H.F. 1528 (Morrow) | **S.F. 1277** (Sheran)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s):	MSRS-General
Relevant Provisions of Law:	Uncoded
General Nature of Proposal:	Increased survivor benefit for certain deceased MnDOT employee
Date of Summary:	May 3, 2011

Specific Proposed Changes

Provides an additional surviving spouse benefit from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) of 54% of the decedent's highest five successive years average monthly salary for the surviving spouse of a Minnesota Transportation Department employee who died while engaged in emergency Minnesota River flood response activities, payable when any Workers' Compensation survivor benefits cease.

Policy Issues Raised by the Proposed Legislation

1. The appropriateness of providing a special surviving spouse benefit in addition to the surviving spouse benefit payable from MSRS-General under Minnesota Statutes, Section 352.12.

2. The appropriateness of creating an additional survivor benefit from a Coordinated Program survivor benefit amount without taking into account Social Security survivorship benefit coverage.

3. The role that the special additional surviving spouse benefit would play in the total survivorship benefit coverage available to the surviving spouse from all employment-related sources.

4. The appropriateness of resolving this survivorship benefit problem evidenced in the deceased's circumstance as special legislation rather than addressing the problem as a general policy matter. (See Principle II.B.)

5. The actuarial cost of the special additional surviving spouse benefit under the proposed legislation.

6. The appropriate entity to bear the actuarial cost of the special additional survivor benefit provided for in the special legislation.

7. Whether or not there is prior retirement legislation that is an arguable binding precedent for the proposed legislation and whether or not, if enacted, the proposed retirement legislation can reasonably be argued in the future to be a binding precedent.

8. Drafting omissions or ambiguities.

Potential Amendments

H1528-1A clarifies that the benefit is a life annuity for the surviving spouse.

H1528-2A clarifies that post-retirement adjustments begin with the post-retirement adjustments as of the January 1 following the date on which the survivor benefit first becomes payable.

H1528-3A clarifies that the initial payment includes the post-retirement adjustments that would have been paid if the benefit had been payable immediately following the active member's death, then regular post-retirement adjustments thereafter.

TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director LAM

RE: H.F. 1528 (Morrow); S.F. 1277 (Sheran): MSRS-General; Increased Survivor Benefit for Certain Deceased MnDOT Employee

DATE: May 2, 2011

Summary of H.F. 1528 (Morrow); S.F. 1277 (Sheran)

H.F. 1528 (Morrow); S.F. 1277 (Sheran) provides an additional surviving spouse benefit from the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) of 54% of the decedent's highest five successive years average monthly salary for the surviving spouse of a Minnesota Transportation Department employee who died while engaged in emergency Minnesota River flood response activities, payable when any Workers' Compensation survivor benefits cease.

Public Pension Situation of the Surviving Family of Mike Struck

Mike Struck was a 39-year-old employee of the Minnesota Department of Transportation who, while engaged in emergency response work related to Minnesota River flooding on March 21, 2011, between St. Peter and Mankato, died when his backhoe flipped over into Seven Mile Creek and he drowned. Mr. Struck had nine years of service with the State of Minnesota. Mr. Struck left a widow, age 30, and two children, ages six and four. Mr. Struck's survivors are entitled to Workers' Compensation survivor benefits, Social Security survivor benefits, and a surviving spouse annuity from MSRS-General of $191 per month.

Background Information

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

- **Attachment A**: Background Information on the Development of Coordinated Program Active Member Survivor Benefit Coverage.
- **Attachment B**: Background Information on the Social Security Survivorship Benefits and Minnesota Public Employees.
- **Attachment C**: Background Information on the Workers' Compensation and Deceased State Employees.

Discussion and Analysis

H.F. 1528 (Morrow); S.F. 1277 (Sheran) provides the surviving spouse of the late Mike Struck, a deceased employee of the Minnesota Department of Transportation who died while engaging in emergency flood response activities along the Minnesota River on March 22, 2011, a survivor benefit in addition to the Minnesota Statutes, Section 352.12, survivor benefit coverage that is equal to 54% of Mr. Struck's highest five successive years average salary, that is payable at the conclusion of any Workers' Compensation surviving spouse benefit, and that is eligible for post-retirement adjustments.

