.

1. The creditable service and the dollar amounts credited to all parts of the participant's account through the day before the decree date, if the participant is not an annuitant on the decree date.

40.08(1m)(b)2.

2. The present value of the annuity being paid if the participant is an annuitant.

40.08(1m)(c)

(c) The present value of the annuity specified in par. (b) 2. shall be computed in accordance with the actuarial tables then in effect and shall consider the number of remaining guaranteed payments, if any. If the participant is an annuitant who is not receiving an annuity from all parts of the participant's accounts, then par. (b) 1. applies to those parts of the account from which the annuity is not being received.

40.08(1m)(d)

(d) The amount computed under par. (b) shall be divided between the participant and the alternate payee in the percentages specified in the qualified domestic relations order. The participant shall have no further right, interest or claim on that portion of the participant's creditable service and account balances or annuity amount allocated to the alternate payee.

40.08(1m)(e)

(e) The alternate payee share of the amount computed under par. (b) shall be distributed to the alternate payee or, in the case of an individual adjudged mentally incompetent, to a named guardian under sub. (9), as follows:

40.08(1m)(e)1.

1. The creditable service and amounts computed under par. (b) 1. shall be transferred to a separate account in the name of the alternate payee.

40.08(1m)(e)2.

2. Except as provided in subds. 3. and 4., the control and ownership rights of the alternate payee over his or her share of the account shall be the same as if the alternate payee were a participant who had ceased to be a participating employee but had not applied for a benefit under s. 40.23 or 40.25 on the decree date or the date that the participant terminated covered employment, whichever is earlier.

40.08(1m)(e)3.

3. If par. (b) 1. applies and the effective date of the alternate payee's benefit is after the date that the participant would have met the age requirement for a retirement annuity under s. 40.23, the benefits for the alternate payee shall be determined under s. 40.23. The alternate payee's benefits shall be computed using the participant's final average earnings on the first day of the annual earnings period in which the alternate payee's annuity is effective. If the effective date of the alternate payee's benefit is before the date that the participant would have met the age requirement for a retirement annuity under s. 40.23, the alternate payee's benefits shall be determined under s. 40.25 (2).



40.08(1m)(e)4.

4. An alternate payee, who elects an annuity option, may only elect among the options under s. 40.24 that provide payments that are calculated only on the basis of the age of the alternate payee.

40.08(1m)(f)

(f) After division of the participant's account under par. (b), the account and any benefits payable shall be adjusted as follows:

40.08(1m)(f)1.

1. Subject to subd. 3., if the participant is not an annuitant on the decree date, an amount equal to the total of the alternate payee share distributed under par. (e), including creditable service, shall be subtracted from the participant's account.

40.08(1m)(f)2.

2. Subject to subd. 3., if the participant is an annuitant on the decree date, the annuity shall be recomputed using the total value of the participant's account determined under par. (b) reduced by the total of the alternate payee share transferred under par. (e) 1., in accordance with the actuarial tables in effect and using the participant's age on the decree date. The decree date shall be the effective date of recomputation. If the optional annuity form before division of the participant's account under par. (b) was not a joint and survivor annuity with the alternate payee as the named survivor, the same annuity option with no change in the remaining guarantee period, if any, shall be continued upon recomputation to the participant. The present value of the alternate payee's share of the annuity after division shall be paid to the alternate payee as a straight life annuity based on the age of the alternate payee on the decree date. The alternate payee's annuity shall have the same remaining guarantee period, if any, as the participant's annuity. If the optional annuity form before division of the participant's account under par. (b) was a joint and survivor annuity with the alternate payee as the named survivor, the present value of the annuity after division shall be paid to both the participant and the alternate payee as a straight life annuity based upon their respective ages on the decree date. If the participant's account is reestablished under s. 40.26 (2) after the decree date, the memorandum account created under s. 40.26 (2) (b) shall be adjusted by the total of the alternate payee share computed under this subdivision. If the participant's account is reestablished under s. 40.63 (10) after the decree date, the amounts and creditable service reestablished shall be reduced by an amount equal to the percentage of the alternate payee share computed under this subdivision.

40.08(1m)(f)3.

3. For any participant whose marriage is terminated by a court during the period that begins on January 1, 1982, and ends on April 27, 1990, and for whom the department receives a qualified domestic relations order after May 2, 1998, the division of benefits may not apply to any benefits paid to the participant before the date on which the department receives the qualified domestic relations order.

40.08(1m)(g)

(g) If par. (b) 1. applies, eligibility for benefit rights that are available only after attainment of a specified length of service shall be determined based on the service that would have been credited, if the account had not been divided under this subsection, to the participant's account on the effective date of the participant's benefit and on the effective date of the alternate payee's benefit for purposes of determining the participant's and alternate payee's benefit rights, respectively. However, no creditable service may be added to the alternate payee's account under this paragraph, and the participant shall not receive creditable service under this paragraph, for any service that has been transferred to the alternate payee's account. This paragraph applies only if all eligibility requirements, other than length-of-service requirements, for the benefit rights being established have been met.

40.08(1m)(h)

(h) Notwithstanding pars. (b) to (g), if the participant is both an annuitant and is receiving a benefit under s. 40.65 that is effective on or before the decree date, the adjustments specified in s. 40.65 (5) (b) 4. shall be computed as though the participant's account had not been divided.

40.08(1m)(i)

(i) The department, its employees, the fund and the board are immune from any liability for any act or omission under this subsection in accordance with a qualified domestic relations order and may not be required to take any action or make any notification as part of the exercise of ownership rights granted under this subsection.

40.08(1m)(j)

(j) This subsection applies to qualified domestic relations orders issued on or after January 1, 1982, that provide for divisions of the accumulated rights and benefits of participants whose marriages have been terminated by a court on or after January 1, 1982.

