HF 4656 (Pursell); SF 4759 (Westlin): Supplemental Deferred Compensation Plans; Authorizing Plans to Provide for an Employer Match on Student Loan Repayments; Making Other Changes

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Introduction

Affected Plans: Supplemental deferred compensation plans

Laws Amended: Minnesota Statutes, Section 356.24, Subdivisions 1 and 3

Brief Description: The bill:

- revises the requirements for deferred compensation plans to which public funds may be contributed to permit a deferred compensation plan to provide for an employer matching contribution based on qualified student loan repayments, as authorized by the federal Secure 2.0 Act of 2022;
- permits a deferred compensation plan to be documented in an employment contract between a superintendent and a school district; and
- reinstates a provision that was deleted in 2020 that will allow public employers to offer retirement plans to which employees can contribute the value of sick leave, vacation leave, and severance pay.

Attachment: Hendricks Testimony dated April 17, 2023.

Background

The bill amends section 356.24, a statute in chapter 356, which governs public pension and retirement plans, generally. Section 356.24, subdivision 1, prohibits school districts, local governments, and state agencies from contributing public funds to pension or deferred compensation plans that are in addition to the primary pension program that covers public employees. The statute refers to these plans as "supplemental," to distinguish them from the "primary" pension plans. Primary pension plans include the statewide pension plans administered by the Minnesota State Retirement System (MSRS), the Public Employees Retirement Association (PERA), and the Teachers Retirement Association (TRA).

For example, teachers are required to participate in TRA, to which both teachers and school districts are required to contribute. The TRA pension plan would be considered the "primary" pension plan. If a school district wants to permit vendors of retirement savings accounts called 403(b) accounts to market their products to teachers, as a way to provide another way to save for retirement, these would be considered "supplemental" retirement plans and are prohibited by section 356.24, subdivision 1, unless one of the exceptions in subdivision 1 applies. The exception that applies to 403(b) accounts and therefore would permit public funds, such as matching contributions, to be contributed by a school district is the exception at clause (5) for "deferred compensation plans."

To reiterate, if a public employer wishes to contribute public funds to a supplemental retirement plan, the supplemental plan must be listed in the exceptions in subdivision 1 of section 356.24. The exception that is the focus of the bill is the exception at clause (5) of subdivision 1, which allows a public employer to contribute public funds to a "deferred compensation plan defined in subdivision 3."

To satisfy the definition of a "deferred compensation plan," set forth in subdivision 3, the plan must satisfy all of the following:

First, it must be:
- (1) the Minnesota Deferred Compensation Plan administered by MSRS;
- (2) a tax-sheltered annuity plan under section 403(b) of the Internal Revenue Code; or
- (3) a deferred compensation plan under section 457(b) of the Internal Revenue Code.

Second, for each investment fund available to participants under the plan, the plan administrator or vendor must disclose at least annually to participants (and file with the Commission) a statement that sets forth:
- (1) all fees, including administrative, maintenance, and investment fees, that impact the rate of return on each investment fund available under the plan; and
- (2) the rates of return for the prior one-, three-, five-, and ten-year periods or for the life of the fund, if shorter, in an easily understandable document.

Third, enrollment in the plan must be provided for in:
- (1) a personnel policy of the public employer;
- (2) a collective bargaining agreement between the public employer and the exclusive representative of public employees in an appropriate unit; or
- (3) an individual employment contract between a city and a city manager.

Fourth, the plan covers employees of a school district, state agency, or other governmental subdivision.

Fifth, public funds are contributed to the plan only in an amount that matches employee contributions on a dollar for dollar basis, but not to exceed one-half of the annual limit on elective deferrals under section 402(g) of the Internal Revenue Code (for 2024, 50% of this limit is $11,500) or, if less, the amount stated in the personnel policy or agreement.

Section 356.24 was added to the Minnesota Statutes in 1971 and, at that time, was a blanket prohibition on any supplemental pension or deferred compensation plan, except those already in existence in 1971. The Commission's legislative history files date back only until 1975, so we are not able to verify legislative intent, but it is likely that the law was the result of concern on the part of the legislature that if the State makes available publicly funded pension plans for public employees, individual governmental employers should not be permitted to spend public funds to establish and maintain another ("supplemental") pension or retirement plan.

Since 1971, section 356.24 has been amended numerous times to add more exceptions, starting with an exception in 1980 for severance pay plans. Exceptions now include group health, disability, severance, post-retirement medical, and death benefit plans, the Minnesota Deferred Compensation Plan, other individual account plans, and a number of multiemployer pension funds.

Section- by- Section Summary

The bill has two sections.

Section 1 adds back into the list of exceptions in subdivision 1 of section 356.24 the exception for retirement plans that are wholly and solely funded by the value of employee sick leave, vacation leave and severance pay. This exception was added in 2002 apparently because public employers wanted to sponsor retirement plans that would permit employees to defer receipt of payments made to employees in connection with separation from service.

The section was moved in 2020 to new paragraph (g) in subdivision (3) in an attempt to address concerns about the “wholly and solely” language and clarify that sick leave, vacation leave, and severance pay could be contributed to a deferred compensation plan, as defined in paragraphs (a) through (f) of that subdivision.

We have since learned that the plans that had been established to allow for these types of pay are plans governed by Section 401(a) of the Internal Revenue Code, not Sections 403(b) or 457(b) of the Code, so wouldn’t satisfy the definition of “deferred compensation plan.” Opening that definition up to Code section 401(a) plans would be a substantive expansion of the definition of “deferred compensation plan.” Thus, until more consideration can be given, section 1 of the bill simply returns the exception to where it had been in 2002 before the 2020 legislation.

Section 2 makes two changes:

(1) Lines 4.7 to 4.9 add individual employment agreements between a school district and a superintendent to the places where a deferred compensation plan can be documented. Current law provides that the deferred compensation plan is permitted if it is documented in a personnel policy, a collective bargaining agreement, or an individual employment contract between a city and a city manager. The Commission heard testimony at its meeting on April 17, 2023, that a number of school districts and superintendents have been entering into employment agreements that provided deferred compensation. This is in violation of current law, at section 356.24, subdivision 3, which allows a deferred compensation plan to be documented in an employment agreement, but only those between cities and city managers. *See Hendricks Testimony dated April 17, 2023, attached.*

    This change in the law will align the law with what is currently occurring in a number of school districts, as they negotiate employment agreements with superintendents.

(2) Lines 4.21 to 4.31 add a new option available now to public and private employers as a result of the federal law known as the SECURE 2.0 Act of 2022. Beginning on January 1, 2024, SECURE 2.0 permits employers to make matching contributions on behalf of employees to a qualified retirement plan, a 403(b) plan, or 457(b) plan that are based on “qualified student loan payments,” as if they were salary deferral contributions. An employee must certify to the employer that the employee has made the student loan repayments for the preceding year or other time period. The Internal Revenue Service (IRS) has yet to issue regulations that will provide the necessary detail to employers hoping to implement the new match.

This new authority under federal law is intended to encourage retirement savings by employees who delay making salary deferral contributions to retirement savings plans because of their obligation to repay student debt, which means they miss out on the employer matching contribution.

The new language in paragraph (f) does not require employers to offer this but allows them to do so and still satisfy the definition of “deferred compensation plan.” In addition to allowing the match on student loan payments, the new language imposes the same limit on the amount of the match as is imposed under the language earlier in the paragraph for matching contributions on salary deferral contributions.

Effective date. Both sections are effective the day following final enactment.