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

1. Appropriateness of the Special Survivor Benefit in Addition to the Current MSRS-General Surviving Spouse Benefit. The policy issue is the appropriateness of the proposed legislation in providing a special surviving spouse benefit in addition to the surviving spouse benefit payable from MSRS-General under Minnesota Statutes, Section 352.12. Minnesota Statutes, Section 352.12, Subdivisions 2, 2a, 2b, and 2c, provide the survivor benefit coverage fashioned by the Commission with input from the retirement plan administrators in 1993, following a mandated study of gaps in Coordinated Program survivor benefit coverage by the Commission during the 1992-1993 interim. A given retirement plan benefit is usually in lieu of any other benefit coverage provided by the retirement plan. Thus, a retirement annuity from MSRS-General under Minnesota Statutes, Section 352.115, is in lieu of a disability benefit from MSRS-General under Minnesota Statutes, Section 352.113, even if the person could qualify for either, or a death refund from MSRS-General under Minnesota Statutes,

Section 352.12, subdivision 1, is in lieu of a survivor annuity under Minnesota Statutes, Section 352.12, subdivision 2, 2a, and 2b. Mr. Struck's survivor has been estimated to be eligible for a surviving spouse annuity under Minnesota Statutes, Section 352.12, Subdivision 2, of $191 per month. The creation of this additional surviving spouse benefit may prompt Mr. Struck's surviving spouse to elect a term certain survivor annuity under Minnesota Statutes, Section 352.12, Subdivision 2a, in a larger monthly amount rather than a for-life survivor annuity under Minnesota Statutes, Section 352.12, Subdivision 2, in order to maximize benefit amounts.

2. Appropriateness of Setting the Additional Survivor Benefit Amount Based on Basic Program Benefit Coverage Amounts Without a Social Security Offset. The policy issue is the appropriateness of creating an additional survivor benefit from a Coordinated Program survivor benefit amount without taking into account Social Security survivorship benefit coverage. The 54% of final average salary benefit amount reportedly was set for the special additional surviving spouse benefit based on the State Patrol Retirement Plan survivorship coverage, a Basic Program. The State Patrol Retirement Plan survivorship coverage is 50% of final average salary for the surviving spouse, 10% of final average salary for each surviving child, an additional $20 per month prorated among all surviving children, with a surviving family maximum of 70% of final average salary. Presumably, the special additional surviving spouse benefit amount closely approximates the State Patrol Retirement Plan benefit amount, with two surviving children benefit amounts, and reduced for the MSRS-General Retirement Plan surviving spouse benefit payable under Minnesota Statutes, Section 352.12. The benefit level does not reflect the surviving spouse's eligibility for Social Security by virtue of an offset or otherwise.

3. Appropriate Total Level of Survivorship Benefit Coverage From All Sources. The policy issue is the role that the special additional surviving spouse benefit would play in the total survivorship benefit coverage available to Mr. Struck's surviving spouse from all employment-related sources. The surviving spouse benefit coverage potentially available from all sources arising out of state employment are the MSRS-General survivor benefit, Workers' Compensation survivor benefit, state-provided life insurance, deferred compensation account balance, and Social Security survivorship coverage. With the possible exception of any deferred compensation accumulation, all of the employment-related survivor benefit coverage is provided at least partially with employer funding. Presumably, the goal for survivorship benefit coverage is to replace a significant portion or all of the survivor's standard of living prior to the death of the employee, but should not provide more than the family income immediately prior to the employee's death. The Workers' Compensation program accomplishes this by having an explicit offset based on any amount in excess of a pre-death compensation level. A benefit set based on the benefit payable under a basic program when Social Security is also payable could provide a total benefit that is greater than pre-event compensation. The Commission should consider taking additional testimony on the totality of the survivorship benefit coverage available in this circumstance if the Commission thinks that there is a possibility of providing excessive survivor benefit coverage.

4. Appropriateness of Special Legislation If a Larger Survivor Benefit Inadequacy Problem Exists. The policy issue is the appropriateness of resolving this survivorship benefit problem evidenced in Mr. Struck's circumstance as special legislation rather than addressing the problem as a general policy matter. The Pension Policy Principles of the Legislative Commission on Pensions and Retirement, Principle II.B., provides in part that

   > [n]o pension legislation of local or special limited application should be recommended by the Legislative Commission on Pensions and Retirement if the purpose and the intent of the proposed legislation would be better served by legislation of general statutory application....

   In 1992-1993, a single survivor benefit request triggered an appraisal of the adequacy of Coordinated Program survivor benefit coverage in the form of an interim study followed by the formulation of draft proposed legislation. If there is a belief that Coordinated Program survivor benefit coverage remains insufficient in Mr. Struck's case and if there is no reason to believe that the inadequacy is based on factors unique to Mr. Struck, the issue would appear to be resolved most consistently with the Commission's Pension Policy Principle in a pursuit of general legislation rather than special legislation.