40.08(1m)(k)

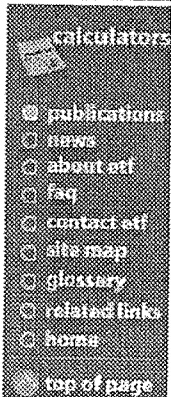
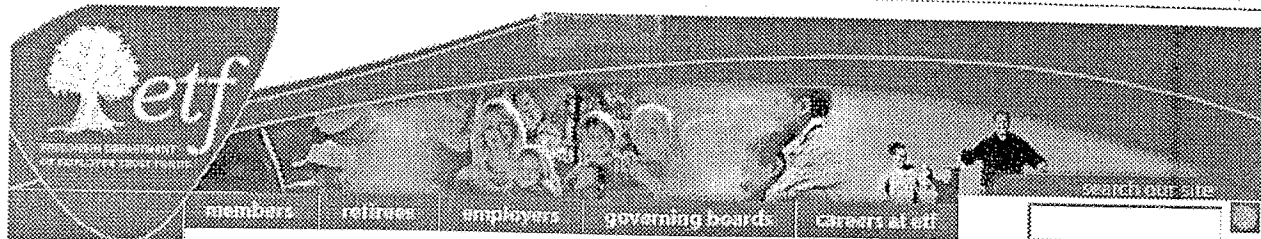
(k)

40.08(1m)(k)1.

1. Nothing in this subsection authorizes a court to revise or modify a judgment or order with respect to a final division of property under s. 767.255, in contravention of s. 767.32 (1) (a).

40.08(1m)(k)2.

2. Notwithstanding subd. 1., a court may revise or modify a judgment or order specified under subd. 1. for participants whose marriages were terminated by a court on or after January 1, 1982, and before April 28, 1990, but only with respect to providing for payment in accordance with a qualified domestic relations order of benefits under the Wisconsin retirement system that are already divided under the judgment or order.



## Publications

### How Divorce Can Affect Your WRS Benefits

ET-4925, Rev. 5/2004

#### GENERAL INFORMATION

For marriages that are legally terminated after 1981 by divorce, annulment or legal separation, the Department can divide a participant's Wisconsin Retirement System (WRS) account or annuity between the participant and an alternate payee (the former spouse) upon receipt of a Qualified Domestic Relations Order (QDRO). The Department must receive an original or certified copy of the QDRO; we cannot accept an uncertified photocopy. To assure that the QDRO meets all of the requirements in WRS law, we recommend using the QDRO forms that we provide; Order to Divide Wisconsin Retirement System Benefits (ET-4926) and Foreign Jurisdiction Order to Divide Wisconsin Retirement System Benefits (ET-4935) (used if the marriage is not terminated in a Wisconsin court).

A QDRO must divide the account or annuity by awarding a percentage to the alternate payee, rather than a specific dollar amount. The portion of the account or annuity awarded to the alternate payee cannot exceed 50% of the total value of the account or annuity as of the "decree date." The decree date is defined by statute as the first day of the month in which the marriage is legally terminated.

As a public retirement plan, the WRS is not subject to the Employee Retirement Income Security Act (ERISA) or the Retirement Equity Act. The provisions of those federal laws do not apply to the WRS. The effects of a QDRO on a participant's WRS account and the WRS benefits payable to an alternate payee differ based on whether the participant has an:

- **Active Account** - Currently employed in a position covered under the WRS, and/or
- **Inactive Account** - Terminated from covered WRS employment, but has not yet taken a benefit, and/or
- **Annuity** - Receiving monthly retirement or disability payments.

A QDRO applies only to the participant's account based on the service, earnings and contributions from his/her own WRS employment. If the participant is entitled to benefits as a beneficiary or alternate payee of another WRS participant's WRS account, the QDRO does not apply to that account or annuity.

If the participant is enrolled in the variable trust fund on the decree date, a portion of the alternate payee's account and/or annuity will automatically be included in the variable trust fund. The alternate payee can cancel variable participation for his/her share of the account, and may contact this Department for a variable cancellation form at any time. If the participant is not enrolled in the variable trust fund as of the decree date, both accounts and/or annuities will be in the fixed trust fund.

#### What Language Must Be Included In a Valid QDRO

- The participant's name, birthdate, current address and Social Security number.
- The alternate payee's name, birthdate, current address and Social Security number.
- The Wisconsin Retirement System must be specifically named.
- The QDRO must specify the decree date as the date to be used for valuing and dividing the account or annuity. Per Wisconsin Statutes, the decree date is the first day of the month in which the marriage is legally terminated.

Note: If the marriage was legally terminated between January 1, 1982 and April 27, 1990 and the participant is receiving a monthly annuity when the Department receives the QDRO, the annuity division will not apply to payments issued prior to the date that we receive the QDRO.

- The QDRO must award a percentage, not to exceed 50%, of all parts of the participant's account as of the decree date to the alternate payee. The percentage of the account may be specified up to two decimal places; for example, 33%, 33.3%, or 33.33% are all acceptable. If a QDRO specifies the percentage to more than two decimal places, the Department will round the percentage to two decimals.
- The QDRO must require the participant to certify all active military service on a form provided by this Department.
- The QDRO must require the participant's employer to submit a report to this Department of all service, earnings and contributions from the last reported data through the decree date.

### **What Happens When the Department Receives a QDRO**

The Department reviews the QDRO to verify that it meets all of the statutory requirements for a valid QDRO. If the QDRO contains provisions that are prohibited by WRS law, does not meet all of the statutory requirements or is invalid for any other reason, it will be stamped "REJECTED" and returned to the party who submitted it, plus information about the necessary corrections. A corrected QDRO can subsequently be submitted to the Department.

#### **If the participant is receiving a monthly annuity:**

- The Department will divide the annuity into two separate life annuities, one payable to the participant and one to the alternate payee. The alternate payee does not need to apply for his/her share of the annuity; payments are made automatically to the alternate payee, retroactive to the effective date of the annuity division. Each person receives a notice of the amount of his/her annuity after the division.

#### **If the participant has an active or inactive account:**

- If the participant has an active or inactive account, the Department sends a certification of military service form to the participant. The participant must certify whether he/she has any active military service, have the certification form notarized and return the certification form to the Department. The participant must submit a copy of any applicable discharge papers with the certification form if the Department has not already received a copy.
- If the participant is actively employed in a covered WRS position, the Department will also send a form to his/her employer for certification of any unreported service, earnings and contributions through the decree date.
- After the Department has received the military service certification form and any applicable military discharge papers and/or employer certification of unreported service, the participant's account is split.

