SF 4587 (Westlin); HF 4694 (O'Driscoll):

Supplemental plans; Eliminating the requirement that deferred compensation plans file investment information with the LCPR

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Introduction

Affected Plans: Supplemental plans that are 403(b) tax sheltered annuity plans and other deferred compensation plans

Law Amended: Minnesota Statutes, Section 356.24, subdivision 3

Brief Description: The bill eliminates the requirement that deferred compensation plans annually file investment fee and rate of return information with the Legislative Commission on Pensions and Retirement (LCPR or Commission)

Background

Statute prohibits supplemental plans unless an exception applies. Minnesota Statutes, 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 otherwise 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).

Section 356.24, subdivision 1, provides a list of exceptions to the general prohibition on supplemental plans. One of these, clause (5), is an exception for deferred compensation plans as defined in subdivision 3. Subdivision 3 defines "deferred compensation plan" by reference to several requirements that must be met in order to be considered as satisfying the definition. Paragraph (b) states that the plan must be the Minnesota Deferred Compensation Plan, a 403(b) tax-sheltered annuity, or a 457(b) deferred compensation plan. Paragraph (c) states that the plan administrator or vendor of the plan must, for each investment fund available to participants under the plan, disclose at least annually to participants a statement that sets forth in an easily understandable document:

> (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-, five-, and ten-year periods or for the life of the fund, if shorter.

Paragraph (c) also requires that the plan administrator or vendor file a copy of this statement annually with the executive director of the Legislative Commission on Pensions and Retirement.

The consequence, at least theoretical, of not complying with the requirements of paragraph (c), including the disclosure and filing requirements, is that the 403(b) or other deferred compensation plan does not satisfy the requirements to be considered a "deferred compensation plan" and the school district or other public employer would no longer be able to transfer "public funds" to the vendor.

History of the requirement to file disclosures with the Commission. Since 2015, Commission staff had been receiving calls and emails from legislators, teachers, spouses, and others about 403(b) investment fee issues, mostly stemming from newspaper and magazine articles about how teachers were being taken advantage of, and even scammed, by high fee, illiquid 403(b) programs, often offered by annuity companies. We also heard from teachers that the vendors or administrators were not providing them with an easily understandable document that informed them of fees or investment rates of return, as required by Section 356.24.

While the statute requires vendors and plan administrators to provide disclosure to participants, there is no enforcement mechanism in the statute. To provide some assurances that vendors and plan administrators were at least preparing the disclosure, Commission staff worked with the Commission Chair and a lobbyist for one of the vendors to amend the statute in 2020 to require that vendors and plan administrators file the disclosure with the Commission executive director. Commission staff could then review the disclosure and make it available to participants through the LCPR website.

Disclosure filing requirement has outlived its usefulness. Since the 2020 effective date of the legislation that added the filing requirement, LCPR staff has received disclosure from Ameriprise, Horace Mann, Invesco, Nationwide, Vanguard, and many other vendors and plan administrators. Some filed the disclosure with us for only one year, while others have consistently filed with us every year since the requirement became effective.

LCPR staff is requesting the Commission and the legislature amend the statute to eliminate the requirement that investment fee and rate of return disclosure be filed with the LCPR. No change would be made to the requirement in the statute that this information be provided annually to participants in an easily understandable document, which has been required since 2006.

LCPR staff has identified the following concerns, which are the bases for this request:

- Filing the disclosure statement with the LCPR does not mean that the plan administrator or vendor also sent the disclosure statement to the plan participants. We don't believe a certification that the statement has been filed with participants would be possible to obtain from these vendors and administrators, based on the many objections we received from lobbyists when the filing requirement took effect.

- LCPR staff has not been able to identify a source for determining which public employers offer a 403(b) or 457(b) plan to their employees. Therefore, we are not able to determine if we are receiving disclosure statements from all the vendors or administrators who offer their products

to public employees. Some vendors provide a list of the school districts they service (see, e.g., MassMutual Life Insurance Company List), but this is not a requirement and with no master list to compare them to, the lists provided do not help LCPR staff track compliance. In any event, if we discover that we are not getting filings from a specific vendor, LCPR staff has no way to enforce the requirement, short of contacting the Attorney General's office.

- The entities that submit disclosure statements and the number of disclosure statements received by LCPR staff vary from year to year. Whenever possible, LCPR staff links to the disclosure statements on the LCPR webpage for mandatory filings. However, due to the number of disclosure statements provided by some vendors (sometimes hundreds from one vendor), LCPR staff has not had the capacity to link to all the filed disclosure statements on its website. Instead, the website states that "If [a person] would like to receive a copy of the [plan vendor's] fee disclosure for a specific entity," the person should contact the LCPR. Since the filing requirement was added, LCPR staff has not received a single request for a copy of a disclosure statement.

- Vendors and administrators do not like this filing requirement. Two of them have made it particularly difficult for staff to process their filings by emailing hundreds of pdf documents attached to emails. This takes staff time to process and uses up digital storage capability that could be spent on tasks that provide more value to the Commission and plan participants.

- Commission staff work for the legislature and have no ability to enforce statutory requirements. Staff has received no request from a legislator since 2020 for copies of disclosure filings nor questions about compliance with the disclosure filing requirement. If we suspect a vendor is not filing with us or missed a year, in the absence of interest on the part of legislators in compliance, it is not clear that Commission staff time should be spent following up with vendors and plan administrators, requesting missed filings, and otherwise tracking compliance.

Section- by- Section Summary

The bill consists of one section that amends Section 356.24, subdivision 3. Subdivision 3 defines "deferred compensation plan," which is one of the exceptions to the prohibition in subdivision 1 against public employers contributing public funds to supplemental plans. A deferred compensation plan satisfies the definition if the plan complies with paragraphs (b) through (g). Paragraph (c) is the requirement at issue. Paragraph (c) requires vendors and plan administrators to disclose annually to plan participants, for each investment fund, all fees and rates of return over one-, five-, and ten-year periods, and file this disclosure with the LCPR executive director.

The bill amends paragraph (c) to eliminate the final sentence of this paragraph, which is the requirement that the investment fee and rates of return disclosure be filed with the LCPR executive director.

Effective date: The bill is effective the day following final enactment.