5. Actuarial Cost of the Special Additional Surviving Spouse Benefit. The policy issue is the actuarial cost of the special additional surviving spouse benefit under the proposed legislation. David Bergstrom, Executive Director of the Minnesota State Retirement System (MSRS), reportedly participated to some degree in the deliberations leading to the formulation of the proposed legislation and should have some estimate, either internal by the MSRS staff or more rigorous by the consulting

actuary retained by MSRS. The actuarial cost of the proposed legislation will add to the MSRS-General unfunded actuarial accrued liability. The funded condition and financial requirements of MSRS-General are as follows:

	MSRS-General			
	Actuarial Value of Assets Basis		Market Value of Assets Basis	
	2010		2010	
Membership				
Active Members		48,494		48,494
Service Retirees		23,337		23,337
Disabilitants		1,684		1,684
Survivors		3,414		3,414
Deferred Retirees		15,388		15,388
Nonvested Former Members		6,537		6,537
Total Membership		98,854		98,854
Funded Status				
Accrued Liability		$10,264,071,000		$10,264,071,000
Current Assets		$8,960,391,000		$7,692,531,000
Unfunded Accrued Liability		$1,303,680,000		$2,571,540,000
Funding Ratio	87.30%		74.95%	
Financing Requirements				
Covered Payroll		$2,483,519,000		$2,483,519,000
Benefits Payable		$473,447,000		$473,447,000
Normal Cost	7.77%	$193,027,000	7.77%	$193,027,000
Administrative Expenses	0.23%	$5,712,000	0.23%	$5,712,000
Normal Cost & Expense	8.00%	$198,739,000	8.00%	$198,739,000
Normal Cost & Expense	8.00%	$198,739,000	8.00%	$198,739,000
Amortization	2.99%	$74,200,000	5.89%	$146,361,000
Total Requirements	10.99%	$272,939,000	13.90%	$345,100,000
Employee Contributions	5.00%	$124,176,000	5.00%	$124,176,000
Employer Contributions	5.00%	$124,176,000	5.00%	$124,176,000
Employer Add'l Cont.	0.00%	$0	0.00%	$0
Direct State Funding	0.00%	$0	0.00%	$0
Other Govt. Funding	0.00%	$0	0.00%	$0
Administrative Assessment	0.00%	$0	0.00%	$0
Total Contributions	10.00%	$248,352,000	10.00%	$248,352,000
Total Requirements	10.99%	$272,939,000	13.90%	$345,100,000
Total Contributions	10.00%	$248,352,000	10.00%	$248,352,000
Deficiency (Surplus)	0.99%	$24,587,000	3.90%	$96,748,000

6. Appropriate Bearer of the Funding Burden of the Special Legislation. The policy issue is the appropriate entity to bear the actuarial cost of the special additional survivor benefit provided for in the special legislation. The proposed legislation would have the MSRS-General retirement plan and its funders, the State of Minnesota, the University of Minnesota, the Metropolitan Council, and the employees of those employers, bear the actuarial accrued liability of the special benefit coverage. Alternatively, the specific employing unit involved, the Minnesota Department of Transportation, could be required to bear the cost, either in a one-time present value payment or in a series of amortization payments over a time period. In somewhat comparable legislation recommended by the Legislative Commission on Pensions and Retirement, the Donald Juenemann special law, Laws 1998, Chapter 390, Article 2, Sections 17 and 18, and in somewhat comparable proposed legislation considered by the Commission, the David Day proposed legislation, Article 4, Section 4, of the First 2006 Omnibus Retirement Bill, Document LCPR06-121, Page 41.22 to Page 42.8, the Commission required the employing units involved, the City of St. Paul and the City of St. Louis Park, to pay the actuarial cost of the special survivor coverage in employment- (Juenemann) or quasi-employment- (Day) related deaths in a lump sum present value payment.

7. Precedent. The policy issue is the twin questions of whether or not there is prior retirement legislation that is an arguable binding precedent for the proposed legislation and whether or not, if enacted, the proposed retirement legislation can reasonably be argued by other petitioners in the future to be a binding precedent for other similar enactments. While public employees die while engaged in employment duties periodically, the only active public employee employment-related death special pension provision that the Commission staff can identify as having been enacted is the situation of

Donald Juenemann, a Maplewood resident and PERA Basic Program member who was a St. Paul building inspector and who was killed by a homeowner while inspecting the homeowner's property for property violations. That circumstance resulted in Laws 1998, Chapter 390, Article 2, Sections 17 and 18, which deemed Mr. Juenemann eligible for the Rule of 90, with improved consequent survivor coverage in the amount of $456 per month, from $2,121 per month to $2,577 per month. The David Day situation cited in Issue #6 is less clearly applicable, involving the death of a former St. Louis Park police officer who died while on active military duty with U.S. Armed Forces in Iraq and the Public Employees Police and Fire Retirement Plan (PERA-P&F) vesting provisions for non-duty survivor benefits. It is difficult to believe that Mr. Struck's survivor benefit enhancement, if ultimately enacted, will not be cited in the future by every set of survivors of every public employee who dies or is killed while conducting employment duties. On the face of the proposed legislation, there is little that the Legislature or the Commission could point to in order to limit any future use of it as a precedent. If the current MSRS-General and other general retirement plan survivor benefits are insufficient as to coverage, and if this proposed legislation will become functionally the new survivor coverage by virtue of precedent, it would be better to seek improvement of the general Coordinated Program employee retirement plan survivor coverage as general legislation, properly pre-funded, than setting off a stream of future special legislation.