The participant's money balances and creditable service are divided and a separate account is created for the alternate payee. After the account is split, each party receives a Statement of Account which shows the respective account balances, total creditable service, etc. Subsequently, each party will receive annual Statements of Benefits showing the service and contribution balances in his/her own account.

### **PURCHASING SERVICE**

If you purchase qualifying, forfeited or outside government (OGS) service as an active employee and your WRS account is later divided due to a QDRO, we also divide the purchased service. The alternate payee receives the same percentage of the purchased service and of your WRS creditable service. If you purchase service after a QDRO, we do not divide the purchased service and the total remains in your account.

Once the participant's account has been reduced by the portion transferred into the alternate payee's account, any actions taken by the alternate payee (e.g. a benefit withdrawal) have no further effect on the participant's account.

There are no provisions in WRS law which permit the participant to repay the contributions awarded to the alternate payee to his/her account, nor to purchase the years of creditable service lost through the QDRO. The contributions and years of service awarded to the alternate payee are permanently lost to the participant.

### **BENEFICIARY DESIGNATIONS**

If a participant's account is divided per a QDRO or if there are remaining guaranteed payments for an annuity that is divided, the participant and alternate payee can each name beneficiaries to receive any death benefits payable upon his/her death from

his/her account or annuity.

Death benefits are always paid based on the most recent beneficiary designation received by the Department prior to an individual's death. An individual's designation of beneficiary does not change automatically when significant life events occur, such as a divorce or remarriage. For example, if the participant named a spouse as primary beneficiary and that marriage ends, the former spouse remains the named beneficiary unless the Department receives an updated designation form from the participant prior to the participant's death. The designation must be on the form approved by the Department.

If an individual has never filed a beneficiary designation form with the Department, death benefits are paid from that individual's account based on statutory standard sequence.

Forms are available by calling or writing our office or are on our web site.

## EFFECTS ON ACTIVE/INACTIVE ACCOUNTS

### How the Participant's Account is Affected

A QDRO awards the alternate payee a percentage of the participant's WRS account balances as of the decree date. The alternate payee receives a percentage of the money balances and creditable service (including purchased service) accrued as of that date. The appropriate monies and years of service are transferred from the participant's account into a new separate account created for the alternate payee. Exception: If the marriage was terminated between January 1, 1982 and April 27, 1990 and the participant was not receiving an annuity as of the decree date but is an annuitant on the date the Department receives the QDRO, a separate annuity is created for the alternate payee, based on the share of the account (as of the decree date) awarded to the alternate payee. In this situation, the remainder of this section would not apply. Refer to the "Effects on Monthly Payments" section for information about annuity divisions.

- **Money Balances** - The specified percentage of the dollar amounts in the participant's account on the decree date transfers to a separate account established for the alternate payee. The percentage applies to employee- and employer-required contributions and to voluntary additional contributions.
- **Creditable Service** - The specified percentage of the participant's creditable service on the decree date transfers to the alternate payee's account and is used to calculate formula retirement benefits for the alternate payee.

The participant's total creditable service is reduced by the years of service granted to the alternate payee, including any purchased service. The participant's remaining creditable service, plus any additional service earned by the participant after the decree date, is used to calculate the participant's formula retirement benefits.

The participant's future eligibility for benefit rights that are available only after earning a specified number of years of service is determined as though the participant's service was not reduced through a QDRO.

Example: A QDRO awards 50% of a participant's account to the alternate payee. The alternate payee receives 15 years of service and the participant retains 15 years of creditable service:

- **Formula retirement benefit calculation:** The years of creditable service actually credited to the participant's and alternate payee's accounts are used to calculate their formula benefits. However, the total creditable service earned by the participant (the original 30 years plus any additional service accrued after the decree date) as of the dates that their respective annuities begin, is used to calculate any age reduction factor in their respective formula benefits.
- **Continuation of health insurance/life insurance benefits:** The total years of service (as if the account had never been split) will be used to meet service eligibility requirements for continuation of the participant's insurances.
- **Military Service Credit** - If the participant has active military service, he/she will be required to submit a copy of the discharge papers to the Department if we have not already received copies. If the participant already has credit for the eligible active military service, the same percentage specified in the QDRO is deducted from his/her account and transferred to the alternate payee's account.

In most cases, a participant cannot receive credit for eligible active military

service until retirement. However, at the time of a QDRO, part of the participant's years of active military service may be granted to the alternate payee based on the participant's creditable service on the decree date. The participant may be required to sign an affidavit verifying whether the military service will also be used toward certain federal benefits. The participant may later receive credit at retirement for the remaining years of military service and a second affidavit may be required at that time.

Additional information about eligibility for credit for active military service is provided in the brochure Military Service Credit (ET-4122), available from this Department.

Final Average Earnings (FAE) - The participant's FAE is not affected by a QDRO. His/her formula retirement benefits are based on the actual FAE at the time that the participant's benefit begins. The alternate payee's formula retirement benefits also are based on the participant's actual FAE at the time the alternate payee's retirement benefit begins.

## **BENEFITS AND OPTIONS AVAILABLE TO ALTERNATE PAYEE**

The alternate payee can apply for a benefit at any time, regardless of whether the participant has terminated covered WRS employment. In order to receive a benefit, the alternate payee must request the appropriate application form from this Department.

We Recommend That The Alternate Payee Carefully Review This Section Of The Booklet For Important Information About The Benefits That May Be Available.

When a portion of a WRS participant's account is transferred to a separate account for an alternate payee, as explained above, the benefit rights available to the alternate payee are the same as they would be for a participant who terminated WRS employment on the decree date. Changes in the law effective after the decree date have no effect on the alternate payee's account; the account is considered an inactive account or benefit purposes.

If the alternate payee also has a WRS account based on his or her own WRS employment, the alternate payee account will be separate. The two accounts are not combined; benefits are calculated separately and require separate applications. An alternate payee who is still actively employed in a covered WRS position can apply for a benefit from his/her alternate payee account at any time, regardless of whether the alternate payee and/or participant have terminated WRS employment. However, the alternate payee cannot apply for a benefit from the WRS account based on his/her own employment before terminating covered employment.

When designating beneficiaries, a designation applies to all benefit plans and accounts administered by the Department, unless otherwise specified on the Beneficiary Designation form.

Alternate payee benefits are based on both the dollar amount in the alternate payee's account and the age, employment category, FAE and other benefit rights of the participant.

- Participant Under Age 55 (Age 50 if Protective Category Employee) - The alternate payee can apply for a separation benefit at any time until the participant reaches age 55, (50 if protective). A separation benefit includes employee-required and additional contributions plus accrued interest. Employer-required contributions and all associated service are forfeited.

The alternate payee should carefully consider the onsequences of taking a separation benefit. He/she would forfeit all rights to a future retirement benefit based on the employee-required contributions plus at least a matching amount of employer contributions when the participant reaches age 55, (50 if protective).

- Participant Age 55 or Over (Age 50 if Protective Category Employee) - The alternate payee can apply for a retirement benefit from both employee- and employer-required contributions. WRS retirement benefits are calculated under both the formula and the money purchase methods. The alternate payee automatically receives the higher benefit amount. The alternate payee is not eligible to select a joint and survivor annuity payment option.

Exception: if the participant first became covered under the WRS after 1989 and either the participant's WRS termination date and/or the decree date are before April 24,

1998, the alternate payee does not meet the vesting requirement and is only eligible for a separation benefit regardless of the participant's age.

Detailed information about the formula and money purchase calculations is in the Calculating Your Retirement Benefits (ET-4107) brochure.

**Formula Benefits:** The formula benefit for the alternate payee is calculated using the following elements:

1. The participant's final average monthly earnings (FAE) at the time the alternate payee's retirement benefit begins.
2. The formula factor(s) based on the employment category(ies) of the creditable service granted to the alternate payee.
3. The years of creditable service granted to the alternate payee in the QDRO, including military service and purchased service.
4. An age reduction factor based on the alternate payee's age, if the alternate payee has not reached the normal retirement age for the participant's employment category(ies).

The age reduction factor is calculated based on the years of service the participant would have accrued at the time the alternate payee's benefit begins as though the participant's creditable service had never been reduced by a QDRO.

**Money Purchase Benefits:** The money purchase benefit is calculated based on the alternate payee's age when his/her annuity begins and the dollar amount(s) in the account.

If the For Annuitant's Life Only annuity using the formula or the money purchase calculation is \$140\* or less per month, the alternate payee is restricted to a lump sum retirement benefit payment. If the annuity is greater than \$140,\* and less than \$283\* per month, the alternate payee can choose between a lump sum and a monthly lifetime annuity. If the annuity is at least \$283\* per month, payment is restricted to a monthly lifetime annuity.

Annuities from voluntary additional contributions are always calculated under the money purchase method. More detailed information about the payment options for additional contributions is in the brochure Additional Contributions (ET-2123), available from this Department.

**Application Procedures:** The alternate payee should contact this Department for a benefit application. It can take 90 days or more to process a lump sum benefit application after the Department receives it.

If the alternate payee is eligible for a retirement benefit paid as lifetime monthly payments, the Department provides an estimated amount for all eligible annuity options\* when sending the application. We recommend that you request annuity estimates several months before the anticipated annuity begin date. We include specific instructions for applying in the application packet.

**Special Caution To Alternate Payees Who Are Eligible for Accelerated Payment Options:** As an alternate payee under age 62, you are eligible to select an Accelerated Payment option from an account under the WRS. Accelerated Payment options provide a higher monthly annuity until age 62, at which time the WRS annuity decreases by the approximate amount of the anticipated monthly Social Security benefit. The intent of Accelerated Payment options is for the to-age-62 WRS annuity to be approximately the same as the total after-age-62 income from Social Security and the WRS annuity combined.

As an alternate payee, the amount of the Social Security benefit used to estimate your Accelerated Payment options uses the participant's final average WRS earnings. We use tables which assume full career employment covered under Social Security. The assumed Social Security benefit amount from these tables could be substantially higher than the Social Security benefit you will actually receive. This could result in a substantial decrease in your total income at age 62.

To avoid a possible decrease in your total income at age 62, you may wish to contact the Social Security Administration office for a projection of your Social Security benefits at age 62. You should request that this benefit projection be based on your actual "stop working age." If you provide us with a copy of the projection and your "stop working age" is within one year of your WRS benefit effective date, we will use your Social Security benefit projection when calculating your accelerated payment options.



## EFFECTS ON MONTHLY ANNUITY PAYMENTS

If the participant is a WRS annuitant on the decree date and also has an inactive account from which benefits are not being paid (such as an additional contribution account), the inactive account is divided as described in the section on Active/Inactive Accounts.

**For marriages legally terminated after April 27, 1990:** Upon receipt of a valid QDRO, a percentage of a participant's total WRS annuity in effect on the decree date can be paid directly to an alternate payee. The participant's annuity is divided into two separate life annuities, with a new annuity record established for the alternate payee.

**For marriages legally terminated between January 1, 1982 and April 27, 1990:** Upon receipt of a valid QDRO, if the participant was not an annuitant on the decree date but is receiving an annuity when the Department receives the QDRO, the Department will divide the annuity prospectively and create a separate annuity for the alternate payee. The alternate payee's share of the annuity is calculated based on the percentage of the participant's account value as of the decree date that the QDRO awards to the alternate payee; the portion of the annuity based on service and contributions to the participant's account after the decree date are not divided.

Once the annuity is divided, both the participant and the alternate payee will receive notices explaining his/her annuity amounts, the options in effect, etc. The type of annuity and amounts for each party will be based on his/her age and the participant's original annuity option selection. The alternate payee does not need to file an application for benefits; when the annuity is divided, payments will automatically be made to the alternate payee.