8. Drafting Issues. The policy issue is the resolution of some drafting omissions or ambiguities.

   The first drafting issue related to the duration of the special additional survivor benefit. The benefit is undoubtedly intended to be for the life of Mr. Struck's surviving spouse and only for the life of Mr. Struck's surviving spouse. **Amendment H1528-1A** clarifies that the benefit is a life annuity for Mr. Struck's surviving spouse.

   The second drafting issue relates to the date when post-retirement adjustments for the special additional surviving spouse benefit will be first paid. The special additional surviving spouse benefit will be calculated based on the late Mr. Struck's current salary level, but the initial benefit payment date is delayed until the Workers' Compensation survivor benefits end, a decade after any surviving children complete their education. **Amendment H1528-2A** clarifies that adjustments begin with the post-retirement adjustments as of the January 1 following the date on which the survivor benefit first becomes payable, some years hence. **Amendment H1528-3A** clarifies that the initial payment includes the post-retirement adjustments that would have been paid if the benefit had been payable immediately following Mr. Struck's death, then regular post-retirement adjustments thereafter. **Amendment H1528-2A** would not likely increase the actuarial cost of the proposed legislation. **Amendment H1528-3A** would likely increase the actuarial cost of the proposed legislation.

Background Information on the Development of Coordinated Program Active Member Survivor Benefit Coverage

Coordinated Program Retirement Plans

Since coverage by the federal Old Age, Survivors and Disability Insurance Program (Social Security) was made available by federal legislation in 1955, Minnesota has revised its retirement coverage to include Social Security coverage in many cases, creating what are usually termed "coordinated" programs. All general employee retirement plans have now coordinated with Social Security, meaning that the public employee defined benefit plan coverage supplements Social Security coverage.

Coordinated programs, with the year of coordination, are as follows:

- General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General) (1957)
- Duluth Teachers Retirement Fund Association (DTRFA) (1957)
- Teachers Retirement Association (TRA) (1959)
- General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) (1963 for hospital employees; 1967 for other public employees)
- Uniform Judges Retirement Plan (1973)
- St. Paul Teachers Retirement Fund Association (SPTRFA) (1978)
- Former Minneapolis Teachers Retirement Fund Association (MTRFA) (1978)
- Former Minneapolis Employees Retirement Fund (MERF) (1979)
- Constitutional Officers (1997)
- Legislators (1997)

In addition to the general employee retirement plans that have coordinated with Social Security, as outgrowths of prior general employee retirement plan coverage, the state's two correctional retirement plans, the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) and the Local Government Correctional Service Retirement Plan (PERA-Correctional), also supplement Social Security coverage.

Coordinated Program Active Member Survivor Benefit Coverage

a. Before 1971. Before 1971, coordinated programs had deceased active member survivorship benefit coverage that was limited to a refund of the deceased active member's accumulated retirement plan contributions unless the retirement plan permitted pre-retirement elections of optional annuity forms and entitlement to a reversionary annuity.

b. Death While Eligible Automatic Joint and Survivor Optional Annuity. In 1971 (Laws 1971, Ch. 194, Sec. 3-4), relating to MSRS-General, active members who are at least 65 years old and have at least ten years of allowable service or who are at least 58 years old and have at least 20 years of allowable service and who die before terminating state service or who have filed a valid retirement or disability application before terminating state service obtained survivorship coverage, with the surviving spouse permitted to receive the second portion of a 50% joint and survivor optional annuity form of the retirement annuity that the active employee could have received as of the date of death, in lieu of the death refund and notwithstanding any beneficiary designation.

   In 1973 (Laws 1973, Ch. 221, Sec. 6), relating to MSRS-General, the age for the death-while-eligible optional survivor annuity was reduced from age 65 to age 62.

   In 1974 (Laws 1974, Ch. 229, Sec. 17), relating to PERA-General, a death-while-eligible optional survivor annuity was added to the plan, payable if the deceased active member was at least age 58 with at least 20 years of allowable service credit or had filed a valid retirement annuity or disability benefit application prior to death.

   In 1979 (Laws 1979, Ch. 217, Sec. 20, Subd. 2), relating to the first class city teacher retirement fund associations, a death-while-eligible optional survivor annuity provision was included in the codification of the Coordinated Program benefit plan, payable if the deceased active member was at least age 55 with at least 20 years of allowable service credit or has at least 30 years of allowable service credit, without specifying the amount of the joint and survivor optional annuity.

   In 1981 (Laws 1981, Ch. 156, Sec. 2), relating to TRA, a death-while-eligible optional survivor annuity was added to the plan, payable if the deceased active member was at least age 55 with at least

20 years of allowable service credit, and the optional annuity amount was the second half of a 100% joint and survivor optional annuity.

c. Laws 1992, Chapter 373, Section 1. In 1992, the Legislative Commission on Pensions and Retirement considered H.F. 1744 (Dempsey, T.); S.F. 1710 (Frederickson, D.R.), which provided Ms. Diane Huiras, the surviving spouse of a deceased Public Employees Retirement Association (PERA) member, who had made a valid application for Social Security disability benefits but who had not filed a PERA disability benefit application prior to death, with a 100% joint and survivor annuity. As part of the consideration of the proposed legislation, Senator Gene Waldorf raised questions regarding the precedent the bill would set and stated that he would be more comfortable with a bill that would address the problem of all survivors of members who died early and would like the solution to be made retroactive. Ms. Laurie Hacking, Executive Director of PERA, did not oppose the proposed legislation and indicated that PERA had been working on proposed legislation that would provide protection for survivors of members who had not reached the age of 50 but the benefit from this plan would be considerably less than the joint and survivor benefit being proposed for Ms. Huiras. The proposed legislation was initially laid over by the Commission, but was ultimately recommended by the Commission with the addition of a mandated study over the 1992-1993 interim by the Legislative Commission on Pensions and Retirement of the gaps in survivor coverage for Minnesota public pension plan Coordinated Program members. The 1992 special legislation provided that the surviving spouse of a deceased PERA member, who made a valid application for Social Security disability benefits, was entitled to the same 100% joint and survivor benefit from PERA that the surviving spouse would have received if the member, who died on June 22, 1991, had completed and filed the application with PERA prior to death, retroactive to July 1, 1991.

d. Coordinated Program Survivorship Benefit Coverage Gap Study. As directed by Laws 1992, Chapter 373, Section 2, the Legislative Commission on Pensions and Retirement conducted a study of the gaps existing in Minnesota public pension plan coordinated membership coverage. The Commission's study, in addition to considering the process of creating coordinated programs in Minnesota public employee retirement plans, considering the nature of survivorship coverage under the federal Social Security program and, considering the existing Coordinated Program survivor benefit coverage, determined that Minnesota public employee pension plan Coordinated Programs have coverage gaps in comparison to Minnesota public employee pension plan benefit programs, especially if an active Coordinated Program member dies at a relatively young age leaving a young surviving family. The report included draft proposed legislation designed to fill the identified gaps in Coordinated Program coverage.

e. Laws 1993, Chapter 336, Article 6. Laws 1993, Chapter 336, Article 6, implemented the 1992-1993 interim Commission study on the gaps in survivorship benefit coverage for Minnesota public employee retirement plan coordinated programs. For MSRS-General, MSRS-Coordinated, PERA-General, TRA, and the first class city teacher retirement fund associations coordinated programs, the legislation provided that if an employee or former employee dies at any age, rather than at age 50 or older or with 30 years of service regardless of age, in lieu of a refund, the surviving spouse may elect a 100% joint and survivor annuity or an actuarially equivalent term certain annuity:

- 100% Joint and Survivor Annuity. If the deceased member had 30 or more years of service, the joint and survivor annuity is reduced by 0.25% per month from age 62 to age 55, and half this reduction from age 55 to the age that payment begins. If the member had less than 30 years of service, the joint and survivor annuity is reduced by 0.25% per month or an actuarial reduction, whichever is less, from age 65 to age 55 and half this reduction from age 55 to the age that payment begins. If the annuity is deferred, annuity augmentation applies.

- Term Certain Annuity. In lieu of a refund or the joint and survivor annuity, the surviving spouse may elect an actuarially equivalent 5-, 10-, 15-, or 20-year term certain annuity, providing that monthly payments do not exceed 75% of the average high five monthly salary of the deceased employee. Upon the surviving spouse's death, the remaining value of term certain payments, if any, must be paid to the survivor's estate.

If there is no surviving spouse, the dependent children are entitled to benefits to age 20. If a child is 15 years old or older on the date of the member's death, the payment must be made for five years. The payment to dependent children is actuarially equivalent to a surviving spouse 100% joint and survivor annuity computed as above, using the age of the child rather than the age of the spouse. The actuarial value is to be proportionally divided among the surviving children. A dependent child means a deceased employee's biological or adopted child below age 20 and dependent for more than half of his or her support.

Background Information on the Social Security Survivorship Benefits and Minnesota Public Employees

Social Security Coverage for Minnesota Public Employees

Old Age, Survivors, Disability and Insurance Program (Social Security) coverage for public employees, under 42 U.S. Code Section 418, is generally provided through coverage agreements between the applicable state and the federal Department of Health and Human Services. When Social Security was established in 1935, it did not permit coverage for public employees since it is funded by employee and employer payroll taxes (the Federal Insurance Contribution Act or FICA tax) and taxation of state governments by the federal government is unconstitutional. In 1954, Social Security coverage was extended to public employees by virtue of intergovernmental (state-federal) agreements. The applicable law in Minnesota is coded as Minnesota Statutes, Chapter 355. In 1986, Medicare coverage was extended on a mandatory basis by federal law to all public employees and in 1991, Social Security coverage was extended on a mandatory basis to any public employee who is not covered by a public employee pension plan.