Annual fixed and variable adjustments are applied to both parties' annuities. We send separate 1099-R tax reports to each annuitant every year, showing the taxable and non-taxable annuity amounts, annuity deductions, etc.

It is important to note that while the combined actuarial value of the two annuities remains the same as the actuarial value of the participant's original annuity, the sum of the two separate gross annuities will usually be different than the participant's gross monthly annuity before the division. This is due to the actuarial conversion of the annuity into two separate life annuities based on the respective life expectancies of the participant and alternate payee.

### Annuity Options and Associated Death Benefits

The death benefits from the participant's and alternate payee's annuities are based on the original option selected by the participant:

#### Life With 60-Payments and 180-Payments Guaranteed Options:

The annuity is divided into two separate annuities, one paid to the participant for life and one to the alternate payee for life. If the guarantee period has not expired as of the effective date of the annuity division, each annuity provides the remainder of the original guarantee period as a potential death benefit. Whether a death benefit is payable from an annuity depends on whether the guarantee period has expired at the time he or she dies. However, if the guarantee period had expired as of the effective date of the annuity division, there is no death benefit payable from either annuity.

The participant and the alternate payee can each name his/her own beneficiary(ies) to receive the death benefit from his/her annuity. Each can change beneficiary(ies) at any time. Once the guaranteed number of payments has been made, there is no death benefit from either annuity.

#### Joint and Survivor Options With Alternate Payee As Named Joint Survivor:

- **Joint and Survivor Annuity with No Monthly Payments Guaranteed:** The annuity is divided into two annuities payable for the respective lifetimes of the participant and the alternate payee. There is no death benefit payable upon either death.
- **Joint and Survivor Annuity with 180 Payments Guaranteed:** The annuity is divided into two annuities payable for the respective lifetimes of the participant and the alternate payee. If fewer than 180 payments have been made since the participant's annuity began, the remaining guaranteed payments are available as a death benefit from each annuity.

The participant and the alternate payee can each name his/her own beneficiary(ies) to



receive the death benefit from his/her annuity. Once the guaranteed payments have been made, there is no death benefit from either annuity.

**Joint and Survivor Options with Someone other than Alternate Payee as Named Survivor:**

**Joint and Survivor Annuity With No Monthly Payments Guaranteed:** The annuity is divided into two separate annuities payable for the respective lifetimes of the participant and the alternate payee. The participant's annuity continues as a reduced joint and survivor annuity with the survivor originally named by the participant continuing as the named survivor. The alternate payee receives a life annuity that ends upon the alternate payee's death.

**Joint and Survivor Annuity Combined with 180 Payments Guaranteed:** The annuity is divided into two separate annuities payable for the respective lifetimes of the participant and the alternate payee. The participant's annuity continues as a reduced joint and survivor annuity with the survivor originally named by the participant continuing as the named survivor. If both the participant and the named survivor die before 180 payments have been made, the remaining guaranteed payments are payable to the secondary beneficiary(ies). The alternate payee receives a life annuity, and if the alternate payee dies before 180 total payments have been made since the participant's annuity began, the remaining guaranteed payments are payable to the alternate payee's beneficiary(ies).

**Accelerated Payment Options:**

Accelerated Payment options are available in all of the optional forms of payment previously listed above. Accelerated Payment annuities have two parts:

1. A temporary annuity paid until the participant dies or reaches age 62, whichever comes first; and,
2. A life annuity payable for the life of the participant.

When an accelerated payment option annuity is divided per a QDRO, the participant and alternate payee each receive a lifetime annuity calculated as previously described, plus a temporary annuity. It is payable to each person until that person reaches age 62 or dies, whichever occurs first. At age 62, each annuity decreases to that person's lifetime annuity amount.

The participant and alternate payee can each submit a projection of his/her estimated age-62 Social Security benefits. If this projection is based on his or her actual stop working age and is within one year of his or her WRS benefit effective date, it will be used to recalculate the before-and-after-age-62 annuity amounts. Otherwise, the Department uses actuarial tables for the temporary portion of the annuity.

There is no death benefit payable from the temporary annuities, so upon their respective deaths any death benefit payable is based on the life annuity amount only.

**Annuity Certain Options (Available from employee additional contributions only):**

The annuity certain is divided into two separate annuities paid to the participant and the alternate payee for the duration of the number of payments originally selected by the participant. Each person can name beneficiaries to receive any remaining payments available upon his/her death. He/she can change beneficiaries at any time.

#### **FEDERAL WITHHOLDING TAX ON BENEFITS PAID TO ALTERNATE PAYEES**

Federal law requires that the Department withhold 20% of the taxable portion of any lump sum benefit or any payments from an annuity certain of less than ten years as federal withholding tax, unless you elect to have your payment(s) directly rolled over into another qualified plan or an IRA.\*

If you do not elect a direct rollover you can still (indirectly) roll over your payment(s) within 60 days after the date your check(s) is(are) issued. However, we must withhold 20% of the taxable amount of your payment; if you wish to roll over the entire taxable amount you must obtain the 20% amount withheld from another source.

The federal early distribution tax that normally applies to separation benefits does not apply to benefits paid to alternate payees.

- 1.1 ..... moves to amend S.F. No. 2047; H.F. No. 2230 as follows:
- 1.2 Page 11, line 32, delete "2005" and insert "2006"

1.1 ..... moves to amend S.F. No. 2047; H.F. No. 2230 as follows:

1.2 Page 6, line 20, after "order." insert "The determination must be completed within  
1.3 90 days. "

1.4 Page 9, after line 10, insert:

1.5 "(g) For a division of benefits involving the unclassified state employees retirement  
1.6 program, the alternative payee may take the benefit as provided in section 352D.05 or in  
1.7 section 352D.06."

1.8 Page 9, line 19, after "unclassified" insert "state"

1.9 Page 11, line 21, after "System" insert "or the unclassified state employees retirement  
1.10 program of the Minnesota State Retirement System, whichever applies,"

Senator Michel introduced--

S.F. No. 2047: Referred to the Committee on State and Local Government Operations.

1

A bill for an act

2

relating to retirement; statewide and major local  
retirement plans; modifying the manner for dividing  
public pension benefits as marital property in a  
marriage dissolution action; amending Minnesota  
Statutes 2004, sections 356.20, subdivision 4;  
356.215, subdivision 13; 518.58, subdivision 4;  
proposing coding for new law in Minnesota Statutes,  
chapter 356.

3

4

5

6

7

8

9

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

11

Section 1. Minnesota Statutes 2004, section 356.20,

12

subdivision 4, is amended to read:

13

Subd. 4. [CONTENTS OF FINANCIAL REPORT.] (a) The financial

14

report required by this section must contain financial

15

statements and disclosures that indicate the financial

16

operations and position of the retirement plan and fund. The

17

report must conform with generally accepted governmental

18

accounting principles, applied on a consistent basis. The

19

report must be audited. The report must include, as part of its

20

exhibits or footnotes, an actuarial disclosure item based on the

21

actuarial valuation calculations prepared by the

22

commission-retained actuary or by the actuary retained by the

23

retirement fund or plan, if applicable, according to applicable

24

actuarial requirements enumerated in section 356.215, and

25

specified in the most recent standards for actuarial work

26

adopted by the Legislative Commission on Pensions and

27

Retirement. The accrued assets, the accrued liabilities,

1 including accrued reserves, and the unfunded actuarial accrued  
 2 liability of the fund or plan must be disclosed. The disclosure  
 3 item must contain a declaration by the actuary retained by the  
 4 Legislative Commission on Pensions and Retirement or the actuary  
 5 retained by the fund or plan, whichever applies, specifying that  
 6 the required reserves for any retirement, disability, or  
 7 survivor benefits provided under a benefit formula are computed  
 8 in accordance with the entry age actuarial cost method and with  
 9 the most recent applicable standards for actuarial work adopted  
 10 by the Legislative Commission on Pensions and Retirement.

11 (b) Assets of the fund or plan contained in the disclosure  
 12 item must include the following statement of the actuarial value  
 13 of current assets as defined in section 356.215, subdivision 1:

|                                | Value   | Value     |
|--------------------------------|---------|-----------|
|                                | at cost | at market |
| 14 Cash, cash equivalents, and |         |           |
| 15 short-term securities       | .....   | .....     |
| 16 Accounts receivable         | .....   | .....     |
| 17 Accrued investment income   | .....   | .....     |
| 18 Fixed income investments    | .....   | .....     |
| 19 Equity investments other    |         |           |
| 20 than real estate            | .....   | .....     |
| 21 Real estate investments     | .....   | .....     |
| 22 Equipment                   | .....   | .....     |
| 23 Equity in the Minnesota     |         |           |
| 24 postretirement investment   |         |           |
| 25 fund                        | .....   | .....     |
| 26 Other                       | .....   | .....     |
| 27                             |         |           |
| 28 Total assets                |         |           |
| 29 Value at cost               |         | .....     |
| 30 Value at market             |         | .....     |
| 31 Value of current assets     |         | .....     |

32 (c) The unfunded actuarial accrued liability of the fund or  
 33 plan contained in the disclosure item must include the following  
 34 measures of unfunded actuarial accrued liability, using the

1 value of current assets:

2 (1) unfunded actuarial accrued liability, determined by  
3 subtracting the current assets and the present value of future  
4 normal costs from the total current and expected future benefit  
5 obligations; and

6 (2) unfunded pension benefit obligation, determined by  
7 subtracting the current assets from the actuarial present value  
8 of credited projected benefits.

9 If the current assets of the fund or plan exceed the  
10 actuarial accrued liabilities, the excess must be disclosed and  
11 indicated as a surplus.

12 (d) The pension benefit obligations schedule included in  
13 the disclosure must contain the following information on the  
14 benefit obligations:

15 (1) the pension benefit obligation, determined as the  
16 actuarial present value of credited projected benefits on  
17 account of service rendered to date, separately identified as  
18 follows:

19 (i) for annuitants;

20 retirement annuities for retired members;

21 retirement annuities for alternate payees;

22 disability benefits;

23 surviving spouse and child benefits;

24 (ii) for former members without vested rights;

25 (iii) for deferred annuitants' benefits, including

26 any augmentation;

27 (iv) for active employees;

28 accumulated employee contributions,

29 including allocated investment income;

30 employer-financed benefits vested;

31 employer-financed benefits nonvested;

32 total pension benefit obligation; and

33 (2) if there are additional benefits not appropriately  
34 covered by the foregoing items of benefit obligations, a  
35 separate identification of the obligation.

36 (e) Any additional statements or exhibits or more detailed

1 or subdivided itemization of a disclosure item that will enable  
 2 the management of the fund to portray a true interpretation of  
 3 the fund's financial condition must be included in the  
 4 additional statements or exhibits.

5 Sec. 2. Minnesota Statutes 2004, section 356.215,  
 6 subdivision 13, is amended to read:

7 Subd. 13. [MEMBERSHIP TABULATION.] (a) The actuarial  
 8 valuation must contain a tabulation of active membership and  
 9 annuitants in the fund. If the membership of a fund is under  
 10 more than one general benefit program, a separate tabulation  
 11 must be made for each general benefit program.

12 (b) The tabulations must be prepared by the administration  
 13 of the pension fund and must contain the following information:

|                                     |        |
|-------------------------------------|--------|
| 14 (1) Active members               | Number |
| 15 As of last valuation date        |        |
| 16 New entrants                     |        |
| 17 Total                            |        |
| 18 Separations from active service  |        |
| 19 Refund of contributions          |        |
| 20 Separation with deferred annuity |        |
| 21 Separation with neither refund   |        |
| 22 nor deferred annuity             |        |
| 23 Disability                       |        |
| 24 Death                            |        |
| 25 Retirement with service annuity  |        |
| 26 Total separations                |        |
| 27 As of current valuation date     |        |
| 28 (2) Annuitants                   | Number |
| 29 As of last valuation date        |        |
| 30 New entrants <u>annuitants</u>   |        |
| 31 Total                            |        |
| 32 Terminations                     |        |
| 33 Deaths                           |        |
| 34 Other                            |        |
| 35 Total terminations               |        |
| 36 As of current valuation date     |        |

1 (c) The tabulation required under paragraph (b), clause  
2 (2), must be made separately for each of the following classes  
3 of benefit recipients:

- 4 (1) service retirement annuitants;  
5 (2) alternate payee annuitants;  
6 (3) disability benefit recipients;  
7 ~~(3)~~ (4) survivor benefit recipients; and  
8 ~~(4)~~ (5) deferred annuitants.