Under both state and federal law, Minnesota police officers and firefighters with Minnesota public pension plan coverage are not eligible for coverage by Social Security. Under Minnesota Statutes, Section 355.07, police officers and firefighters are not permitted to be included in any agreement between the State of Minnesota and the federal Department of Health and Human Services extending Social Security to public employees. The last sentence of that statute, first enacted in 1955, indicates that:

> Nothing in any provision of this chapter shall authorize the extension of the insurance system established by this chapter, as amended, to service in any police officer's or firefighter's position or in any position covered by a retirement system applicable exclusively to positions in one or more law enforcement or fire fighting units, agencies or departments.

Under federal law, 42 U.S. Code, Section 418(d)(8)(D), police officers and firefighters are not eligible for inclusion in a Social Security coverage agreement, although 42 U.S. Code, Section 418(l) has been recently amended to permit police officers and firefighters to be included in a Social Security coverage agreement. Previously, 42 U.S. Code, Section 418(l) allowed police officer and firefighter inclusion in Social Security coverage agreements in only 22 states (including North Dakota and South Dakota, but not Minnesota) and Puerto Rico unless the governor of the remaining 28 states determined that Social Security coverage would improve the firefighters benefit coverage. Minnesota's Social Security coverage agreement does not include Minnesota police officers or firefighters in Social Security coverage.

In 1990 legislation, effective July 1, 1991, amending 42 U.S. Code, Section 410(a)(7)(F), Social Security coverage was extended to those public employees who are not covered by a public pension plan. Public pension plan coverage for purposes of 42 U.S. Code Section 410(a)(7)(F) means coverage by any pension plan established for public employees unless provided differently by federal Department of Treasury regulation. Treasury regulation 26 Code of Federal Regulation, Section 31.3121(b)(7)-2, specifies which public employees are considered to have sufficient public pension coverage to be exempt from Federal Insurance Contribution Act (FICA) taxes if not included in a federal-state social security coverage agreement under U.S. Code Section 418.

In Minnesota, virtually all public employees are included in Social Security coverage based on a 42 U.S. Code Section 418 state-federal coverage agreement. The groups currently excluded from Minnesota's agreement with the federal government extending Social Security coverage are as follows:

1. constitutional officers first taking office before July 1, 1997;
2. legislators first taking office before July 1, 1997;
3. judges first taking office before July 1, 1973;
4. members of the State Patrol Retirement Plan;
5. members of the Public Employees Police and Fire Plan (PERA-P&F);
6. members of the various local police or salaried fire relief associations or consolidation accounts administered by the Public Employees Retirement Association (PERA);
7. members of the PERA Basic Program (pre-1967 hires);
8. members of the Teachers Retirement Association (TRA) Basic Program (pre-1959 hires);
9. members of the former Minneapolis Teachers Retirement Fund Association (MTRFA) Basic Program (pre-1978 hires);
10. members of the St. Paul Teachers Retirement Fund Association (SPTRFA) Basic Program (pre-1978 hires);
11. members of the former Minneapolis Employees Retirement Fund (MERF) (pre-1979 hires);

12. state or local government employees excluded from the coverage by the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), PERA, TRA, MERF, or the first class city teacher retirement plans; and
13. members of the various volunteer firefighter relief associations for their volunteer firefighter service.

Originally, in 1954, Social Security coverage was extended by a coverage agreement that required an "all or none" referendum of current public pension plan members. The State Employees Retirement Association (SERA), renamed the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), and the Duluth Teachers Retirement Fund Association (DTRFA) both coordinated with Social Security on an "all or none" referendum basis, which is why those plans lack a Basic Program. Later in the 1950s, the Social Security Act was amended to permit coverage extensions on a split basis referendum basis, where existing public pension plan members who did not desire Social Security coverage could retain their prior coverage. The Legislators Retirement Plan, the Judges Retirement Plan, the Elected State Officers Retirement Plan, PERA, TRA, the former MTRFA, SPTRFA, and the former MERF all coordinated with Social Security on a split basis referendum basis.

Social Security Survivorship Benefits

1. Surviving Spouse Benefits

   A surviving spouse is entitled to widow or widower's insurance benefits on a worker's Social Security record if:

   a. the surviving spouse is either (1) age 60 or over; or (2) is at least age 50, but not age 60, and is disabled, and meets the disability-related requirements;
   b. the worker died fully insured (have one credit for each calendar year after 1950; or, if born after 1949, have at least one credit for each calendar year after turning age 21 and the earliest of the year before turning age 62, the year before death, or the year before you become disabled);
   c. the surviving spouse is not entitled to a retirement insurance benefit that is equal to or larger than the worker's primary insurance amount;
   d. the surviving spouse filed an application for widow or widower's insurance benefits;
   e. the surviving spouse is not married; and
   f. *one* of the following conditions is met:
      i. the surviving spouse was married to the deceased worker for at least the nine months just before the worker died;
      ii. the surviving spouse is the mother or father of the worker's son or daughter;
      iii. the surviving spouse legally adopted the worker's son or daughter during your marriage and before the child reached age 18;
      iv. the surviving spouse was married to the worker when both legally adopted a child who was under age 18;
      v. the worker legally adopted the surviving spouse's son or daughter during the marriage and before the child reached age 18; or
      vi. in the month before the month in which the surviving spouse married the deceased worker, the surviving spouse was entitled or potentially entitled to either (a) spouse's, widow or widower's, father's, mother's, parent's, or childhood disability benefits on the record of a fully insured individual under the Social Security Act; or (b) the widow, widower's, child's (age 18 or over), or parent's insurance annuity under the Railroad Retirement Act.

   The father's or mother's insurance benefit rate is equal to three-fourths of the deceased worker's primary insurance amount.

   A remarriage will generally end the entitlement to father's or mother's benefits. It also prevents any future entitlement to father's or mother's benefits on the prior deceased spouse's Social Security record.

   The father's or mother's insurance benefits end if:

   a. there are no children of the deceased worker under age 16 or disabled who are entitled to a child's insurance benefit;
   b. the person is a surviving divorced father or mother, the person has no natural or legally adopted child under age 16 or disabled who is entitled to a child's insurance benefit on the deceased worker's earnings record;
   c. the person becomes entitled to a widow or widower's insurance benefit;
   d. the person dies;

e. the person becomes entitled to retirement insurance benefits in an amount equal to or greater than three-fourths of the spouse's primary insurance amount; or
f. the person remarries.

2. Surviving Child Benefits

A surviving child is entitled to child's insurance benefits if:

a. the worker-parent died either fully or currently insured;
b. the child is the child of the deceased worker;
c. the child is:
   i. under age 18;
   ii. under age 19 and is a full-time elementary or secondary school student; or
   iii. age 18 or over and has a disability which began before reaching age 22;
d. the child was dependent upon the deceased parent;
e. the child is not married; and
f. an application for child's insurance benefits is filed.

"Child" includes the insured worker's:
a. biological legitimate child, or any other child who would have the right under applicable State law to inherit intestate personal property from the insured worker as the worker's child;
b. stepchild, under certain circumstances;
c. legally adopted child;
d. child of an invalid ceremonial marriage
e. natural illegitimate child if the insured worker:
   i. has acknowledged in writing that the child is the person's son or daughter;
   ii. has been decreed by a court to be the parent of the child;
   iii. has been ordered by a court to contribute to the support of the child because the child is the person's son or daughter; or
   iv. has been shown to be the child's biological parent by other reasonable evidence and the worker lived with the child or contributed to the child's support when the insured worker died; or
f. dependent grandchild or step-grandchild.

The surviving child's insurance benefit rate is three-fourths (.75) of the deceased parent's primary insurance amount.

Surviving child's insurance benefits end when:
a. the child dies;
b. the child reaches age 18 and is neither under a disability nor is a full-time elementary or secondary school student;
c. the child marries;
d. the child's entitlement is based on a legal adoption and the adoption is annulled; or
e. the child is a stepchild of the worker, and the marriage between the worker and the stepchild's parent ends in divorce.

The effective date of the termination of benefits is the month in which any of the above events occurs.

3. Family Maximum

The family maximum is 85% of the Average Indexed Monthly Earnings, but cannot be less than the Primary Insurance Amount (PIA) nor more than 150% of the PIA.

Background Information on Workers' Compensation and Deceased State Employees

Definition of Workers Compensation

Workers' Compensation is a form of insurance that provides wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence. Workers' Compensation provides weekly payments in place of wages (functioning in this case as a form of disability insurance), compensation for economic loss (past and future), reimbursement or payment of medical and like expenses (functioning in this case as a form of health insurance), and benefits payable to the dependents of workers killed during employment (functioning in this case as a form of life insurance).

Historical Development of Workers' Compensation

In antiquity, there were systems of compensation for bodily injury, including the city-state of Ur in 2050 B.C., the code of Hammurabi in 1750 B.C., as well as ancient Greek, Roman, Arab, and Chinese law.

English common law in the late Middle Ages and Renaissance provided a legal framework that generally restricted work-related injury or death compensation under the doctrines of contributory negligence, the "fellow servant" rule, and the "assumption of risk."

Workers' compensation systems were devised in the late 19th Century. The Prussian Employers' Liability Law of 1871 provided limited social protection to workers in certain factories, quarries, railroads, and mines and the Prussian Workers' Accident Insurance of 1884 created the first modern system of workers' compensation. The British Employer's Liability Act of 1880 abolished the old common-law defenses in theory, but did not establish a "no-fault" system, required that negligence on the part of the employer be proved for the employee to collect, and permitted "right to die" contracts under which workers renounced the right to sue for injury. The British Workers' Compensation Act of 1897 was largely equivalent to the 1884 Prussian law in establishing a "no-fault" doctrine of compensation, but relied on nongovernmental "Friendly Societies" to provide private disability insurance for workers.