9 Sec. 3. [356.48] [MARRIAGE DISSOLUTION PUBLIC RETIREMENT  
10 ANNUITY DIVISION.]

11 Subdivision 1. [DEFINITIONS.] (a) For the purposes of this  
12 section, the terms defined in this subdivision have the meanings  
13 given them, unless the context clearly indicates otherwise.

14 (b) "Alternate payee" means the person designated in a  
15 domestic relations order as a person to whom a portion or all of  
16 a participant's retirement annuity or service pension under the  
17 retirement plan is payable.

18 (c) "Domestic relations order" means a judgment, decree, or  
19 order issued by a court of competent jurisdiction under a  
20 domestic relations law of any state or territory of the United  
21 States relating to a marriage that terminated after July 1,  
22 2005, and conforms to the requirements of subdivision 2.

23 (d) "Participant" means an active member, a retired member,  
24 or a deferred member of a covered retirement plan.

25 (e) "Retirement plan" means a covered retirement plan under  
26 subdivision 6.

27 Subd. 2. [DOMESTIC RELATIONS ORDER REQUIREMENTS.] A  
28 domestic relations order must:

29 (1) relate to a marriage that terminates after July 1,  
30 2005, except as provided in section 5;

31 (2) assign all or a portion of the value of a participant's  
32 accumulated retirement coverage credited in a retirement plan  
33 under this section to a former spouse to satisfy a marriage  
34 dissolution marital property division obligation;

35 (3) name the retirement plan and be submitted to the chief  
36 administrative officer of the retirement plan;



1 (4) clearly specify the following information:

2 (i) the name, last known mailing address, date of birth,  
3 and tax reporting identification numbers of the participant and  
4 the alternate payee; and

5 (ii) the percentage of the participant's benefits to be  
6 paid to the alternate payee, but not to exceed 100 percent;

7 (5) not require a form of payment or any other benefit to  
8 the alternate payee that is not otherwise provided under the  
9 retirement plan;

10 (6) not require the payment of benefits to an alternate  
11 payee which are required by a prior domestic relations order to  
12 be paid to another alternate payee or another person; and

13 (7) satisfy the requirements of an applicable rule  
14 established by the governing board of the retirement plan under  
15 chapter 14.

16 Subd. 3. [DOMESTIC RELATIONS REVIEW ORDER.] (a) When the  
17 chief administrative officer of the retirement plan receives a  
18 domestic relations order, the administrative officer shall  
19 determine whether or not the document is a qualified domestic  
20 relations order. The administrative officer shall promptly  
21 notify the participant and the alternate payee of that  
22 determination.

23 (b) The chief administrative officer may place a  
24 restrictive hold on a participant's account for up to 90 days  
25 while the administrator determines the validity of the domestic  
26 relations order and processes the order. The restrictive hold  
27 functions as a delay in processing any refund application or  
28 retirement annuity application.

29 (c) The governing body of the retirement plan, the  
30 participant's employer, and the chief administrative officer of  
31 the retirement plan and any of their employees or agents are  
32 immune from civil liability for any act or omission directly  
33 resulting from implementing a domestic relations order and  
34 consistent with the order.

35 Subd. 4. [DIVISION OF BENEFITS.] (a) Notwithstanding any  
36 provision of law to the contrary, a participant's accumulated

1 rights and benefits in a retirement plan may be divided by a  
2 court of competent jurisdiction under a qualified domestic  
3 relations order. The qualified domestic relations order must  
4 provide for a division of marital property in connection with a  
5 marriage dissolution only as specified in this section.

6 (b) If the participant is an active member or deferred  
7 member on the decree date, the division must be the percentages  
8 specified by the court, but not to exceed 100 percent in total,  
9 of the participant's allowable or formula service credit,  
10 whichever applies, on the day before the decree date.

11 (c) If the participant is a retired member on the decree  
12 date, the division must be the percentages specified by the  
13 court, but not to exceed 100 percent in total, of the present  
14 value of the participant's retirement annuity, retirement  
15 allowance, or service pension, whichever applies, on the day  
16 before the decree date, calculated on the basis of the  
17 postretirement actuarial interest assumption and the retired  
18 life mortality assumption applicable to the retirement plan.

19 (d) Upon division under this subdivision, the participant's  
20 account in the retirement plan must be reduced by the service  
21 credit amount or percent value amount transferred to the  
22 applicable alternate payee for all purposes except for  
23 eligibility to retire under section 352.116, subdivision 1,  
24 paragraph (a) or (b); 353.30, subdivision 1a or 1b; 354.44,  
25 subdivision 1 or 6, paragraph (c), clause (ii) or (iii); or  
26 354A.31, subdivision 6, paragraph (a) or (b). An account must  
27 be established by the retirement plan for the alternate payee.  
28 The following must be credited to the alternate payee's account:

29 (1) the amount of service credit transferred; and  
30 (2) the applicable final salary or final average salary  
31 figure of the participant as of the day before the decree date  
32 if the participant was an active or deferred member on the  
33 decree date or the present value transferred if the participant  
34 was a retired member on the decree date.

35 Subd. 5. [COMMENCEMENT OF BENEFIT PAYMENT TO ALTERNATE  
36 PAYEE.] (a) Upon filing of a written application for a refund of

1 member contributions, plus interest, the alternate payee is  
2 entitled to receive a refund of the member contributions  
3 attributable to the alternate payee under the domestic relations  
4 order. If the domestic relations order does not allocate the  
5 member contributions allocated to the alternate payee, the  
6 contributions must be allocated for each fiscal year in the same  
7 percentage division as the total pension benefits divided as  
8 marital property.