Workers' Compensation Development in the United States

In the United States, the federal Employers' Liability Acts of 1906 and 1908 softened the common-law doctrine of contributory negligence. Failed or limited efforts to pass comprehensive workers' compensation acts were attempted in New York in 1898, in Maryland in 1902, in Massachusetts in 1908, and in Montana in 1909. The first comprehensive workers' compensation law was enacted in Wisconsin in 1911. Nine other states also enacted workers' compensation laws in 1911, followed by 36 other states between 1912 and 1920. The final state to enact workers' compensation legislation was Mississippi in 1948.

In Minnesota, workers' compensation laws were enacted in 1913 (Laws 1913, Ch. 467), in 1919 (Laws 1919, Ch. 359), and in 1921 (Laws 1921, Ch. 82).

Minnesota Workers' Compensation Death Benefits

Minnesota Statutes, Section 176.111, Subdivision 8, for a deceased worker leaving a spouse and two dependent children, provides the surviving spouse, for the benefit of the spouse and children, weekly benefits of 66-2/3% of the daily wage at the time of the injury of the deceased until the last dependent child is no longer dependent, and, at that time, provides the dependent surviving spouse weekly benefits at a rate which is 25% less than the last weekly Workers' Compensation benefit payment while the surviving child was a dependent, for a period of ten years. Workers' Compensation benefits are adjusted according to Minnesota Statutes, Section 176.645, which currently provides for 2% annual increases.

Minnesota Statutes, Section 176.111, Subdivision 21, requires that death benefits be coordinated with governmental survivor benefits, with the combined total of weekly government survivor benefits and Workers' Compensation death benefits not to exceed 100% of the weekly wage being earned by the deceased employee at the time of the injury causing death. No state Workers' Compensation death benefit is payable for any week in which the survivor benefits paid under a federal government program may exceed 100% of the weekly wage, but the Workers' Compensation benefits payable to a dependent surviving spouse are not to be reduced on account of any governmental survivor benefits payable to the decedent's children if the support of the children is not the responsibility of the dependent surviving spouse. Social Security survivor benefits are benefits under a government survivor program.

.... moves to amend H.F. No. 1528; S.F. No. 1277, as follows:

Page 1, line 10, after "additional" insert "surviving spouse" and after "benefit" insert ", payable for the lifetime of the surviving spouse,"

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.... moves to amend H.F. No. 1528; S.F. No. 1277, as follows:

Page 2, line 4, after the period insert "Eligibility for postretirement adjustments for this benefit begin on the January 1 next following the commencement of payment of the additional survivor benefit."

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.... moves to amend H.F. No. 1528; S.F. No. 1277, as follows:

Page 2, line 4, after the period insert "The initial payment of the additional survivor benefit must include the postretirement adjustments under Minnesota Statutes, section 356.415, that would have been paid on and after January 1, 2012, if the additional survivor benefit were paid since April 1, 2011, and the adjusted additional survivor benefit is subject to regular postretirement adjustments on each January 1 thereafter."

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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

HOUSE FILE NO. 1528

April 18, 2011
Authored by Morrow and Smith
The bill was read for the first time and referred to the Committee on Government Operations and Elections

A bill for an act
relating to retirement; providing for increased annuity for surviving spouse and dependent children of employee killed while engaged in emergency response to flooding.

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

Section 1. **INCREASED ANNUITY FOR SURVIVING SPOUSE OF EMPLOYEE KILLED WHILE ENGAGED IN EMERGENCY RESPONSE TO FLOODING.**

(a) Notwithstanding Minnesota Statutes 2010, section 352.12, a surviving spouse of an eligible person specified in paragraph (b) is entitled, upon application filed with the executive director of the Minnesota State Retirement System, to the additional benefit from the general state employees retirement fund of the Minnesota State Retirement System specified in paragraph (c).

(b) An eligible person is a person who:

(1) was born on November 7, 1971;

(2) began working for the state on September 25, 2002; and

(3) was killed on March 22, 2011, while working as an employee of the Department of Transportation engaged in emergency response to flooding by using a backhoe to clear debris from a culvert that drains into the Minnesota River between St. Peter and Mankato.

(c) The monthly annuity payable to the surviving spouse of an eligible person specified in paragraph (b) is 54 percent of the average monthly salary of the eligible person, and accrues as of the first day of the first week after the surviving spouse ceases to receive workers' compensation payments attributable to the death of the eligible person specified in paragraph (b).

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(d) "Average salary" has the meaning given in Minnesota Statutes 2010, section 352.01, subdivision 14a.

(e) The benefit under this section is eligible for postretirement adjustments under Minnesota Statutes, section 356.415, subdivision 1a.

EFFECTIVE DATE. This section is effective retroactively from March 22, 2011.