9 (b) Upon filing a written application for a benefit on or  
10 after the date on which the participant attains or would have  
11 attained the minimum age for the commencement of an annuity,  
12 allowance, or pension under the governing provisions of the  
13 retirement plan, the alternate payee is eligible to receive a  
14 benefit on the basis of the alternate payee's account.

15 (c) For an alternate payee where service credit has been  
16 divided and transferred, the alternate payee's benefit must be  
17 determined based on the present value of portions of the  
18 participant's retirement annuity represented by the service  
19 credit transferred to the alternate payee. For an alternate  
20 payee where the present value of a current annuity has been  
21 divided and transferred, the alternate payee's benefit must be  
22 determined based on the present value figures transferred.

23 (d) Where service credit has been divided and transferred,  
24 the present value determination of the transferred portion of  
25 the participant's annuity, allowance, or pension must be made  
26 under the retirement plan governing laws in effect on the date  
27 of the domestic relations order, based on the final salary or  
28 final average salary credited to the alternate payee, and is  
29 subject to deferred annuity augmentation, if the retirement plan  
30 so provides, from the date of the domestic relations order to  
31 the date on which the benefit becomes payable, and based on the  
32 age of the participant as of the date of the domestic relations  
33 order.

34 (e) The alternate payee benefit under paragraph (c) or (d)  
35 is payable as a single life annuity for the lifetime of the  
36 alternate payee and the alternate payee may elect an actuarial

1 equivalent optional retirement annuity form. The optional  
2 retirement annuity form must be one of the forms generally  
3 provided by the plan to newly retiring members. Notwithstanding  
4 section 518.58, subdivision 4, the alternate payee benefit under  
5 paragraph (c) or (d) is also payable in a lump sum amount.

6 (f) All present value determinations must be made using the  
7 postretirement actuarial interest assumptions applicable to the  
8 retirement plan, the retired life mortality assumption  
9 applicable to the retirement plan, and the alternate payee's age  
10 on the decree date.

11 Subd. 6. [COVERED RETIREMENT PLANS.] This section applies  
12 to the following retirement plans:

13 (1) the general state employees retirement plan of the  
14 Minnesota State Retirement System, established under chapter  
15 352;

16 (2) the correctional state employees retirement plan of the  
17 Minnesota State Retirement System, established under chapter  
18 352;

19 (3) the unclassified employees retirement program,  
20 established under chapter 352D;

21 (4) the State Patrol retirement fund, established under  
22 chapter 352B;

23 (5) the legislators retirement plan, established under  
24 chapter 3A;

25 (6) the elective state officers retirement plan,  
26 established under chapter 352C;

27 (7) the general employees retirement plan of the Public  
28 Employees Retirement Association, established under chapter 353;

29 (8) the public employees police and fire retirement plan of  
30 the Public Employees Retirement Association, established under  
31 chapter 353;

32 (9) the local government correctional service retirement  
33 plan of the Public Employees Retirement Association, established  
34 under chapter 353E;

35 (10) the Teachers Retirement Association, established under  
36 chapter 354;

1 (11) the Minneapolis Employees Retirement Fund, established  
2 under chapter 422A;

3 (12) the Minneapolis Teachers Retirement Fund Association,  
4 established under chapter 354A;

5 (13) the St. Paul Teachers Retirement Fund Association,  
6 established under chapter 354A;

7 (14) the Duluth Teachers Retirement Fund Association,  
8 established under chapter 354A;

9 (15) the judges' retirement fund, established by sections  
10 490.121 to 490.132;

11 (16) the Bloomington Firefighters Relief Association,  
12 established under Laws 1965, chapter 446, as amended;

13 (17) the Fairmont Police Relief Association, established  
14 under Minnesota Statutes 2000, sections 423.41 to 423.62;

15 (18) the Minneapolis Firefighters Relief Association,  
16 established under chapter 423C;

17 (19) the Minneapolis Police Relief Association, established  
18 under chapter 423B; and

19 (20) the Virginia Fire Department Relief Association,  
20 established under Laws 1953, chapter 399, as amended.

21 Sec. 4. Minnesota Statutes 2004, section 518.58,  
22 subdivision 4, is amended to read:

23 Subd. 4. [PENSION PLANS.] (a) The division of marital  
24 property that represents pension plan benefits or rights in the  
25 form of future pension plan payments:

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

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

31 (3) is not payable in a lump sum amount from pension plan  
32 assets attributable in any fashion to a spouse with the status  
33 of an active member, deferred retiree, or benefit recipient of a  
34 pension plan;

35 (4) if the former spouse to whom the payments are to be  
36 made dies prior to the end of the specified payment period with

1 the right to any remaining payments accruing to an estate or to  
2 more than one survivor, is payable only to a trustee on behalf  
3 of the estate or the group of survivors for subsequent  
4 apportionment by the trustee; and

5 (5) in the case of public pension plan benefits or rights,  
6 may not commence until the public plan member ~~submits-a-valid~~  
7 ~~application-for-a-public-pension-plan-benefit-and-the-benefit~~  
8 ~~becomes-payable~~ attains the minimum age for receipt of a  
9 retirement annuity and is divided under section 356.48.

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

17 Sec. 5. [RETROACTIVE APPLICATION TO CERTAIN MARRIAGE  
18 DISSOLUTIONS.]

19 (a) Notwithstanding any provision of Minnesota Statutes,  
20 section 356.48, to the contrary, the general state employees  
21 retirement plan of the Minnesota State Retirement System shall  
22 implement a domestic relations order from an eligible person  
23 described in paragraph (b).

24 (b) An eligible person is a person:

25 (1) who was born on August 12, 1944;

26 (2) who resides in Edina, Minnesota; and

27 (3) whose marriage was dissolved on December 15, 1999.

28 (c) An eligible person must provide adequate written  
29 documentation to the chief administrative officer to confirm  
30 that the eligibility requirements in paragraph (b) are met.

31 Sec. 6. [EFFECTIVE DATE.]

32 Sections 1 to 5 are effective July 1, 2005.